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FILE TITLE:	SERIES
IMMIGRATION.	HOME AFFAIRS.
	PART: 7
PART BEGINS: 13 MAY 1999	PART ENDS: 14. JULY 1999
	CAB ONE:

PART CLOSED

LABOUR ADMINISTRATION

PREM 49/886

CONFIDENTIAL

T.S.O. Order No. N0064510 3/98 C5 59064

PART

CLOSED

DATE CLOSED	14. JULY 1999

Series : **HOME AFFAIRS**

File Title : **Immigration**

Part : **7**

Date	From	To	Subject	Class	Secret
15/06/1999	PU	PM	Central and Eastern Europe Asylum pressure	C	0
15/06/1999	MS/DETR	DPM	Asylum seekers: families	C	0
16/06/1999	SS/DoH	HS	Asylum Seekers: Families	C	0
16/06/1999	HS	SS/DoH	Asylum seekers: Families	U	0
16/06/1999	HS	SS/DoH	Asylum seekers: families	C	0
16/06/1999	MS/DETR	DPM	Asylum applications from unaccompanied children	C	0
17/06/1999	LP	HS	Asylum Seekers: Families	U	0
23/06/1999	HS	CST	Asylum seekers	U	0
23/06/1999	DoH	HO	Asylum processing - unaccompanied children	C	0
24/06/1999	HA/PS	PM	Passport backlog	U	0
24/06/1999	HO	HA/PS	Background on UKPA	R	0
24/06/1999	HO	HA/PS	United Kingdom Passport Agency (UKPA)	R	0
25/06/1999	HA/PS	HO	UK Passport agency	C	0
25/06/1999	WO	HO	Asylum processing - unaccompanied children	C	0
28/06/1999	HO	PA/PS	UKPA press notice	C	0
28/06/1999	HA/PS	Ch.Staff	Passport Office	C	0
28/06/1999	SS/DSS	CST	Immigration and Asylum Bill	U	0
29/06/1999	Cab Off	SOC	Passport Agency	U	0
29/06/1999	MS/DETR	DPM	Asylum seekers	U	0
30/06/1999	FA/APS	PU	Central and Eastern Europe: Asylum Pressure	R	0
30/06/1999	HO	HO	UKPA Meeting 30/6	C	0
02/07/1999	HS	PM	UKPA	C	0
06/07/1999	HS	MS/DETR	Immigration and asylum bill:civil penalty:through freight trains	C	0
06/07/1999	FA/APS	PM	Central and Eastern Europe Asylum Pressures	C	0
06/07/1999	FA/APS	PM	Central and Eastern Europe Asylum pressures	R	0
08/07/1999	FA/APS	HO	Central and Eastern Europe Asylum pressures	R	0
08/07/1999	DPM	HS	Immigration and Asylum Bill: Civil penalty through freight trains	U	0
08/07/1999	MS/DETR	HS	agreement to introduce the amendment	U	0
08/07/1999	LC	HS	Immigration appeal tribunal and adjudicators: Eligibility for appointme	U	0
09/07/1999	DETR	LCO	Immigration Appeal Tribunal and Adjudicators:Eligibility for Appointm	U	0
12/07/1999	LC	CST	Contracting for immigration and asylum work	C	0
13/07/1999	HS	PM	Passport Agency:Report on latest position in dealing with Passport d	U	0
14/07/1999	HS	DETR	Immigration and Asylum Bill:Civil Penalty:Freight Trains	U	0
14/07/1999	HS	PM	Ben James	R	0

Series : **HOME AFFAIRS**

File Title : **Immigration**

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Date	From	To	Subject	Class	Secret
13/05/1999	HS	LC	Office of immigration adjudicator	C	0
14/05/1999	LC	DPM	Legal aid report on contracting of immigration work	C	0
14/05/1999	DPM	LC	Immigration and asylum bill - Immigration appeal tribunal lay membe	C	0
14/05/1999	PU	PM	Immigration for couples who cannot marry	C	0
14/05/1999	LPS	DPM	Immigration and asylum bill - HOL judgement in Shah and Islam	C	0
17/05/1999	HS	CST	Immigration and asylum bill - asylum seekers support	C	0
17/05/1999	LPO	DSS	Review of the habitual residence test	C	0
17/05/1999	SS/DoH	SS/DSS	Review of the habitual residence test	C	0
18/05/1999	HS	SS/SO	Support arrangements in Scotland for asylum seekers	C	0
18/05/1999	HA/PS	HO	Unmarried partners concession	C	0
18/05/1999	MS/DETR	DPM	Review of the habitual residence test	C	0
18/05/1999	HS	LC	Asylum and Immigration Bill: Amendment to Section 2 of the Asylum	U	0
19/05/1999	LP	HS	Asylum and Immigration Bill: Amendtment to S2 of the Asylum and I	U	0
21/05/1999	DPM	HS	Immigration and Asylum Bill: Civil Penalty: Through Freight Trains	R	0
24/05/1999	HS	PM	Immigration and Asylum Bill: IND caseworking	R	0
24/05/1999	SS/DoH	HS	Immigration and Asylum Seekers: Asylum Seekers Support	R	0
24/05/1999	DETR	LCO	Immigration and Asylum Bill - Immigration Appeal Tribunal Lay Mem	U	0
25/05/1999	SS/SO	HS	Support arrangements for asylum seekers	R	0
25/05/1999	MS/DETR	HS	Eurostar	C	0
27/05/1999	SS/SO	HS	Immigration and Asylum Bill: Asylum Seekers' Support	C	0
27/05/1999	CST	HS	Immigration and Asylum Bill: Asylum Seekers' Support	R	0
28/05/1999	HS	DPM	immigration & asylum bill:statutory presumptioin in favour of bail	C	0
28/05/1999	HS	DPM	Immigration and asylum bill: statutory presumption in favour of bail	C	0
28/05/1999	MS/DSS	CST	Immigration and Asylum Bill: Asylum Seekers' Support	C	0
01/06/1999	MS/DETR	DPM	Asylum bill	C	0
01/06/1999	DPM	LC	Office Of Immigration Adjudicator	C	0
01/06/1999	DPM	HS	Immigration Asylum Bill: Appeals in certain National Security Cases	C	0
01/06/1999	DETR	DPM	Immigration and Asylum Bill: support	C	0
02/06/1999	LP	HS	Immigration and Asylum Bill: asylum Seekers' Support	C	0
03/06/1999	HO	DoH	asylum applications from unaccompanied children	C	0
03/06/1999	PU	PM	Asylum - progress report	R	0
04/06/1999	HO	HA/PS	Prime Minister's meeting with the Home Secretary on Monday 7 Jun	U	0
07/06/1999	POL	PM	Asylum meeting with Jack Straw	C	0
07/06/1999	HA/PS	HO	(M) Prime Minister's meeting on Asylum, 7 June	R	0
07/06/1999	HS	LP	Amendments to the immigration and asylum bill	C	0
08/06/1999	LP	SS/DSS	Review Of The Habitual Residence Test	C	0
08/06/1999	LP	HS	asylum & immigration bill:amendment to section 2 of the asylum & i	C	0
08/06/1999	LP	HS	Immigration and Asylum Bill: Asylum Seekers Support	R	0
08/06/1999	LP	HS	Eurostar	C	0
08/06/1999	HO	HA/PS	Asylum cases: four month target for appeals	C	0
09/06/1999	LP	HS	Immigration and Asylum Bill	C	0
09/06/1999	LC	LP	Immigration and Asylum Bill: Proposed arrangements for overstayers	C	0
10/06/1999	HS	DPM	Immigration and asylum bill	C	0
10/06/1999	LC	HS	Immigration and asylum bill	C	0
10/06/1999	HS	DPM	Immigration and asylum bill	C	0
11/06/1999	LP	HS	Immigration and asylum bill: statutory presumption in favour of bail	C	0
14/06/1999	Ch.Staff	PPS	Asylum	U	0
14/06/1999	DPM	HS	Immigration and asylum bill	C	0
14/06/1999	HS	LC	Legal aid board report on contracting of immigration work	C	0
14/06/1999	HS	DPM	Asylum seekers: Families	U	0
14/06/1999	Ch.Staff	PPS	Asylum	C	0

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DEPARTMENT/SERIES PREM 49 PIECE/ITEM 8486 (one piece/item number)	Date and sign
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HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

14 JUL 1999

The Rt Hon Helen Liddell MP
House of Commons
LONDON
SW1A 0AA

Dear Helen,

IMMIGRATION AND ASYLUM BILL: CIVIL PENALTY: FREIGHT TRAINS

Thank you for your letter of 8 July.

I am very grateful to you and HS colleagues for agreement to our amending the Bill so as to enable, in due course, an extension of the civil penalty to freight trains. My officials will, of course, keep yours fully engaged in all the subsequent work and I would be very happy to discuss the matter with you once more before we make the necessary regulation.

I am copying this letter to the Prime Minister, the Deputy Prime Minister, Members of HS and LEG, to Sir Richard Wilson and to the first Parliamentary Counsel.

Yours ever

Jack.

JACK STRAW

6552js

DN
cc: JJH

(f)

Prime Minister

PASSPORT AGENCY: REPORT ON LATEST POSITION IN DEALING WITH PASSPORT DELAYS

Queues

The position on queues outside offices has been transformed. All offices, except Glasgow, eliminated outside queues by 8.30am last week and Glasgow had done so by 9am. They hope to be in line this week. Agency staff estimate this to be an improvement on the normal summer peak but we should not be complacent about this as waiting times inside the office are still in excess of the one hour maximum target and the Agency is working to restore that later in the year.

Applications

2. There has been some significant progress in turning the position round. The backlog has begun to fall (it now stands at 496,589). Following a blitz at the weekend, involving nearly 1,000 staff working overtime, all offices except Glasgow and Liverpool have now completed virtually all applications showing July travel dates. Glasgow is now working on applications 10 days ahead of travel and Liverpool one week ahead. Both offices hope to make further significant progress this week. This will give a much stronger chance of avoiding missing travel dates. It will also ease travellers' concerns and reduce pressure on other areas such as the call centre. While the indicators are thus beginning to look positive past experience of false dawns makes me cautious about making play of this publicly at this stage. I will be in a better position to judge on Wednesday when we receive a collated report of the latest figures from the Agency.

Call centre

3. The attached table gives details of calls received and answered. As you will see the centre got off to a shaky start with a large number of callers failing to get through. The number of lines has been expanded and this has greatly improved the situation. Nevertheless we are keeping the position under close review and will expand lines further if this looks necessary. The Agency have

6546-JS

set up a system to identify the really urgent cases emerging from the process and are also looking to improve response times on the remainder.

Post Office

4. The new arrangements for free over-the-counter extensions began last Wednesday in 1,700 main Post Offices and appear to be working well. Stamps have been delivered to all main Post Offices. By sampling offices at the end of last week the Post Office estimate that by Friday some 95,000 applicants had had their passports extended in this way and that this would rise to 105,000 by close on Saturday. I think this is proving a very worthwhile exercise which should help reduce the backlog from the other end by reducing demand for full renewals.

Media

5. If progress continues to be made I would like to try and get some positive stories out this week but we need to be reasonably confident that current trends are continuing. I will review this mid-week.

Chief Executive designate

6. Bernard Herdan, the incoming Chief Executive, arrives this week. I have also appointed a senior Home Office official, Mike Eland, to look at some of the broader issues and co-ordinate activity.

7. I have asked them to look at some medium term issues such as the further phasing of the computer roll-out the potential for making more use of the Post Office and improvement in our arrangements for crisis handling.

8. I will continue to keep you in touch with progress.

13 July 1999

6546-JS

(f)

Prime Minister

This is being turned round, and progress will accelerate in the coming weeks, as new applications tail off.

David

Prime Minister

Arthur Top-DN
David
North

PASSPORT AGENCY: REPORT ON LATEST POSITION IN DEALING WITH PASSPORT DELAYS

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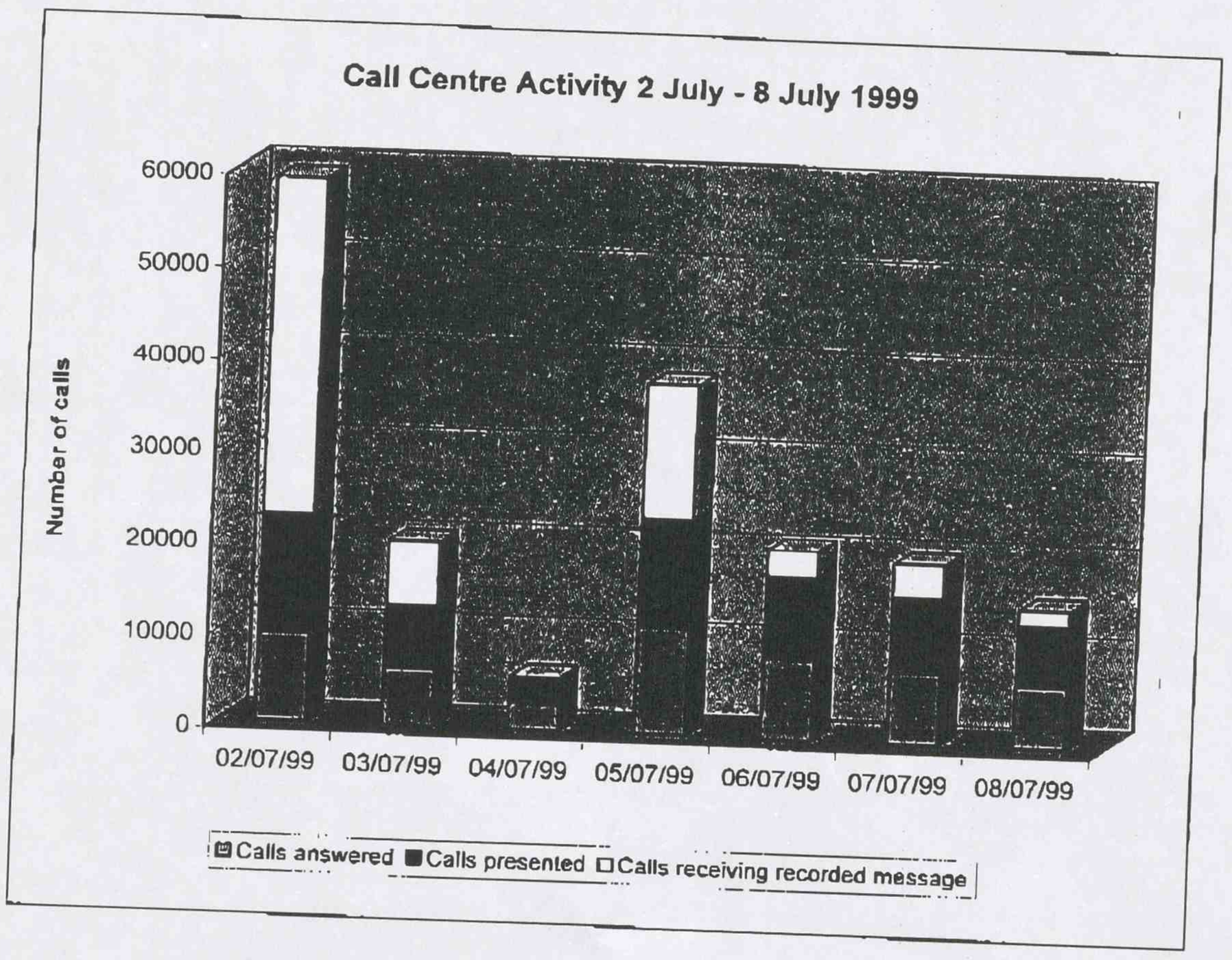
13th July 1999

6546-JS

Call centre activity 2 July - 8 July 1999

	02-Jul	03-Jul	04-Jul	05-Jul	06-Jul	07-Jul	08-Jul
Total calls received	43447	13803	2151	26567	11836	10797	8458
Calls answered	9586	6200	2887	11453	8739	7858	6778
Calls presented	12954	6839	2939	12141	9038	8165	6614
Calls receiving recorded message	36493	6964	0	14426	2798	3632	1680



Note:
Calls answered are those calls answered by the operator
Calls presented are those calls, in a queue, waiting to be answered
Calls receiving recorded message are those calls unable to be connected because all lines are busy

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

12 July 1999

The Rt. Hon. Alan Milburn MP
Chief Secretary to the Treasury
HM Treasury
Treasury chambers
Parliament Street
London SW1P 3AG

Dear Alan,

CONTRACTING FOR IMMIGRATION AND ASYLUM WORK

The Legal Aid Board published its report on *Access to Quality Services in the Immigration Category - Exclusive Contracting* on 18 May this year. The purpose of this letter is to secure your agreement and that of HS Committee to the draft response to the Board's proposals, which agrees to all the report's recommendations, except one on the funding of the Immigration Advisory Service and the Refugee Legal Centre. The key recommendation is to extend public funding under contract to representation before the Immigration Appellate Authorities (adjudicators or appeals tribunals). I propose to agree to that recommendation, and to introduce the necessary regulations to give it effect in due course.

I would be grateful for agreement and any comment by 16 July, in order to provide the Legal Aid Board with the time it needs to issue supplementary contracting papers to potential bidders.

I wrote to John Prescott and HS colleagues on 6 May with a copy of the report, but enclose another for convenience. I said in my letter that I would be seeking collective agreement to the Government response to the report after publication. I now attach a copy of my proposed response, and would be grateful for agreement and comment by 16 July.

My response is broadly in support of the Board's proposals, subject to some minor amendments they wish to make, which I have referred to in my reply. The only proposal to which I have not given my approval is recommendation 11, which concerns the future of the Immigration Advisory Service (IAS) and the Refugee Legal Centre (RLC).

Jack Straw wrote to me on 14 June, supporting the proposals in the report.

The key proposal in the report is the extension of public funding under contract to representation before the Immigration Appellate Authorities (IAA). The report makes out a strong case for this funding, on three grounds:

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cc JJH
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FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

(f)

12 July 1999

The Rt. Hon. Alan Milburn MP
Chief Secretary to the Treasury
HM Treasury
Treasury chambers
Parliament Street
London SW1P 3AG

Dear Alan,

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Jack Straw wrote to me on 14 June, supporting the proposals in the report.

The key proposal in the report is the extension of public funding under contract to representation before the Immigration Appellate Authorities (IAA). The report makes out a strong case for this funding, on three grounds:

- It will allow high quality, franchised suppliers of services to take a case on from start to finish, which will reduce the waste arising from referrals and duplication of effort.

- By providing the incentive to high quality firms with expertise in immigration law to take cases on at an early stage and at initial appeals, the Government's aim to reduce the time taken on appeals will be assisted. There may also be fewer cases going forward to judicial review as some appeals are more likely to be resolved if they are not being presented by inexpert or unscrupulous firms.

- The greater involvement of high quality firms at the early stages of a case will help to address the shortfall in advice which may arise from contracting only with franchised suppliers from January 2000.

I am convinced by the Board's arguments, but I acknowledge that the proposal is not without risks.

First, no-one can give a cast iron guarantee that the high quality firms, who have previously concentrated on judicial review work, or complex advice, will expand their activities into the earlier stages of cases in sufficient numbers. But the Board is proposing some payment incentives which will help, and an informal survey by the of Immigration Law Practitioners Association suggests that respected firms both in and outside London would expand, given the opportunity.

Second, my CSR settlement already implies that the value of new starts for advice and assistance in immigration will drop from £26.6m in the current financial year to £18.8m next year. That reduction may well be accounted for by the decrease in the number of potential suppliers when contracting is in place, as only franchised providers will be able to provide publicly funded services. The reduction in the supplier base could even lead to fewer new starts than this. We cannot be sure what will happen until contracts have been let in the Autumn, but there is clearly a risk that we will face a continuing increase in the demand for immigration and asylum advice (resulting from the number of asylum seekers) at the same time as the supply is falling.

Both risks must be faced - the alternative of doing nothing will simply make matters worse. I am quite certain that it is right to take the view that poor quality advice can be more harmful than no advice at all and that it is right, therefore, to contract only with quality assured providers. The money saved by rooting out the incompetent and unscrupulous should cover the increased cost of funding representation and provide scope to attract more of the higher quality firms into the early stages of work. But under a controlled budget we do face the possibility that genuine demand will not be met as it arises. If that is happening then we, collectively, will have to revisit the question of available resources, although constraints on the number of competent providers is likely to prevent any immediate or substantial increase in the volume of cases that can be taken on.

Recommendation 11 of the report, on funding the IAS and RLC, raises the possibility in the future of transferring Home Office funding, under section 23 of the Immigration Act 1971, to the Lord Chancellor, so that all of the IAS and RLC's work could be placed under contract with the Legal Services Commission. As a long term aim, this makes a good deal of sense, and I know that Jack supports the proposal. However, it is important that we walk before we can run. It is still not certain that the IAS and RLC will win franchises in time to be awarded contracts for January 2000. I am hopeful that they will, and I know that officials from the Board and the Home Office are in

discussion with these organisations about how to take their bids for franchises forward. If they do win contracts, and when we see, through contracting, what the levels of genuine need for legal services are, we will then be in a position to consider the transfer of funding.

Finally, on a detailed point, paragraph 3.14 of the Report briefly looks at the issue of contracts for automatic bail hearings for detainees. These hearings will come into being as a result of the Immigration and Asylum Bill. The Board accepts that there will be a need for contracting, but do not discuss whether funding for representation will be needed. I think that it will, and it would fit with the general extension of funding for representation. Before I can agree to this form of representation being funded by the Board, however, I need to discuss further with Jack the issue of cost. The sums are likely to be relatively small - in the order of £300,000 a year.

I am copying this letter to the Prime Minister, members of HS colleagues and Sir Richard Wilson.

Yours ever,

Derry

Access to Quality Services in the Immigration Category

exclusive contracting

recommendations to the Lord Chancellor

LEGAL AID FRANCHISE

May 1999

Legal Aid Board

Contents

Exclusive Contracting

Access to Quality Services in the Immigration Category

Introduction

1. The Lord Chancellor wrote to Sir Tim Chessells on 13 October 1998 accepting the findings of the Legal Aid Board's report on the introduction of exclusive contracting. In that letter he also said:

> "On immigration, you highlight the need to be proactive in addressing the potential shortfall in suppliers resulting from a move to exclusive contracting in an area where the number of quality assured suppliers is low. I attach great importance to the availability of competent advice in this area. This can underpin the Government's aim to make the appeal system in immigration more efficient and effective. I agree with the proposition in your report that advice is only worthwhile if it is competent - poor quality advice can be very damaging to the client.
>
> At the same time you clearly do need to address the potential shortfall of suppliers that could arise from the introduction of exclusive contracting. With this in mind I would like you to submit to me by the end of November 1998 a more detailed set of proposals about how this problem can be addressed. This will include consideration of alternative methods of service delivery and reflect the need to improve the efficiency and effectiveness of the immigration appeal system."

2. This paper sets out the background to the Board's conclusions on the appropriate way forward for contracting for quality services in the immigration category.

Following the summary of our conclusions and recommendations, it is divided into four key sections:

a) the current position;

b) the problems;

c) breaking the problems down; and

d) possible solutions.

Conclusions and Recommendations

3. The Board's consideration of the issues set out in this paper have lead to the conclusions and recommendations set out below.

4. Current expenditure cannot be taken as an indicator of the level of genuine need for advice and assistance in the immigration category of law.

5. It is our view that the legal aid scheme should pay only for competent services delivered by quality assured suppliers to clients who are financially eligible. Money spent otherwise is money wasted. We do not see as defensible a position whereby very large sums of public money are paid to those who practice in this area merely because they can attract and sometimes exploit vulnerable clients. While such suppliers may, sometimes, deliver good advice to some clients they can cause considerable damage to others. Therefore, subject to paragraphs 4.19 to 4.25 below, we strongly recommend that we should contract for the provision of advice and assistance and representation only with organisations that have an immigration franchise or have passed a preliminary audit following a franchise application.

6. While some progress towards identifying the level of genuine need will emerge from the current work of RLSCs, the real extent of need for advice and assistance from the legal aid scheme will emerge only when incompetence, and undesirable, abusive practices, are eliminated from the scheme by contracting with quality assured suppliers.

7. The availability of good quality advice and assistance at the earliest possible opportunity will have benefits throughout the system - for clients, for the Board and for the Home Office.

8. We are introducing tighter controls over green form claims, and applications to extend the financial limits in the immigration and asylum category of work.

9. Contracts could allow representation before the adjudicators and the Tribunal subject to the application of a merits test and the application of outcome indicators. If this recommendation were agreed, we believe representation should be paid for at what is currently the ABWOR advocacy rate of £57.25. Preparation should be at the franchise green form rate of £45.50 (£48.25 in London).

10. The only organisations in receipt of funding for representation at appeals under s23 of the Immigration Act 1971 are the Immigration Advisory Service (IAS) and the Refugee Legal Centre (RLC). Comprehensive contracts with IAS and RLC could assist significantly in meeting need, providing that they can meet the required franchise quality standard.

11. The Lord Chancellor and the Home Secretary should consider at an appropriate stage, if IAS and RLC are successful in meeting the franchise and other contract requirements, transferring to the Lord Chancellor s23 funding so that the major

funding of these organisations for the range of work they carry out on a case is provided, co-ordinated and controlled from a single source.

12. Legal aid for applications for judicial review proceedings should be limited from 1 January 2000 to those organisations contracted with the Board. Outcomes of cases should be monitored.

13. Where it is clear that there is priority need for immigration advice and assistance, or where it can be identified that need will increase, contracted firms should be encouraged to expand to address the need by enhanced payment arrangements.

14. The Board should enter into "second tier" contracts with organisations able to support other organisations with contracts.

15. Core background work on asylum claims should be excluded from all normal contracts and subject to separate and specific contract terms. The results of work done on background issues should be made available to all contracted organisations with clients from a particular country.

16. We should consider further the quality implications where advice is given to detainees at a police station (or elsewhere) under PACE or otherwise.

Section 1 - The Current Position

1.1 Work provided under the legal aid green form scheme in the immigration category covers applications for asylum, disputes over nationality, and assistance with applications to enter or remain. The vast majority of the work supported by the scheme is, we believe, asylum although our historical records do not distinguish between different types of immigration work. The requirement for those coming to the country to be able to demonstrate their ability to maintain themselves without access to public funds means that many clients with non asylum cases are not eligible for legal aid at the advice and assistance level because, having other means of financial support, they are outside the eligibility levels.

1.2 The tables which follow show immigration green form payments to immigration franchisees, and applicants for immigration franchises, for the financial years 1997/98 and 1998/99. It can be seen from the figures that in the year to March 1998, 28% of the total expenditure of £35.25m was for cases undertaken by those who were already franchised, or in the process of applying for a franchise. By March 1999 the annual expenditure for immigration advice and assistance had reached £48.9m. Whereas in 1997/98 only 25% of expenditure was related to cases undertaken by franchisees or applicants, by the end of March 1999 (which was the closing date for franchise applications to qualify for contracts in January 2000) 79% of the expenditure was covered by immigration franchisees or applicants. [Note that the figure excludes payments in the solicitor block contracting pilot in which some of the key immigration franchised providers are involved, and money paid for immigration work

under contracts with in the not-for-profit block contracting pilot. The nature of the contracts means that payment data are not compatible with the information in the tables. Pilot contract payments cover all work in progress, rather than being for completed cases.]

1.3 It is noticeable that the significant increase in expenditure this year over last is concentrated in London. Such increases as there are elsewhere are on such small sums as to make them insignificant.

Immigration Green Form Payments: 1998/99

Area	Others		IMM franchise applicants		IMM franchisees		Total £
	Amount (£)	% of Area	Amount (£)	% of Area	Amount (£)	% of Area	
London	9,224,486	20%	31,860,400	69%	4,835,416	11%	**45,920,302**
Brighton	49,897	45%	32,871	30%	27,417	25%	**110,186**
Reading	53,919	23%	31,333	13%	149,424	64%	**234,677**
Bristol	18,369	27%	177	0%	49,455	73%	**68,001**
Cardiff	14,502	37%	15,179	39%	9,540	24%	**39,221**
Birmingham	294,119	24%	171,479	14%	780,059	63%	**1,245,656**
Manchester	150,919	45%	59,022	18%	122,741	37%	**332,682**
Newcastle	7,208	4%	4,185	2%	160,911	93%	**172,304**
Leeds	47,459	21%	39,680	18%	134,336	61%	**221,475**
Nottingham	50,520	14%	186,054	52%	121,463	34%	**358,038**
Cambridge	41,924	40%	11,619	11%	52,553	50%	**106,096**
Chester	8,584	89%	-	0%	1,100	11%	**9,684**
Liverpool	8,222	7%	20,616	18%	88,009	75%	**116,847**
All	9,970,126	**20%**	32,432,616	**66%**	6,532,426	**13%**	**48,935,168**

Immigration Green Form Payments: 1997/98

Area	Others		IMM franchise applicants		IMM franchisees		Total £
	Amount	% of Area	Amount	% of Area	Amount	% of Area	
London	24,306,964	75%	4,064,695	12%	4,230,546	13%	**32,602,205**
Brighton	38,183	60%	190	0%	24,930	39%	**63,304**
Reading	69,692	38%	4,116	2%	110,479	60%	**184,287**
Bristol	31,373	53%	0	0%	27,301	47%	**58,674**
Cardiff	23,470	83%	1,471	5%	3,249	12%	**28,190**
Birmingham	261,177	25%	114,188	11%	649,332	63%	**1,024,697**
Manchester	222,283	61%	90,877	25%	52,225	14%	**365,386**
Newcastle	13,149	9%	0	0%	138,155	91%	**151,304**
Leeds	72,197	42%	10,832	6%	87,085	51%	**170,114**
Nottingham	196,174	53%	28,793	8%	146,242	39%	**371,209**
Cambridge	43,930	55%	6,378	8%	28,897	36%	**79,204**
Chester	6,686	86%	449	6%	632	8%	**7,768**
Liverpool	21,553	16%	2,486	2%	113,047	82%	**137,086**
All	25,306,833	**72%**	4,324,474	**12%**	5,612,120	**16%**	**35,243,427**

Section 2 - The Problems

2.1 We do not accept that the current level of expenditure is an accurate reflection of the need for legal services by financially eligible clients in the immigration category of law. We have become convinced that much of current expenditure does not reflect the delivery of competent help for those genuinely in need (see paragraphs 2.2 to 2.13). On the other hand it is not possible, at this stage, to define the extent of genuine need, at least in terms of the likely number of clients. We will be assisted towards a conclusion on the extent of genuine need by the Regional Legal Services Committees (RLSCs) process which has begun and which resulted in initial reports to the Board in February 1999. That, in itself, is not enough. Our thoughts on how the extent of need will be determined are set out in paragraphs 3.5 to 3.9 below.

Contracts Able To Address Need

2.2 We have been concerned to ensure that the number of contracts we are able to let with appropriately quality assured practitioners is sufficient to provide an appropriate level of help for clients in need of support under the legal aid scheme. As set out in paragraphs 1.1 to 1.3 and related tables, the level of expenditure in immigration matters has increased at an alarming rate. However, we have investigated this rise in expenditure and sought advice from a wide variety of informed sources.

2.3 We have concluded that the current level of expenditure is a reflection of a significant increase in poor quality, ill supervised and sometimes completely unnecessary work being done for clients. There is no evidence that legitimate need is growing at the rate that expenditure is increasing. The clients who are being served could be clients who have a legitimate and sometimes urgent need for help under the scheme but there are clear indications that many of them are not receiving helpful or competent advice. Others may have no legitimate case at all and their need for help could be dealt with quickly by someone with the appropriate knowledge and expertise.

2.4 Some of the expenditure also reflects, we believe, multiplication of work where clients whose needs *are* genuine and pressing seek help from other solicitors. The extent to which they are then dealt with appropriately may depend on how successful they are in finding a quality practitioner able to take their case on. They may not succeed in finding such a solicitor but yet claims are still submitted by the solicitor(s) consulted. Clients are required to declare if they have received advice on the same matter but it is easy to imagine the circumstances where a genuine asylum or other client needing help in an immigration matter would not understand the requirement on them to make a truthful declaration on the green form. This may particularly be the case if the client were relying on their solicitor to advise them of this need.

2.5 To a certain extent we also suspect that money is being claimed for help provided under the scheme by those solicitors who are well meaning but lack competence in this complex category of law in a misjudged attempt to be helpful. We recognise that not all those giving poor immigration advice are deliberately abusive of the scheme.

2.6 It seems we are not alone in holding these views. In July 1998 the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) issued a report "Improving the Quality of Immigration Advice and Representation". The Committee said:

> "Immigration law and practice (which includes asylum, nationality and applicable European Union law) is increasingly complex and frequently changing; it is also an area in which most solicitors and barristers lack both knowledge and expertise. Certainly, the basic education and training received by most lawyers does not extend to immigration law in any detail. Moreover, immigration law involves many non-traditional sources, such as the immigration rules and a substantial quantity of administrative guidance, with some of which many practitioners are not familiar."

2.7 It is clear that effective advice and assistance, and representation, can be delivered only by those who fully understand the problems in this complex category of work. Advisers must possess a real understanding of the practices of the immigration authorities at ports of entry, how they deal with interviews and how urgent deportations are handled. Advisers must also understand the practice and procedures of the Adjudicators and the Immigration Appeal Tribunal. The most effective advice and assistance will, therefore, be delivered by those who have the understanding and experience of working within the administrative framework that surrounds the relevant Acts and Rules.

2.8 During our consultations as part of preparing this report we have been struck by the number of experienced practitioners, well respected by their peer group, who have told us they spend a considerable amount of time putting right work done incompetently by those whom the client has consulted earlier.

2.9 Such cases must represent only the tip of an iceberg. Clients in this area of law may find it difficult to find a quality practitioner. There may be cultural and language barriers which deter or prevent clients from getting the help they need. Some may not recognise that they are receiving poor advice because, on the face of it, they appear to be getting a good service. In the worst of the potentially abusive cases of which we are aware, however, clients know they are getting a poor service because they are getting no service at all.

2.10 ACLEC said in its report.

> "At worst, advisers are unscrupulous as well as incompetent; there is considerable anecdotal evidence of the charging of extortionate fees and the provision of advice which is not merely inaccurate but also dishonest."

2.11 The Law Society's consultative document issued in February 1998 said:

> "Immigration clients may be particularly disadvantaged... Most do not speak English as a first language, if at all. Asylum seekers, in particular because of their cultural background and personal experience, may be distrustful of all those in authority including solicitors and many may not have an understanding of the British legal system. As a result,

immigration clients may have difficulty in identifying a solicitor with requisite knowledge and experience and hence use advisers who may not be competent to represent their interests effectively."

2.12 ACLEC went on to say

> "Particular concern has been expressed about the reluctance of immigration clients, because of their fear of authority and lack of understanding and knowledge of British systems, to pursue complaints through official channels against those who may be providing poor quality legal services."

2.13 All of this is relevant to our view that current green form spend is not an accurate indication of the extent or nature of the genuine need.

2.14 There are, however, some indicators that need in specific areas will increase; for example, Home Office predictions are that appeals will rise over the next three years and therefore the need for quality help in appeals will rise from 39,000 in 1998/1999 to 60,000 in 2000/2001. There is even a suggestion that these predictions may already be out of date. We understand from discussions with the Immigration and Nationality Directorate that the Immigration Service dealt with 46,000 asylum seekers last year (to 31 December 1998). The previous year the figure was 32,000. The figure ten years ago was 4,000.

2.15 Whatever the final figures are, we anticipate that expansion of capacity within the contracted regime will be necessary.

2.16 Our general advice and assistance contract proposals envisage contractors being able to come back to us during the life of their contracts to request additional contract capacity. This would enable them to take on additional work rather than find themselves limited by their contract in the number of cases with which they can deal. In immigration, we expect that the move to contracting and the result of excluding poor quality practitioners from the scheme will mean that there should be sufficient funds available to meet the level of genuine need and enable contractors to expand their contract capacity to deal with more cases. We are confident that these measures, together with the various incentives we are proposing specifically for immigration contracts (paragraphs 4.71 to 4.72 below) will ensure that practitioners are willing and able to expand to take on the anticipated increase in work over the next few years and meet the level of genuine need.

2.17 The majority of expenditure is in London at the moment. We have already discussed why we do not believe the actual amount of expenditure to be an accurate indicator of genuine need. During the calendar year 1998 173 offices in London earned more than £40,000 in immigration green form. 36 of those offices had an immigration franchise at the end of that calendar year.

2.18 The latest figures show that there are over 130 immigration franchisees nationally and more than 650 applications for immigration franchises currently in progress. The combined figure of franchisees and applicants for London is in the region of 750.

2.19 In the rest of the country the figures are also encouraging. The only area office with any major current level of Fund take is Birmingham which spent £1.2 million in 1999. The current position in Birmingham is that 76% of the current expenditure is covered by franchisees and applicants.

2.20 All those organisations meeting the franchise requirements will be offered a contract in the immigration category. Depending on the willingness of contracted organisations to expand (particularly given the incentives we have set out in paragraphs 4.71 to 4.72) we believe that there will be reasonable coverage, although we will want to monitor carefully the approaches contractors make to us in the circumstances set out in paragraph 2.16 above.

2.21 Elsewhere area offices have franchise share at the end of the year 98/99 as set out below:

Franchise Share Immigration Green Form Expenditure 1998/99

Area	Non-franchised	**Total franchise and applicants**	**Total all**	Non-franchised	**Total franchise and applicants**
London	9,224,486	**36,695,817**	**45,920,302**	20%	**80%**
Brighton	49,897	**60,289**	**110,186**	45%	**55%**
Reading	53,919	**180,758**	**234,677**	23%	**77%**
Bristol	18,369	**49,632**	**68,001**	27%	**73%**
Cardiff	14,502	**24,719**	**39,221**	37%	**63%**
Birmingham	294,119	**951,537**	**1,245,656**	24%	**76%**
Manchester	150,919	**181,763**	**332,682**	45%	**55%**
Newcastle	7,208	**165,097**	**172,304**	4%	**96%**
Leeds	47,459	**174,017**	**221,475**	21%	**79%**
Nottingham	50,520	**307,517**	**358,038**	14%	**86%**
Cambridge	41,924	**64,172**	**106,096**	40%	**60%**
Chester	8,584	**1,100**	**9,684**	89%	**11%**
Liverpool	8,222	**108,625**	**116,847**	7%	**93%**
Totals	**9,970,126**	**38,965,042**	**48,935,168**	20%	**80%**

Controlling the Current Expenditure

2.22 We have been attempting for some time to exercise effective control of expenditure under the green form scheme. However, we are limited by the nature of the scheme itself which requires no authority from the Board to start work and has no merits test. The scheme has many strengths in that it is flexible and covers the whole field of English law. However, it is also susceptible to abuse and exploitation which can, in some cases, become fraud. Unfortunately, there have been many examples of solicitors using the green form scheme purely as a means of generating income, not necessarily by means that are illegal or, indeed, outside the scope of the scheme, but certainly not for the purposes of meeting genuine need for competent and honest help. This problem is not confined to immigration law but is stark here and is particularly reprehensible given the vulnerability of many of the clients.

2.23 Among the undesirable practices in immigration we are aware of are:

a) large groups of clients being referred to the Refugee Council by firms of solicitors for the purposes of requesting assistance in finding accommodation, in spite of the fact that the firms had been told repeatedly that the Council was unable to assist and clients should be referred to the local authority;

b) aggressive touting for clients in the waiting room of the Council;

c) aggressive touting mainly by non-legally qualified individuals in the waiting room of the Home Office's Asylum Screening Unit (HOASU), on the street outside and even at various railway stations;

d) attending the HOASU with clients for *every* interview without consideration of necessity. The presence of a representative may not be necessary where the interview is short and basic (consisting of collection of information such as name, date of birth, date of entry to the UK etc), is not about the substance of the asylum claim, and there is no risk of detention;

e) a failure to return the HOASU's questionnaire given to clients when they first attend the Unit - a most basic function for an adviser in an asylum case; and

f) a significant rise observed by the HOASU (from 117 in March 1998 to 395 in July 1998) in the number of asylum seekers claiming, as a result of direct advice from solicitors, to be unaccompanied minors when they plainly are not (minors benefit from more generous social welfare provisions than adult asylum seekers).

2.24 In considering our response to these problems we accept the conclusion that ACLEC reached that it would be unfortunate if we constructed a contracting framework that had as its sole purpose the exclusion of the unscrupulous. We accept some responsibility for bringing about some general improvements in the development of competence in this area of law. However, we cannot bear it alone - we need others to take action too.

2.25 Therefore the key challenges for the Board are:

a) to identify as far as possible *genuine* need and priorities in the immigration category of law;

b) as far as possible within the resources allocated by the Lord Chancellor, to address that need by contracting with suppliers of legal services of an appropriate quality; and

c) to identify and introduce incentives which will facilitate our meeting the objective at b) above.

2.26 The next section breaks these challenges down into constituent elements in order to identify what will enable us to begin to solve these problems.

- attending the interview with the client; and
- making further representations to the Home Office.

Most applicants, particularly those who are traumatised or are non-English speakers, will require independent assistance in establishing the narrative of the claim and ensuring that it is clearly put to decision makers who may not themselves be specialists, or have interviewed the applicant. Yet, as the Committee understands it, at none of these stages is the role of the adviser currently encouraged or made straightforward. It may be difficult, or impossible, for clients to seek legal help before interview, particularly those applying for asylum on arrival. It is widely acknowledged that individuals tout their immigration services to new arrivals at main ports of entry. There is, however, no regular provision of scrupulous and competent legal help at such locations. The right of advisers to intervene in Home Office interviews in order to clarify the applicant's account is undefined. There is no obligation on the Home Office to amend or alter its decisions on receipt of further information or rebuttal."

Detainees

3.14 In its report ACLEC also recognised the need for advice at police stations, detention centres and prisons. The Law Society also particularly supports such provision in relation specifically to the proposed automatic bail hearings in its response to the White Paper (Fairer, Faster, Firmer - A Modern Approach to Immigration and Asylum. CM 4018 - July 1998). We accept that there is a need for a contracting regime to cover help for those so held.

Availability of Help (Funding and Services)

3.15 The current advice and assistance scheme covers preparation for immigration and asylum appeals and attendance as McKenzie advisors but the scheme does not extend specifically to representation before the appellate bodies. Certificated legal aid is available for applications for leave to bring judicial review proceedings and to bring such proceedings if leave is granted. However, success rates on applications for leave are low and we have reported a number of cases to the Bar Council where barristers have supported the grant of legal aid in what the Divisional Court found to be hopeless and unmeritorious cases. We recognise the importance of the availability of legal aid for applications for leave but it should not be used to support delaying tactics or cases that are unmeritorious. Our proposals for dealing with this are in paragraphs 4.64 to 4.67 below.

3.16 The Home Office funds the Immigration Advisory Service and the Refugee Legal Centre under Section 23 of the Immigration Act to provide representation on appeals. There is therefore public funding available to support representation before the adjudicators and at the Tribunal, but not through the Legal Aid Fund.

3.17 Some agencies in the advice sector provide advice, assistance and representation in immigration cases. They are funded, mainly, by local authorities but also by various charitable bodies.

3.18 There is a reported tendency for able advisers, particularly those in private practice, to concentrate on the more complex, interesting and perhaps more remunerative aspects of the work. This means that those developing expertise in the complexities of immigration law through dealing with the more advanced stages of cases will often not deal with cases at the advice and assistance stage but take on privately funded cases, and Judicial Review work under a legal aid certificate.

3.19 There is therefore a dearth of quality help at the earliest stages in cases. Green form hourly rates for franchisees are £45.50 (£48.25 in London), and for non-franchisees £44.00 (£46.50 in London). Hourly rates for certificated work are far higher (County Court non-family preparation rates for franchisees are £66.00 [£70 in London]; High Court work attracts a still higher hourly rate). There are quality providers in the not-for-profit sector; in Law Centres and other independent agencies. However, the spread of expertise in immigration is limited, and largely concentrated in London.

3.20 It is unfortunate that the most able tend not to take on cases at the early stages preferring to deal with cases at the later stages where they find the work most interesting and also most remunerative. However, it is at the early stages of the cases that most of the delegable work exists. So the most able practitioners could still take on cases at the early stages, supervise others or delegate specific tasks in the early work but increase their personal involvement as the case progresses, where appropriate, to the more complex (and more remunerative) stages. In this way the client would have access to a quality service from the outset, receive help from the same firm throughout, having built up trust in their adviser over that time, and would be assured of help throughout the life of the case. Meanwhile, the lawyer gets a good mix of interesting and remunerative work.

3.21 Most advice and assistance matters in categories of work other than immigration, are generally relatively short, particularly when certificated legal aid is available if the case needs to go to court. However, immigration matters can take several years, and there is no certificated legal aid available prior to reaching the judicial review stage. Since green form payments are made at the end of the case, organisations undertaking green form work must support a large quantity of work in progress, in relation to both profit costs *and* disbursements (which in immigration are often particularly expensive). This is a limiting factor in encouraging good firms to expand and specialise in immigration. We return to this later (paragraphs 4.71 to 4.72).

Guidance and Range of Work Carried Out

3.22 The Board has set out detailed guidance for franchisees exercising devolved powers to extend the initial green form limit (two hours) in the immigration category of work. The guidance covers applications to enter or remain, and asylum cases. The former guidance indicates that between 15.5 and 25 hours' work may be justified on matters which progress from initial advice to applications for legal aid to appeal to the Court of Appeal. The Asylum guidance indicates that between 43.5 and 53 hours' work may be justified for matters which progress to this stage. A summary of the guidance is at Annex A.

3.23 Lawyers are rarely introduced to immigration law during their training and often can only gain expertise in the area by working in firms which have a caseload in the category. These firms are largely concentrated in London. This becomes circular: only those who have done immigration work will do immigration work. In turn, this has the effect of severely restricting the number of practitioners who are able to undertake immigration work with any degree of competence.

3.24 The number of firms which have already demonstrated compliance with the franchise standard in immigration is relatively small. We suspect that the number of firms which are not franchised, but are providing any volume of immigration work to a high standard is also small. This goes to the heart of the second major challenge we have identified. How do we extend the availability of expertise in the immigration category of work in order to provide competent contracted services? The majority of quality suppliers is concentrated in London, and we expect most of the need to continue to be concentrated in London. However, it is possible that needs elsewhere in the country will increase as changes in procedure mean that clients with immigration cases may be dealt with in various centres, including outside London.

3.25 As we finalise this report parliamentary debate on the Immigration and Asylum Bill is in progress. The Bill envisages asylum seekers being "dispersed" to designated reception zones, likely to be outside London, where suitable accommodation is available. The current draft of the Bill does not allow any account to be taken of any location preferences expressed, for example because of community or family ties. This may mean that asylum seekers do not remain in the place to which they are moved and may drift back to London or to other community ties.

3.26 In our consideration of the issues we have concluded, therefore, that the essential components of the problems are as follows:

a) **Inadequate advice and abuse**
There is a great deal of inadequate advice particularly in the early stages of cases and some abuse of the scheme resulting in distress to clients, and unnecessary expense as poor quality work may have to be repeated and the damage done at early stages redressed (where possible) if the client eventually finds a competent solicitor. To this must be added the social costs in maintenance of detained clients and the costs of the formal determination and appeal processes.

b) **Lack of Early Access to Quality Services**
It may be difficult, or impossible, for clients to seek legal help before interview, particularly those applying for asylum on arrival. It is widely acknowledge that individuals tout their immigration services to new arrivals at main ports of entry. There is, however, no regular provision of scrupulous and competent legal help at such locations.

c) **Restrictions of Legal Aid Scope**
The fact that legal aid funding is not available to support cases from the outset through to completion leads to the most effective solicitor practitioners concentrating on work at the later stages of cases. This exacerbates the

problem of inadequate help and support being given at the earliest stages of cases, which, in turn, creates more costs in the system as cases are prolonged as they go through various stages of appeal. (This is also unacceptable as far as individual clients are concerned - matters should be disposed of quickly so that clients have certainty on their position as soon as possible);

d) **Lack of Incentives**

Immigration green form cases can be very long, very complex *and* very expensive, including a high level of disbursements. This means that firms can be carrying significant work in progress. This makes it uneconomic for many of the better organisations to expand.

e) **Uneven concentration of expertise**

Supply is currently concentrated in London and is likely to remain so. We believe that the overwhelming majority of clients need access to competent legal help in London. However, if the need for help outside London grows, as is likely given the Home Office practice of dispersal now being adopted, then it will be difficult to develop new advisers to meet that need. We will want to develop and encourage the expansion of quality immigration practitioners in private practice and not-for-profit organisations, as well as organisations like IAS and RLC.

f) **Waste and Duplication**

We have already set out our views on this (see paragraphs 2.2 to 2.13). We reiterate our belief that this is a serious problem that must be addressed in our plans.

Section 4 - Possible Solutions

Dealing with Abuse and Poor Quality Work

4.1 As we have explained, the current green form scheme is, by its nature, susceptible to abuse by those who pursue their own interests rather than the interests of their clients. Contracting has enormous advantages in bringing about more effective control.

4.2 Contracting will give an assurance of quality. The franchising specification demands named supervisors who meet laid down requirements as to experience, who must exercise effective supervision and ensure internal peer review of work done by caseworkers in the organisation. A check that this is done, and the monitoring of the outcomes of the supervisory and file review process, is carried out on audit by the Board. Abuse, where it exists, and poor quality work can be more readily identified by this process. The fact that work will be audited acts as a disincentive to deliberate abuse. Contracting also allows an organisation's total workload, including all started and finished cases, to be monitored against contract terms.

4.3 The contract will include a detailed specification setting out the standards and nature of work the Board is seeking to provide under contracts. In addition, the contract will

set out the types of behaviour which will no longer be permitted; for example, unsolicited visits or telephone calls (Rule 1.1, Section 1, Contract Work General Rules).

4.4 At present, sanctions can be applied only in individual cases. These sanctions are usually limited to reducing a particular claim for costs. It is resource intensive and difficult to apply sanctions beyond the individual case. Under a contract, sanctions can be applied in accordance with the contract terms and problems can be eliminated at source by giving notice to change practices or behaviour and, ultimately, by removal of the contract. In a fully exclusive system this would mean the organisation could no longer do legal aid work. This acts as an enormous incentive to act in accordance with the contract and the Legal Aid Act and Regulations.

4.5 In addition, the Funding Code which will be adopted under the new Access to Justice Act anticipates a "sufficient benefit" test being applied to advice and assistance type work. This is intended to operate as an appropriate consideration when working under a controlled budget before expending limited resources on cases.

4.6 However, we cannot wait until contracting is introduced to tackle the problems we have identified and we are under a duty to do what we can now to reduce the size of the problem. Here it is worth recording what we consider to be the differences between fraud, abuse and undesirable practices. All of these can be tackled within a contracted regime but it is difficult to eliminate them within the current Legal Aid Act and Regulations.

4.7 The differences can best be described by some simple examples. If a claim is made for three hours' work when only two hours' work was done, that is fraud. A case where work is claimed for a fictional client or where the client is known to be financially ineligible but is said to be eligible, is also fraud.

4.8 The green form scheme is being abused if work is done by a non solicitor who is not under the required supervision of a qualified solicitor, or where three hours' work is done and claimed for actions or activities which should have been completed in two hours or not done at all. Undesirable practices include aggressive touting.

4.9 In order to address the problems we have in place systems that require a solicitor's file to be submitted with every claim in excess of £1,000 and for some solicitors to submit a file with every single claim. In addition we have invited some firms to submit a report setting out the names of all fee earners and their links, if any, with other solicitors' firms. We have also asked them to describe in detail how clients access their services and how supervision of non lawyers is exercised.

4.10 We will follow up these reports in appropriate cases by visits to the relevant organisations to check the accuracy of what we have been told. We will retain the claims made by the firms involved and assess them all together in the light of the information we have been given or acquired. In some cases this may cause us to re-open historical claims and seek repayment. We will extend this approach to cover all non franchised firms with a significant income from the green form scheme.

4.11 Information from this process will be passed as appropriate to the Office for the Supervision of Solicitors (OSS). The OSS has already intervened in a number of immigration practices as a result of this information exchange.

Enhancing The Controls Within The Current Scheme

4.12 It will be apparent from what we have already said that our investigations in the immigration category of work have lead to our uncovering undesirable practices and incompetence amongst solicitors and their largely unqualified representatives currently operating under the green form scheme. We have therefore introduced guidance on the application of regulation 20 (which allows a solicitor to entrust work to a competent and responsible representative under his/her immediate supervision) following consultation with the Law Society, the Office for the Supervision of Solicitors, the Immigration Law Practitioners' Association, as well as the Lord Chancellor's Department. The guidance is aimed at regulating the current situation in order to ensure that public money is being appropriately spent.

4.13 The guidance requires:

a) supervision of green form immigration matters to be exercised directly by a qualified solicitor, able to demonstrate substantial and recent experience in the immigration category of work;

b) the supervisor to

i) ensure that any representative is appropriately trained, and kept up to date in the relevant areas of work;

ii) ensure that only tasks within the individual's skill and competence are delegated to them; take appropriate steps to direct and monitor the work, and be able to take any remedial action necessary.

4.14 The guidance also specifies requirements relating to particular circumstances:

a) the provision of advice and assistance by an experienced representative who has conduct of the file;

b) the provision of other advice and assistance by a representative not having conduct of the file;

c) representatives attending the client on interviews with the Immigration Services.

4.15 The guidance is now in effect and is rigorously applied. Copies of the guidance are available from the Board's Policy and Legal Department.

4.16 In addition, we propose that after 1 January 2000 (the contract start date) any organisation without a contract to do immigration work should be unable to apply for an initial green form extension after that date.

4.17 From 1 July 1999 ***all*** green form extensions will be subject to a costs limitation, ***and*** a six month time limitation. Whichever limitation is reached ***first*** will apply.

4.18 Non-contracted organisations having conduct of matters with green form extensions which expire ***after*** 1 January 2000, and who wish to continue work on the case, should submit the full case file to the Board with their application for a further extension setting out, in detail, what work is necessary to complete the case and the associated cost of that work.

The Law Society Panel

4.19 In addition to those organisations that have a franchise or have passed a preliminary audit we recommend that we should have the discretion to contract with those non-franchised organisations that have an individual accredited to the Law Society's panel of immigration practitioners. However, we would expect such organisations to have applied for a franchise by 1 January 2000 and achieved a full franchise by 31 December 2000. If they had not then their contract would not be extended or renewed.

4.20 The Law Society's panel was established in April 1999. 180 initial expressions of interest have been received and the Society expects to be able to announce the first panel members in July 1999. We welcome the Law Society's initiative in this area and we are satisfied that panel accreditation would be sufficient to qualify an individual as a supervisor within the Board's franchising requirements.

4.21 The presence of an immigration panel member in an initially non-franchised organisation would give the Board the assurance that there is an experienced and competent individual able to give the help, despite the fact that that organisation had not demonstrated compliance with key franchise quality criteria, such as effective supervision, file management and file review. These contracts would restrict to specific circumstances the work which could be delegated to be carried out by individuals other than the panel member themselves. The proposals (set out at Annex B) are drafted to be consistent with the guidance we have proposed on the application of Regulation 20 summarised in paragraphs 4.12 to 4.15 above.

4.22 The restrictions applicable to contracts with non-franchised Panel Members would also impose a requirement that delegation of specified substantive work was ***only*** to individuals approved by the Board who were employees of the organisation and working under the contract under the direct supervision of the panel member. Arrangements for the use and approval of Restricted Delegates (able to attend clients on interviews with the Immigration Services only) are addressed specifically.

4.23 It will also be a requirement that the organisation achieves a full franchise within one year of such a contract being signed. Once the organisation had passed appropriate franchise audits, we would consider removing the restriction on delegating work to be carried out by others.

4.24 We propose, therefore, that in the immigration area of law ***only***, we should accept applications for contracts from initially non-franchised organisations where that

organisation has an individual on the Law Society's immigration panel. Note, however, that there is ***no*** guarantee that panel members will be awarded a contract; that guarantee applies only to immigration franchisees and those meeting the initial contract requirements relating to compliance with the franchise quality standards.

4.25 We do not expect there to be a large number of contractors accessing the contracted advice and assistance scheme through this route as we would be surprised if there were a significant number of practitioners who were able to meet the panel's requirements but had not applied for a franchise.

Lack of Early Access to Quality Services

4.26 The suggestions in paragraphs 4.36 to 4.63 below would help to address the lack of early access to a quality legal service as more quality providers should be attracted into the scheme. However, in itself this will not necessarily deal with the major part of the problem which is the lack of effective help available at ports of entry, and police stations, both of which are points at which clients may be detained under the provisions of the Immigration Act.

4.27 At the moment the majority of on-entry applicants are interviewed by Immigration Officers at the ports of entry. The extent to which there is access to quality advice at this point probably depends on there being duty (or own) solicitors available at these venues who are experienced in dealing with relevant matters. There may certainly be poor quality advice on hand.

4.28 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.

4.29 We understand the Home Office, taking account of these factors, is considering moving away from on-the-spot interviews on arrival to either detaining clients, or agreeing temporary release with a view to holding an interview later. If the Home Office were to go down this route, the Board could consider contracting to provide effective early access to quality services. We would consider how to make the most effective use of a specialist resource where interviews would be scheduled. We would not want there to be a risk of resources not being utilised, thereby wasting time, money and expertise.

4.30 This approach would only be successful if the clients' interviews took place at a scheduled time such that legal assistance could be provided. The interim period would allow a much more focused approach to be taken to individual cases; appropriate quality assured interpreters could be provided, perhaps from an accredited register such as the National Register of Public Service Interpreters run by the Institute of Linguists. We believe that this would enable a more cost effective approach to be taken, benefiting the client, the Legal Aid Fund, and Immigration Officers. This combination should also ensure that quality decisions are made at the outset and

reduce the extent to which matters are appealed several times during the course of one matter. We will continue to liaise closely with the Home Office as it develops its plans so we can create arrangements that are compatible with them.

Advice at Police Stations

4.31 There are circumstances where individual immigrants will be detained and interviewed at a police station (or elsewhere). This could occur when an offence such as theft has been committed, or when the individual is detained for an offence under the Immigration Act. Where the case is covered by the Police and Criminal Evidence Act (PACE) the individual concerned is *entitled* under the Act to advice from a solicitor, either of their choice or from the Duty Solicitor. Such advice is paid for by the Board through the advice and assistance at police stations scheme. Where the case is not covered by PACE, then clients eligible for advice and assistance can receive advice under the green form scheme.

4.32 This raises two important quality considerations. First, a solicitor called to the police station (or elsewhere) to assist under PACE may not have any experience of immigration law and practice. Second, an adviser attending a detainee under the green form may not have the necessary police station skills and experience of running a criminal defence. This situation appears to reflect most practitioners' skills range - duty solicitors are not typically immigration practitioners, and individual immigration practitioners rarely have criminal defence and up-to-date police station skills.

4.33 This is rather a conundrum - there could be a number of options for dealing with the issue. We intend to discuss this further with those who have experience both of police station work and of immigration work but at this stage we believe that the following are the range of options:

a) we could define specifically which matters at police stations must be dealt with under PACE by those with police station/criminal experience, and which must be handled by immigration contractors.

   On the face of it this seems attractive; however, the range and complexity of cases which are likely to arise may mean that it would be difficult to establish a workable definition in practice;

b) where individual immigrants who would qualify for green form advice are to be interviewed under PACE, we could establish a requirement to consult an immigration contractor initially, at least by telephone, to ascertain whether, in specified circumstances, the immigration contractor should be present at the interview to advise the solicitor dealing with the case. This requirement could then be extended to a joint arrangement for progressing the matter, with the PACE solicitor having lead in the matter if the offence is crime other than an offence under the Immigration Act but with relevant issues on which the immigration contractor could act as adviser, or the immigration contractor taking the lead (or taking over the case completely) if the matter progresses down the immigration offence route.

Alternatively, those seeking to advise immigration detainees could be required to demonstrate that they have completed an accreditation scheme covering the requisite skills. A scheme already exists for accrediting police station representatives and we believe that it would be possible to design an appropriate scheme to ensure that contractors advising detainees at the police station or elsewhere have the appropriate skills.

While either of these alternatives might be a positive way forward in future, either is likely to be rather complex to establish effectively in practice before both schemes are contracted. This would also be difficult in the early stages of contracting when we are concerned about the breadth of coverage which will be achieved nationally.

c) the police station arrangements could remain unchanged for the time being, where immigrants interviewed under PACE (which is a non-means non-merits tested scheme) are seen either by their own choice of solicitor, or the duty solicitor. We could however, include an additional requirement at least on duty solicitors, that immigration detainees should be referred to immigration contractors where they exist, say within a 20 mile radius. Under these arrangements the duty solicitor would continue to deal with the PACE aspects of the case, but they would put the client in touch with one or more immigration contractors able to take forward the specific immigration elements of their case.

4.34 Although this is a difficult issue which undoubtedly needs to be addressed, we do not believe that it is practical to make major changes in the arrangements prior to the Police Station scheme being contracted. Rather we will keep the position under review and consider the way forward once the appropriate contractual arrangements are introduced. This could mean that we pursue one of the alternatives in option b) which is aimed at ensuring that those with the appropriate skills deal with the cases.

4.35 In the mean time, we have asked our Duty Solicitor call centre to record information on the numbers of cases which are classified by the Police as immigration related. We also intend to find out how many of our immigration franchisees have duty solicitors in their organisations as this would give a good indication of how practical it would be to have a joint approach in some circumstances

Restrictions of Legal Aid Scope

4.36 One of the key changes which would attract more of the quality suppliers to provide help at earlier stages, is for contracts to cover representation in immigration matters before the adjudicators and the Tribunal.

4.37 In order to make such an extension of scope feasible, the provision of representation before the adjudicators and the Tribunal under contract should be controlled through a merits test (proposed in paragraph 4.62 below).

4.38 We would also expect appropriate outcomes to be secured in cases where representation was provided and would put in place steps to ensure that representation was achieving appropriate outcomes.

4.39 There are important considerations relating to outcome indicators specific to the immigration category and we would need to have regard to these in drawing up appropriate indicators:

a) in asylum appeals courts have an obligation to look at the situation in the country of origin at the time of the hearing itself. Predictions of success made earlier may therefore change quite markedly when the position at the time of the hearing is considered (Ravichandran);

b) the point at which outcomes will be deemed to have been finalised will need to be defined - initial failure may still subsequently lead to a positive outcome.

4.40 Of course, we do not presume that representation provided following the application of the test set out in paragraph 4.62 below will result in success for the client in every case. Our development of outcome indicators will be based on an examination of the outcomes within the population of cases. Those contractors who consistently fall outside the pattern we see from others would trigger closer inspection of their procedures and the way in which they are making decisions about whether or not representation is justified in individual cases.

The Cost Of Including Representation Under Contracts

4.41 Although *representation* at appeals before the adjudicators or the Immigration Appeals Tribunal is outside the scope of the current Legal Aid Act. Solicitors can be paid under the green form scheme (where justifiable) for

a) preparation for an appeal;

b) attendance at the appeal as a McKenzie Adviser;

c) accompanying the client to the Asylum Screening Unit;

as well as for work relating to Judicial Review and subsequent appeals to the Court of Appeal.

Annex A sets out the guidelines on appropriate extensions.

4.42 Therefore, if representation before the appellate bodies were included within the scope of the scheme, the additional cost to the scheme would be the cost of the *representation* element itself. The costs incurred under the current green form scheme already include an element for attendance at appeals as McKenzie advisers. McKenzie advice by franchisees is claimed at the normal green form rate of £48.25 (in London). If representation is claimed at the ABWOR advocacy rate of £57.25 then this would result in an increase of £9 per hour for allowing representation at appeals.

4.43 The range of length of Asylum hearings was estimated by Government officials in an internal review undertaken in 1997 based on figures from an experienced immigration adjudicator. We believe the same assumptions to be valid now:

Length of hearing	% of cases	Cost for McKenzie Advisor (green form rate)	Cost for representation (ABWOR rate)	Difference between rates
4 hours	10%	£193.00	£229.00	**£36**
3 hours	30%	£144.75	£171.75	**£27**
2 hours	20%	£96.50	£114.50	**£18**
1 hour	40%	£48.25	£ 57.25	**£ 9**

4.44 Other non-asylum appeals average at about 1 hour and the difference between McKenzie advice and full representation will therefore be as for the one hour asylum cases above.

4.45 It is difficult to draw accurate conclusions from the current statistics on numbers of cases which go to appeal because there has been so much poor work done by solicitors under the green form scheme, particularly at the early stages of the cases. This has significantly undermined the usefulness of the current expenditure pattern as providing a sound basis for extrapolation for planning purposes under a contracted regime. What it does provide, however, is a worst case scenario. We are confident that the proportion of legal aid cases going to appeal should begin to decrease once our proposals, if adopted, are in place. The package of measures we are suggesting should eventually ensure that a higher proportion of first instance decisions are appropriately made. It will, of course, take time for the full effect of this to be felt as there are still many matters which have already progressed some way down the road to appeal having received little effective early help and advice.

4.46 An analysis of the range of green form bills submitted in the six months to October 1998 suggests that approximately 30% (c34,500 over a year) were for more than 12 hours' work. This would suggest that such cases were more likely than not to have been sufficiently complex to progress to appeal. If we also assume that these cases would also have met the merits criteria we propose in paragraph 4.62 below, then the additional cost of providing representation would be as set out below:

Range of Cases	Additional Cost £
10% @ 4 hours - additional £36	124,200
30% @ 3 hours - additional £27	279,450
20% @ 2 hours- additional £18	124,200
40% @ 1 hour - additional £9	124,200
Total	**£652,050**

4.47 This is likely, we believe, to be a maximum figure of the increase on the cast of cases where McKenzie advisers are used and paid for under the green form scheme, given the conclusions we have drawn earlier about the quality of the work currently being claimed.

4.48 In addition to this, however, we have attempted to estimate the number of cases where McKenzie advisors are not attending and being paid for under the scheme and where

representation, if allowed under contracts, would meet the merits test set out in paragraph 4.62

4.49 Our estimate is that a further 10,000 cases per year are likely to attract representation appropriately under the contract conditions we propose.

4.50 The *additional* cost of providing representation in these further 10,000 cases distributed on the range assumed above, would add a total cost of approximately :

Number of cases (% of 10000)	Length of hearing	Additional Cost
1000	4 hours - additional £36	36,000
3000	3 hours - additional £27	81,000
2000	2 hours- additional £18	36,000
4000	1 hour - additional £9	36,000
Total 10000		**189,000**

4.51 Adding these 10,000 cases would take our estimate of appeal cases where representation is likely to take place under the legal aid scheme in the year 2000/2001 to 44,500.

4.52 This figure should be seen in the context of the Home Office planning estimates, which suggest that 60,000 appeals will be disposed of in the year 2000/2001. 60,000 is the number of all appeals, not solely asylum and not solely appeals for clients who would be eligible for legal aid.

4.53 A comparison of the two figures suggests that 75% of all cases likely to be disposed of on appeal would attract representation under contracts for legally aidable clients meeting the merits test. As we have already explained this figure is likely to be the maximum number of matters reaching appeal and requiring representation. Contracting with quality suppliers, excluding the incompetent and providing more effective early advice should all begin to reduce the cases which need to progress as far as appeal.

4.54 This could mean that, if we are already paying for the equivalent of McKenzie advice in these 44,500 cases, the addition of representation would increase costs by approximately £844,000.

4.55 If, as is possible, we are wrong in assuming that we are already paying an amount equivalent to the amount necessary to support McKenzie type advice under the current scheme, then, in the worst case scenario, we would expect all 44,500 cases to attract the full costs of representation at the appeals themselves. This would be at the full hourly rate of £57.25.

Length of hearing	% of cases	No of cases (% of 44,500)	Cost for representation (@ ABWOR rate)	Total additional cost of representation
4 hours	10%	4450	£229.00	**1,019,050**
3 hours	30%	13350	£171.75	**2,292,862**
2 hours	20%	8900	£114.50	**1,019,050**
1 hour	40%	17800	£ 57.25	**1,019,050**
Total	100%	**44,500**	-	**5,350,012**

4.56 From this we conclude that the additional cost of providing representation should lie in the range £844,000 to £5.35m. However, this computation ignores our strongly held belief that the current level of green form expenditure significantly exaggerates the extent of need, and the need for many cases to go to appeal. We therefore believe that the additional cost of providing representation will be relatively small and likely to be offset by the control and value for money advantages which contracting exclusively with quality assured suppliers will bring. This is also without considering what we believe are likely to be savings elsewhere in the system, particularly for the Immigration Service and the appeal process itself.

Including Representation at Appeals - Conclusions

4.57 We conclude therefore that the additional cost of allowing representation in appeals where the merits test is met lies in the range £844,000 to £5.35m in the financial year 2000/2001 when the Home Office statistics indicate a peak in the disposals by the appellate authorities. Home Office planning figures for 2000/2001 set out in the White Paper (Fairer, Faster, Firmer - A Modern Approach to Immigration and Asylum. CM 4018 - July 1998) suggest a drop in disposals to 45,000 appeals, thus the cost range in that year would reduce to between approximately £637,000 and £4m. A common sense view, however, is that the actual figure will not approach the maximum of the range of the figures and we would predict the actual cost to be likely to fall in the range £2 - 3m in the year 2000/2001 reducing to about £1.5 - 2m in the following financial year.

4.58 Further, we believe that the inclusion in contracts of the ability to provide representation in appropriate cases will be justifiable because:

a) the contracted regime will require us to operate within a controlled budget. We are satisfied that the inclusion of the ability to represent in appropriate cases could be contained within the controlled budget, not least because of the significant reduction in expenditure on incompetence, abuse and unnecessary work which will follow the introduction of contracting;

b) central Government funding is already available providing support before the adjudicators and the IAT through the Home Office grant-in-aid to IAS and RLC. The principle of central Government funding being available in the category to support appeals is therefore already established;

c) a more comprehensive approach to supporting casework in the category should also reduce duplication of work from earlier stages, as well as cut down the

number of matters which are adjourned because there is no (prepared) representative available, and provide continuity of support for a particularly vulnerable group of clients for whom referral may be ineffective.

A Merits Test For Representation in Immigration Cases

4.59 We have given some thought to an appropriate merits test and taken into account a research report we commissioned from the Policy Studies Institute "Approaches to Tribunal Representation, a study of the tribunal work of advice agencies" published in 1996. We have also considered this issue in the light of our proposals on future reform of the merits test generally: see 'The Funding Code: a new approach to funding civil cases', Legal Aid Board, January 1999.

4.60 Funding representation before Immigration Adjudicators and the Immigration Appeal Tribunal would be a new development for legal aid. If the Lord Chancellor accepts this recommendation, we would propose to proceed cautiously by establishing clear criteria to ensure that funding is targeted to those cases which most need representation. On the other hand we recognise that by their nature, immigration matters are very often of immense importance to the client and, since the benefits to the client are not quantifiable in money terms, it is not always possible or desirable to lay down hard and fast criteria.

4.61 We therefore suggest the following merits test for representation before the Immigration Adjudicators or the Immigration Appeal Tribunal.

4.62 In deciding whether or not representation before the Immigration Adjudicators or Tribunal is justified an organisation shall consider the following questions and record their answers to each question on the file:

1 Does the client require representation?

This test will be satisfied if the applicable law, procedure or facts are complex or if the client suffers a disability (other than language) so as to make it difficult for the case to be presented without representation.

2 Does the importance of the issues to the client justify representation?

We suspect that most cases coming before the adjudicator or the tribunal will be able to satisfy this test, especially in asylum cases. Nevertheless it is important that representation in these cases is subject to criteria at least as strict as those which apply to legal aid cases generally. Legal aid should only be granted in circumstances where a reasonable private paying client would be prepared to pay the costs of representation at his or her own expense (taking into account the prospects of success and all the other circumstances). For example, a refusal might well be justified on this ground in relation to a limited application to remain in the country.

3 What are the prospects of an appeal being successful?

These must be estimated in one of the following three categories:

a) **Good** - Prospects clearly over 50%. If so legal aid may be granted (assuming all the other criteria are satisfied)

b) **Borderline** - Where the client has an arguable case but where it is not possible to predict the chances of success or where those chances appear to be around 50/50.

In these circumstances legal aid will be **refused** *unless the client appears credible to the adviser* **and** any one of the following three factors apply:

i) the case is of overwhelming importance to the client. This will often be true of asylum cases; **or**

ii) the case raises significant issues of human rights; **or**

iii) it is in the wider public interest for the appeal to proceed, in that success may bring benefits to a wider group of persons, beyond the applicant and his or her family.

Where these factors apply, legal aid will usually be granted provided all other criteria are satisfied.

c) **Poor** - Prospects are clearly below 50% - legal aid will be refused.

4 Is a grant of legal aid reasonable?

Cases which satisfy the above criteria will normally be entitled to receive legal aid but, as in our general proposals on the future of the merits test, we feel it is advisable to retain a residual discretion to refuse funding if there are exceptional or unusual circumstances which would make a grant unreasonable. For example, abusive or aggressive conduct by the client, dishonesty in relation to the application for legal aid, or criminal convictions while in this country could be relevant considerations .

4.63 Normally we would expect a contracted organisation to represent a client where they had been involved at an earlier stage in advising the client and preparing the case. However, there will inevitably be occasions where a client approaches a contracted organisation immediately prior to a hearing. In our view it would be appropriate to apply the merits test at that stage before deciding whether representation was justified or not.

Legal Aid for Applications for Leave for Judicial Review

4.64 In cases where leave has been granted by the Divisional Court to bring judicial review proceedings legal aid should generally be granted to eligible clients as a matter of course. However, concern has been expressed at a number of applications for leave in immigration where the application has little merit. We dealt with this in paragraph 3.15 above.

4.65 In 1996/97 the overall success rate for applications for leave for judicial review was 68% of all cases, but in immigration it was only 41%. This may reflect the fact that

often leave applications in immigration cases are required to be heard at short notice, with the respondent being put on notice and appearing to argue the substance of the case rather than it being heard on an "ex parte" basis. A recent short survey (Legal Aid Board Research Unit - unpublished) of immigration judicial review cases in the twelve months up to the end of November 1998 shows that the proportion of successful applications for leave was only 31%. In fact, leave grant rates in immigration judicial reviews have fluctuated a good deal historically, depending on the composition of the caseload at any particular point in time.

4.66 The Lord Chancellor's stated policy of moving towards exclusive contracting for all legal aid work has persuaded us to recommend that applications for full civil legal aid in immigration matters should be limited to organisations that are part of the exclusively contracted advice and assistance scheme from 1 January 2000. No organisation without a contract to provide advice and assistance should be able to apply for a legal aid certificate to seek leave for judicial review in an immigration matter after that date.

4.67 This step, together with our ability under contracts to monitor the outcome of applications for leave, will mean that limited legal aid resources will not be wasted on unmeritorious applications. Of course, as we have already said, we do not presume that all applications will be successful and we could certainly not insist that applications should only be made when they are certain to succeed. Nevertheless, the concentration of this work on contracted firms should result in a significant reduction in unmeritorious applications and the speeding up of work in the Divisional Court to the benefit of those with genuine applications worthy of early resolution.

IAS and RLC

4.68 IAS and RLC have both submitted applications to join the bid panel for consideration for contracts starting in January 2000. IAS is regionally organised and contracting with them would be a convenient way to extend coverage regionally. RLC is a large London based organisation, which together with IAS' London region offices could make a material difference to the provision of contracted quality advice and representation. We see this as a positive development which will be helpful in ensuring access to quality services where it is most needed.

4.69 If these organisations meet the various requirements, are able to become long-term contracted providers and the Lord Chancellor accepts our view that legal aid contracts should provide for representation in certain circumstances, then the Lord Chancellor and the Home Secretary may wish to consider whether the funding provided to IAS and RLC under s23 of the Immigration Act 1971 should become the responsibility of the Lord Chancellor. IAS and RLC, if contracted, would be part of the new Community Legal Service; one of the principles that will underpin the CLS is common definitions of need supported by co-ordinated funding.

4.70 While we hope that both IAS and RLC will become long term contractors, we must also ensure that our proposals are effective in encouraging a wide range of organisations across the sectors to provide effective help in this important category of

work. We cannot and do not rely on RLC and IAS to address all the problems in the immigration category.

Lack of Incentives

4.71 As we pointed out in paragraph 3.26d) above, the cost of increasing work in progress is a major disincentive to good quality organisations which may wish to expand. We want to encourage expansion among those organisations to meet genuine need as it emerges. Accordingly, we propose that organisations that are fully franchised should qualify for enhanced payment arrangements if they are prepared to expand to meet identified need. We recommend that we should agree with organisations prepared to expand, a schedule payment limit (the maximum annual sum payable under the contract) set at a rate that reflects new cases taken on rather than cases likely to finish.

4.72 If contracts cover representation before the adjudicators and the Tribunals, an hourly rate should be paid. To be consistent with the approach taken on most ABWOR advocacy we have proposed the ABWOR advocacy rate of £57.25 for representation in these circumstances (preparation would be undertaken as currently at the green form preparation rate). Where matters needed to go on to a legal aid certificate, contractors would be paid at the appropriate hourly rate laid down in Regulations.

4.73 It is interesting to note that few of the quality providers have reacted to the significant increase in need for advice by asylum seekers (referred to in paragraph 2.14) by expanding the capacity of their practices. This bears out our contention that the current scheme does not provide sufficient incentives to encourage expansion, particularly in providing help at the earliest stages of cases.

4.74 We believe that reasonable and appropriate incentives in this category of work are essential if we are going to see expansion of quality supply in this category of work.

Uneven concentration of expertise

4.75 We believe that we need to be proactive in setting up specific arrangements to address the uneven spread of expertise in this category of work.

4.76 The Lord Chancellor has already asked us to explore further the delivery of contracted services through telephone advice, outreach and second tier services. In the immigration category we see second tier contracts, in particular, as having an important role in the way forward. We use the term second tier specifically to mean:

a) advice, support and consultancy to front line advisers on specific problems (whether related to an individual case or not). Here the front line adviser retains responsibility for the advice given to the client;

b) training on particular aspects of immigration casework (which might extend beyond the legal complexities of the category and include specific points on best practice in dealing with service delivery for immigration clients);

c) taking cases on referral in appropriate circumstances. Normally the responsibility for the casework service would transfer at this stage to the second tier adviser.

4.77 Contracts enabling this type of arrangement could enhance the effectiveness of the services being provided at the first tier, providing a better service for the client and therefore better value for money. It would also enable advisers to build up their own knowledge and expertise by providing what is akin to a mentoring opportunity with appropriate experts. Learning is most effective in an appropriately supported environment where there is the opportunity to apply the skills learnt. However, as the work we are dealing with here is difficult and has potentially serious consequences for the client, the ability to be supported up to a point but then pass a case on at the appropriate point is essential for the client to be assured of obtaining the most appropriate and effective service.

4.78 This approach enables knowledge and expertise to be passed on effectively from specialists to non-specialists, providing the opportunity to assimilate learning by application but with the ability for the specialist to take the case at the appropriate point. Duplication is minimised as, instead of removing learner and teacher from the direct provision of advice during the whole training period, this approach would gain the benefit of passing on expertise and eventually extending the availability of specialist help, while at the same time relatively quickly enabling more clients access to quality services at an earlier stage of contracting.

4.79 It will be essential, however, that the clients' needs remain the focus of the scheme which is why the arrangements include the necessary back up to protect the client from potential problems created by lack of expertise or knowledge at the various stages of the learning process.

4.80 We are in the process of setting up a small number of pilot schemes to take these ideas forward. However, it will take time for these contracts to be finalised and available to more than the initial pilot participants. The next section looks at our proposed interim arrangements.

Interim Arrangements for Access to Specialist Knowledge

4.81 We propose that we should allow time spent either directly by the immigration category supervisor (or by other contract staff with the supervisor's agreement) in seeking guidance and advice from another fully franchised immigration contractor (meeting in full the immigration supervisors standards) as time claimable at the green form preparation rate under the contract. Time spent by the contracted advising organisation would be allowable under their own contract, again at the green form preparation rate.

4.82 To facilitate this we will provide all organisations with immigration contracts the names of all other organisations with contracts, and include information on the franchise status of the contractor, as well as information on the client groups and issues in which particular organisations specialise. This will help to encourage referral to these specialist organisations in appropriate circumstances. The extent to which this

facility is used will also be extremely helpful in determining the way forward in using second tier contracting in future.

4.83 We have already said that we will encourage appropriately equipped firms to expand. However, there is a degree of circularity in that statement. In most cases, firms will only be able to expand if they are able to recruit additional staff. The extent to which there are ready-made immigration practitioners available to recruit is limited for reasons we have already discussed. We intend therefore to discuss with the Immigration Law Practitioners Association (ILPA) whether it would be possible for the Board to support specific ILPA training for new staff being taken on by organisations that are expanding for the purposes of increasing their legal aid immigration work. The support might be either by contributing directly to the cost of sending individuals on training courses *or* the direct funding of a training supplier (ILPA itself, or other appropriate providers such as JCWI, or LAG Training) to provide relevant training to individuals from contracted organisations.

Waste and Duplication

4.84 Asylum work is the major part of the work provided through the scheme at the moment. Each group of asylum seekers from a particular country generates work for the practitioner who takes on their case. However, there will be a good deal of core background work in cases for particular groups. In our discussions with the Law Society the idea of developing a contract to undertake some of the background research necessary to take forward cases from a particular group, akin to a generic work contract in multi-party-action, was put forward as a means of reducing duplication, case costs and improving quality, as specialists would undertake the research work necessary to provide the appropriate background for the cases. It is not possible to prevent duplication under the current arrangements and this idea can be progressed only in the context of contracting. In particular, we wish to discuss with RLC the work carried out by its research and information unit which has a high reputation.

4.85 Conclusion

We have set out in this paper our consideration of the various factors which we believe need to be addressed to introduce an effective contracting scheme for immigration and nationality (including asylum). We are confident that the proposals outlined here (listed in paragraphs 3. to 16. will ensure that the contracts we will have in place on 1 January 2000 will be able to deal with the immediate level of genuine need for appropriate quality advice and assistance, while providing appropriate support for expansion and innovative means of providing effective services directly to address the needs which are specific to this category of work.

Legal Aid Board
May 1999

Guidance on the Exercise of Devolved Powers Annex A

Application to enter or remain

Reason for extension	**Suggested time in units** (unit = 6 mins)
Initial limit	N/A
Marriage or settlement cases	20 - 40
Reporting outcome	5 - 10
Courses of Enquiry	Various
Submit notice of appeal	10
Consider explanatory statement	10
Prepare for appeal	20 - 80
Attend appeal before adjudicator	20
Apply for leave to IAT	20
Consider and apply for legal aid to apply for JR of IAT decision to refuse leave	Up to 20
Prepare for IAT	20
Attend IAT	20
Consider and apply for legal aid to appeal to Court of Appeal	10 - 20

Asylum Cases

Reason for extension	**Suggested time in units** (unit = 6 mins)
Initial limit	N/A
Initial advice (complex)	40
Reporting outcome	5 - 10
Courses of enquiry	Various
Attend ASU	10
Attend ASU with interview	Further 20
Complete PAQ	Up to 40
Prepare and attend PAQ interview	Up to 60
Prepare and lodge appeal to adjudicator	10
Prepare for appeal	40 - 120
Attend appeal before adjudicator (fast track)	20
Attend appeal before adjudicator (substantive)	Up to 80
Apply for leave to IAT	20
Consider and apply for LA for JR of IAT's decision to refuse leave	20
Prepare for IAT	20
Attend IAT	20
Consider and apply for LA to appeal to Court of Appeal against IAT decision	Up to 20
Upgrades	10 - 20

(Extracted from current edition of Guidance on the Exercise of Devolved Powers - this table first issued April 1996)

Annex B

Proposed Requirements for Panel Members Delegating Work to Approved Delegates

Background

B1. The Board has agreed guidance on the meaning and application of regulation 20 of the Legal Aid Advice and Assistance Regulations 1989 (summarised at paragraphs 4.12 to 4.15) The approach adopted in the context of Immigration Panel members set out below is intended to be consistent with that guidance. As the guidance has only just been introduced it is still subject to change.

B2. It is our intention to adopt a consistent approach once exclusive contracting is introduced. However, because the position in relation to the regulation 20 guidance is still subject to change and the proposals set out in this annex will not be applied until after the introduction of exclusivity in January 2000, the proposals set out here should be considered draft proposals which may change in due course.

B3. Comments on the proposals set out here are invited and should be sent to the Jenny Treacy, Departmental Administrator, Policy & Legal Department, at the Board's Head Office.

B4. Paragraph B7. sets out the principles behind the arrangements set out here which detail the circumstances in which a member of the Law Society's Immigration Panel Member (IPM) operating under a pre-franchise immigration contract may delegate tasks to other approved individuals.

B5. Detailed supervision requirements are set out in three categories:

a) Category A: The provision of advice and assistance by an experienced delegate who has conduct of the file (paragraphs B18. to B23.);

b) Category B: The provision of other advice and assistance by a delegate not having conduct of the file (paragraphs B24. to B27.);

c) Category C: Attending the client on interviews with the Immigration Services (paragraphs B28. to B29.);

B6. Paragraphs B31. to B33. deal with keeping records of supervision.

The Principles of Delegating Work

B7. The underlying principles are that Immigration Panel Members (IPMs) may delegate work ***only*** to individuals who are

a) approved for the purpose by the Board;

b) competent to carry out the work;

c) working under the IPM's immediate supervision (see paragraphs B14. to B17.)

B8. IPMs working towards achieving full franchise status may, under the terms of their initial pre-franchise contract, delegate work to someone under their immediate supervision who is not a panel member and need not be legally qualified, provided that person is competent to conduct the work and has been approved by the Board for these purposes.

Types of Delegate

B9. The Board will approve two specific types of delegate:

a) **Approved Delegates (ADs)** who must be competent and responsible, employed in the IPM's office under a contract of service, and competent to perform the range of tasks delegated to them;

b) **Restricted Delegates[1] (RDs)** who may be self employed but must be deployed on contract work *only* under the IPM's immediate supervision, and *only* in attending clients on interviews with the Immigration Services.

B10. Approved Delegates may undertake tasks a Restricted Delegate would undertake; however, a Restricted Delegate may not act as an Approved Delegate unless they are specifically approved by the Board as an Approved Delegate.

Entrusting work to Approved and Restricted Delegates

B11. Any delegation of work by the IPM must be to an Approved Delegate (or in specified circumstances a RD) who is both responsible in general, and competent to deal with the particular matter delegated. No delegate will be approved who has been convicted of a serious criminal offence or against whom there has been a finding of serious misconduct by the OSS or Bar Council. It will be the IPM's responsibility to ensure that only appropriate work is delegated.

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[1] Note that the Board has been in discussion with the Home Office to consider the most effective on-entry interview procedures. Any changes in these procedures may mean that it is no longer necessary to approve restricted delegates

B12. The delegate must be competent to perform the particular tasks allotted to them. The levels of experience, qualification and training required will depend on the nature of those tasks. IPMs should apply the guidelines set out in paragraphs B18. to B29. below, subject to the proviso that where the IPM has reason to believe that any task is beyond the capacity of the particular delegate, then the matter should not be delegated to that individual.

B13. The delegate should be of sufficient maturity to be able to deal with the tasks allotted to them.

Immediate Supervision

B14. For the purposes of determining whether a delegate is under the immediate supervision of the IPM, the Board will follow the Law Society's interpretation (adopted in Rafina) of "immediate supervision" and apply it in this context as set out below:

a) "immediate supervision" requires the IPM to direct the work of the delegate, monitor its quality, take immediate and effective action if the quality is unsatisfactory, and insist that the delegate cease to act as necessary;

b) the need to ensure the competence of an AD, who will normally be carrying out a range of tasks, as well as direct the quality of the work carried out, means that there must be a limit on the number of ADs who can be effectively monitored by one IPM. In particular, no IPM should at any given time, be responsible for the supervision of more than ***five*** individual (*not* full time equivalent) ADs;

c) the Board may approve more than 5 ADs but the IPM must not be responsible for the supervision of more than 5 individual ADs at any one time. This limitation on numbers does not apply to approved Restricted Delegates;

d) supervision of delegates must be both general in relation to their skills, conduct and overall work load, and particular in relation to the work they actually carry out. Therefore the IPM must show that systems are in place and in effective operation to:

i) ensure that the delegate receives any training necessary for their particular role and is kept up to date with any relevant developments in the law, including, as a minimum, any changes in law (including case law and European Law) and immigration procedures and practices relevant to the AD's role;

ii) ensure that only those tasks which are within the particular delegate's skill and competence are delegated to them;

iii) monitor the overall level of the delegate's workload and any feedback on their conduct (including complaints) provided by clients or other third parties.

B15. In order to ensure that the quality of the work provided by the delegate is appropriately directed and monitored, IPMs must adopt appropriate measures including to:

a) read all incoming and a reasonable sample of outgoing post;

b) carry out supervisory checks (as set out for each category below);

c) brief the delegate in advance of the work, unless it is justifiable not to do so (see B16. to B17. below).

B16. The IPM should ensure that the delegate is appropriately briefed in advance on the particular context of the case and in relation to any issues that may arise. The extent of this briefing may vary depending on the experience of the delegate and in some instances may not be required (a note of the justification for dispensing with a briefing should be kept on the file). A note of the briefing ***must*** be kept on the file.

B17. If the delegate is seeing a client by prior arrangement to take a statement, the IPM ***must*** ensure that the delegate is aware of the issues which will need to be addressed in the particular case. In the case of interviews with the immigration services, the delegate ***must*** be briefed as to any special factors e.g. particular conditions prevailing in the country of origin. If a delegate is attending an interview at short notice, then the briefing may be given over the telephone, if appropriate. The IPM ***must*** speak to the delegate in advance in every case where they are instructed to attend on an interview.

Category A: The provision of advice and assistance by an Approved Delegate who has conduct of the file.

B18. Some ADs will have sufficient knowledge and experience to handle their own caseload, although they must still be subject to appropriate supervision including the requirements set out at paragraphs B14. to B17. above.

B19. It will be for the IPM to demonstrate that only appropriately experienced delegates have responsibility for the full conduct of cases. The paragraphs which follow set out the Board's expectation of minimum levels of qualification for experienced ADs.

B20. The Board will consider an AD with experience described in one of the following categories as sufficiently experienced to handle their own caseload:

a) a Fellow of the Institute of Legal Executives who has worked full-time for at least two years post-qualification and has spent a third of their fee earning/casework hours (or more) over that period working in immigration law. This would be equivalent to an average of 8 hours a week or 350 hours a year over two years.

b) a Fellow of the Institute of Legal Executives who has worked part-time for at least three years post-qualification and has spent an average of between 3 to 8 hours a week or 120 to 349 hours a year over three years working in immigration law.

c) any other type of legal adviser who has worked full-time for at least five years and has spent a third of their fee earning/casework hours (or more) working the relevant subject category over that period. This would be equivalent to an average of 8 hours a week or 350 hours a year over five years.

d) any other type of legal adviser who has worked part-time for at least seven years and has spent an average of between 3 to 8 hours a week or 120 to 349 hours a year over seven years working in the relevant subject category.

B21. The Board will also expect the IPM to demonstrate that an experienced AD is able to show:

a) in relation to immigration advice and assistance generally

i) familiarity with the relevant statute and case law;

ii) a working knowledge of the immigration rules and procedures, the way in which they are applied and the time limits;

iii) experience in the preparation of the necessary documentation.

b) in relation in asylum matters

i) knowledge of the 1951 Convention, any associated domestic jurisprudence and of the handbook produced by the United Nations High Commission for refugees

ii) familiarity with the application of the exceptional leave to remain provisions outside the immigration rules

iii) familiarity with the application of the European Convention of Human rights and the associated jurisprudence to domestic law and procedures.

Supervisory check

B22. IPMs should carry out a supervisory check on a randomly chosen proportion of the files dealt with by the AD, such proportion initially to be not less than 10% of the AD's total caseload per calendar month.

B23. As part of each file check, the IPM should:

a) read all attendance notes made by the AD to check that the appropriate advice has been given and action taken. Standardised attendance notes are unlikely to be able to show that adequate supervision has been given, since it will not be possible for the IPM to monitor the quality of the work carried out;

b) read any documentation prepared by the AD (e.g. statements, instructions to counsel);

c) identify any material errors or omissions in the advice given or steps taken and take or direct prompt remedial measures;

d) ensure that the appropriate steps have been taken in accordance with the requirements to category C work (see paragraphs B28. to B29. below).

e) ensure that the AD has correctly identified any further steps to be taken and that the file has been given an appropriate review date in consequence.

Category B: The provision of other advice and assistance by an Approved Delegate not having conduct of the file.

B24. Less experienced ADs (who do not fall into the category described above) should not have conduct of the file and their involvement should be limited to specific tasks e.g. taking statements from the applicant and drafting the application for approval by the IPM. In such cases the IPM should ensure that the representative is briefed in advance on the particular context of the case and in relation to any issues that may arise. If seeing a client by prior arrangement to take a statement, the AD should be aware of the issues which will need to be addressed in the particular case and be capable of explaining the legal framework of the application to the client.

B25. Where delegation takes place, the AD should (unless their experience of the type of matter is such that this is not required) be properly briefed in advance. Any documentation prepared by the AD must be checked and amended where appropriate by the IPM, in whose hands the conduct of the file will remain.

Supervisory check

B26. IPMs should ensure that a check of the file should take place on *every* category B matter as soon as practicable after any substantive step has been taken in the case by the AD.

B27. As part of the file check, the IPM should:

a) read all attendance notes made by the AD to check that the appropriate advice has been given and action taken. Standardised attendance notes are unlikely to be able to show that adequate supervision has been given, since it will not be possible for the IPM to monitor the quality of the work carried out;

b) read any documentation prepared by the AD (e.g. statements, instructions to counsel);

c) identify any material errors or omissions in the advice given or steps taken and take or direct prompt remedial measures;

d) where after any piece of work, the AD is to take the next substantive step in the matter, ensure that they have correctly identified any further steps to be taken and ensure that the file has been given an appropriate review date in consequence.

Category C: Attending the client on interviews with the Immigration Services

B28. The IPM should ensure that any delegate (including approved Restricted Delegates) attending an interview:

a) has a general knowledge of the relevant legal issues sufficient to enable them to assist the client at the interview by seeking to ensure that the pertinent details of the client's case are put forward and to intervene where appropriate. Compliance with this requirement could be demonstrated by for example, recent study of immigration law, and/or through the firm's own written guidance and training materials. The delegate would not be expected to be able to argue detailed case law but must be able to advise the client in general terms of their appeal rights and the timetable;

b) is briefed as to any special factors; for example, particular conditions prevailing in the country of origin, and special circumstances in the particular case. The delegate should, if the timing of the interview permits, be given a copy of the client's statement. If a delegate is attending an interview of which the firm has only been given short notice, then any briefing may be given over the telephone, if appropriate. However, the IPM must speak to the delegate in advance in every case where they are instructed to attend on an interview;

c) is capable of taking a full accurate, and comprehensible verbatim note of the interview and of any interventions made during its course.

Supervisory Check

B29. Where a Restricted Delegate has attended interviews with the immigration authorities the IPM should read all records of the interviews taken by the RD. These should be full, verbatim, legible notes. IPMs should compare the notes with any record provided by the Immigration Service and should ensure that the delegate has taken a proper record, has intervened in the interview where appropriate and has not intervened in an inappropriate fashion.

B30. Where an experienced AD (see B20. to B21.) is dealing with the matter, the IPM may decide the appropriate level of supervision required. The IPM remains ultimately responsible for carrying out the appropriate supervisory checks as set out in B23. above.

Record of supervision.

B31. IPMs should ensure that documentation is maintained setting out the supervision arrangements. This will confirm matters such as which IPM is responsible for which ADs, which tasks are suitable to be delegated to them and what their ongoing training arrangements are.

B32. However, in order to demonstrate that adequate supervision has taken place, IPMs must be able not only to show that procedures exist to meet the general requirements but must be able to provide evidence of actual supervision in relation to work carried out. IPMs will normally be able to demonstrate this by a note on the file showing, for example, when a file was taken from an AD as it became more complex, when an approach taken by an AD in a case was corrected and so on. In other words, there must be evidence that supervision is actual rather than merely structural.

B33. The IPM should therefore keep written records of supervisory checks which should contain:

a) the date the check was carried out;

b) the particular purpose of the check (e.g. to consider the interview record) if not otherwise apparent;

c) a note of any corrective action taken;

d) where relevant, confirmation that the appropriate future steps have been identified;

e) the date for the next check.

In the absence of such evidence, the IPM will have difficulty in demonstrating that adequate supervision has taken place.

B34. Once an organisation operating under these arrangements has achieved full franchise compliance at the end of their pre-franchise contract, they will demonstrate compliance with the requirements through the franchise route. The arrangements set out in this annex apply only during the pre-franchise contract of a non-franchised Law Society Immigration Panel member.

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LEGAL AID BOARD
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DETR
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TRANSPORT
REGIONS

(f)

GARY CHISHOLM
MINISTERIAL SUPPORT UNIT

DEPARTMENT OF THE ENVIRONMENT
TRANSPORT AND THE REGIONS

ZONE 6/D5
ELAND HOUSE
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DIRECT LINE: GTN 3533-4304
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OUR REF: IDC/198

9 July 1999

DN
CiPU

Jenny Rowe
Private Secretary
Lord Chancellor's Department
Selbourne House
54-60 Victoria Street
London
SW1E 6QW

Dear Jenny,

IMMIGRATION APPEAL TRIBUNAL AND ADJUDICATORS: ELIGIBILITY FOR APPOINTMENT

The Lord Chancellor wrote to the Home Secretary on 8 July concerning appointments to the Immigration Appeal Tribunal. The letter was copied to HS Committee.

The letter should have also been copied to the Prime Minister and members of LEG Committee. I should be grateful if you would arrange for this to be done, and if other recipients of this letter would note the need to add the Prime Minister and members of LEG Committee to the copy list of any letters on this subject .

I should be grateful if you would ensure that replies, or nil returns, are received from all the members of the Committees. Recipients of this letter should note that, if their Ministers wish to respond, they should do so by 22 July.

Once all comments or nil returns have been received, you should inform the secretariat (on 270 0326 or 0135), which will then prepare the reply from the Deputy Prime Minister, as Chairman of HS Committee. The aim is to issue a letter summing up the correspondence by the following working day. A decision should not, however, be assumed until the Deputy Prime Minister has replied.

I am sending a copy of this letter to the Private Secretaries of the Prime Minister, members of HS and LEG Committees and Sir Richard Wilson.

Yours sincerely

GARY CHISHOLM
Ministerial Support Unit

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

DN
cc. JJ+
PU

8 July 1999

File Ref: DL142/279/7

The Right Honourable Jack Straw MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

Dear Jack,

IMMIGRATION APPEAL TRIBUNAL AND ADJUDICATORS: ELIGIBILITY FOR APPOINTMENT

To consider whether a power should be taken in the Immigration and Asylum Bill to widen the definition of legal qualification to include persons who appear to the Lord Chancellor by reason of their legal and other experience to be suitable for appointment as a legally qualified member of the Tribunal or as an Adjudicator.

It has always been the case, and the Bill presently maintains the position, that legally qualified members of the Tribunal may only be appointed if they hold a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 or are advocates or solicitors in Scotland, or barristers or solicitors in Northern Ireland, of not less than 7 years' standing. The Bill also contains, following your and colleagues' earlier agreement, a new requirement for Adjudicators to be similarly qualified. Save in one case, it has been the policy, since the Lord Chancellor took over responsibility for these appointments in 1987, that only those who meet that requirement are appointed as Adjudicators.

I am concerned that, in setting a strict requirement for legal qualification in this jurisdiction, notwithstanding that we have decided to retain lay membership in the Tribunal, this may well exclude from future appointment (at both levels of tribunal) a number of talented academic and other lawyers who may not meet the seven year qualification requirement but would otherwise be exceptionally well qualified to preside in the Tribunal or sit as Adjudicators. The growth of the

jurisdiction and the need for potential additional judicial resources to meet our public commitments is such that I do not think we should pass up the chance of using these individuals' skills and experience.

I am copying this letter to members of HS and Sir Richard Wilson.

Yours ever,

Derry

THE RT HON HELEN LIDDELL MP
MINISTER FOR TRANSPORT

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

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DETR
ENVIRONMENT
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DW
CC. JJH
PU

08 JUL 1999

The Rt Hon Jack Straw MP
Home Secretary
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

Dear Jack,

Thank you for your letter of 6 July. I am happy that this correctly sets out the terms of our agreement and I am content for you to proceed to introduce the amendment, as you suggest.

I would be grateful if officials from your Immigration and Nationality Directorate could continue to liaise with mine, as they have on the wording of the amendment. There will need to be discussions, in the longer term, on the drafting of the Code of Practice.

Perhaps we could discuss the issue once more prior to your making the necessary Statutory Instrument.

I am copying this letter to the Prime Minister, the Deputy Prime Minister, Members of HS and LEG, to Sir Richard Wilson and to the first Parliamentary Counsel.

HELEN LIDDELL

DETR (MSU) Fax:0171-890-4875 8 Jul '99 14:33 P.01/02

FROM THE DEPUTY PRIME MINISTER

Top: ER
CC: DN
PJ

(f)

DEPARTMENT OF THE ENVIRONMENT
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
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TEL: 0171 890 3011
FAX: 0171 890 4399

Our Ref: IDC/150

8 July 1999

The Rt Hon Jack Straw MP
Home Secretary
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

IMMIGRATION AND ASYLUM BILL: CIVIL PENALTY THROUGH FREIGHT TRAINS.

This letter gives you HS approval to proceed as you proposed in you letter of 10 June, subject to the points made by colleagues recorded below.

You explained that HS had already given its agreement to amend the Immigration and Asylum Bill so as to extend the application of the civil penalty to include through freight trains. You now proposed to involve the industry fully in the preparations for implementation of the civil penalty but without giving any commitment to make introduction conditional upon the acceptability to them of any proposed implementation regime.

I commented in relation to my Departmental responsibilities. In my letter of 14 June, I set out a number of concerns. I explained that we needed to be sure that appropriate arrangements could be made to apply sanctions fairly and that we must work with the industry to put in place an appropriate and practicable regime. In your letter of 6 July to Helen Liddell, you described the discussions which had taken place between our Departments. As a result of these, we

agreed that in order to ensure that the practical difficulties and the concerns of the industry were fully addressed the amendment to the Bill would ensure that the extension would be capable of being implemented separately from the powers relating to other types of carriers. The provision would also ensure that implementation only took place after consultation with the industry and the Clause would therefore make explicit reference to such consultation. Implementation would be by way of negative resolution.

I am copying this letter to the Prime Minister, members of HS and LEG and to Sir Richard Wilson and First Parliamentary Counsel.

JOHN PRESCOTT

FJ
bcJR
JS
PB
AC

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

8 July 1999

Dear Hilary

CENTRAL AND EASTERN EUROPE ASYLUM PRESSURES

The Prime Minister has seen the Home Secretary's minute of 11 June and the Foreign Secretary's of 1 July.

The Prime Minister appreciates that this issue creates a difficult dilemma between asylum pressures on the one hand and our policy on EU enlargement on the other. He is grateful for the work already done with the governments concerned to stem the flow of asylum seekers. This should clearly be continued and intensified.

However, the Prime Minister accepts that the question of visa regimes against certain countries might need to be looked at afresh if there are sudden increases over and above the existing problem. He would be content for contingency plans to be prepared, as long as this could be done in a way which did not seriously antagonise the governments concerned. He would wish to be consulted again before an actual decision to impose a visa regime on any of these countries was taken.

The Prime Minister agrees that the external presentation of the Asylum and Immigration Bill should be handled so as to emphasise its deterrent effects.

I am copying this letter to the Private Secretaries of recipients of the Home Secretary's minute of 11 June and to Sir Stephen Wall (UKRep Brussels).

Yours ever

Michael

MICHAEL TATHAM

Ms Hilary Jackson
Home Office

From: Michael Tatham
Date: 6 July 1999

PRIME MINISTER

cc: Jonathan Powell
John Sawers
Alastair Campbell
David North
Philip Barton
Liz Lloyd
Sally Morgan
Roger Liddle

file

CENTRAL AND EASTERN EUROPE ASYLUM PRESSURES

Liz Lloyd did a note for you on 15 June commenting on Jack Straw's proposal that we put in place contingency plans for imposing visas on the Czech Republic and Poland in the light of rising numbers of asylum seekers from these countries. You minuted on Liz's note asking whether there would really be uproar in Poland etc and whether we could not explain our problem to the countries concerned.

The answer to your question is that there would certainly be a sharp reaction if we were to impose visas on Poland and the Czech Republic. Both countries see the issue in highly political terms – as a badge of their progress towards EU membership. The issue has considerable domestic resonance in the countries concerned – the imposition of visas would be a blow to the respective governments and explaining our problem to them would not do much to sweeten it.

FCO Views

Robin Cook has now written arguing against the imposition of visas. He makes two points:

- FCO are working hard with the governments concerned to address the problem by publicity campaigns, cooperation with border police etc. (However this has not yet delivered a sustained reduction in numbers of asylum seekers.)

- imposing visas would conflict with our message on EU enlargement.

Implications for our message on enlargement

We should not be deterred from tackling the asylum problem simply because of the fear of upsetting foreign governments. But the greater problem is how this would impact on our current message on EU enlargement. In recent speeches (Bucharest, Aachen, Sofia) you have struck a highly forward-looking note on enlargement – intensification of negotiations, moving fast to make enlargement a reality, motivating the candidate countries etc. The imposition of visas on some candidate countries would undermine the impact of this message. Candidate countries would perceive a contradiction between our stated support for enlargement on the one hand and our movement in the opposite direction on one of the key aspects of EU membership (free movement of people).

You will want to balance the competing arguments. **One option would be to agree to what Jack is actually asking for – contingency plans for visa imposition – whilst putting down a marker that any decision actually to impose visa regimes should be the subject of further discussion/correspondence.** This would up the pressure on FCO to get even more serious with the governments concerned over measures to stem the flow (for example, enhanced cooperation with police and immigration authorities, more effective publicity campaigns, high-level Ministerial contact). It would also

allow us to weigh up fully all the pros and cons if the problem continues to deteriorate.

Jack and Robin's letters and Liz's original note are all attached.

Michael Oatham

If we can ~~impose~~ put in place contingency plans, that is worth doing unless ever that we have to rerun them.

HOME SECRETARY

You are dropping out.

DN
~~C~~ OB
JJH
JS
PB
JPO
AC

Prime Minister

CENTRAL AND EASTERN EUROPE ASYLUM PRESSURES

Since I wrote at the end of March the level of asylum applications from Lithuania has remained at a relatively low level. However, applications from the Czech Republic in particular and also from Poland have shown a worrying upward trend. In addition, we are receiving large numbers of asylum seekers from Croatia. We are reviewing urgently with FCO Officials the measures which might be taken to stem the flow. In my speech at Report Stage and in publicity on the Bill we will need to walk a careful line between selling our package of concessions to our supporters and avoiding sending the wrong signals to traffickers and would-be asylum seekers.

2. In my Minute to you of 31 March I set out my concerns about the flow of asylum seekers from Central and Eastern Europe and from Poland, Lithuania and the Czech Republic in particular. At that time after a very worrying period of considerable increases, the figures had tailed back in the early part of this year. In view of this, I did not pursue then the case for a visa regime on one or more of these countries.

3. Since then the picture, particularly in respect of the Czech Republic has worsened significantly. From a level of 75 applications in February they have risen to 95 in March and 110 in April. In May some 95 applications were received. The position in respect of Poland has also worsened, from 50 applications in February to 80 in March and 75 in April with some 58 applications in May. Figures for Lithuania have risen slightly but not to anything like the same extent.

4. In addition, we are increasingly concerned about the level of asylum applications from Croatia (in January we received 85 applications, 108 in February, 95 in March, 84 in April and in May some 125. They are accompanied by higher than average numbers of dependants). We are investigating the background to these applications: clearly the special situation in the area may play a part, although first indications are that many of the applications are by economic migrants..

5. Mike O'Brien expressed our concern to the Czech Deputy Foreign Minister on 7 June and is due to visit Lithuania later this month.

6. Officials are examining urgently the scope for further engagement with the Governments concerned with a view of reducing the flows. However, we may soon have exhausted these possibilities. If numbers suddenly increased, we would need, very quickly, to revisit the issue of visa regimes on one or more countries. This would of course be very difficult politically, not least considering the support these countries have given over Kosovo, so it would be absolutely a last resort.

7. I am very conscious that we shall need to handle publicity surrounding the Asylum and Immigration Bill very carefully. We must strike the right balance between selling our package of concessions to our own supporters and giving the impression that we are weakening the deterrent value of our package.

8. I am copying this minute to the Deputy Prime Minister, the Foreign Secretary, the Secretary of State for Social Security, the Secretary of State for Trade and Industry, and to the Chief Secretary to the Treasury, and also to Margaret Beckett, Ann Taylor, Baroness Jay, Sir Richard Wilson and Sir Stephen Wall.

11 June 1999

5986js

RESTRICTED

PM/99/031

PRIME MINISTER

MT

Are you now happy to lead on this?

DN

DN

C: JTH
OB
JS
MT

Central European Asylum Seekers

1. I am writing in response to the Home Secretary's minute to you of 11 June about asylum seekers from Central Europe, in particular Poland, the Czech Republic, Croatia and Lithuania.

2. I share the Home Secretary's concern about this. We have been closely engaged with all the governments concerned to bring down the number of asylum seekers from their countries without having to resort to visa regimes. We have had some success: the numbers from Poland and particularly Lithuania are much better this year, though Czech and Croatian asylum
... seekers have risen. More details in the attached annex.

3. We have agreed with the Home Office to step up our activities in the region. At the request of the Governments concerned, the Immigration Service are now producing an analysis of recent asylum seekers showing their towns of origin and the reasons given for fleeing. These analyses, which will of course preserve the anonymity of individual applicants, will help the four governments to address some of the factors driving migration; and will enable us to have an even better dialogue with them as we keep up the pressure for effective solutions in-country. You may, of course, wish to raise this issue during your own forthcoming visit to Poland.

4. The Central Europeans, of course, claim that the problem stems in part from a UK asylum regime which is perceived to be relatively liberal. I note that Germany has just tightened its laws. Jack's Immigration and Asylum Bill will be an

important step forward. I am very keen to get across the message in Central Europe that our regime will be "firm, fair and fast". In presenting the Bill abroad, we will need to play up its deterrent effects, and correct any impression in the foreign media that its key provisions have been watered down. We will stage a vigorous information campaign among potential asylum seekers, on the basis of Home Office guidance. And, of course, FCO Ministers stand ready to help ensure the Bill's passage through both Houses of Parliament.

5. I note that Jack sees visa regimes as absolutely a last resort. But I remain concerned at the suggestion that we might need to impose visa regimes very quickly if numbers were to increase suddenly. Such a step would have very serious implications for our enlargement policy. It would fly in the face of our efforts, in the post-Kosovo context, to anchor the countries of the region as quickly as possible into Europe. Visa regimes in the larger countries would be a huge undertaking, and I am not convinced that they would be justified by the numbers involved. The Poles and Lithuanians for example, would not understand such a step, given the fall in the number of claimants this year. We have been able to achieve some encouraging results for example in Lithuania without a visa regime. We should go on working in a similar way with the countries concerned. And we should maximise the impact of the new Bill in the region.

6. I am copying this minute to recipients of the Home Secretary's minute of 11 June.

Robin Cook

(ROBIN COOK)

Foreign and Commonwealth Office
1 July 1999

CENTRAL EUROPEAN ASYLUM SEEKERS

The monthly average number of principal asylum applicants from Lithuania is now 39; less than half the 1998 figure of 108. This has followed intensive contact between us and the Lithuanian Government; a Lithuanian crack-down on illegal people-trafficking; and parallel measures by the Immigration Service to discourage abuse of the asylum system by port arrivals. Kate Hoey's visit on 30 June - 1 July will keep the Lithuanians focussed.

The monthly average from Poland has fallen from 132 in 1998, to 72 in the first five months of 1999. In addition to political and official contacts, the Embassy have also met all the main Polish Roma leaders and have produced a leaflet (in Polish) dispelling some of the myths about claiming asylum in the UK.

The FCO shares Home Office concern about the increase in Czech asylum seekers. We have responded very actively, with Home Office help. Since 1 June we have raised this issue with the Foreign Minister and the Interior Minister, while the Czech Deputy Foreign Minister recently visited London expressly to discuss asylum seekers. Although the vast majority of asylum claims are unfounded, there is still substantial anti-Roma discrimination in the Czech Republic and we have several projects underway to help the Czechs address this. The Czechs are as keen as we are to see the numbers reduce and to avoid a visa regime.

The increase in Croatian asylum seekers is a more recent development. Many of them appear to be ethnic Serbs. Discrimination against the Serbian community in Croatia is widely documented, as is the Croatian Government's deliberately slow progress on return of ethnic Serb refugees. Mr Lloyd told the Croatian Foreign Minister on 8 June that

Croatia's poor record on Serb issues lay at the heart of the asylum problem and he will repeat this message during his visit to Croatia on 12-13 July. But there is more we can do to engage the Croatians on illegal people-trafficking. As in Lithuania there is evidence of racketeering. The Croatians have offered to send a Junior Minister to London along with a team of senior Ministry of the Interior officials. We await a response from the Home Office to this proposal and an alternative suggestion that the Home Office send a team to Zagreb for talks there.

From: Liz Lloyd
Date: 15 June 1999

PRIME MINISTER

cc: Philip Barton
John Sawers
David North
Alastair Campbell
Sally Morgan
Roger Liddle

CENTRAL AND EASTERN EUROPE ASYLUM PRESSURE

Jack has written to you again proposing that we put in place contingency plans for imposing visas on the Czech Republic and Poland (and possibly Croatia and Lithuania).

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The Foreign Office is resolutely opposed to any additional visa requirements. They argue that 1) it would harm our commercial interests which are substantial in the case of Poland. 2) It would leave us isolated in Europe as no other country

has imposed visas on Lithuania, Czechoslovakia or Poland and 3) we just cannot do this to the two countries nearest accession and 4) You are visiting Poland next month.

You will want to balance the competing factors. If we are to keep the overall numbers down then we need to act at every point not just fast processing in the UK. The imposition of a visa regime on Slovakia ended port asylum applications. If we are serious about limiting asylum numbers we will need to allow the Home Office to prepare contingency plans. **What is your view?** We might also consider how your visit to Poland could be used to raise this with the Polish government.

Jack also mentions messages on the Asylum Bill. He is right that our recent announcement on concessions may send the wrong message to economic migrants who choose to come through the asylum system. It would be helpful if you could signal your agreement that we need to maintain firm messages to external audiences.

I agree. Is it really the case that there will be upsurge from Poland etc? Can we explain our problem?

f

From: Michael Tatham
Date: 6 July 1999

PRIME MINISTER

cc: Jonathan Powell
John Sawers
Alastair Campbell
David North
Philip Barton
Liz Lloyd
Sally Morgan
Roger Liddle

CENTRAL AND EASTERN EUROPE ASYLUM PRESSURES

Liz Lloyd did a note for you on 15 June commenting on Jack Straw's proposal that we put in place contingency plans for imposing visas on the Czech Republic and Poland in the light of rising numbers of asylum seekers from these countries. You minuted on Liz's note asking whether there would really be uproar in Poland etc and whether we could not explain our problem to the countries concerned.

The answer to your question is that there would certainly be a sharp reaction if we were to impose visas on Poland and the Czech Republic. Both countries see the issue in highly political terms – as a badge of their progress towards EU membership. The issue has considerable domestic resonance in the countries concerned – the imposition of visas would be a blow to the respective governments and explaining our problem to them would not do much to sweeten it.

FCO Views

Robin Cook has now written arguing against the imposition of visas. He makes two points:

- FCO are working hard with the governments concerned to address the problem by publicity campaigns, cooperation with border police etc. (However this has not yet delivered a sustained reduction in numbers of asylum seekers.)

- imposing visas would conflict with our message on EU enlargement.

Implications for our message on enlargement

We should not be deterred from tackling the asylum problem simply because of the fear of upsetting foreign governments. But the greater problem is how this would impact on our current message on EU enlargement. In recent speeches (Bucharest, Aachen, Sofia) you have struck a highly forward-looking note on enlargement – intensification of negotiations, moving fast to make enlargement a reality, motivating the candidate countries etc. The imposition of visas on some candidate countries would undermine the impact of this message. Candidate countries would perceive a contradiction between our stated support for enlargement on the one hand and our movement in the opposite direction on one of the key aspects of EU membership (free movement of people).

You will want to balance the competing arguments. **One option would be to agree to what Jack is actually asking for – contingency plans for visa imposition – whilst putting down a marker that any decision actually to impose visa regimes should be the subject of further discussion/correspondence.** This would up the pressure on FCO to get even more serious with the governments concerned over measures to stem the flow (for example, enhanced cooperation with police and immigration authorities, more effective publicity campaigns, high-level Ministerial contact). It would also

allow us to weigh up fully all the pros and cons if the problem continues to deteriorate.

Jack and Robin's letters and Liz's original note are all attached.

Michael Statham

HOME SECRETARY

You are dropping a note.

DN
~~CJOB~~
JJH
JS
PB
JPO
AC

Prime Minister

CENTRAL AND EASTERN EUROPE ASYLUM PRESSURES

Since I wrote at the end of March the level of asylum applications from Lithuania has remained at a relatively low level. However, applications from the Czech Republic in particular and also from Poland have shown a worrying upward trend. In addition, we are receiving large numbers of asylum seekers from Croatia. We are reviewing urgently with FCO Officials the measures which might be taken to stem the flow. In my speech at Report Stage and in publicity on the Bill we will need to walk a careful line between selling our package of concessions to our supporters and avoiding sending the wrong signals to traffickers and would-be asylum seekers.

2. In my Minute to you of 31 March I set out my concerns about the flow of asylum seekers from Central and Eastern Europe and from Poland, Lithuania and the Czech Republic in particular. At that time after a very worrying period of considerable increases, the figures had tailed back in the early part of this year. In view of this, I did not pursue then the case for a visa regime on one or more of these countries.

3. Since then the picture, particularly in respect of the Czech Republic has worsened significantly. From a level of 75 applications in February they have risen to 95 in March and 110 in April. In May some 95 applications were received. The position in respect of Poland has also worsened, from 50 applications in February to 80 in March and 75 in April with some 58 applications in May. Figures for Lithuania have risen slightly but not to anything like the same extent.

4. In addition, we are increasingly concerned about the level of asylum applications from Croatia (in January we received 85 applications, 108 in February, 95 in March, 84 in April and in May some 125. They are accompanied by higher than average numbers of dependants). We are investigating the background to these applications: clearly the special situation in the area may play a part, although first indications are that many of the applications are by economic migrants..

5. Mike O'Brien expressed our concern to the Czech Deputy Foreign Minister on 7 June and is due to visit Lithuania later this month.

6. Officials are examining urgently the scope for further engagement with the Governments concerned with a view of reducing the flows. However, we may soon have exhausted these possibilities. If numbers suddenly increased, we would need, very quickly, to revisit the issue of visa regimes on one or more countries. This would of course be very difficult politically, not least considering the support these countries have given over Kosovo, so it would be absolutely a last resort.

7. I am very conscious that we shall need to handle publicity surrounding the Asylum and Immigration Bill very carefully. We must strike the right balance between selling our package of concessions to our own supporters and giving the impression that we are weakening the deterrent value of our package.

8. I am copying this minute to the Deputy Prime Minister, the Foreign Secretary, the Secretary of State for Social Security, the Secretary of State for Trade and Industry, and to the Chief Secretary to the Treasury, and also to Margaret Beckett, Ann Taylor, Baroness Jay, Sir Richard Wilson and Sir Stephen Wall.

11 June 1999

5986js

PM/99/031

PRIME MINISTER

MT

Are you now happy to lead on this?

DN

DN

C: JSH
OB
JS
MT

Central European Asylum Seekers

1. I am writing in response to the Home Secretary's minute to you of 11 June about asylum seekers from Central Europe, in particular Poland, the Czech Republic, Croatia and Lithuania.

2. I share the Home Secretary's concern about this. We have been closely engaged with all the governments concerned to bring down the number of asylum seekers from their countries without having to resort to visa regimes. We have had some success: the numbers from Poland and particularly Lithuania are much better this year, though Czech and Croatian asylum seekers have risen. More details in the attached annex.

...

3. We have agreed with the Home Office to step up our activities in the region. At the request of the Governments concerned, the Immigration Service are now producing an analysis of recent asylum seekers showing their towns of origin and the reasons given for fleeing. These analyses, which will of course preserve the anonymity of individual applicants, will help the four governments to address some of the factors driving migration; and will enable us to have an even better dialogue with them as we keep up the pressure for effective solutions in-country. You may, of course, wish to raise this issue during your own forthcoming visit to Poland.

4. The Central Europeans, of course, claim that the problem stems in part from a UK asylum regime which is perceived to be relatively liberal. I note that Germany has just tightened its laws. Jack's Immigration and Asylum Bill will be an

important step forward. I am very keen to get across the message in Central Europe that our regime will be "firm, fair and fast". In presenting the Bill abroad, we will need to play up its deterrent effects, and correct any impression in the foreign media that its key provisions have been watered down. We will stage a vigorous information campaign among potential asylum seekers, on the basis of Home Office guidance. And, of course, FCO Ministers stand ready to help ensure the Bill's passage through both Houses of Parliament.

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(ROBIN COOK)

Foreign and Commonwealth Office
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From: Liz Lloyd
Date: 15 June 1999

PRIME MINISTER

cc: Philip Barton
John Sawers
David North
Alastair Campbell
Sally Morgan
Roger Liddle

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has imposed visas on Lithuania, Czechoslovakia or Poland and 3) we just cannot do this to the two countries nearest accession and 4) You are visiting Poland next month.

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Jack also mentions messages on the Asylum Bill. He is right that our recent announcement on concessions may send the wrong message to economic migrants who choose to come through the asylum system. It would be helpful if you could signal your agreement that we need to maintain firm messages to external audiences.

I agree. Is it really the case that there is no appeal from Madrid? Can we explain the problem?

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

06 JUL 1999

(f)

Top: DN

cc: RR
PJ

The Rt Hon Helen Liddell MP
Minister for Transport
Department of the Environment Transport
and the Regions
Eland House
Bressenden Place
LONDON SW1E 5DU

Dear Helen,

IMMIGRATION AND ASYLUM BILL: CIVIL PENALTY: THROUGH FREIGHT TRAINS

Following earlier correspondence, you have agreed that the Immigration and Asylum Bill should be amended to enable the civil penalty to be extended to freight trains using the Channel Tunnel. This letter deals with the one outstanding issue from my letter to John Prescott of 10 June, and puts in writing the agreement we have reached bilaterally.

Following the exchanges of correspondence, which culminated in John Prescott's letter to me of 14 June about the possible application of the civil penalty to through freight trains, you and I discussed this matter on the telephone on Monday 28 June. This followed consultations between your officials and mine, together with a further meeting between officials and the management at EWSI.

You kindly agreed that we should now proceed to amend the Immigration and Asylum Bill so as to provide for the extension of the civil penalty to freight trains using the Channel Tunnel. We agreed that in order to ensure that the practical difficulties and the concerns of the industry are fully addressed the amendment to the Bill would ensure that this extension of the civil penalty power would be capable of being implemented separately from the powers relating to other types of carriers (for example road hauliers, yachts etc.). The provision would also ensure that implementation only took place after consultation with the industry and the Clause would therefore make explicit reference to such consultation. Implementation could be by way of negative resolution.

6435JS

I am grateful to you for your help on this important matter. As I have mentioned in earlier correspondence, the freight trains are being increasingly targeted by the sophisticated gangs involved in smuggling illegal immigrants. Without a provision of this sort the whole civil penalty regime and our chances of stemming the flow of illegal immigrants and asylum seekers would be severely jeopardised.

This ties up the only loose end in this round of HS correspondence. The timetable for tabling amendments for Committee Stage in the House of Lords means that we need to table this amendment by Thursday 8 July. I am copying this letter to the Prime Minister, the Deputy Prime Minister, Members of HS and LEG and to Sir Richard Wilson and to the First Parliamentary Counsel.

Yours ever,

Jack.

JACK STRAW

6435JS

f

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

06 JUL 1999

Top: DJ
(cc: GJH
PJ

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the
Environment,
Transport and the Regions
Eland House
Bressenden Place
LONDON SW1E 5DU

Dear John,

SINGLE REGENERATION BUDGET ROUND 5

Thank you for copying me your letter of 1 July to Gordon Brown.

As you say, these bids have already been extensively discussed with officials and I am happy to endorse the proposed allocations. I think it is disappointing that only 66% of the round 5 resources will be targeted on the most deprived areas, as against our target of 80%. But I agree that it would not be right to approve poor quality bids simply because of where they are from. I hope that we shall be able to do better on the next round.

I particularly welcome the fact that over three-quarter of the schemes contain crime reduction or anti-drugs components. There is also a good spread of bids focused on tackling the particular needs of the ethnic minorities, including the imaginative capacity building programme in London, which I particularly welcome.

A copy of this letter goes to the recipients of yours.

Yours ever,

Jack.

JACK STRAW

6405

DN
CC: JDH
LPU

Prime Minister

UNITED KINGDOM PASSPORT AGENCY (UKPA)

Summary

Update on position of UKPA. New measures to improve position now in place.

Consideration

2. Your Private Secretary asked for a further update on the position at UKPA, including the Agency's plans to make their operations more user-friendly.

3. This week's difficulties have revealed serious systemic problems in the relationship between an arms' length Agency like UKPA and its parent Department, especially when the Agency's performance starts to fail. These problems include an absence of any standing capacity for crisis management and media handling. I will write to you in due course about the lessons here for government. Meanwhile I have had directly to start managing the Agency. I will continue to do so until the immediate difficulties are over.

4. Output of the agency continues to run at above 140,000 passports issued per week – 20% above levels last year. Intake is beginning to fall. The backlog has also fallen this week by 15,000.

Queue Management

5. The key in media terms has been to get the queues off the streets so far as possible. The Agency have now introduced new queue management arrangements at the London Office which will enable people to get a ticket in the queue and leave it without losing their place. They will start servicing the queue from 7 am. Mothers with young children are being brought inside to give them a seat (though they are not jumping the queue). There are streamlined queues for different processes to enable simple cases to be handled quickly. This has already had an impact on the size of the queues.

6349js

Post Offices

6. I agreed with Neville Baine, Chairman of the Post Office, that we should use Post Office Counter operations for granting two year extensions of existing passports. The Agency and the Post Office are working out the details and the new system will be introduced in main Post Offices next week with the bulk going live on Wednesday. This will mean that many new applicants will be able to avoid long trips to local passport offices by going to their local post office instead. This will also reduce the backlog by reducing the number of new applications. Baine could not have been more helpful.

Call Centres

7. We have contracted with a commercial call centre to answer calls and enable people who already have applications in the system to find out what is happening. This is targeted at people with applications lodged with the Agency who have not received their passports within a week of their travel date. It is going live today, and will be operational from 7 am to 11 pm seven days a week.

8. Press advertisements were in this morning's press and we will repeat them on Sunday and Tuesday next week.

9. Mike O'Brien visited the Newport and Glasgow offices on Wednesday and Thursday. Newport was in good shape, processing applications with travel dates two – three weeks ahead. Glasgow, however, is under enormous pressure from a surge in demand in the last few weeks. I have agreed this morning ways in which they could improve on the position and action is in hand. I am also briefing Donald Dewar about this.

JACK STRAW

2nd July 1999

6349js

Prime Minister

These steps will make a difference - particularly using post offices - but should have been taken much earlier. There is some truth in X, but the Home Office itself should have taken a grip earlier.

DN.

DN
cc: JTH
JPO
PU

Prime Minister

UNITED KINGDOM PASSPORT AGENCY (UKPA)

Summary

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JACK STRAW

2nd July 1999

6349js

(F)

Attention
David
North

VC: LL PO

From: Mara Goldstein
PS/Home Secretary
Room 760 QAG
Tel. 273 3585
Fax. 273 3965

cc Mike O'Brien
David Omand
Kevin Sheehan
Anne Scovell
Brian Butler
Pam Teare
Terry Norman
Gill Stewart
Justin Russell
Ed Owen

30 June 1999

David Gatenby

UKPA – MEETING 30 JUNE 1999

You came to a meeting this morning with the Home Secretary to discuss next steps in handling the backlog of passport applications. Jon Payne, Mr Omand, Mr Butler, Ms Teare, Mr Sheehan, Ms Stewart, Mr Owen and Ms Jackson were also there.

The outdoor queues at the six offices needed to be reduced very quickly.

The following actions were agreed:

Queue management

People queuing with small children would be given priority.

Passport staff wearing badges would keep those waiting informed

Ticket systems would be set up to enable people to get a ticket and come back later.

drinks vouchers would be distributed.

Umbrellas would be made available.

Extensions

The existing criteria for extensions would be applied wherever possible and 2 year extensions would be used much more widely than hitherto. If postal applications were already in the system and the cheques had been cashed: - an extension would be given rapidly and the fee returned later, except in Liverpool and Newport where the new system meant a renewal would be quicker than an extension. Where cheques had not yet been cashed, passports

mg-455

would be extended and the cheques returned with the extended passport.

Extensions would also now be given on family passports which included children up to the date of their sixteenth birthday, so long as the birthday did not fall during the period of the holiday.

Post Offices

Negotiations with the Post Office for them to issue two year extensions would be speeded up. If possible, some Post Offices should be ready to issue extensions within a few days.

(Since the meeting, you have spoken with Post Office colleagues, and the Home Secretary has spoken with Dr Neville Baine, the Post Office Chairman. He said he had asked Paul Rayner and Kevin Macadam to work with you. It has been agreed that all 1,500 Crown Post Offices will start this work as soon as the stamps can be made and sent out, and that an announcement – which is agreed with the Post Office press office - will be made by Monday 5 July or Tuesday 6 July at the latest. Press Office will arrange for advertising space.)

Staff

Further staff would be recruited immediately to deal with the unopened postal backlogs.

Telephones

Arrangements would be made immediately for a call centre to be set up on an 0345 telephone number. Staff would work from a set script, and would not be given access to UKPA data.

(Ms Stewart has been working on this with you during today. A centre has been identified and may be in a position to start taking calls on Friday 2 July. The Chairman of the Post Office offered to provide the service, but I understand the Post Office is not on the list of COI recommended suppliers for this service. I should be grateful if Ms Stewart would, in due course, set in motion arrangements for the Post Office to be given the opportunity to become a supplier, or provide advice on the point.)

Separate Children's passports

It was agreed that there was no benefit in the suspension of the new policy. The lead time for revised application forms was three months and it would cause much public confusion.

mg-455

Examiners

Mr Sheehan said there were a number of trained examiners now working in Nationality Directorate, and it had not been possible for them to be moved back to UKPA, partly because of concerns from the Unions. The Home Secretary asked Mr Omand to look at this issue.

£10 fee for issue of passports at offices

You agreed with the Home Secretary this afternoon that the £10 fee for passport renewals or new passports would be waived for any caller who had not received their passport back within 10 working days of a postal submission, and who then came to an office to get the passport.

MARA GOLDSTEIN
PRIVATE SECRETARY

mg-455

RESTRICTED

File

From: Michael Tatham
Date: 30 June 1999

Liz Lloyd

cc: John Sawers
Philip Barton
David North
Alastair Campbell
Sally Morgan
Roger Liddle

CENTRAL AND EASTERN EUROPE: ASYLUM PRESSURE

David North asked if I could comment on the PM's reaction to your note of 15 June ("would there be uproar in Poland etc?").

The answer is that there would be uproar if we were to impose visas on the Czech Republic and Poland. Both countries (however mistakenly) see the visa issue in highly political terms – as a badge of their progress towards Euro-Atlantic integration, a sign of their readiness for EU membership etc. The issue has considerable domestic resonance in the countries concerned – the imposition of visas would be a considerable blow to the respective governments.

So we can be sure they would react badly and trying to explain our problems to them would not do much to sweeten the blow.

We should not of course be deterred from tackling the asylum problem simply because of the fear of upsetting foreign governments. But the greater problem is how this would impact on our current message on EU enlargement. The PM's recent speeches (in Bucharest, Aachen and Sofia) have all struck a visionary note on enlargement – intensification of negotiations, moving fast to make

enlargement a reality, the economic and political benefits that will result. Some of this will no doubt also feature in the Poland speech on 12 July.

This message will sound pretty hollow if we impose visas. It is difficult to press for intensification of enlargement preparations whilst moving in the opposite direction on one of the key aspects of EU membership (free movement of people).

So I think there would be a cost for our bilateral relations but a greater cost in terms of damaging the credibility of our message on EU enlargement.

Is it an option to agree to what Jack is actually asking for – contingency plans – whilst insisting on a clear tripwire before going any further? This would up the pressure on FCO to get even more serious with the governments concerned over measures to stem the flow (the papers indicate that the Poles could be more responsive). It would also allow us to weigh up fully all the pros and cons if the problem continues to deteriorate.

Michael

Top-DN
& RR
PJ

FROM THE RT HON HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND HOUSING

DETR
ENVIRONMENT
TRANSPORT
REGIONS

(f)

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3000
FAX: 0171 890 4489

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the Environment,
Transport and the Regions
Eland House
Bressenden Place
LONDON
SW1E 5DU

OUR REF: IDC(99) 174

29 JUN 1999

Dear Deputy Prime Minister,

ASYLUM SEEKERS

I have seen a copy of Jack Straw's letter of 23 June to Alan Milburn, seeking agreement to a further concession in the Immigration and Asylum Bill which would increase the level of support for asylum seeker families with children.

I understand Jack's concerns about the pressure that we can expect during the passage of the Bill in the Lords, and I support his proposal to improve the support package available for families with children.

A copy of this letter goes to the Prime Minister, HS colleagues, and Sir Richard Wilson.

Yours sincerely,

Tom Wechsler

HILARY ARMSTRONG
(Approved by the Minister
and signed in her absence)

FAX FOR ROB READ

DN
CC: LL
Press

UKPA - PRESS NOTICE

DRAFT FOR INFORMATION, AS DISCUSSED WITH CLARE SUMNER. SATURDAY OPENING HAS NOT YET BEEN FINALLY AGREED. THE INFORMATION IN THE PRESS NOTICE IS NOT BEING USED UNTIL TOMORROW. PLEASE LIAISE WITH ANDY COLE IN THE HOME OFFICE PRESS OFFICE.

HILARY JACKSON

NOT YET AGREED
BY HOME SECRETARY
NOT FOR USE ~~BEFORE EMBARGO~~
0171 273 4620
~~BEFORE~~ TUESDAY 29 JUNE

Draft News Release

29 June 1999

ADDITIONAL MEASURES ANNOUNCED AT PASSPORT AGENCY

Home Office Minister Mike O'Brien announced today extra measures to enable the Passport Agency to meet target dates for the issue of passports.

The extra measures are:

- There will be a series of adverts placed in national newspapers advising the public of the situation and of what they can do to ensure their application is dealt with speedily.

- With immediate effect all the Passport Offices, with the exception of Belfast, will open on Saturday to provide a full counter service to those who are travelling within two weeks.

- To assist the above an extra 100 staff will be taken on. This is in addition to the 300 staff already taken on.

- The Passport Agency is entering discussions with its business partners on ways in which they can help in dealing with telephone and personal queries from those who are within 2 weeks of their travel dates.

Announcing the measures Mike O'Brien said:

> "Significant improvements have already been made in productivity in the light of a 40% increase in applications this year compared to last. The new measures are designed to build on those improvements, enabling the Passport Agency to deliver its commitment to meeting the travel dates of the general public."

Secretary of the Cabinet and Head of the Home Civil Service

From the Private Secretary

(f)

Richard

cc: Mr Heywood
Mr North
Alison Rutherford
(Home Office)

tpo

DN

Passport Agency

This following meeting

1. I spoke to Alison Rutherford on this, in your absence. I told her that No 10 had asked you to reinforce to David Omand the points in David North's minute of 28 June (attached), and ran through them with her.

2. She said that the Home Office, and David Omand in particular, are well-seized of the need for very rapid turning-around of the media handling of this affair. David has been personally involved a lot today, and has had a long meeting with Mike O'Brien.

3. Either Mr O'Brien or Jack Straw will tackle this on the Today Programme tomorrow morning. A major advertising campaign is planned, including (Alison thought) full-page advertisements in tomorrow's press highlighting the messages in Mr North's minute.

Sebastian Wood

DEPARTMENT OF SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 0171 - 238 0800

From the Secretary of State for Social Security

SOS/628

DN
C: LL (cu)
RR

The Rt Hon Alan Milburn Esq MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1P 3AG

28th June 99

Dear Alan

Immigration and Asylum Bill

I have seen Jack's letter of 23 June 1999 to you regarding the need for a further concession to the Immigration and Bill, to increase the level of support for families with children.

I appreciate Jack's concern that the increases will be necessary to head off opposition to the Bill in the House of Lords. The proposal to increase the amounts for families with children can be positively presented as responding to concerns, and is in keeping with our overall objective of tackling child poverty.

I would like to emphasise the need for care in the arguments used to defend the value of the new support arrangements, in particularly when making comparisons with Income Support. I appreciate that it may be necessary to argue that the support amounts under the new arrangements are broadly similar in value to what asylum seekers currently receive. However, this will require careful handling to ensure that this does not

R.

cause presentational difficulties for the defence of the adequacy of social security benefits. I am particularly concerned that critics are not left with the impression that there are identifiable amounts within Income Support to meet the costs of utilities and domestic items, or that Housing Benefit generally has to be supplemented by Income Support in order for claimants to meet their rent liability.

My officials are discussing with Jack's how best these presentational difficulties may be overcome.

Yours

Alistair

ALISTAIR DARLING

Temporarily Retained

From: David North
Date: 28 June 1999

JONATHAN POWELL (in NI) – FAX

cc: Jeremy Heywood
Godric Smith
Liz Lloyd

PASSPORT OFFICE

1. We spoke over the phone.

2. I wrote to the Home Office again on Friday about this (letter attached). I have also spoken to them, and to the Chief Executive of the Passport Agency, at length. The key points I have made are:

- we have to get a grip on the backlog and turn it around. The staff should be broùght in at weekends until it is sorted. And we should announce this publicly;

- we have to get a grip on the presentation too. We are in a vicious spiral (public panic → people send in their applications earlier and earlier → bigger backlog → more public panic etc). We need to get across the facts:

  - the Passport Agency have recruited 300 extra people to process applications. This is making a difference;

  - by prioritising applications – they are still processing 99.99% of them in time to meet applicants' travel dates (i.e. in cases where applicants specify a date on their applications). Only 50 people out of 2.5 million applications processed so far this year missed their travel, and were given compensation;

  - the Passport Office are confident that they will tackle the backlog and get processing times back down to the target of within 10 days by September.

3. I have said to the Home Office that we should add to this an announcement that, until the backlog is eradicated, the Passport Office will work through

weekends. They are putting that to Jack Straw. We should also get Ministers up on the media.

David

DAVID NORTH

Temporarily retained

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary **25 June 1999**

UNITED KINGDOM PASSPORT AGENCY (UKPA)

The Prime Minister was grateful for your letter of 24 June, explaining the reasons behind the current backlog in processing passport applications, and the action which the UKPA is taking to put the situation right.

Although the Prime Minister was somewhat reassured by the steps that are being taken, he remains extremely concerned to ensure that the situation does not deteriorate further, and is rectified as rapidly as possible. He has noted that the current intense media interest in the issue is both playing into the hands of the Government's critics and driving more and more people to submit their passport applications earlier, thereby increasing the backlog further. He thinks that we must break this vicious spiral quickly, including by taking every opportunity to point out the facts in the media (e.g. your point that 99.99% of applications which specify a travel date are being dealt with on time).

The Prime Minister has asked for a further update on the situation, and on any further action that needs to be taken to put the problem right, immediately after the debate on Tuesday. He has also asked that the note should set out the UKPA's plans to make their operations more user-friendly, particularly for those people who want to renew their passports personally, but cannot attend an office during the working day.

I am copying this to Sebastian Wood (Cabinet Office).

DAVID NORTH

Mara Goldstein,
Home Office.

FILE

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

25 June 1999

Dear Mara,

UNITED KINGDOM PASSPORT AGENCY (UKPA)

The Prime Minister was grateful for your letter of 24 June, explaining the reasons behind the current backlog in processing passport applications, and the action which the UKPA is taking to put the situation right.

Although the Prime Minister was somewhat reassured by the steps that are being taken, he remains extremely concerned to ensure that the situation does not deteriorate further, and is rectified as rapidly as possible. He has noted that the current intense media interest in the issue is both playing into the hands of the Government's critics and driving more and more people to submit their passport applications earlier, thereby increasing the backlog further. He thinks that we must break this vicious spiral quickly, including by taking every opportunity to point out the facts in the media (e.g. your point that 99.99% of applications which specify a travel date are being dealt with on time).

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I am copying this to Sebastian Wood (Cabinet Office).

Yours ever,

David

DAVID NORTH

Mara Goldstein,
Home Office.

AOB

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TŶ GWYDIR
WHITEHALL LLUNDAIN SW1A 2ER
Ffôn: 0171-270 3000 (Switsfwrdd)
0171-270 (Llinell Union)
Ffacs: 0171-270 0568
Oddi wrth yr Is-Ysgrifennydd Seneddol

Top - DN
CLLR
PJ

P

WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel: 0171-270 3000 (Switchboard)
0171-270 (Direct Line)
Fax: 0171-270 0568
From The Parliamentary Under-Secretary

Jon Owen Jones MP

Our Ref: CT/99/12870

25 June 1999

Dear Mr O'Brien

Thank you for sending me a copy of your letter of 27 may to John Hutton about a proposed policy change to the way asylum applications from unaccompanied children are processed.

You envisage that this change would reduce bogus applications and have a deterrent effect on those who seek to exploit the more sympathetic approach that is taken in dealing with asylum applications from minors. In turn, you expect this to reduce the burden on the Department of Health and local authorities in England of supporting these vulnerable unaccompanied children. There are very few such children being supported by authorities in Wales; hence the implications for Welsh authorities and for the grant support arrangements that we have in place are likely to be minimal.

While the proposal is designed to close a loophole, it could be portrayed unhelpfully by our opponents as having an adverse effect on children's rights. I assume you will have taken this into account in forming a view on the relative merits of either making the change or living with the status quo. I am therefore content to accept your judgement of the best way forward.

Copies of this letter go to John Hutton, Alan Milburn, Hilary Armstrong, Margaret Hodge, Angela Eagle, Keith Vaz, Liz Symons and HS colleagues.

Yours sincerely
Stephen George.
(Approved by the Minister and signed in his absence).

Mr Mike O'Brien MP
Parliamentary Under Secretary of State
Home Office
50 Queen Anne's Gate
LONDON SWIH 9AT

(4)

From: David North
Date: 24 June 1999

PRIME MINISTER

cc: Jonathan Powell
Jeremy Heywood
Sally Morgan
Liz Lloyd
Philip Barton

PASSPORT BACKLOG

1. You asked for a note on the backlog in issuing passports.

Who is in charge?

The United Kingdom Passport Agency (UKPA), which is an executive agency of the Home Office. The Home Office is at pains to say that it has a very good track record. Certainly, up to the last few months, the delays in issuing passports which characterised the 1970s and 1980s looked like a thing of the past. Average turnaround time over the past three years was below 10 days.

What is the current backlog?

Around 530,000 applications. 5 million passports are issued (or renewed) each year, so the backlog is equivalent to just over one month's throughput.

But the UKPA say that – by prioritising applications – they are still processing 99.99% of applications in time to meet applicants' travel dates (i.e. in cases where applicants specify a date on their applications). It is the "routine" applications that are being delayed.

Why is there a backlog?

Three reasons:

- a new computer system – being developed by Siemens – has (inevitably) run into difficulties. It has been rolled out at the Liverpool and Newport offices and average turnaround time for applications in these has reached 41 days, compared to around 30 days in the other offices (and six days at the London office);

- the introduction of separate passports for children. The UKPA underestimated the impact of this change;
- people are hearing about the backlog and getting their applications in extra early. In total, applications are currently 25 per cent up on the same time last year.

How are the UKPA tackling the problem?

They are:

- recruiting 300 new staff;
- getting existing staff to work longer hours and weekends;
- spreading the load among the offices by transferring some applications from Liverpool and Newport to the others;
- prioritising applications (as set out above);
- extending the life of some passports by two years as a short-term measure to alleviate pressure.

When will the problem be resolved?

The Home Office and UKPA are confident that:

- the average turnaround time will be back down to 10 days by September. The number of applications tends to fall from July onwards, and many of the applications that we would expect to come forward in the coming weeks are being processed now (because people are applying earlier in anticipation of the backlog);
- in the meantime they will continue to get 99.99% of passports to people before their travel dates (where these are specified).

2. **So the situation is not quite as bad as people think. The Home Office need to convey this publicly to avoid more panic applications from creating an even bigger backlog. And we should keep the pressure on them to make sure that they deliver on these assurances.**

David

DAVID NORTH

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

David North Esq
Private Secretary
10 Downing Street
LONDON
SW1A 2AA

24 JUN 1998

faxed?
C: LL(PV)

Dear David,

UNITED KINGDOM PASSPORT AGENCY (UKPA)

You asked for a note about the current problems in the UKPA. UKPA is one of the executive agencies of the Home Office. It has an excellent track record of service to the public. In the last three years, the average turnaround times for passports have been under 10 days.

2. In July 1997 the Agency awarded ten year contracts to Siemens Business Services for them to take on receipt, cashiering and data capturing of applications, and to provide UKPA with a new processing system, and for Security Print and Systems Ltd. to personalise and print new, more secure, passports. The new arrangements were piloted in the Liverpool Office in October of last year, and rolled out to the Newport Office in November. There have been problems, partly because staff have taken longer to adapt than expected, partly because of teething problems with the IT equipment and partly because of significantly increased levels of intake of work.

3. A backlog developed in Liverpool and Newport, caused partly by a normal seasonal rise in applications, and exacerbated by media attention, as a result of which the agency has been swamped by telephone and written enquiries. Applications are also now arriving from people who wish to travel in mid-Autumn i.e. much further in advance than usual. Work was transferred to other offices to help Liverpool and Newport and to equalise processing times across the Agency. This has now resulted in backlogs occurring in all offices.

6243mg

4. There has also been a greater than expected rise in the number of applications for children's passports, following the introduction of separate passports in October 1998. Twice as many children's applications are coming in as had been expected. Overall, all passport applications are up by 25% in this financial year.

5. The agency has put in hand a number of measures. Firstly, 300 new staff are being recruited. The first ones are already in post and the extra numbers will start having an effect by the end of July. Secondly, all offices are working extended hours and staff are working overtime at weekends to raise the numbers processed. Thirdly, applications are being prioritised by travel dates, and 99.99% are being met. Where people incur additional expenditure through missed travel dates, the Agency pays compensation. Fourthly, examination processes are being streamlined and some current passports are being extended for two years to save on issue of new passports . Fifthly, Mike O'Brien has written to all MPs explaining the position in the Agency and its plans to improve.

Conclusion

6. These problems must be put into context. In view of the current difficulties in the Immigration and Nationality Department, it is tempting to assume that UKPA is developing into an issue of a similar nature. We do not believe that this is the case. The Agency is turning out 25% more passports than this time last year, and the total arrears of work is less than one month's normal output. This is not comparable with the situation in IND. Although the weekly backlog is still rising, the annual holiday season peak will be over in a few weeks time. In addition, the number of applications after the summer peak is likely to be lower this year, since those people who have applied for their passports early this year will already have them.

7. As you know, there will be an Opposition debate on UKPA next Tuesday, 29 June. I am copying this to Sebastian Wood, in Sir Richard Wilson's office.

Yours sincerely,

MARA GOLDSTEIN

6243mg

HOME OFFICE
Private Office
50 Queen Anne's Gate, London SW1H 9AT
Switchboard: 0171 273 4000 Fax: 0171 273 3965 Direct Line: 0171 273 2836

FAX

To: David North

From: Mara

Date: **Time:**

Fax Nº:

Number of pages (including this one)

Message

Subject: Backgr on UKPA, as you requested.

I am happy to plagiarise this, note unless you want to do it, so I can check the facts with officials. I'll try & have it with you by 6pm

PQ. Lester.
Pass limit 10 days.
Prioritise.

HOUSE OF LORDS

Thursday, 10 June 1999

Oral Answer

LORD CAMPBELL OF CROY: To ask Her Majesty's Government whether the current delays in responding to applications by British citizens for passports are likely to continue, or to be repeated during this summer.

LORD WILLIAMS OF MOSTYN

My Lords, the processing of passport applications is currently taking longer than normal but the Passport Agency is prioritising applications to meet applicants' declared travel dates. The Agency is meeting travel dates in 99.99 per cent of cases, and will continue to do so throughout the Summer.

5 million annually.

numbers?
compensation
under 100

·01·

500

All in place by early Sept

The Agency is recruiting more than 300 extra staff to help reduce the arrears. The Agency's work is seasonal and intake falls from July onwards. This and the action the Agency is taking to reduce current delays will bring turnround times back to ten days by September.

BULL POINTS

- The Passport Agency is introducing a new computerised issuing system on a phased basis that is enabling it to provide a new more secure British passport, improved security checking, and better customer information. The new system is being piloted in the Liverpool and Newport Passport offices.

- As with any new system there have been some teething problems and productivity has been below expectations. Arrears of work have developed.

- In addition whilst the Agency expected an increase in applications following the introduction of separate passports for children applications at 30% of the Agency's intake are well above forecast levels.

- The Current maximum turnround time for properly completed applications in each of the Agency's six offices is

London	6
Peterborough	33
Belfast	36
Newport	41
Glasgow	31
Liverpool	41

- The Agency is meeting its customers' declared travel dates in 99.99% of cases but the high intake in recent weeks - up 20% on last year means there are delays in processing non-urgent applications.

- The Agency is working very hard to tackle the delays and improve the service. More than 300 additional staff are being brought in, examination processes are being streamlined to boost output, and the Agency is working extended hours. As a result output last week at over 133,000 was 20 % up on last year.

- Current delays will reduce as a result of the action being taken, and the seasonal nature of the Agency's work. The total amount of work arrears is less than one month's normal output.

- The arrears of work (currently 500,000 applications) are resulting in large numbers of telephone and written enquiries, and many customers are having difficulty in making contact with the Agency. Large queues of personal callers have formed at the Agency's offices. The position has been exacerbated by recent media attention.

One million?

- The Agency very much regrets the current situation and the inconvenience it is causing many of its customers.

- On privatisation, there is already substantial private sector involvement in the Agency's business through contracts with Siemens Business Services for the initial processing of applications and provision of new computer systems; and Security Printing and Systems Ltd for the personalisation and printing of passports. Full privatisation would not be appropriate as establishing eligibility for a British passport remains core state work.

Penalty clauses.
Performance targets
applies to us,
accuracy,
seriousness of system.
Siemens: £50,000

- The Agency has a policy of compensating customers for additional expenditure incurred where it has been at fault or its service has been unsatisfactory. Such cases remain a very small proportion of the 5 million passports issued annually. It is not the Agency's normal policy to make compensation payments for distress and inconvenience caused to applicants, but each case will be considered on its merits.

- Advice to passport applicants is do not panic. The Agency is meeting travel dates, and will continue to do so. Apply at least a month before travelling; make sure form is properly completed, and all documents enclosed. Do not contact the Agency unless absolutely necessary. Please do not call personally at a passport office unless you are travelling within four days.

INDEX TO SUPPLEMENTARY QUESTIONS

1. What measures is the Agency taking to reduce current delays?

2. What has caused the Agency's problems?

3. Why are passport applicants having great difficulty in contacting the Agency?

4. Should not the Agency be privatised?

5. Where the Agency has caused distress, inconvenience and additional costs through its unsatisfactory service will it compensate the applicant?

6. Who is responsible for the current state of arrears?

7. Will the Chief Executive be sacked?

8. Should not the Agency lose its Charter Mark?

9. What performance targets has the Home Secretary set this year?

10. What performance targets did the Home Secretary set the Passport Agency in 1998/99?

11. Will there now be an increase in passport fees?

12. Will the Government reconsider its policy on separate passports for children?

13. What is the point of passports for babies?

14. Aren't there difficulties in taking photographs of babies?

15. Why not exempt babies from the policy?

16. Why not bring back the old blue passport?

Supplementary Questions and Answers

1. What measures is the Agency taking to reduce current delays?

The Agency is prioritising applications by its customers' declared travel dates, and is meeting those dates for 99.99 per cent of passports issued. 300 additional staff are being deployed, examination processes are being streamlined, and the Agency is working extended hours. In order to clear quickly straightforward renewal applications certain existing passports are being extended for 2 years.

Current delays will reduce as a result of action being taken, and the seasonal nature of the Agency's work. Total work arrears are less than one month's normal output.

2. What has caused the Agency's problems?

Teething problems with the introduction of new computerised passport issuing arrangements which since October 1998 have been

piloted in the Liverpool Passport Office, and from November last year in the Newport Office. The new system provides a new more secure passport, improved security checking and a better customer information system. But productivity from the new system has been lower than expected, and arrears of work have built up. Also, intake of passport applications is very high - currently up 20 per cent on last year with far more children's applications being received than expected.

3. Why are passport applicants having great difficulty in contacting the Agency?

Because of the arrears of work the Agency has been swamped with telephone and written enquiries. Despite its best endeavours, and with its focus on meeting customers travel dates, the Agency in many cases has not been able to provide a satisfactory response. The Agency very much regrets the current situation and is taking action to improve matters.

4. Should not the Agency be privatised?

There is already substantial private sector involvement in the Agency's business through contracts with Siemens Business Services for the provision of the new computerised issuing arrangements and digital processing of applications, and with Security Printing and Systems Ltd for the personalisation and printing of passports. Establishing the eligibility of an applicant for a British passport remains a function of the Passport Agency. This is core state business, and full privatisation of the Agency would not be appropriate.

5. Where the Agency has caused distress, inconvenience and additional costs through its unsatisfactory service will it compensate the applicant?

The Passport Agency is obviously very sorry for current delays, and the serious inconvenience it has caused certain of its customers. The Agency's policy, where it has clearly been at fault and provided

unsatisfactory service, is to compensate customers for additional expenditure incurred. It is not its normal policy to make compensation payments for distress and inconvenience but each case is considered on its merits.

6. Who is responsible for the current state of arrears?

Under the Passport Agency's Framework Document the Chief Executive is responsible to the Home Secretary for the Agency's performance and its effective management.

7. Will the Chief Executive be sacked?

David Gatenby agrees.

dept.

No. The Agency has performed very well under the current Chief Executive's leadership. The introduction of the new computerised issuing system is essential. The old system does not allow the Agency to address current weaknesses and the printing equipment is outdated. The Agency's current decline in performance whilst very regrettable is temporary, and the Agency should return to

who is in post

its previous standard of performance by September.

8. Should not the Agency lose its Charter Mark?

This is a matter for the Charter Mark assessors. The Passport Agency was awarded the Charter Mark because of consistent high performance against the set criteria over the last 3 years. It is going through a major change programme and whilst this year's decline in performance is highly regrettable the Agency aims to return to its previous high standards from September. I am sure the Charter Mark assessors will take this into account.

9. What performance targets has the Home Secretary set this year?

My rt hon Friend is awaiting proposals from the Chief Executive of the Passport Agency on targets for 1999-2000 which take account of the introduction of the new passport issuing arrangements to all of the Agency's 6 offices.

10. What performance targets did the Home Secretary set the Passport Agency in 1998/99?

Its standard of service target was to process properly completed straightforward applications within a maximum of 15 working days in April 1998, and 10 working days for the remainder of the year. In seeking to meet this target, the Agency had to give priority to customers' travel needs, aiming to meet declared travel dates for at least 99.99 per cent of passport issued.

The Agency's financial target was to achieve an accrued unit cost of £12 per passport service provided.

11. Will there now be an increase in passport fees?

The Passport Agency fees are reviewed annually in the light of the Treasury requirement for the Agency to fully recover its costs. This year's review has yet to be completed.

12. Will the Government reconsider its policy on

No. The policy is soundly based in that it reflects

separate passports for children?

international best practice, and has clear advantages in better identification of the child, improved security, making child abduction more difficult, and facilitating travel.

13. What is the point of passports for babies?

It is better than the minimal information on children that appears on parents' passport at present. A photograph provides evidence to an immigration officer of basic characteristics, and only in a minority of cases would a child not be able to be identified.

14. Aren't there difficulties in taking photographs of babies?

The Passport Agency has issued passports to young babies for many years without difficulty prior to the policy change in October 1998. The United Kingdom is not alone in requiring separate passports for babies. The Agency is not aware of major problems in taking photographs of babies. It will accept photographs

details.

showing the parent supporting the baby's head provided the baby's facial features are clear.

15. Why not exempt babies from the policy?

The policy on separate passports for children would be less clear if separate passports were only required for children above a certain age, and less effective.

16. Why not bring back the old blue passport?

Since 1988 the blue passport has been progressively replaced by the machine readable burgundy passport which is in a common format agreed with our European Union partners. The British passport complies with the international standard for passports. The blue passport does not meet these requirements, and is less secure than the machine-readable passport.

Reintroducing it now would cause major difficulties for travellers.

BACKGROUND NOTE

The Passport agency is an executive agency of the Home Office. It produces around 5m passports annually. It is a 3-time winner of the Charter Mark, and holds Investor in People status.

In July 1997 the Agency awarded 10 year contracts (worth £250m) to Seimens Business Services (SBS) and Security Print and Systems Ltd (SP&S). The SBS contract involves them in undertaking the initial receipt, cashiering and data capturing of applications, and providing the Agency with a new processing system for establishing identity and nationality.

Penal by clause

The SP&S contract is for the manufacture, personalisation and issue of the new digital passport.

The new issuing arrangements were piloted in the Liverpool Office from 5 October 1998, and rolled out to the Newport Office in mid November. The passport partnership prospect is a complex and ambitious undertaking requiring a unique degree of planning, coordination and cooperation from the 3 partners.

A considerable amount has been achieved but there have been teething problems with the new arrangements, staffs' learning curve in adapting to the new arrangements has been slower than planned, and productivity has been lower than expected.

Output has steadily risen but not fast enough to deal with a high intake of work fuelled by higher than forecast applications for children. Arrears have been built up, and currently stand at around ½ million applications.

Lowyear.

The current difficult operational situation has necessitated a further assessment of the viability of the programme to roll out to the remaining 4 passport offices. Final decisions will be made at the end of June.

DEPARTMENT OF HEALTH

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

From the Parliamentary Under Secretary of State

Mike O'Brien MP
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

Dear Mike,

Thank you for your letter of 27 May, in which you outlined your proposal for a policy change in the way the Home Office processes asylum applications from unaccompanied children. I am sorry that it has not been possible to reply as quickly as you requested, but we needed to consider the implications fully.

We support your proposal, as we are of course keen to eliminate any incentive for young people over the age of 18 to claim to be under 18. We would, however, like to ensure that unaccompanied asylum seeking children between 14 and 18 are not treated less favourably than adults, who may, I understand, sometimes be granted exceptional leave to remain(ELR) for four years. We would therefore be grateful if you could confirm that the intention is that the young people would have the same rights to ELR as adults, eg on humanitarian grounds; and that, only if ELR was not granted on those grounds, would ELR be granted up to the age of 18 on the basis that adequate reception arrangements could not be made.

Copies of this letter go to the Prime Minister, members of HS committee, Alan Milburn, Mike O'Brien, Margaret Hodge, Angela Eagle, Keith Vaz, Baroness Symons and to Sir Richard Wilson.

Yours,

John

JOHN HUTTON

Work →

(f)

QUEEN ANNE'S GATE LONDON SW1H 9AT

23 JUN 1999

The Rt Hon Alan Milburn Esq MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1P 3AG

Dear Chief Secretary,

ASYLUM SEEKERS

As you will be aware we were able to secure a successful Report Stage and Third Reading for the Immigration and Asylum Bill in the Commons. But Gareth Williams and I are in no doubt that we will come under great pressure in the Lords. The only way satisfactorily to deal with this is if Gareth has achieved prior agreement from colleagues about concessions he may need to make, especially on the level of support for families with children.

2. This letter seeks your agreement to ensure that the new support arrangements have broadly equivalent value to what an asylum seeker family could expect to receive in Income Support.

3. I estimate that this concession will cost £4 million per year. I seek your approval to agree that these costs should be added to the asylum costs model. This would marginally increase the costs of the asylum support over the CSR period. I would be grateful if this could be taken into account if we need to revisit the budget without reopening the rest of the CSR settlement.

4. I should be grateful for your agreement by 8 July to the overall approach. Gareth will need to be able to announce the detail at Lords committee stage, but we will need to announce our broad intention to review this issue at second reading in the Lords on 29 June. I should therefore be grateful to know by noon on 28 June if anyone has any fundamental difficulty with that I propose.

5. As you know, we have come under a great deal of pressure from our supporters on the levels of support proposed for the new asylum support arrangements. I consider it necessary, politically, to be able to argue that the new asylum support arrangements taken as a whole are broadly equivalent in value to what asylum seekers can receive now. We are likely to be pressed hard to justify that assertion.

6197JS

6. In essence our argument is that asylum seekers will receive:

- accommodation, which is
- fully furnished, and
- suitably equipped with cutlery, cookware, bedding, cleaning equipment etc, and where
- utilities (gas, water and electricity) are paid separately, and
- spending power in vouchers/cash equivalent to 70% of Income Support levels.

7. By contrast, asylum seekers who are eligible for Income Support and Housing Benefit receive Income Support at 90% of the personal allowance rate for adults and 100% of the personal allowance rate for children. But, from this provision, they would have to meet their own utility bills, they would have to provide their own domestic utensils, and in some cases where Housing Benefit is set at the average rent for the area, in order to rent suitable accommodation, asylum seekers might in practice choose to supplement Housing Benefit from their Income Support provision.

8. The support package we are proposing can be demonstrated to be equivalent to what single adult asylum seekers could expect to receive in Income Support. But it does not work in relation to families.

9. Depending on the precise assumptions made, I calculate that on present plans, families, under the new proposed support arrangements, would receive a package equivalent in value to only 80-90% of the Income Support provision. This can be remedied by adjusting the vouchers/cash provision for children from the proposed 70% level to 100%. In other words, for children aged 0-16, instead of the proposed £17.75 per week, we would pay £25.35 and for children aged 16-18, instead of the proposed £21.20 per week we would pay £30.30. In essence, this concession would cost £8 per week per child, and since we estimate that next year there will be approximately 10,000 children in the system in 2000/01, this equates to an additional £4 million per year.

10. I believe we will be pressed very hard on this in the Lords, and it is essential that Gareth Williams should be able to demonstrate convincingly that the package we are proposing is broadly equivalent to what asylum seekers receiving Income Support could expect to receive now. I attach the table I would use to illustrate this fact. It has been constructed on the basis that the children's allowance is increased as proposed above.

11. I should be grateful if you could indicate that you are content with this proposal which I consider essential if we are successfully to pilot the asylum support arrangements through the Lords. This would marginally increase the costs of asylum support over the CSR period and I would be grateful if this could be taken into account if we need to revisit the budget, on the terms agreed during the CSR, without reopening the rest of the Home Office CSR settlement.

6197JS

12. I am copying this letter to the Prime Minister, other members of HS and to Sir Richard Wilson.

Yours sincerely,

(approved by the Home Secretary)

JACK STRAW

6197JS

TABLE

ASYLUM SUPPORT ARRANGEMENTS

	ASD	DSS*
Single over 25	35.25	45.32
Single under 25	27.90	35.87
Couple	55.30	71.10
Child**	**25.35**	25.35
Family premium	0	11.05

* - ie 90% of income support for adults and 100% for children (plus family premium).

** - for illustration purposes the age 0-16 child rate is used.

COMPARISON OF CURRENT PROPOSED SUPPORT LEVELS WITH DSS BENEFITS

	Vouch/ csh £/week	Utilities & Equipment £/week	Total ASD £/week	DSS £/week	% ASD/DSS £/week	Cash Diff £/week
Single over 25	35.25	7.00	42.25	45.32	93.24	3.07
Single under 25	27.90	7.00	34.90	35.87	97.31	0.97
Couple	55.30	14.00	69.30	71.10	97.47	1.80
Families						
1A + 1C	60.60	18.00	78.60	81.72	96.19	3.12
1A + 2C	85.95	18.00	103.95	107.07	97.09	3.12
1A + 3C	111.30	18.00	129.30	132.42	97.65	3.12
1A + 4C	136.65	18.00	154.65	157.77	98.03	3.12
2A + 1C	80.65	18.00	98.65	107.50	91.77	8.85
2A + 2C	106.00	18.00	124.00	132.85	93.34	8.85
2A + 3C	131.35	18.00	149.35	158.20	94.41	8.85
2A + 4C	156.70	18.00	174.70	183.55	95.18	8.85
2A + 5C	182.05	18.00	200.05	208.90	95.76	8.85
2A + 6C	207.40	18.00	225.40	234.25	96.22	8.85

This table shows:

a) the amount which the ASD will pay in vouchers/cash to asylum seekers (singles or families)
b) the deemed value of the utilities and domestic utensils which will be provided separately (at no cost to the asylum seeker)
c) the total deemed value of the ASD support package (ie a + b)
d) the amount which the asylum seeker would currently obtain from income support
e) the ASD total provision expressed as a proportion of the income support provision
f) the cash difference between the ASD and income support provision

For ease of comparison the table uses the income support figures set out in the information document (although these have recently been increased). On 1 April 2000, the actual value of the voucher/cash element of the support package would be set at 70% of the then prevailing adult income support rate; and 100% of the prevailing child rate.

6197JS

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
68 WHITEHALL LONDON SW1A 2AT

18 June 1999

TOP: SN
C: fu

Dear Jack,

ASYLUM SEEKERS: FAMILIES

This letter gives you HS approval to proceed as you proposed in your letter of 14 June, subject to the points made by colleagues recorded below. I am responding on behalf of John Prescott.

You outlined the implications of the decision, which had already been announced, that from April 2000 the new asylum support system would not be introduced in respect of families with dependent children unless, on average, an initial decision was being taken within two months. If the target was not met, the intention was that all families claiming asylum after 1 April would be eligible for Income Support and Housing Benefit at the DSS "urgent cases" rate in the same way that port applicant families received such a benefit now. In addition, where a family in receipt of Income Support and Housing Benefit received a first negative decision, that family would transfer for support to the new Asylum Support Directorate for the duration of that appeal. The Directorate would take over the payment of rent and Income Support would cease, but would be replaced by the voucher/cash system.

Replies were received from Alistair Darling, Alan Milburn, Hilary Armstrong and Frank Dobson, all of whom were content, but made points which they wanted you to take into account.

Alan said that if the two month target on average were not met then there could be additional costs both from supporting those families on benefits and also from supporting the increased number of asylum seekers attracted by the continuing availability of cash benefits. As with the earlier concessions which were agreed on the Bill (your letter of 17 May and his of 27 May), the presumption would be, that next year's £300 million single, asylum budget would be managed to meet those pressures (with appropriate transfers to DSS in respect of the benefit payments). If that budget had to be revisited then compensatory savings would not be required from other Home Office programmes. However, he could not agree - despite your further letter of 7 June - that such revisiting would not take account of any use of End Year Flexibility by the Home Office since that was itself a claim on the Reserve.

Alistair said that given the announcements already made there was no alternative to explaining that the fall back position should the target not be met would be the retention of access to benefits. He asked that your officials liaise closely with his on

the detail. There would be pressure to extend these arrangements to other groups or to the situation where appeal clearance times were not met. That should be strongly resisted. It was important to plan for the possibility that the target might not be met and it was vital therefore that the mechanisms were clarified and agreed early so that those who would need to operate

the new arrangements were not left in suspense on the position of families until the last minute. The potential operational consequences for the Benefits Agency also needed to be assessed. The extra costs to DSS of support through the benefit system if the concession was triggered would, of course, be met by the Home Office who now held the budget for asylum support.

Hilary noted that you had not mentioned the question of eligibility under the homelessness legislation but she assumed that this was implied in your proposal since otherwise families would not be provided with an adequate support package. If the target for asylum decisions was not achieved your proposal would place an additional burden on local authorities. She was prepared to agree in principle with your proposal but she reserved the right to return to the question of costs in good time before April 2000, if it appeared that the two month target was unlikely to be met.

Frank did not disagree with your proposals in principle, however if the two month target was not met, he said there were two fundamental issues which needed to be resolved. The first was who would provide for those families who claimed prior to 1 April, and, if this was to be local authorities, whether there would be a system of reimbursements. The second issue was, given the effect of the new clause, what would be the legal basis of such a provision. I have seen your reply to Frank of 16 June responding to these two points. On the issue of who would provide for those families who claimed prior to 1 April, you said that if they were port applicants, they would continue to receive Income Support and Housing Benefit; if they were in-country applicants they would continue to be supported by local authorities. Local authorities would be able to reclaim their costs from the Home Office in the same way as they did now. In any event, there was no question of transferring to the new support arrangements on 1 April 2000 all those (families or singles) who arrived in the UK before 1 April 2000, so the current interim arrangements would need to continue beyond 1 April while the phased transition arrangements were developed. Local authorities and DSS would be able to reclaim the costs in these circumstances from the Home Office, as they were doing for this financial year. On the second point, of the legal basis of what was being proposed, you said that you could, if necessary, commence the new support arrangements for singles but not for families on 1 April 2000 by way of the commencement order, transitional arrangements and regulations.

I am copying this letter to the Prime Minister, members of HS and LEG, and to Sir Richard Wilson and First Parliamentary Counsel.

Regards

Margaret

MARGARET BECKETT

Rt Hon Jack Straw MP
Home Secretary

FROM THE RT HON HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND HOUSING

Top DB
LL:OB
PJ

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
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LONDON SW1E 5DU

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OUR REF: IDC(99) 148

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the Environment,
Transport and the Regions
Eland House
Bressenden Place
LONDON
SW1E 5DU

16 JUN 1999

Dear Deputy Prime Minister

ASYLUM APPLICATIONS FROM UNACCOMPANIED CHILDREN

I am responding to Mike O'Brien's letter of 27 May to John Hutton about the proposed policy change in the way asylum applications from unaccompanied children would be processed.

I agree with the proposals in Mike's letter. We should plug the present loophole which allows unfounded asylum applicants to obtain settled status simply by virtue of making their application as an unaccompanied child. While it is important that we maintain adequate support for children, particularly those who are genuinely fleeing persecution, we must take all possible steps to end abuse of our asylum procedures.

A copy of this letter goes to the Prime Minister, members of HS committee, Alan Milburn, Mike O'Brien, John Hutton, Margaret Hodge, Angela Eagle, Keith Vaz, Baroness Symons and to Sir Richard Wilson.

Yours sincerely

HILARY ARMSTRONG
(Approved by the Minister
and signed in her absence)

Top: HAIPS
cPU

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

16 JUN 1999

The Rt Hon Frank Dobson MP
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS

Dear Frank,

ASYLUM SEEKERS: FAMILIES

Thank you for your letter of 16 June in response to mine to John Prescott about provision for asylum seeking families. This letter responds to your two specific questions.

I was grateful for your agreement in principle with what I propose.

You asked two particular questions. First you asked what would happen to those families who claimed prior to 1 April. The answer is that if they were port applicants, they would continue to receive Income Support and Housing Benefit; if they were in-country applicants they would continue to be supported by local authorities. Local authorities would be able to reclaim their costs from the Home Office in the same way as they do now. In any event, there is no question of us being able to transfer to the new support arrangements on 1 April 2000 all those (families or singles) who arrived in the United Kingdom before 1 April 2000 so the current interim arrangements will need to continue beyond 1 April while we develop phased transition arrangements. Local authorities and DSS will be able to reclaim the costs in these circumstances from the Home Office, as they are doing for this financial year.

Your second question related to the legal basis of what I was proposing. We could, if necessary, commence the new support arrangements for singles but not for families on 1 April 2000 by way of the commencement order, transitional arrangements and regulations.

I am copying this letter to the Prime Minister, other members of HS and LEG and to Sir Richard Wilson.

Yours ever
Jack.

JACK STRAW

6078js

SKP 17/6/99

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

RESTRICTED - POLICY

DN
CC: SH
PJ

The Rt Hon Jack Straw MP
Home Secretary
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

16 June 1999

ASYLUM SEEKERS: FAMILIES

I have seen your letter of yesterday's date to John Prescott about provision for asylum seeking families seeking responses by noon today.

I understand the need to offer further concessions in respect of families and I agree that what you propose will go a long way towards assuaging the concerns raised during the Committee stage of the Immigration and Asylum Bill. I do not therefore disagree with what you propose in principle.

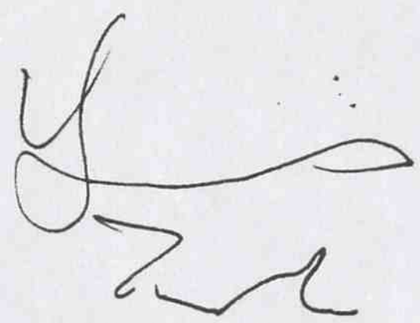
However, if you cannot reach the two month target and have to revert to these proposals, there are two fundamental issues which will need to be resolved as quickly as possible.

First, what will happen to those families who claimed prior to 1 April? My presumption is that you are assuming that they will continue to be provided for by local authorities. If that is the case, then there will of course have to be some system of reimbursement. Local authorities are unlikely to welcome these developments and we will need to be able to offer them some assurance on this point.

Secondly, given the effect of the new clause being tabled today, what do you propose will be the legal basis of such provision? Will it still be under

the Children Act, or will it be provided under contract to the HO?

I am copying this letter to the Prime Minister, Deputy Prime Minister, other Members of HS and LEG and to Richard Wilson.



FRANK DOBSON

FROM THE RT HON HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND HOUSING

Top - DN
& PJ

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
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OUR REF: IDC(99) 157

15 JUN 1999

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the Environment,
Transport and the Regions
Eland House
Bressenden Place
LONDON
SW1E 5DU

Dear Deputy Prime Minister,

ASYLUM SEEKERS: FAMILIES

This letter gives agreement in principle to the implications of Jack Straw's proposed concession, announced last week, that families with dependent children who claim asylum after 1 April 2000 will not be provided with support under the new asylum support system if the Home Office are not taking initial asylum decisions, on average, within two months. However, it reserves the right to return to the question of potential costs on local authorities nearer the time, if necessary.

I have seen Jack Straw's letter to you of 14 June, seeking agreement to the implications of the announcement last week that asylum applications after 1 April 2000 from families with dependent children will not receive support under the new asylum support system but would instead be eligible for social security benefits, if initial asylum decisions are not being taken, on average, within two months.

In his letter, Jack does not touch on the question of eligibility under the homelessness legislation but I assume that this is implied in his proposal since otherwise families would not be provided with an adequate support package. If the target for asylum decisions is not achieved, therefore, Jack's proposal would place an additional burden on local authorities.

Given the timing of the Immigration and Asylum Bill, with Report this afternoon, I am prepared to agree in principle with Jack's proposal now, but must reserve the right to return to the question of costs in good time before April 2000, if it appears that the two month target is unlikely to be met.

I am copying this letter to the Prime Minister, other members of HS and Sir Richard Wilson.

Yours sincerely

Tom Wechsler

HILARY ARMSTRONG

APPROVED BY THE
MINISTER AND SIGNED
IN HER ABSENCE

f

From: Liz Lloyd
Date: 15 June 1999

PRIME MINISTER

cc: Philip Barton
John Sawers
David North
Alastair Campbell
Sally Morgan
Roger Liddle

CENTRAL AND EASTERN EUROPE ASYLUM PRESSURE

Jack has written to you again proposing that we put in place contingency plans for imposing visas on the Czech Republic and Poland (and possibly Croatia and Lithuania).

		Czech Republic	Poland	Croatia
Numbers of applications in 1999				
	Feb	75	50	108
	March	95	80	95
	April	110	75	84
	May	95	58	125
Estimate for Total in 1999		1100	800	1200
1998	Total	515	1585	Not Known
1997	Total	240	565	Not Known

The Foreign Office is resolutely opposed to any additional visa requirements. They argue that 1) it would harm our commercial interests which are substantial in the case of Poland. 2) It would leave us isolated in Europe as no other country

has imposed visas on Lithuania, Czechoslovakia or Poland and 3) we just cannot do this to the two countries nearest accession and 4) You are visiting Poland next month.

You will want to balance the competing factors. If we are to keep the overall numbers down then we need to act at every point not just fast processing in the UK. The imposition of a visa regime on Slovakia ended port asylum applications. If we are serious about limiting asylum numbers we will need to allow the Home Office to prepare contingency plans. **What is your view?** We might also consider how your visit to Poland could be used to raise this with the Polish government.

Jack also mentions messages on the Asylum Bill. He is right that our recent announcement on concessions may send the wrong message to economic migrants who choose to come through the asylum system. It would be helpful if you could signal your agreement that we need to maintain firm messages to external audiences.

Top - DN

cc JS
JPo
AB
PJ
AC

LL
RL

Prime Minister

CENTRAL AND EASTERN EUROPE ASYLUM PRESSURES

Since I wrote at the end of March the level of asylum applications from Lithuania has remained at a relatively low level. However, applications from the Czech Republic in particular and also from Poland have shown a worrying upward trend. In addition, we are receiving large numbers of asylum seekers from Croatia. We are reviewing urgently with FCO Officials the measures which might be taken to stem the flow. In my speech at Report Stage and in publicity on the Bill we will need to walk a careful line between selling our package of concessions to our supporters and avoiding sending the wrong signals to traffickers and would-be asylum seekers.

2. In my Minute to you of 31 March I set out my concerns about the flow of asylum seekers from Central and Eastern Europe and from Poland, Lithuania and the Czech Republic in particular. At that time after a very worrying period of considerable increases, the figures had tailed back in the early part of this year. In view of this, I did not pursue then the case for a visa regime on one or more of these countries.

3. Since then the picture, particularly in respect of the Czech Republic has worsened significantly. From a level of 75 applications in February they have risen to 95 in March and 110 in April. In May some 95 applications were received. The position in respect of Poland has also worsened, from 50 applications in February to 80 in March and 75 in April with some 58 applications in May. Figures for Lithuania have risen slightly but not to anything like the same extent.

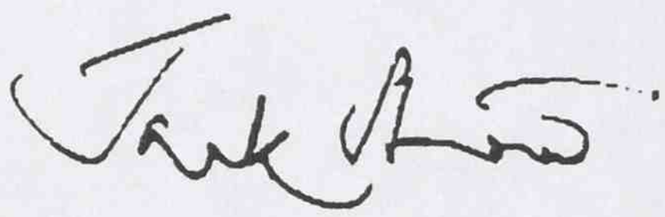
4. In addition, we are increasingly concerned about the level of asylum applications from Croatia (in January we received 85 applications, 108 in February, 95 in March, 84 in April and in May some 125. They are accompanied by higher than average numbers of dependants). We are investigating the background to these applications: clearly the special situation in the area may play a part, although first indications are that many of the applications are by economic migrants..

5. Mike O'Brien expressed our concern to the Czech Deputy Foreign Minister on 7 June and is due to visit Lithuania later this month.

6. Officials are examining urgently the scope for further engagement with the Governments concerned with a view of reducing the flows. However, we may soon have exhausted these possibilities. If numbers suddenly increased, we would need, very quickly, to revisit the issue of visa regimes on one or more countries. This would of course be very difficult politically, not least considering the support these countries have given over Kosovo, so it would be absolutely a last resort.

7. I am very conscious that we shall need to handle publicity surrounding the Asylum and Immigration Bill very carefully. We must strike the right balance between selling our package of concessions to our own supporters and giving the impression that we are weakening the deterrent value of our package.

8. I am copying this minute to the Deputy Prime Minister, the Foreign Secretary, the Secretary of State for Social Security, the Secretary of State for Trade and Industry, and to the Chief Secretary to the Treasury, and also to Margaret Beckett, Ann Taylor, Baroness Jay, Sir Richard Wilson and Sir Stephen Wall.



11 June 1999

5986js

From: Jonathan Powell
Date: 14 June 1999

cc: Liz Lloyd
David North
Lord Falconer

JEREMY HEYWOOD

ASYLUM

The Prime Minister likes the idea of getting an experienced businessman to oversee the reform of IND, namely John Neill. Grateful if you could pursue.

JONATHAN POWELL

g:\docs\cos\asylumch.doc

HOME SECRETARY

(F)

QUEEN ANNE'S GATE LONDON SW1H 9AT

14 JUN 1999

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the Environment,
Transport and the Regions
Eland House
Bressenden Place
LONDON SW1E 5DU

Dear John,

DN
It seems to have passed it relatively ok.

Liz
cc JH
SM

Top DN
cc PU.

On X, we also need a rule for moving families onto vouchers/cash if, having not met the target by 1 April, it was subsequently met. We need to be clear on this now.

MW 14/6

ASYLUM SEEKERS: FAMILIES

This letter sets out the implications of the position I agreed with the Prime Minister, and which we have subsequently announced, that from April 2000, the new asylum support system would not be introduced in respect of families with dependent children unless, on average, an initial asylum decision was being taken within two months.

With apologies for the short deadline, I need to know by noon on 15 June whether anyone disagrees with what follows, since the Immigration and Asylum Bill will be considered on Report that afternoon.

It is my clear intention that this target should be met and families will be fast tracked to ensure that we meet the two month target for all initial decisions for families.

However, we need to be clear what the circumstances would be in the event that the target was, for some reason, not met.

X

In those circumstances, my proposition is that all families claiming asylum after 1 April would be eligible for Income Support and Housing Benefit at the DSS "urgent cases" rate in the same way that port applicant families would receive such benefit now.

At present, in-country family asylum applicants are not eligible for Income Support, but are instead supported by local authorities under the terms of the Children Act 1989. I do not propose that that should continue for two reasons. First, I think it is important that all applicants should be treated in the same way. Secondly, local authorities have been assuming that we will be relieving the burden on them after 1 April 2000. I do not think it would be appropriate to expect them to continue to shoulder a burden for new asylum applicants after 1 April 2000.

I also propose that where a family in receipt of Income Support and Housing Benefit receives a first negative decision, that family would transfer for support to the new Asylum Support Directorate for the duration of any subsequent appeal. I would want to make it clear that, unless there were strong reasons for doing otherwise, we would try to keep the family in the same accommodation, but that the new Asylum Support Directorate, would take over the payment of the rent instead of this being paid by Housing Benefit. Income Support would cease, but would be replaced by the voucher/cash system. I consider this to be an acceptable way forward given that the asylum seeker family in these circumstances would already have had their first negative decision, and would then simply be awaiting the normal appeal process.

If pressed on this issue tomorrow at Report stage I propose to give an indication of my plans as set out above. I should, therefore, be grateful to know by noon tomorrow (**15 June**) whether any colleague disagrees with the proposition I have put forward.

I am copying this letter to the Prime Minister, other members of HS and Sir Richard Wilson.

Yours ever,

Jack.

JACK STRAW

6010js

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

14 JUN 1999

Top DN
cc: PJ

The Rt Hon The Lord Irvine of Lairg QC
Lord Chancellor
House of Lords
LONDON
SW1A 0PW

Dear Derry,

LEGAL AID BOARD REPORT ON CONTRACTING OF IMMIGRATION WORK

The purpose of this letter is to express my support for your letter of 6 May to the Deputy Prime Minister.

Thank you for sending me a copy of your letter of 6 May to the Deputy Prime Minister.

I realise that you did not invite comments but I nevertheless wish to express my support for the contents of your letter. As you know, I have been concerned for some time about abuse of the Green Form legal scheme in immigration and asylum cases. In particular, I have been concerned about incompetent and unscrupulous advisers who prey on some of the most vulnerable members of our society with offers of advice and assistance which is often completely unnecessary.

My officials in the Immigration and Nationality Directorate and the Immigration Service have been working closely with the Legal Aid Board officials to prevent excessive legal aid claims. The procedures they have agreed have already produced savings in excess of £1m for the Legal Aid Board in this financial year.

I agree with the thrust of the Legal Aid Board report. The objective must be to drive up the standard of advice and assistance and I regard the report's proposals as complementing the powers I am taking in the Immigration and Asylum Bill to regulate immigration advisers.

We will in due course need to review the arrangements for funding the Immigration Advisory Service and the Refugee Legal Centre. As you know, I have already made the proposal, echoed in the Legal Aid Board's report, that

5992js

representation in immigration and asylum appeals should be placed under legal aid arrangements with franchising as an effective means of control. This would help to overcome the present problem where public funds are wasted when applicants have to switch to a different source of advice at the appeal stage.

I am copying this letter to the Prime Minister, other members of HS and Sir Richard Wilson.

Yours ever,

Jack.

JACK STRAW

5992js

Top DN
cc: DS
PJ.

RESTRICTED - POLICY
FROM THE DEPUTY PRIME MINISTER

DETR
ENVIRONMENT
TRANSPORT
REGIONS

(f)

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
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TEL: 0171 890 3011
FAX: 0171 890 4399

The Rt Hon Jack Straw MP
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

14 JUN 1999

IMMIGRATION & ASYLUM BILL: APPLICATION OF THE CIVIL PENALTY TO THROUGH FREIGHT TRAINS

Thank you for your letter of 10 June seeking modification of the terms of the HS clearance. I am afraid that I see difficulty in what you propose.

My letter of 21 May agreed in principle to the extension of the civil penalty to freight trains using the Channel Tunnel. HS's concerns were that the practical difficulties of applying the penalty to the rail freight industry must be addressed first.

I share your concern about the illegal trafficking of immigrants on freight trains and I am encouraged that since my letter there have been a number of occasions when incidents of trains carrying illegal immigrants have been stopped at the French-Italian border and a decline in the incidence of illegal immigrants reaching the UK.

I also appreciate your Department's efforts to work with the affected transport sectors and to ensure equitable arrangements. My officials stand ready to discuss with yours the drafting of an amendment to the bill. We need to be sure that appropriate arrangements can be made to apply any sanctions fairly. My letter offered two possible routes for this: there may be others. However, I believe that in devising sanctions to stop this traffic, we must work with the industry to put in

place an appropriate and practicable regime before we commit ourselves to imposing what could otherwise be an undue and unhelpful burden on a key [redacted]ayer in our Integrated Transport policy.

I very much hope that we can devise satisfactory arrangements before the bill reaches the Lords. In the meantime, I do not believe that we should make any specific commitments.

I am copying this letter to the Prime Minister, members of HS and LEG and to Sir Richard Wilson and the First Parliamentary Counsel.

JOHN PRESCOTT

File

From: Jonathan Powell
Date: 14 June 1999

JEREMY HEYWOOD

cc: Liz Lloyd
David North
Lord Falconer

ASYLUM

The Prime Minister likes the idea of getting an experienced businessman to oversee the reform of IND, namely John Neill. Grateful if you could pursue.

JONATHAN POWELL

g:\docs\cos\asylumch.doc

Top DN
cc. PJ
RR

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
68 WHITEHALL LONDON SW1A 2AT

11 JUN 1999

Dear Jack,

IMMIGRATION AND ASYLUM BILL: STATUTORY PRESUMPTION IN FAVOUR OF BAIL

Thank you for copying me your letter of 28 May to John Prescott, seeking HS and LEG approval for amendments to the Bill to create a statutory presumption in favour of bail. I am also responding on behalf of John Prescott.

You argued that, to meet intense pressure from lobby groups and the Government's own supporters, you needed to amend the Bill to create a statutory presumption in favour of bail, with exceptions designed to ensure effective immigration control and enforcement. This would place immigration detainees in a similar position to defendants in criminal cases, and would shift the burden onto the Immigration Service to show, on the balance of probabilities, that the person is unlikely to comply with conditions of bail if released. The list of exceptions to the presumption would be variable by affirmative resolution statutory instrument.

You added that you also proposed a minor change in relation to those arrested for breach of bail, to align the procedures with those in the Bail Act 1976. You commented that you intended to resist pressure for the introduction of statutory criteria for detention, and to extend the scope of bail hearings to include consideration of the legality of detention, because your proposed approach, combined with the existing remedy of habeus corpus, effectively covers these points. You also proposed to exclude from the presumption in favour of bail people convicted of criminal offences and subject to deportation by order of the court. In such cases, it would be for the applicant to show that none of the exceptions to the presumption applied.

You noted that your proposals carry no resource implications. You are still considering whether you need seek agreement for an amendment giving a right of appeal against refusal of bail in some circumstances.

Derry Irvine and Chris Smith commented and were content.

Derry said that although you had made no proposals to introduce a right of appeal against the bail decision by a magistrates' court or an adjudicator, you were considering the issue. Any right of appeal would presumably be to the Crown Court from a magistrates' court and to the Immigration Appeal Tribunal from an adjudicator. As the introduction of the bail regime in Part III of the Bill was to answer

calls for a judicial oversight of immigration officers' decisions to detain there would appear to be no obligation or commitment to provide an appeal route. It would also appear that if the bail hearing were to be before the Tribunal itself any appeal arising from the decision made would have to go to the Court of Appeal. The intention was that the magistrates court in exercising its functions under Part III would not be given the power to look into the legality of detention and any challenges of that nature would, as now, go for judicial review or habeas corpus. In that way, compliance with Article 5(4) of the European Convention on Humans Rights would be achieved. There appeared to be no other ECHR points that would make the provision of an appeal right an obligation. You had made no reference in your letter to a specific appeal route but there were a number of concerns about the Crown Court hearings appeal against the magistrates court's refusal to grant bail. A right of appeal would not only delay immigration procedures but would also add to the existing heavy burdens on the Crown Court.

Clause 33 enabled you to give directions, with his approval, about the location at which bail hearings were to be held. The options listed in the Bill included prisons or detention centres. The adjudicators were very concerned about the possibility of their ever being required to hold bail hearing in either, in any circumstances than the most exceptional. They argued that for the appellant to make their first appearance before an adjudicator in a prison or a detention centre could well give rise to legitimate doubts about the independence of the subsequent appeal process. It also applied to those magistrates who would be making judicial decisions about whether to grant bail at the first stage of the appeal. The Government should strive to prevent judicial hearings taking place in prison or detention centre. He would only be prepared to consent to such sittings where it was obvious to any reasonable observer that it was required for a limited period of time to cope with any emergency. As the point was likely to be raised in the House of Lords, it would be helpful if the position could be spelled out and preferably before the Bill left the Commons.

I agree that your proposals should do much to help ease the Bill's passage through Parliament, and am therefore content for the Bill to be amended as you suggest.

You may therefore take it that you have LEG and HS approval, subject to the comments made by Derry.

I am copying this letter to the Prime Minister, members of HS and LEG, and to Sir Richard Wilson and First Parliamentary Counsel.

Regards

Margaret

MARGARET BECKETT

The Rt Hon Jack Straw MP
Home Secretary

Top: HA/PS
c PS

(F)

QUEEN ANNE'S GATE LONDON SWIH 9AT

10 JUN 1999

The Rt Hon John Prescott MP
Deputy Prime Minister and Secretary of State
for the Environment, Transport and the Regions
Eland House
Bressenden Place
LONDON
SW1E 5DU

Dear John,

IMMIGRATION AND ASYLUM BILL: CIVIL PENALTY: THROUGH FRIEGHT TRAINS

My letter of 21 April sought clearance to extend the scope of the new civil penalty for transport of clandestine illegal entrants, so that through freight trains from the Continent are included. We will work closely with the industry to ensure a workable regime. But I should be grateful for agreement, by 14 June, to modification of the terms of the HS clearance, so that we are not open to the possibility of delay in implementation.

Thank you very much for your letter of 21 May giving HS clearance to amend the Immigration and Asylum Bill so as to extend the application of the civil penalty to include through freight trains. I am very grateful to colleagues for agreeing to this vital addition to the scope of the civil penalty.

There is no doubt whatsoever that these trains are increasingly being targeted by organised crime as a means of smuggling clandestine illegal entrants into the United Kingdom. We are already involved in, and deepening, intelligence exchanges with the French and other EU immigration authorities in order jointly to combat the problem. It is a particularly serious threat given the potential for large numbers of persons to be carried at a time. By way of example, at the time I wrote my letter we had received information concerning a group of some 200 Romanians which had been assembled in another EU Member State to board freight trains bound for the United Kingdom. As a result of co-operation with the French authorities a number of these illegal immigrants have since been intercepted in France.

5277-JS

SKP 10/6/99

We are currently working with the various transport sectors already covered by the civil penalty in order to prepare for implementation of the penalty and in particular to ensure that, so far as possible, the Code of Practice which will underpin the penalty regime is relevant and appropriate to the varying circumstances of the different sectors. We will certainly do the same in respect of the through freight trains and have, in fact, already had a preliminary meeting with the industry prior to putting forward my proposals to colleagues.

However, it is important that we bring the civil penalty into operation as quickly as possible. It is also important that we do not leave ourselves open to allegations of favouritism as between one transport sector and another and that we do not leave one or more sectors where the civil penalty does not apply since that would merely become the route of choice for traffickers. You will appreciate therefore that I would be most reluctant to commit us publicly (or privately to the industry), not to enforce the civil penalty until we had agreed the operation of the penalty regime with the industry. A commitment of that sort would leave us open to delay, for example based upon argument as to the precise distribution and extent of responsibilities as between EWSI, owners, hirers and operators of rolling stock. We could not afford to allow this; to do so could jeopardise the speedy and effective implementation of the civil penalty with serious social and public expenditure implications arising from the continuing high level of clandestine illegal immigration.

I hope therefore that colleagues can agree that we may proceed on the basis I have outlined. That is, involving the industry fully in the preparations for implementation of the civil penalty but without giving any commitment to make introduction conditional upon the acceptability to them of any proposed implementation regime. The amendments to extend the civil penalty to through freight trains will now have to be made in the Lords. Even so, it would be helpful, if pressed, to be able to indicate the Government's intentions at Report and Third Reading in the Commons which is scheduled for 15 and 16 June. I should, therefore, be grateful if you could let me know by 14 June whether you are content to proceed on this basis.

I am copying this letter to the Prime Minister, members of HS and LEG and to Sir Richard Wilson and the First Parliamentary Counsel.

Yours ever,

Jack

JACK STRAW

5277-JS

Top: HAIPS

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

RESTRICTED - POLICY

The Right Honourable Jack Straw MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London SW1H 9AT

10 June 1999

Dear Jack,

IMMIGRATION AND ASYLUM BILL: BAIL

Thank you for copying to me your letter of 28 May to John Prescott. I agree with your proposals, subject to concerns about appeal routes and the location at which bail hearings are to be held.

I am content with your proposal to introduce a presumption in favour of bail, since a similar presumption (for temporary admission or temporary release) will have operated at the time of the making of the decision to detain which is being reviewed. I agree that statutory exceptions should be on the face of the Bill and be capable of amendment by statutory instrument.

I also agree with what you propose for the production before a court of those arrested for being in breach of bail and for the exclusion from the new bail regime and the statutory presumption in favour of bail, of those persons who have been recommended for deportation by a court.

Although you have made no proposal to introduce a right of appeal against the bail decision by a magistrates' court or an adjudicator, your statement that this is something that you are considering prompts me to comment at this stage on some of the issues which appear to be involved.

Any right of appeal would presumably be to the Crown Court from a magistrates' court and to the Immigration Appeal Tribunal from an adjudicator. As the introduction of the bail regime in Part III of the Bill was to answer calls for a judicial oversight of immigration officers' decisions to detain, there would appear to be no obligation or commitment to provide an appeal route. It would also appear that if the bail hearing were to be before the Tribunal itself, which must be a possibility in a few cases, any appeal arising from the decision made would have to go to the Court of Appeal.

You have confirmed that it is your view that the magistrates' court, in exercising its functions under Part III, is not to be given the power to look into the legality of detention and any challenges of this nature will, as now, go for judicial review or habeas corpus. In this way, compliance with Article

SKP 10/6/99

5(4) of the European Convention on Human Rights is achieved. There appear to be no other ECHR points that would make the provision of an appeal right an obligation.

Whilst you make no reference to a specific appeal route in your letter, there must be concerns about the Crown Court hearing appeals against the magistrates court's refusal to grant bail. A right of appeal would not only delay immigration procedures but would also add to the existing heavy burdens on the Crown Court.

Finally, there is one point on Part III on which I think it would be prudent to forestall difficulties with the judiciary. Clause 33 enables you to give directions, with my approval, about the location at which bail hearings are to be held. The options listed in the Bill include prisons or detention centres. The adjudicators are very concerned about the possibility of their ever being required to hold their bail hearings in either, in any circumstances other than the most exceptional. They argue that for appellants to make their first appearance before an adjudicator in a prison or a detention centre could well give rise to legitimate doubts about the independence of the subsequent appeal process. I have considerable sympathy with their view. It also applies to those magistrates who will be making judicial decisions about whether to grant bail at the first stage of the appeal. I feel that we really must strive to prevent judicial hearings taking place in a prison or detention centre. I would only be prepared to consent to such sittings where it was obvious to any reasonable observer that it was required for a limited period to cope with an emergency. Since this is a point which I think will be raised in the House of Lords, I believe it would be helpful if this position could be spelled out, and preferably before the Bill leaves the Commons.

I am copying this letter to the Prime Minister, members of HS and LEG, to Sir Richard Wilson and First Parliamentary Counsel.

Yours ever,
Derry

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

10 JUN 1999

The Rt Hon John Prescott MP
Deputy Prime Minister and Secretary of State
for the Environment, Transport and the Regions
Eland House
Bressenden Place
LONDON
SW1E 5DU

(f)

DN
C.PU

Dear John,

IMMIGRATION AND ASYLUM BILL: CIVIL PENALTY: THROUGH FRIEGHT TRAINS

My letter of 21 April sought clearance to extend the scope of the new civil penalty for transport of clandestine illegal entrants, so that through freight trains from the Continent are included. We will work closely with the industry to ensure a workable regime. But I should be grateful for agreement, by 14 June, to modification of the terms of the HS clearance, so that we are not open to the possibility of delay in implementation.

Thank you very much for your letter of 21 May giving HS clearance to amend the Immigration and Asylum Bill so as to extend the application of the civil penalty to include through freight trains. I am very grateful to colleagues for agreeing to this vital addition to the scope of the civil penalty.

There is no doubt whatsoever that these trains are increasingly being targeted by organised crime as a means of smuggling clandestine illegal entrants into the United Kingdom. We are already involved in, and deepening, intelligence exchanges with the French and other EU immigration authorities in order jointly to combat the problem. It is a particularly serious threat given the potential for large numbers of persons to be carried at a time. By way of example, at the time I wrote my letter we had received information concerning a group of some 200 Romanians which had been assembled in another EU Member State to board freight trains bound for the United Kingdom. As a result of co-operation with the French authorities a number of these illegal immigrants have since been intercepted in France.

5277-JS

We are currently working with the various transport sectors already covered by the civil penalty in order to prepare for implementation of the penalty and in particular to ensure that, so far as possible, the Code of Practice which will underpin the penalty regime is relevant and appropriate to the varying circumstances of the different sectors. We will certainly do the same in respect of the through freight trains and have, in fact, already had a preliminary meeting with the industry prior to putting forward my proposals to colleagues.

However, it is important that we bring the civil penalty into operation as quickly as possible. It is also important that we do not leave ourselves open to allegations of favouritism as between one transport sector and another and that we do not leave one or more sectors where the civil penalty does not apply since that would merely become the route of choice for traffickers. You will appreciate therefore that I would be most reluctant to commit us publicly (or privately to the industry), not to enforce the civil penalty until we had agreed the operation of the penalty regime with the industry. A commitment of that sort would leave us open to delay, for example based upon argument as to the precise distribution and extent of responsibilities as between EWSI, owners, hirers and operators of rolling stock. We could not afford to allow this; to do so could jeopardise the speedy and effective implementation of the civil penalty with serious social and public expenditure implications arising from the continuing high level of clandestine illegal immigration.

I hope therefore that colleagues can agree that we may proceed on the basis I have outlined. That is, involving the industry fully in the preparations for implementation of the civil penalty but without giving any commitment to make introduction conditional upon the acceptability to them of any proposed implementation regime. The amendments to extend the civil penalty to through freight trains will now have to be made in the Lords. Even so, it would be helpful, if pressed, to be able to indicate the Government's intentions at Report and Third Reading in the Commons which is scheduled for 15 and 16 June. I should, therefore, be grateful if you could let me know by 14 June whether you are content to proceed on this basis.

I am copying this letter to the Prime Minister, members of HS and LEG and to Sir Richard Wilson and the First Parliamentary Counsel.

Yours ever,

Jack

JACK STRAW

5277-JS

f

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
68 WHITEHALL LONDON SW1A 2AT

9 June 1999

Dear Jack,

DN
C. RR
(LL) PU

IMMIGRATION AND ASYLUM BILL

Thank you for your letter of 7 June seeking LEG agreement to amendments to the Immigration and Asylum Bill which would preserve current rights of appeal for certain overstayers.

You said that the Bill currently withdraws the right of appeal when the new legislation comes into force for those foreign nationals who overstay the period for which they have been permitted to enter or remain in the UK. The Bill had attracted criticism that those foreign nationals who were overstayers at the coming into force of the new legislation should retain rights of appeal under the current legislation. You suggested a compromise way forward, preserving current rights in certain circumstances, which you thought would help meet the concerns that have been expressed.

In particular, you said that under the scheme you have in mind, current overstayers would have well publicised opportunities to declare themselves to the Immigration and Nationality Directorate (IND); those who seek to regularise their position will secure their appeal rights against deportation by virtue of having made an application; anyone who has already applied to regularise his position will have to reapply; anyone whose appeal against deportation is dismissed will be deported rather than administratively removed and will therefore face the normal timebar on re-entry that goes with deportation; any applicant would be required to maintain contact with the IND. You estimated it would need one new clause and several small consequential amendments.

Derry Irvine commented and was content. He pointed out that if different appeal rights applied over a prolonged period, it could cause dissatisfaction amongst the appellate population. More importantly, it could hamper the efficient disposal of appeal business by the Immigration Appellate Authorities, which would be particularly unwelcome in view of the average target for dealing with appeals, and the pressure which he expects to build up in the system over the next few years. He said it was therefore important that there were time limits for making and determining applications which would ensure that the transitional cases were moved very quickly through the system.

From my own perspective, this should help in a minor way to make the Bill's passage a little smoother, and I am therefore content; you may take it that you have LEG approval to proceed as you proposed, subject to Derry's comments.

I am copying this letter to the Prime Minister, members of LEG, and to Sir Richard Wilson and First Parliamentary Counsel.

Regards

Margaret

MARGARET BECKETT

The Rt Hon Jack Straw MP
Home Secretary

From: THE PRIVATE SECRETARY

(F)

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

08 JUN 1999

David North Esq
10 Downing Street
London SW1

CC'. JSH
PU

CL
Not very enlightening.
AW
9/6

David N
I think you should keep Pressy Rem for detailed plans as this is a re initial decision.
CJ

Dear David

ASYLUM CASES: FOUR MONTH TARGET FOR APPEALS

Summary

Following the Prime Minister's bilateral with the Home Secretary, you asked for information about plans for meeting the four month target for asylum appeals. You asked in particular whether this target could be met by April 2000 for family cases, in line with the latest proposal for initial asylum decisions. The responsibility for this is shared with the Lord Chancellors Department. Joint working arrangements are in hand to deliver the four month target.

Detail

We have consulted the Lord Chancellor's Department, with whom we have established close joint working arrangements in order to ensure that action towards a six month overall target turnaround time for asylum cases is co-ordinated.

The Immigration Appellate Authority's target, as set by the Public Service Agreement, is to bring average waiting times down to 17 weeks (four months) by April 2001. However, the temporary reduction in the number of appeals as a result of the introduction of the casework programme at IND has meant that it has been possible for IAA to eliminate its backlog and bring average waiting times for hearings before the adjudicators within the four month target already. At the end of April 1999 the imputed waiting time (ie the number of outstanding cases divided by the number of disposals by adjudicators that month) was just over three months. IAA's strategy is now to plan for the expansion which will be necessary when the workload from IND picks up so that waiting times do not deteriorate below the target levels. Whether this is achievable therefore depends upon the speed and predictability of the increase in workload. However, IND are working to ensure that the necessary projections are available, and joint planning mechanisms have been established between the IAA and IND. IAA's expansion has been formalised into a project with Home Office and other stakeholder involvement.

If these plans prove successful it should not be necessary to prioritise family cases within the appeal system as the average processing time for all categories of case will be within the target. If it should become necessary to prioritise family cases this would need to be enshrined in secondary legislation, as the work of the IAA is judicial in nature and there is not the same scope for purely administrative prioritisation as there is at the initial decision stage.

A vehicle for secondary legislation exists already in the Immigration and Asylum Bill, in the form of a continuing power of the Lord Chancellor to make procedure rules governing, among other things, timescales for the conduct of appeals.

I am copying this letter to Jenny Rowe, Ros Roughton, Mark Langdale and Sebastion Wood.

Hilary

HILARY JACKSON

TOI- OS
E. PU

r DA

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
68 WHITEHALL LONDON SW1A 2AT

8/6/99

Dear Jack,

EUROSTAR

This letter gives you HS and LEG approval to proceed as you proposed in your letter of 17 March, subject to the points made by colleagues. I am responding on John Prescott's behalf.

You proposed to impose Carriers' Liability sanctions on Eurostar trains coming from France by amending the Asylum and Immigration Bill to create a reserved power. You explained that this was essentially a fall back measure and you were hoping to persuade the French that it would be better to accept adequate "juxtaposed controls" at all major French Eurostar stations, and tighter control of Paris to Calais passengers.

Replies were received from Robin Cook, John Reid, writing as Minister for Transport, and his successor Helen Liddell all of whom were content although they made points which they asked you to take into account. I also replied.

John raised a number of concerns about the effect of the proposals on the operation and performance of Eurostar (UK). However, I understand from Helen's letter of 25 May that she is now content for you to proceed on the understanding that agreement is reached with her department about claims being met from your CSR prior to the commencement/implementation of the Carriers Liability Act against SNCF.

Robin said that you should proceed with the necessary amendment to the Immigration and Asylum Bill, subject to your legal advisers' confirmation that it would not leave the Government open to serious risk of legal challenge under EC law. The reaction from the French Government and SNCF to the imposition of CLA measures was of course likely to be negative, and the SNCF might well refuse to pay any charges, at least initially. If that happened, you would no doubt consult colleagues before any further action was taken with SNCF. If the issue escalated to the point where the Government would have to consider seizure of SNCF's assets, there would be a risk of damage to wider UK interests.

I am copying this letter to the Prime Minister, Robin Cook members of HS and LEG and to Sir Richard Wilson and First Parliamentary Counsel.

Regards

Margaret.

MARGARET BECKETT

Rt Hon Jack Straw
Secretary of State, Home Department

F TOP - DN

~~E.~~ RR

PJ.

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE

68 WHITEHALL LONDON SW1A 2AT

4/6/99

Dear Jack,

IMMIGRATION AND ASYLUM BILL: ASYLUM SEEKERS SUPPORT

This letter gives you HS approval to proceed as you proposed in your letter of 17 May, subject to the points made by colleagues recorded below. I am responding on behalf of John Prescott.

You proposed a number of changes to ease the passage of the Bill. These included: increasing the cash amounts for adults and children to £10 a week, with a commensurate reduction in the voucher provision, so that the overall financial amount remained the same, enabling the Asylum Support Directorate to make a discretionary grant for specific items after a predetermined period of time and the creation of a local contact point for emergency support for families with children.

Replies were received from Frank Dobson, David Blunkett, Alistair Darling, John Reid, Alun Michael and Hilary Armstrong all of whom were content. I also responded. Alan Milburn raised a point which he asked you to take into account.

Alan said he was prepared to agree that compensatory savings for the £3.6 million costs of the concessions should not be required from other Home Office programmes. However, given that End of Year Flexibility (EYF) when taken up was itself a claim on the Reserve, he could not agree to disregarding the effect of the claim on your EYF. Nor could he make any commitment for the period beyond that to be covered by the next spending review. The Government would want to take the opportunity at that time to set the issue against other priorities going into the next Election. In your letter of 7 June, you broadly accepted the points made by Alan but said that EYF was an integral part of your CSR settlement which incorporated an understanding that unforeseen pressures on the asylum support budget outside your control should not jeopardise that deal. You asked him to bear that in mind should it be necessary to increase the budget as EYF was a potentially critical ingredient in the achievement of the demanding PSA targets which had been agreed.

Hilary raised some concern about other aspects of the policy on the provision of support not covered by your letter and said she would be raising them with the Ministerial Group on Rough Sleeping. She also intended to discuss them directly with Mike O'Brien.

I am copying this letter to the Prime Minister, members of HS and LEG and to Sir Richard Wilson and First Parliamentary Counsel.

Regards

Margaret

MARGARET BECKETT

Rt Hon Jack Straw MP
Secretary of State, Home Department

Top Hats

cPU

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

9 June 1999

The Right Honourable Margaret Beckett
President of the Council and Leader of the House of Commons
Privy Council Office
68 Whitehall
London SW1A 2AT

Dear Margaret,

IMMIGRATION AND ASYLUM BILL
PROPOSED ARRANGEMENTS FOR OVERSTAYERS

This letter supports the Home Secretary's proposal to preserve rights of appeal for certain overstayers, but confirms the need for tight time limits for making and determining applications to minimise the overlap in legislation governing appeals.

Thank you for your letter of 7 June. I agree that it is sensible to introduce a scheme to flush out overstayers and encourage them to apply to regularise their position.

However, if different appeal rights apply over a prolonged period, it could cause dissatisfaction amongst the appellant population. More importantly, it could hamper the efficient disposal of appeal business by the Immigration Appellate Authorities, which would be particularly unwelcome in view of the average target for dealing with appeals, and the pressure which we expect to build up in the system over the next few years. It is therefore important that there are time limits for making and determining applications which will ensure that these transitional cases are moved very quickly through the system.

Yours ever,
Derry

I am copying this letter to other members of LEG and to Sir Richard Wilson.

SKP 9/6/99

Top: KR
~~DN~~
PJ

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
68 WHITEHALL LONDON SW1A 2AT

Dear Jack.

- 8 JUN 1999

Asylum And Immigration Bill: Amendment to Section 2 of The Asylum And Immigration Act 1996: House Of Lords Judgement

This letter gives you HS approval to proceed as you proposed in your letter of 10 May to John Prescott, subject to the points made by colleagues recorded below. I am responding in John's absence.

You proposed to amend the Bill to provide that in the context of transfers of asylum seekers under the Dublin Convention, EU Member States are to be regarded as safe third countries as a matter of law.

Replies were received from Derry Irvine and Margaret Jay both of whom were content but they made points which they asked you to take into account. I also responded.

Margaret Jay asked that you do everything in your power to brief Labour Peers on the need for the amendments in order to ensure that they present a united front. In my letter of 19 May, I endorsed Margaret's concerns about the handling of the Bill in the Lords. A similar effort will need to be made in the Commons. I also asked that you send me a copy of your strategy for minimising and dealing with the controversy.

Derry did not oppose the proposal but asked you to respond to the concerns he expressed in his minute to the Prime Minister of 20 April. He remained sceptical whether the proposals would be effective. Given that there had been cases in which courts had held on to the facts and it could not be guaranteed that EU members would comply with the 1951 Convention, there must be a possibility that they would hold that the new provision raised no more than a rebuttable presumption of compliance so that genuine points could be raised. He also noted that it would be helpful to have a more detail understanding of the Law Officers' views. I understand that these concerns were addressed by your letter of 18 May.

I am copying this letter to the Prime Minister, members of HS and LEG and to Sir Richard Wilson and First Parliamentary Counsel.

Regards
Margaret

MARGARET BECKETT

Rt Hon Jack Straw MP
Home Secretary

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
68 WHITEHALL LONDON SW1A 2AT

DN
C: JJH
PJ

Dear Alistair,

- 8 JUN 1999

REVIEW OF THE HABITUAL RESIDENCE TEST

This letter gives you HS approval to proceed as you proposed in your letter of 4 May, subject to the points made by colleagues recorded below. I am responding on behalf of John Prescott.

You explained that in June 1997, the Government had set in motion a review of the habitual residence test. It was now ready to bring forward proposals for reforming the test which you were planning to announce during the election purdah.

Replies were received from Frank Dobson, Alan Milburn and Hilary Armstrong who were content. I also responded and along with Hilary and Alan raised a number of points which we asked you to take into account.

In my letter of 17 May, I said the presentation of the changes would require careful handling and argued that an announcement should not be made during the gap between the periods of election purdah. However, I understand that you are now intending to make an announcement at the end of the purdah period.

Hilary noted that the changes would also lead to some additional costs being imposed on local authorities in connection with claims for housing assistance and for housing benefit, although those costs should be very much smaller.

Alan accepted that there was no scope to reverse the Swaddling judgement and he therefore authorised the additional expenditure. He does not intend to seek offsetting savings. However, he was concerned that there was no mechanism for dealing with the outstanding and future pressure on your programme (AME) budget. Earlier correspondence touched upon the need for a system that avoided protracted ministerial correspondence on relatively minor issues, whilst at the same time delivering expenditure control with prioritisation. He would be interested in any further thoughts you might have on the matter and invited your officials to talk to his about thinking in this area.

I am copying this letter to the Prime Minister, members of HS and to Sir Richard Wilson.

Regards
Margaret

MARGARET BECKETT

The Rt Hon Alistair Darling MP
Secretary of State for Social Security

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

07 JUN 1999

Top DN
cc: RR
PU

The Rt Hon Margaret Beckett MP
President of the Council and Leader
of the House of Commons
Privy Council Office
68 Whitehall
LONDON
SW1A 2AT

Dear Margaret,

The purpose of this letter is to seek your agreement to and the agreement of other members of LEG to amendments to the Immigration and Asylum Bill which would preserve current rights of appeal for certain overstayers.

During the passage of the Immigration and Asylum Bill it has become clear that a number of our supporters are uneasy about the withdrawal of the right of appeal when the new legislation comes into force for those foreign nationals who overstay the period for which they have been permitted to enter or remain in the United Kingdom. Some Members have suggested that those foreign nationals who are overstayers at the coming into force of the new legislation should retain rights of appeal under the current legislation. I am not prepared to agree to this because the effect would be that these overstayers would retain current appeal rights in perpetuity.

I am however prepared to introduce a scheme which I think will go some way to meeting the concerns which have been expressed to me. The outline of the scheme I am proposing is as follows:

- Current overstayers will have well publicised opportunities to declare themselves to the Immigration and Nationality Directorate.

- Overstayers who seek to regularise their position as a consequence of the publicity will secure their appeal rights against deportation by virtue of having made an application.

- Any person who has already applied to regularise his position will have to reapply.

- Any person whose appeal against deportation is dismissed will be deported rather than adminstratively removed and will be therefore face the normal time-bar on re-entry that goes with deportation.

- Any applicant would, under the terms of the scheme, be required to maintain contact with the Immigration and Nationality Directorate.

I should be grateful for your agreement, by 8 June, to the amendments which will be necessary to the Immigration and Asylum Bill in order to give effect to the scheme. I understand that it will be necessary to introduce one new clause and several small consequential amendments.

I am copying this letter to other members of LEG and to Sir Richard Wilson.

Yours ever,

Jack.

JACK STRAW

bc DM
JJH
LL
SM

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

7 June 1999

Dear Hilary,

PRIME MINISTER'S MEETING ON ASYLUM, 7 JUNE 1999

The Prime Minister met the Home Secretary earlier today to discuss the way forward on the Immigration and Asylum Bill. Lord Falconer, Mike O'Brien, Sir Richard Wilson, David Omand, Sally Morgan, David Miliband, Liz Lloyd, Justin Russell and I were present.

The Home Secretary said that the situation in the IND at Croydon was improving. Major organisational changes had been introduced, and were beginning to work. IND was currently processing cases at a rate equivalent to 45,000 decisions a year. A distinction had to be made between these cases and those raised by MPs. The latter were mainly cases about passport and immigration applications, not asylum. There had, in any event, also been an improvement in efficiency in dealing with these cases.

The Home Secretary explained that he proposed to act in three areas to head off the threatened backbench rebellion on the Bill:

(a) a number of backbenchers were concerned that the asylum support proposals would remove some of the Children Act obligations in relation to the children of asylum seekers. However, children with particular needs would still be able to rely on social services departments for help, and we would amend the Bill to put this beyond doubt;

(b) to meet the criticism that asylum seekers would not be receiving sufficient support in the form of cash, we were now proposing that they should be given £10 of their overall non-accommodation support per week in cash (with a commensurate reduction in voucher provision). We were also

proposing to make single discretionary payments in appropriate circumstances;

(c) much of the opposition to the asylum support arrangements focused on fears that, because of the delays and backlog at Croydon, asylum seekers – particularly those with dependent children – would be forced to remain within the system for considerably longer than the target times set by the Home Office. The Home Secretary therefore proposed to fast-track these cases, and to provide a guarantee that initial decisions on all new family cases from April 2000 would made within two months of their applications.

The Prime Minister asked what we were proposing to say should happen in respect of cases which did not meet the target. If we were not clear on this, our proposed guarantee would lack credibility. The Home Secretary said that it would be important to resist any suggestion that, if we failed to meet the target, the individuals should then be transferred to the benefits system; this would introduce an incentive to spin out cases. The Prime Minister and the Home Secretary agreed that we should instead make it clear that, from April 2000, the new asylum support system would not be introduced in respect of families with dependent children unless, on average, these cases were reaching their initial decisions within two months. It was essential that our fast-tracking of these cases was a success so that we met this target. The Home Secretary said he was highly confident that it would be achieved. After fast-tracking family cases, the next priority would be individuals on income support, followed by individuals on local authority support.

The Prime Minister said that it also remained extremely important to ensure that all necessary steps were taken to turn round the problems at IND, and to deliver a service which fully delivered the Government's targets. We should take whatever bold or radical steps were necessary. The Prime Minister asked the Home Secretary to look radically at how IND could be reformed. The Home Secretary undertook to do so. IT and other planned changes would increase the current rate of throughput significantly over the coming months. The Home Secretary added that it was important to note that, in achieving this, the Home Office faced a number of difficulties. The Government had inherited a significant backlog of cases, as well as the problems at IND, from the previous administration. Although he had a number of ideas for tightening the system, and therefore for ensuring that cases were decided within the overall target of six months, we had to be careful to ensure that these did not fall foul of the courts.

The Home Secretary undertook to provide a note on these ideas. (You have agreed to provide this by close tomorrow.)

On handling, the Home Secretary agreed with the Prime Minister that the relevant amendments to the Bill should be given for tabling to those MPs who were likely to take a constructive attitude, and who were likely to persuade others to do so (e.g. Karen Buck and Llin Golding). The Home Secretary would begin to brief groups of backbenchers tomorrow. It was important that we presented the changes as a consolidation of our approach on the Bill, rather than as significant concessions to its critics.

The Prime Minister asked to be kept informed of progress in turning round performance at IND. He felt strongly that the project team should be rewarded – e.g. through bonus payments – if they succeeded in their task.

The Home Secretary separately mentioned his proposals to amend Section 2 of the Asylum and Immigration Act 1996 by introducing a statutory presumption that other EU member states should be deemed compliant with the 1951 Dublin Convention. He planned shortly to outline his intentions to interested MPs and organisations. The Prime Minister confirmed that he supported the proposal.

I am copying this letter to Ros Roughton (Treasury) and to Mark Langdale and Sebastian Wood (Cabinet Office).

Yours ever,

David

DAVID NORTH

Hilary Jackson,
Home Office.

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From: Sally Morgan, Liz Lloyd
Date: 7 June 1999

Prime Minister

cc: JJH, DN, DM

Asylum meeting with Jack

The political background.
Ann Taylor thinks that we will need to take families out of the voucher system or at the very least have a trigger which brings them in when IND is working up to speed. Unfortunately MPs are fully aware of the chaos at Croydon, and the whole history of this Bill has been rushed and inadequately prepared.

The Tories while saying they support the Bill, are now also saying that they support children, and Ann fears this means they may support amendments. The Liberals definitely will support amendments.

The Substance - What concessions do we need?
The key is getting IND sorted out. The HO have provided a wholly inadequate "recovery plan" for this meeting. However there are some signs that IND has turned a corner and that productivity has improved since the beginning of the year.

At the very least we need to do something with families. We should try fast-tracking families' cases, but we may need to go further - either families would be on benefits totally or on benefits to start with until IND got their turn around times down.

Resources: until the HO can provide a business plan we cannot really make decisions on resources. They were provided with extra in the CSR to improve IND, but it is not clear where it is going or what their priorities are. The CSR figures were based on making huge productivity gains by the introduction of a paperless system. We will only know whether this will work in September. Without it the CSR will be broken anyway.

John Neil

Other concessions: e.g. children's act and appeal for overstays - these are OK but not pivotal and will certainly not win the argument in the PLP.

<u>You must focus entirely on IND not on other minor concerns</u>

Political Management from here.
Ann and Sally want Jack to meet only the "sensible MPs". Jack is planning to also meet the Campaign Group and still believes he can do business with Neil Gerrard who voted against us on welfare and has already put an amendment done on asylum.

In our view Jack needs to meet a sensible group tomorrow (Tuesday) and reach an agreement with them which can then be sold to the wider PLP though not to all.

<u>You must tell Jack not to work with the Campaign Group</u>

This should be accompanied by press briefing emphasising the principles of the reform. If agreement can't be reached with this group we have a serious problem and will need to regroup quickly.

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

4 June 1999

David North Esq
10 Downing Street
London SW1

Dear David

PRIME MINISTER'S MEETING WITH THE HOME SECRETARY ON MONDAY, 7 JUNE 1999

Thank you for your letter of 3 June. As promised, I attach a short note summarising progress in implementing the IND recovery plan.

HILARY JACKSON

UPDATE ON ICD RECOVERY PROGRAMME

Key Points

- After the drop in performance earlier this year major organisational changes to structure and team-based case-working have been delivered, and are working.

- In asylum case work progress has been particularly encouraging. Asylum decision-making is running at 160% of the pre-team-based target, with Kosovan decisions included. In the last two weeks of May IND achieved 900 decisions per week, equivalent to 45,000 decisions per year, a level which would be greater than any previous year.

- If new applications are given priority over pre 1 April cases, IND could achieve a two month turnround on new asylum decisions by April 2000. (Support costs impact being calculated).

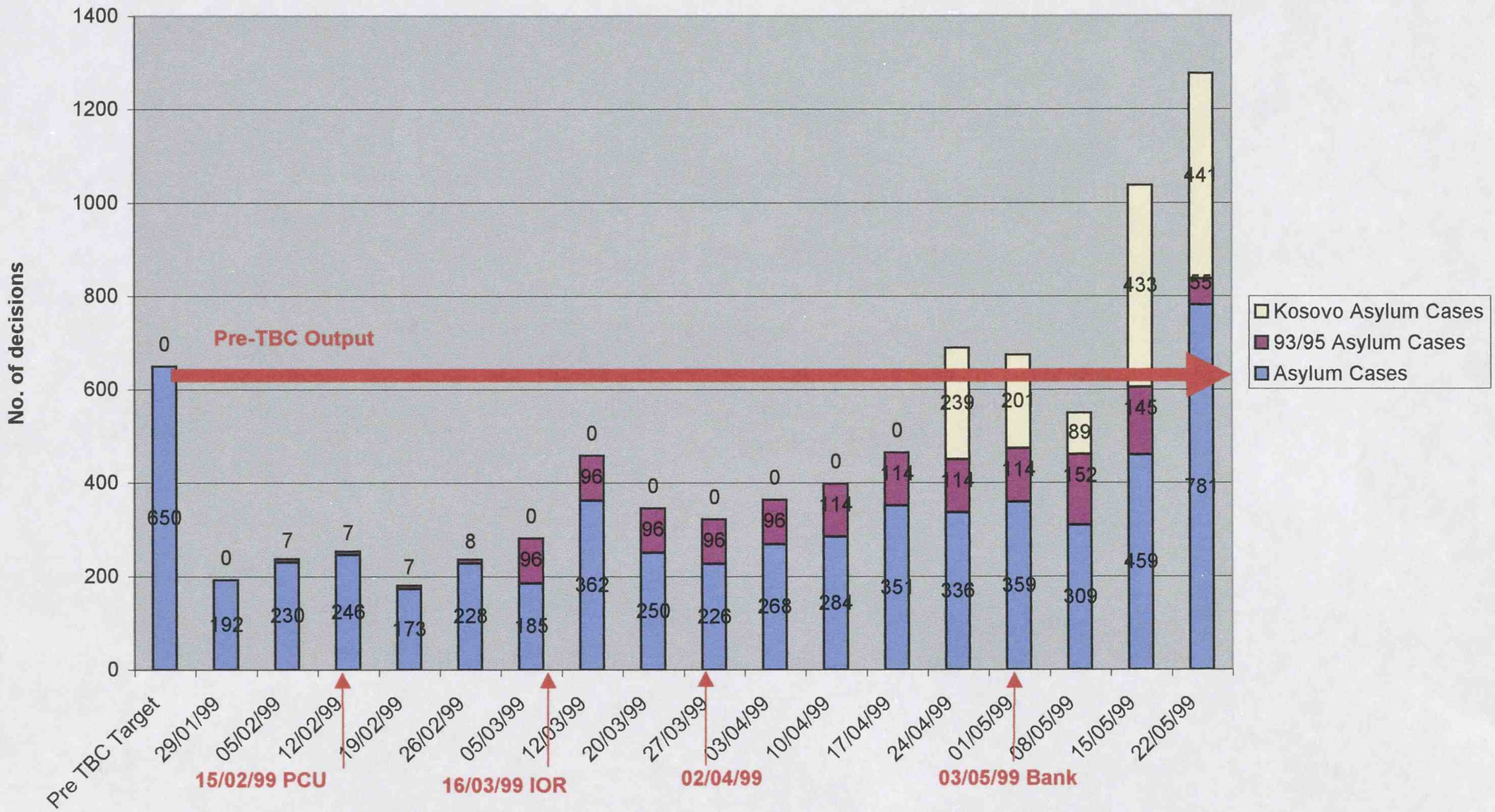
- Overall, output has now recovered to 80% of pre-team-based case-working levels (this includes normal immigration cases – eg extension of visas, marriage cases and EU cases). Expect to achieve 100% of pre-team-based caseworking levels by September.

- We will be spending an extra £120 million over the next three years on casework processing to deliver the ICD recovery programme and the two month target. 200 extra staff are currently being recruited with plans to recruit more later in the year.

- There has been a substantial improvement in replies to MPs cases, with backlog down to 450 items at week which is comparable to weekly demands.

Home Office
6 June 1999

Asylum Casework Decisions



cc Liz L
JJH
& return pse.

From: Liz Lloyd
Date: 3 June 1999

DW

Prime Minister

cc: David Miliband
Sally Morgan
David North
Phil Bassett/Lance Price
Lord Falconer

Asylum - progress report.

You are meeting Jack to discuss this on Monday.

The first part of this note is background and the second a summary of what the plan is with the PLP etc.

The 2 main PLP concerns are on speed and families.

Facts on families: Approx. 5,000 of the 40,000+ asylum seekers that apply every year have families. In the system there are already 6-7,000 families on benefits and 9,000 in local authority care many of whom have been in that situation for over a year.

Facts on who gets asylum/ELR:

Approx. 80% of successful asylum applicants get through at the initial decision.

Approx. 20% get through at appeal

Facts on current speed on caseworking programme: IND published figures for 1999 for a target of 59,000 cases processed a year (i.e. 4,900 a month). So far in total this year they have processed 6,795. Therefore in order to reach their target they would need to increase the rate to 6,500 a month. Last month the rate had improved to

this is a standard.

2,670. The backlog is 76,000. Currently initial decisions are taking 10.6 months on average and only 9% of cases take place within 3 months).

Rather worryingly IND are currently setting aside enough resources for a 6 months HO initial decision and a 9 months appeal process for this year. I.e far from the 2/6 month target for 2000.

David Omand has put an ex-MOD person in to project manage the scheme. His initial task is to stabilise the situation by September. The HO will then decide whether to go ahead with the Siemens paperless office model or go back to paper.

We have already asked the HO for an assessment of the recovery plan which they have yet to provide. Jack may update you.

If this is unsatisfactory then we could ask the PIU to do a quick piece of work on what reforms IND would need to undergo to reach the PSA target. This might include giving it agency status. We should do this in any event.

You know the options that are currently being considered.

1. Jack is proposing a new package and a new presentation of it: it is not 70% of IS levels, but nearer 90% (included in accommodation is furnishing, utility bills, pots and pans, plus the accommodation will not be terrible). People will not be stuck in a cashless economy for 12 months as families will now have £40 a week in cash. If their cases do take longer than 6 months, the Asylum Support Directorate will be able to give grants of up to £50 to pay for items such as prams or coats as necessary. In presentational terms stress that the key date is not 6 months but 2 months for the initial decision.

2. Keep with the above but in addition fast-track the cases of those with children (under 12). We would have to give a figure for this - maybe 3 months for the initial decision and 6 months for the appeal in the first year before the PSA targets are reached. I have no estimate of how much this would cost - I imagine about £50 million. Presentationally: every child will be housed and fed and on average will not be in the voucher system for more than 6 months.
3. Some kind of trigger/2 tier system. This is the preferred option of the PLP. They either want to keep families out of the voucher schemes at all, or only make them come into it when IND can prove they are operating at the speed they promised.

Although logically attractive any system of this kind raise 2 key problems: a) it introduces 2 tier system with the danger of introducing new perverse incentives b) there are already 9,000 families in local authority care, many of whom have been waiting over 6 months for a final decision. It would mean that they came into the benefits system almost immediately.

It is hard to cost this last option. IND estimate that the loss of cash has a deterrent effect on 10,000 people a year which is about £10 million a month. Neither IND nor the Treasury have calculated the effect of implementing a 2 tier system for families and single people.

There is the potential problem that the HO will not be able to convince the PLP (or anyone else) that they are in a position to get the times down without extra resources which we do not have. Alan Milburn will also be at the Monday meeting to put HMT view. We will need either a recovery plan or extra funding to make the deal stick. It might be possible to recast the £120 million extra from the CSR as new money.

Strategy for selling this to the PLP etc.

Jack has already dribbled out most of the concessions in (1). Unfortunately this dilutes the force of the overall package. Sally and I have convinced Ed Own that Jack needs to get the package out sooner rather than later and that they need to include a fast track system for families. Mike O'Brien is looking at this. The first realistic day for this is Tuesday when the MPs return to Westminster. Jack is planning to have a session with the more moderate, but concerned, MPs where he will outline the package. We think this is the key meeting. He will also see the PLP Home Affairs Committee on Tuesday and go through the same ground and the Campaign group on Wednesday. The HO will put down the amendment on Wednesday.

Sally and I are still worried that the PLP will not be satisfied with option 2, but think that we should hold the line.

Lance, Bill, Phil and Ed Owen are putting together a media strategy.

This looks to me absolutely hopeless.
We cannot agree something that will
cost £10m a month.
The key is an efficient IND
Let's discuss prior to Monday.
This rebellion must be settled this
week.

HOME OFFICE

50 Queen Anne's Gate, London, SW1H 9AT
From the Private Secretary
Tel: 0171 273 4604 Fax: 0171 273 2043

Top: DN
cc: PJ

3 June 1999

Bill Jobson
APS/John Hutton MP
Department of Health
Richmond House
79 Whitehall
London SW1A 2NS

Dear Bill,

My Minister wrote to yours on 27 May to seek views on a proposed policy change in the way we deal with asylum applications from unaccompanied children.

The purpose of this note is to extend the copy list of Mr O'Brien's letter to include all HS colleagues.

In the circumstances, please disregard the original deadline of 11 June. Mr O'Brien would be grateful for replies by 18 June.

Copies of this note go to Private Secretaries to Alan Milburn, Hilary Armstrong, Margaret Hodge, Angela Eagle, Keith Vaz, Baroness Symons and HS colleagues.

Yours ever

JON PAYNE
Private Secretary to Mike O'Brien MP

Top: DN

~~cc:~~ JJH
PJ

HOME OFFICE

50 Queen Anne's Gate, London SW1H 9AT

Mike O'Brien MP
Parliamentary Under Secretary of State

27 May 1999

John Hutton MP
Department of Health
Richmond House
79 Whitehall
London SW1A 2NS

I am writing to seek your views and those of colleagues on a proposed policy change in the way we process asylum applications from unaccompanied children. The change does not require legislation. I should be grateful for replies by 11 June.

At present, unaccompanied children who do not qualify for asylum but who cannot be removed from the UK are granted 4 years' exceptional leave to remain, after which they become eligible to apply for indefinite leave to remain. Under the new proposals, unremovable children over the age of 14 will be granted exceptional leave to remain only until their 18th birthday, at which time they will need to apply for further leave to remain or be liable to enforcement action. Unremovable children under the age of 14 will continue to be given 4 years' exceptional leave, leading to indefinite leave to remain, in view of their vulnerability.

Over recent years the number of asylum applications from unaccompanied children has increased markedly. There were 2,833 applications in 1998 compared with just 633 applications in 1996 and 1105 in 1997. By far the largest proportion of applicants claim to be aged between 16 and 18. This includes increasing numbers of undocumented asylum seekers, usually young single men, who claim to be under the age of 18, but who in many cases appear to be much older, in order to benefit from the special procedures intended for consideration of asylum applications from children.

All asylum applications from children are assessed against the criteria set out in the 1951 UN Convention relating to the Status of Refugees. If these criteria are satisfied, asylum will be granted in the usual way. If not, and the applicant is then over 18, he will be refused asylum and expected to leave the UK after exhausting any appeal rights. If at this stage an applicant is still under 18, he will not be removed from the UK unless adequate reception arrangements can be made in the country of origin. In practice this is very difficult to achieve, as parents or other relatives often cannot be traced. Social services facilities, if they exist to an appropriate standard, are rarely available to children being returned from the UK. If adequate reception arrangements cannot be made, the current policy is to grant exceptional leave to remain for four years after which the applicant can apply for indefinite leave to remain. We consider that this, together with the more sympathetic procedures in place for minors, acts as a significant and increasing pull factor.

Under the new proposals we would continue to attempt to make adequate reception arrangements for those children who were still under 14 at the time a decision was made on their application. If such arrangements could not be made, four years' exceptional leave to remain would, as now, be granted. This would enable social services departments in the UK to plan for the child's long term future, and the child would be able to apply for indefinite leave in the same way as adults who have completed four years' exceptional leave.

However, children who were over 14 but under 18 at the time of the asylum decision and for whom adequate reception arrangements cannot be made, would be given exceptional leave to remain only until their 18th birthday. It would be open to them to appeal against the asylum refusal in the same way as now. They would be advised that exceptional leave was only being given because it had not been possible to make reception arrangements in their country of origin, and that if they wished to stay in the UK after the age of 18, they would have to make an application for further leave shortly before the period of exceptional leave expired. In this way, we would be protecting children while they were in need but closing a loophole which affords settlement to those who would not normally qualify.

The main intention of these proposals is to seek to reduce the pull factor and reduce the number of bogus asylum seekers coming to the UK. The current perception is that because of the difficulties associated with removal, if the application is dealt with as a child's, settlement will automatically follow. If people have to make a second application for leave to remain on reaching 18 they will have to face again the prospect of removal. However, the problems associated with the removal of someone who has established themselves in the community should not be underestimated. The benefit of this proposal is seen to lie more in its deterrent effect than in any significant increase in actual removals.

It is also possible that those 14-18 year olds who are given less than 4 years' exceptional leave to remain would be more likely to appeal against the decision to refuse asylum than they are at present, as they will not automatically qualify for indefinite leave to remain. But it is at least arguable that the deterrent impact of these proposals should reduce the number of these applications, which would reduce the burden on the Department of Health and Local Authorities for supporting these children as such cases will not fall within the proposed Home Office funded support arrangements.

The proposal would not affect the support entitlements of the applicants concerned, but clearly we would need to ensure that this was understood to be a quite separate issue from the provisions affecting children in Part VI of the Immigration and Asylum Bill, which have proved controversial.

Copies of this letter go to Alan Milburn (Tsy), Hilary Armstrong (DETR), Margaret Hodge (DFEE), Angela Eagle (DSS), Keith Vaz (LCD), and Liz Symons (FCO).

Yours sincerely

Mike

MIKE O'BRIEN

Top: HAIPS

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The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE

68 WHITEHALL LONDON SW1A 2AT

-2 JUN 1999

Dear Jack,

IMMIGRATION AND ASYLUM BILL: ASYLUM SEEKERS SUPPORT

Thank you for copying me your letter of 17 May to Alan Milburn, about amendments to the Immigration and Asylum Bill to reduce the risk of losing key policies in the Lords.

As you say, the Bill is facing some severe difficulties in the Lords, and, subject to your receiving policy clearance, I am happy to agree to the amendments you propose; which should help ease its passage.

I am copying this letter to the Prime Minister, the Deputy Prime Minister, other members of HS and LEG, and to Sir Richard Wilson and First Parliamentary Counsel.

Regards

Margaret

MARGARET BECKETT

The Rt Hon Jack Straw MP
Home Secretary

SKP 2/6/99

Top: HAIPS
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FROM THE RT HON HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND HOUSING

F

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3000
FAX: 0171 890 4489

The Rt Hon John Prescott MP
Deputy Prime Minister
Department of the Environment, Transport and the Regions
Eland House
Bressenden Place
LONDON
SW1E 5DU

IDC 134/99

- 1 JUN 1999

Dear Deputy Prime Minister,

This letter offers full support for Jack Straw's proposals for concessions in the Asylum Bill on the provision of support. It also raises concerns about the number of persons from abroad who will lose entitlement to any statutory support when the new asylum seeker support arrangements are introduced but who will be allowed to remain in the UK. This could lead to a large increase in the number of people who are destitute and jeopardise our tough targets for reducing the numbers sleeping rough. It also raises concerns about the current pressures from asylum seekers on temporary accommodation and hostels for rough sleepers in London.

I have received a copy of Jack Straw's letter of 17 May to Alan Milburn in which he seeks agreement to proposed concessions in the Immigration and Asylum Bill on the provision of support for asylum seekers.

I support the proposals Jack sets out in his letter. However, I am concerned about other aspects of the policy on the provision of support.

As I explained in my letter of 16 November 1998, I have reservations about allowing failed asylum seekers to remain in the UK with no recourse to any statutory support, since this could jeopardise our targets for reducing the number of people sleeping rough. My additional concern is that Jack's proposed transitional arrangements for moving from the present, hybrid system of support to the new system administered by the Home Office will add to this problem by creating other groups who will be allowed to remain in this country with no recourse to statutory support.

SKP 2/6/99

For example, Jack's Asylum Seekers Project Team estimate that there will be about 10,000 single adults who, immediately prior to the point of transition, will continue to be supported by local authorities under the National Assistance Act 1948 despite their claim for asylum having been finally rejected. Moreover, I understand that it is estimated that a number of people presently supported under the 1948 Act are not asylum seekers, but people who have overstayed their leave to remain or who are here illegally. And, there is likely to be a number of failed asylum seekers who continue to receive social security benefits in error until the point of transition. All these groups will be left without any statutory support when the new arrangements take effect.

Another group which could cause difficulties are those asylum seekers who, on transition, will lose their present entitlement to social security benefits and will instead become eligible for Home Office support under the new system. The Project Team estimates that about 38,000 single adults and 7,000 families will fall within this group. It seems likely that most will have accommodation which is supported by housing benefit. Some among them, particularly single adults, may decide to stay put until evicted, rather than be dispersed on a no-choice basis under the new system. This could cause enormous difficulties for landlords and the courts. And once evicted, some - particularly those based in London - may continue to shun the new arrangements and choose instead to remain where they are and live rough on the streets.

Taken together, these groups could present enormous problems if we do not take measures to either remove them, for example, where they have no legal basis for remaining here, or to facilitate some form of support for those who have a right to remain but genuinely have no resources of their own.

I am also becoming increasingly concerned about the present situation regarding asylum seekers in London. An unprecedented number of asylum seeker households are being accommodated by local authorities in London and the rate of new asylum seeker arrivals continues to be high. The presence in the Capital of such a large number of asylum seekers is contributing to a crisis in the supply of temporary accommodation which affects all client groups including indigenous homeless families.. There is also evidence that refugees and asylum seekers are occupying bedspaces in direct access hostels and therefore impinging on our programme for tackling rough sleeping. This is adding to the risk of social exclusion for these groups, particularly homeless families who are being placed in poor quality temporary accommodation around the country. I shall be raising these issues with the Ministerial Group on Rough Sleeping but given the seriousness of the situation I also propose to discuss this directly with Mike O'Brien.

I am copying this letter to the Prime Minister, members of HS and LEG and to Sir Richard Wilson.

Yours sincerely,

Tom Wechsler

HILARY ARMSTRONG

APPROVED BY THE
MINISTER AND SIGNED
IN HER ABSENCE

Top: HA/PS
cc EA/PS
PU

FROM THE DEPUTY PRIME MINISTER

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3011
FAX: 0171 890 4399

OUR REF: IDC/124
YOUR REF: DL/132/279/7

The Rt Hon Lord Irvine of Lairg
Lord Chancellor's Department
House of Lords
LONDON
SW1A 0PW

- 1 JUN 1999

OFFICE OF IMMIGRATION ADJUDICATOR

This letter gives you HS approval to proceed as you proposed in your letter of 7 May.

You proposed to take powers in the Immigration and Asylum Bill to enable you to appoint a Deputy Chief Adjudicator and Regional Adjudicators; and to remove the current arrangements for the designation of Special Adjudicators. Such a measure, although largely presentational, would be useful in increasing the confidence of the judiciary within the immigration and asylum appeals jurisdiction.

A reply was received from Jack Straw who was content.

I am copying this letter to the Prime Minister, members of HS and LEG and to Sir Richard Wilson and First Parliamentary Counsel.

JOHN PRESCOTT

SKP 2/6/99

FROM THE RT HON HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND HOUSING

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
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TEL: 0171 890 3000
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The Rt Hon John Prescott MP
Deputy Prime Minister
Department of the Environment, Transport and the Regions
Eland House
Bressenden Place
LONDON
SW1E 5DU

IDC 134/99

- 1 JUN 1999

TOP DN
RR
DS
PU

Dear Deputy Prime Minister,

This letter offers full support for Jack Straw's proposals for concessions in the Asylum Bill on the provision of support. It also raises concerns about the number of persons from abroad who will lose entitlement to any statutory support when the new asylum seeker support arrangements are introduced but who will be allowed to remain in the UK. This could lead to a large increase in the number of people who are destitute and jeopardise our tough targets for reducing the numbers sleeping rough. It also raises concerns about the current pressures from asylum seekers on temporary accommodation and hostels for rough sleepers in London.

I have received a copy of Jack Straw's letter of 17 May to Alan Milburn in which he seeks agreement to proposed concessions in the Immigration and Asylum Bill on the provision of support for asylum seekers.

I support the proposals Jack sets out in his letter. However, I am concerned about other aspects of the policy on the provision of support.

As I explained in my letter of 16 November 1998, I have reservations about allowing failed asylum seekers to remain in the UK with no recourse to any statutory support, since this could jeopardise our targets for reducing the number of people sleeping rough. My additional concern is that Jack's proposed transitional arrangements for moving from the present, hybrid system of support to the new system administered by the Home Office will add to this problem by creating other groups who will be allowed to remain in this country with no recourse to statutory support.

For example, Jack's Asylum Seekers Project Team estimate that there will be about 10,000 single adults who, immediately prior to the point of transition, will continue to be supported by local authorities under the National Assistance Act 1948 despite their claim for asylum having been finally rejected. Moreover, I understand that it is estimated that a number of people presently supported under the 1948 Act are not asylum seekers, but people who have overstayed their leave to remain or who are here illegally. And, there is likely to be a number of failed asylum seekers who continue to receive social security benefits in error until the point of transition. All these groups will be left without any statutory support when the new arrangements take effect.

Another group which could cause difficulties are those asylum seekers who, on transition, will lose their present entitlement to social security benefits and will instead become eligible for Home Office support under the new system. The Project Team estimates that about 38,000 single adults and 7,000 families will fall within this group. It seems likely that most will have accommodation which is supported by housing benefit. Some among them, particularly single adults, may decide to stay put until evicted, rather than be dispersed on a no-choice basis under the new system. This could cause enormous difficulties for landlords and the courts. And once evicted, some - particularly those based in London - may continue to shun the new arrangements and choose instead to remain where they are and live rough on the streets.

Taken together, these groups could present enormous problems if we do not take measures to either remove them, for example, where they have no legal basis for remaining here, or to facilitate some form of support for those who have a right to remain but genuinely have no resources of their own.

I am also becoming increasingly concerned about the present situation regarding asylum seekers in London. An unprecedented number of asylum seeker households are being accommodated by local authorities in London and the rate of new asylum seeker arrivals continues to be high. The presence in the Capital of such a large number of asylum seekers is contributing to a crisis in the supply of temporary accommodation which affects all client groups including indigenous homeless families.. There is also evidence that refugees and asylum seekers are occupying bedspaces in direct access hostels and therefore impinging on our programme for tackling rough sleeping. This is adding to the risk of social exclusion for these groups, particularly homeless families who are being placed in poor quality temporary accommodation around the country. I shall be raising these issues with the Ministerial Group on Rough Sleeping but given the seriousness of the situation I also propose to discuss this directly with Mike O'Brien.

I am copying this letter to the Prime Minister, members of HS and LEG and to Sir Richard Wilson.

Yours sincerely,

Tom Wechsler

HILARY ARMSTRONG

APPROVED BY THE
MINISTER AND SIGNED
IN HER ABSENCE

Top: HA/PS
PU

FROM THE DEPUTY PRIME MINISTER

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3011
FAX: 0171 890 4399

OUR REF: IDC/73

The Rt Hon Jack Straw MP
Secretary of State
Home Department
50 Queen Anne's Gate
LONDON
SW1H 9AT

- 1 JUN 1999

Dear Jack

IMMIGRATION ASYLUM BILL: APPEALS IN CERTAIN NATIONAL SECURITY CASES

This letter gives you HS approval to proceed as you proposed in your letter of 18 March.

You proposed three limited extensions of the jurisdiction of the Special Immigration Appeals Commission (SIAC). They were necessary in order to ensure that decisions about the immigration status of people in the UK suspected of involvement in international terrorism could be properly defended when challenged on appeal.

Replies were received from Geoff Hoon, writing as Minister of State from the Lord Chancellor's Department and Baroness Symons both of whom were content.

However, Geoff made a number of points which he wanted you to take into account. He said that the President of SIAC, Mr Justice Potts, had suggested that it might be necessary to appoint at least two more High Court Judges on these cases. It would also be necessary to appoint more staff. This was unanticipated expenditure for Lord Chancellor's Department and officials would re-open discussion about financial arrangements with their Home Office counterparts.

SKP 2/6/99

I am copying this letter to the Prime Minister, members of HS and LEG, and Robin Cook, and to Sir Richard Wilson and First Parliamentary Counsel.

JOHN PRESCOTT

DEPARTMENT OF SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 0171 - 238 0800

From the Secretary of State for Social Security

f

DN
C: 03
JSH
PJ

The Rt Hon Alan Milburn MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1P 3AG

28 May 1999

Dear Chief Secretary

IMMIGRATION AND ASYLUM BILL: ASYLUM SEEKERS SUPPORT

I have seen Jack Straw's letter of 17 May to you regarding the concessions that he feels it will be necessary to make to the proposed new support arrangements for asylum seekers set out in the Immigration and Asylum Bill.

I agree with Jack that we could face strong opposition to the proposals in the Bill, and that it is sensible to tackle some of the issues that particularly concern our supporters. The concessions Jack proposes respond to these concerns, while maintaining the overall policy intention.

I am copying this letter to the Prime Minister, Deputy Prime Minister, HS and LEG colleagues, and to Sir Richard Wilson.

Yours sincerely
Alan Twigg

PP **ALISTAIR DARLING**
(Approved by the Secretary of State and signed in his absence)

Top: HA/PS
cPS

RESTRICTED - POLICY

THE SCOTTISH OFFICE
DOVER HOUSE
WHITEHALL
LONDON SW1A 2AU

f

Rt. Hon Jack Straw, MP
Home Secretary
Home Office
50- Queen Anne's Gate
LONDON
SW1H 9AT

27 May 1999

Dear Jack,

IMMIGRATION AND ASYLUM BILL: ASYLUM SEEKERS SUPPORT

I am writing in response to your letter of 17 May to Alan Milburn about the concessions which you propose to make to the Immigration and Asylum Bill in relation to support arrangements for destitute asylum seekers.

I am broadly content with what you propose. In Scotland, there is considerable opposition amongst local authorities to the removal of the powers that enable them to make cash payments to destitute asylum seekers and to provide support to asylum seeking children. I am sure that the concessions will be welcomed as a step in the right direction by the local authorities in Scotland.

A copy of this letter goes to the Prime Minister, Deputy Prime Minister, Allan Milburn, other members of HS and LEG and to Sir Richard Wilson.

Yours ever

JOHN REID

SKP 1/6/99

RESTRICTED - POLICY

Top-DN
cc RB
LN

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

28 MAY 1999

The Rt Hon John Prescott MP
Deputy Prime Minister
Department for the Environment
6th Floor
Eland House
Bressenden Place
London SW1

Dear John,

IMMIGRATION AND ASYLUM BILL: STATUTORY PRESUMPTION IN FAVOUR OF BAIL

This letter is to seek your and HS colleagues' approval to amend the bail provisions of the Immigration and Asylum Bill to create a statutory presumption in favour of bail with exceptions designed to ensure effective immigration control and enforcement. It is essential to the handling of the Bill that we are able to set out in detail how we intend to proceed on this issue before Report Stage in the Commons. I would be grateful for replies by Monday, 7 June.

During the course of the Special Standing Committee there has been intense pressure from key pressure groups and the Government's own supporters to strengthen still further the safeguards for immigration detainees in particular by introducing a statutory presumption in favour of bail. Comparison is drawn with the provisions of the Bail Act for defendants in criminal cases and, it is argued, immigration detainees should be treated no less favourably. Whilst there is currently no statutory presumption of bail for detainees applying for bail, there is an administrative presumption of temporary admission or temporary release, exercised by the Immigration Service in making decisions to detain. That presumption reflects both the reality of the number of detention beds relative to the number of people who are liable to be detained, about 1.5%, and a requirement to ensure that detention is only used where there is no reasonable alternative.

The argument that we should introduce a statutory presumption of bail, for both routine hearings and those arising from an application under the existing provisions of the 1971 Act, is compelling. It will shift the burden on to the Immigration Service to show, on the balance of probabilities, that the person is unlikely to comply with conditions of bail if released. I do not consider that to be unreasonable, provided exceptions to the presumption of bail are also set out on the face of the Bill.

I have, therefore, come to the conclusion that we should introduce a statutory presumption in favour of bail for persons detained under sole Immigration Act powers, with exceptions designed to ensure effective immigration control and enforcement and to secure the temporary care of children and those suffering from ill health whilst more appropriate facilities are being arranged. I attach a list of the proposed exceptions, subject to minor drafting points. The effect will be for those exceptions to act as both a guide to Immigration Officers in making detention decisions and to the courts in deciding whether to grant bail. It should put beyond doubt the Government's White Paper commitment that detention should be used with great care and when no alternative ways of ensuring compliance are likely to be effective. The exceptions are based on those in the Bail Act 1976 but with adjustments to reflect immigration requirements. However, because those requirements may need to be adjusted in the light of changing immigration pressures, I propose to include in the Bill a provision allowing the exceptions to be varied by statutory instrument, subject to the affirmative procedure.

I propose also to make a minor change to the Bill in relation to those arrested for breach of bail to align the procedures with those in the Bail Act 1976. We hope (subject to Counsel's advice) to be able to deal with other concerns expressed, for example in relation to seeking reports in cases where torture or ill health are key factors and requiring written records of decisions, by means of the procedure rules for which the Bill already provides.

I should also mention that we have also been pressed to introduce statutory criteria for detention and to extend the scope of bail hearings to include consideration of the legality of detention. I do not propose to make such changes. The statutory presumption of bail with specified exceptions effectively establishes statutory criteria for detention and I do not believe it is necessary to go further. There are established means of challenging the legality of detention, principally by means of a writ of habeas corpus, which I do not propose to disturb.

There is one category of case which I propose should be excluded from both the statutory presumption of bail and the Bill's provisions for routine bail hearings. During the committee Stage, the Opposition pressed hard an amendment to exclude from routine bail hearings those persons convicted of criminal offences and who are subject to deportation by order of a court. I think that the arguments for excluding such people, and thereby maintaining the current inclination towards detention in such cases, are strong.

Such persons will be permitted to apply for bail if detained under sole Immigration Act powers beyond the end of a prison sentence. However, before the court can grant bail he or she will have to be satisfied that bail should be granted in the circumstances, subject to appropriate bail conditions. In such cases, it will effectively be for the applicant to show that none of the exceptions to the presumption apply, thus reversing the burden of proof applicable in other cases.

The provisions already in the Bill for routine bail hearings were estimated to cost a maximum of about £3 million a year. The proposals in this letter would not generate additional costs beyond those already identified. There were suggestions at Committee

Stage that there should be a right of appeal against refusal of bail in some circumstances. The provision of such an appeal would have resource implications. I am still considering the options and it is a matter to which we may need to return if there is further pressure on this point, but it does not affect the merits of the proposals set out in this letter.

My proposals on this issue will provide a powerful demonstration of our willingness to listen and to amend the Bill where necessary. It will substantially assist the handling of concerns expressed by our own supporters. Even though we will not be able to make the necessary amendments to the Bill at Report Stage, it is essential that we are able in advance to set out precisely how we intend to proceed. We will need to brief colleagues and made a public announcement. For those reasons, and with apologies for the short notice, I should be grateful if colleagues could indicate by Monday, 7 June whether they are content to proceed on the basis proposed above

I am copying this letter to the Prime Minister, members of the HS and LEG, to Sir Richard Wilson and First Parliamentary Counsel.

Yours ever,

Jack.

JACK STRAW

ANNEX A

PRESUMPTION IN FAVOUR OF BAIL: EXCEPTIONS

A person need not be granted bail if it appears to the relevant court that the person concerned:

(a) is likely to fail to comply with any of the conditions of bail or of any recognisance or bail bond entered into by him;

(b) is likely to commit an offence while on bail;

(c) if released, is likely to cause danger to public health or contribute to a danger to public order;

(d) is knowingly involved in a concerted effort to enter the United Kingdom in breach of the immigration laws;

(e) is suffering from mental disorder and that his continued detention is necessary in his own interests or for the protection of any other person;

(f) is under the age of 18, that arrangements ought to be made for his care in the event of his release and that no satisfactory arrangements for that purpose have been made;

(g) is required to submit to an examination by an immigration officer under paragraph 2 of Schedule 2 to the 1971 Act in circumstances where there is insufficient reliable information to decide on whether to grant temporary admission or release under paragraph 21 of Schedule 2 or to grant leave to enter, or remain in, the United Kingdom; or

(h) is subject to directions for his removal from the UK which directions are for the time being in force.

DN
CE: JJH
PC

RESTRICTED - POLICY

Treasury Chambers, Parliament Street, London, SW1P 3AG

The Rt Hon Jack Straw MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

27 May 1999

Dear Home Secretary —

IMMIGRATION AND ASYLUM BILL: ASYLUM SEEKERS' SUPPORT

Thank you for your letter of 17 May. I have also seen Frank Dobson's letter of 24 May.

2. I understand the problems that you have with the Bill and I have tried to find a way of being helpful. You proposed three concessions, all of which seem to me to be sensible. You estimated that beginning in 2000/1 the total annual cost of these would be £3.6 million initially but decreasing as performance on the processing of asylum claims and appeals improved.

3. You suggested that if the £300 million asylum support budget for 2000/1 has to be revisited then these additional costs could be taken into account without reopening the rest of the Home Office CSR settlement or penalising you on End Year Flexibility.

RESTRICTED - POLICY

4. I am prepared to agree that compensatory savings for the £3.6 million cost of these concessions should not be required from other Home Office programmes. However given that EYF when taken up is itself a claim on the Reserve I am afraid that I cannot agree to disregarding the effect of this claim on your EYF. Nor can I of course make any commitments for the period beyond that to be covered by the next spending review. The Government will want to take the opportunity at that time to set this issue against other priorities going into the next Election.

5. I am copying this letter to the Prime Minister, Deputy Prime Minister, other members of HS and LEG and to Sir Richard Wilson.

Yours sincerely

James Nell.

pp **ALAN MILBURN**

(approved by the Chief Secretary and signed in his absence)

THE RT HON HELEN LIDDELL MP
MINISTER FOR TRANSPORT

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3000

My Ref:

Your Ref:

Top:OB
cc: JJ
HJ

DETR
ENVIRONMENT
TRANSPORT
REGIONS

The Rt Hon Jack Straw MP
Home Secretary
Queen Anne's Gate
LONDON
SW1H 9AT

25 MAY 1999

Dear Jack,

EUROSTAR

I refer to John Reid's letter of 31 March about possible options for resolving the problem of inadequately documented arrivals (IDA's) arriving at Waterloo on Eurostar trains.

I am pleased to confirm that I am now able to support the proposed amendment to the Immigration and Asylum Bill.

However, I should make clear that this support is given on the understanding that agreement is reached with my Department about claims being met from your CSR prior to the commencement/implementation of the Carriers Liability Act against SNCF.

I am copying this letter to the Prime Minister, the Deputy Prime Minister as chairman of HS, the Foreign Secretary, members of HS and LEG Committees, Sir Richard Wilson, Sir Stephen Wall, Sir Michael Jay and First Parliamentary Counsel.

Yours

HELEN LIDDELL

Top: DN
cc: RK
PJ

THE SCOTTISH OFFICE
DOVER HOUSE
WHITEHALL
LONDON SW1A 2AU

Rt Hon Jack Straw MP
Home Secretary
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

25 May 1999

Dear Jack,

SUPPORT ARRANGEMENTS FOR ASYLUM SEEKERS

Thank you for your letter of 5 May, regarding the exercise within Scotland of the Home Secretary's power to direct local authorities to make housing available for asylum seekers.

I am grateful to you for agreeing, in principle, that Scottish Ministers should have the power to refuse consent, but I am not sure that the qualification you suggest meets the point Donald Dewar was raising.

If, in the view of a Scottish local authority, the proposed influx of asylum seekers into its area is likely to cause serious problems because of the anticipated impact on its services, Scottish Ministers would be concerned and would need to take a view on the matter. It would, I suggest, be quite reasonable for them to have a power to refuse consent to the proposed direction irrespective of the number of asylum seekers in Scotland as compared with the UK as a whole. They would, of course, need to be persuaded that there were likely to be serious difficulties for the local authority concerned in meeting the needs of the asylum seekers.

Scottish Ministers do, of course, have a legitimate concern in this area since they will be operating within the constraints of their assigned budget, with no expectation that it would be increased if a significant increase in the number of asylum seekers caused problems for Scottish local authorities.

I think it is worth stressing that I am sure that Scottish local authorities will be willing to respond positively to requests to take asylum seekers – as has been the case in relation to Kosovan refugees. I do not think that you need have any real fears that all the asylum seekers would end up in England.

To try to get this matter resolved quickly, can I suggest an amendment in your proposed qualification so that Scottish Ministers would be able to refuse consent if they had good

grounds to believe that the burden on the public services in the local authority in question was likely to be unreasonable.

I hope that you can agree to this formulation which might apply to both the power of direction and the power to designate an area as an asylum seeker reception zone.

I am copying this letter to the Prime Minister, other members of HS, and Sir Richard Wilson.

Yours ever

JOHN REID

GARY CHISHOLM
MINISTERIAL SUPPORT UNIT

DEPARTMENT OF THE ENVIRONMENT
TRANSPORT AND THE REGIONS

ZONE 6/C5
ELAND HOUSE
BRESSENDEN PLACE
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SW1E 5DU

DIRECT LINE: GTN 3533-4304
FAX: GTN 3533-4873
E-mail: Gary_Chisholm@detr.gsi.gov.uk

OUR REF: IDC/118

24 May 1999

DETR
ENVIRONMENT
TRANSPORT
REGIONS

Mark Gilder
Private Secretary
Lord Chancellor's Department
Selbourne House
54-60 Victoria Street
London
SW1E 6QW

Dear Mark,

IMMIGRATION AND ASYLUM BILL - IMMIGRATION APPEAL TRIBUNAL LAY MEMBERSHIP

The Deputy Prime Minster, as Chairman of HS, wrote to the Lord Chancellor on 14 May about the Immigration Appeal Tribunal. The first sentence of the second paragraph should have read "*In your letter you proposed to amend the Bill to restore your power to appoint lay members to sit in suitable cases.*"

I am copying this letter to Private Secretaries to members of HS and LEG Committees and to the Private Secretary to Sir Richard Wilson.

GARY CHISHOLM
Ministerial Support Unit

DEPARTMENT OF HEALTH

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

DN
C: BK

Restricted – Policy

The Rt Hon Jack Straw MP
Secretary of State
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

24 May 1999

IMMIGRATION AND ASYLUM SEEKERS: ASYLUM SEEKERS SUPPORT

I have seen your letter of 17 May to Alan Milburn about proposed concessions on asylum seekers support.

I am, of course, aware of the opposition which the Bill has faced in Committee, and that there have been particular problems with the proposed amendment to the Children Act (to remove the possibility of dual provision once the new HO scheme is available). That opposition has centred around fears that the welfare of asylum children in families will be put at risk, due to what is regarded as the comparative harshness of the new scheme. I would therefore very much agree with you that we will need to offer some form of easements if the central proposals are to pass relatively unscathed through the remaining Bill stages.

The concessions you are proposing would seem to me to be about right. Your proposal to make a larger element of the financial support available in cash rather than in vouchers should be welcomed. As you say, it is important to retain a disincentive effect, but vouchers are undoubtedly highly inflexible in some respects and this should help to ease some of the criticism.

As for the proposal to enable the Asylum Support Directorate to consider making a lump sum grant for certain items to those who have stayed in the system over six months, again I would very much support this. While it should be possible for most families to obtain clothing at reasonable prices from charity shops as you envisage, items such as children's shoes are more problematic and are costly if they have to be bought new. I fully agree, however, that we need to be careful that this does not become a perverse incentive to spin cases out.

Ps240504

Finally, the proposal to ensure the provision of emergency out of hours services to families with children arises, as you know, from exchanges between John Hutton and Mike O'Brien during the Committee Stage. As was discussed then, my Department's concern is that there should be no possibility of asylum children being left without essential living needs for a period, perhaps over the weekend or Bank Holiday, because it was outside the Asylum Support Directorate's (ASD) standard office hours. It was suggested that the ASD might contract either with the relevant Local Authorities (contracting with LAs rather than SSDs would give the LAs more flexibility in how they managed this) or with voluntary agencies, to ensure that this eventuality was covered. I am sure that this is essential if we are not to run counter to our obligations under the European Convention on Human Rights and the UN Convention on the Rights of the Child.

I therefore strongly support the proposed concessions.

I am copying this letter to the Prime Minister, Deputy Prime Minister, other Members of HS and LEG and to Richard Wilson.

FRANK DOBSON

Recd by fax -

TOR - DN
cc JPO
JJH
RR
PJ

Prime Minister

IMMIGRATION AND ASYLUM BILL : IND CASEWORKING

Summary

I am working closely with PLP colleagues on the Bill, emphasising positive elements on caseworking and other aspects and am meeting Labour Peers and the PLP on 24, 25 and 26 May. A detailed assessment of the course we will need to follow to achieve targets on caseworking will be available in the early part of June.

Detail

2. David North's letter of 10 May recorded your reaction to my minute of 7 May about the Immigration and Asylum Bill and IND caseworking.

3. Mike O'Brien and I will be spending a lot of time between now and Report Stage, likely to be on 15 and 16 June, on the handling of the Bill, particularly with our Parliamentary colleagues. I believe that the changes I summarised in my earlier minute will go a long way to taking the steam out of things. I have written to colleagues about the proposed concessions on asylum support, with an indication of the financial implications. I will be writing shortly on the statutory presumption of bail which will be a major concession. I will cover this ground, and will go over the philosophy and background of the Bill (on which there are still a good many misunderstandings) at meetings with the PLP Home Affairs Group, Labour Peers and the whole PLP on 24, 25 and 26 May respectively.

4. I fully recognise that the situation over caseworking is not comfortable. Nevertheless there are positive elements to the story, such as the Recovery Project and the gradual pick up in outputs to which I referred before. I cannot at this stage let you have a more detailed analysis of the course we will need to follow between now and April 2001, from when we have said we will be averaging two months in the Home Office for asylum decisions and four months in the LCD's appeal process. Mapping out this course will depend on further analysis, which is now in hand but which will not be available in the next week or two. I hope to have figures on which I can base an initial prognosis for future outputs available to me in the early part of June with luck in time for the Report Stage. But in discussion with Parliamentary colleagues I will make clear that we never said the introduction of the new asylum support arrangements was dependent on the achievement of this target. The White Paper made clear that the new support system was designed for introduction in April 2000, and the achievement of the target 12 months later in April 2001.

5. I will ensure you are kept informed of any material developments, including the outcome of my discussions with Labour Peers and the PLP.

6. I am sending a copy of this minute to Sir Richard Wilson.

Jack Straw

~~24~~ 25 May 1999

FROM THE DEPUTY PRIME MINISTER

Top-DN
CC JJN
BB
PJ

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
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TEL: 0171 890 3011
FAX: 0171 890 4399

Our Ref: IDC/98

The Rt Hon Jack Straw MP
Home Secretary
Home Office
50 Queen Anne's Gate
London SW1H 9AT

21 MAY 1999

Dear Jack

IMMIGRATION AND ASYLUM BILL: CIVIL PENALTY: THROUGH FREIGHT TRAINS

This letter gives you HS clearance to proceed as you proposed in your letter of 21 April, subject to the points raised by colleagues recorded below.

You explained that through freight trains from the continent were increasingly being targeted by illegal immigrants and their traffickers. The new civil penalty for transport of clandestine illegal immigrants introduced by the Bill did not presently extend to through freight trains. You proposed that the Bill should be amended to extend the civil penalty to such trains.

Replies were received from Margaret Beckett, John Reid and Geoff Hoon, all of whom were content, although John Reid made some points of which he wished you to take account.

John, writing as Minister of State, Department for the Environment, Transport and the Regions, said he would be happy, in principle, to see the scope of the penalty extended but the special circumstances of rail freight meant that any amendment must be workable and equitable. That would mean either establishing a tailor-made regime for rail freight, or at the very least extending the scope of the Bill but making it clear that it would not be enforced until a practical and workable regime had been agreed with the industry. Any amendment would need to take into account the peculiar operational circumstances of European rail freight: the main operator, English, Welsh &

Scottish International (EWSI) had no control over security at some of the European freight yards where illegal immigrants tended to secret themselves amongst the cargo. You had already said that the aim would be to place responsibility on owners, hirers and operators of rolling stock. He believed that the Bill should only be extended if it was possible to draft an amendment which would achieve that effect.

The Government should also think carefully before imposing extra regulatory burdens and costs on the companies concerned. He pointed out that whilst it might be reasonable to expect an owner-driver of a lorry to check that his cargo seals were still intact before getting on a ferry, a freight train might be over half a kilometre long. Even a few minutes delay to a freight train at Frethun freight yard could have serious implications for the rest of its journey. He, therefore, asked that your officials work closely with his on the drafting of the amendment. If an amendment was brought forward, the safeguards in the Bill and the Code of Practice should be extended to apply to through freight trains. However, a separate Code of Practice, specifically tailored to suit freight trains, might be more useful.

The Government was trying to encourage rail freight, including international rail freight, as part of the its integrated transport policy. Whilst rail freight usage was increasing, it was doing so after a long period of decline, and its renaissance was fragile. Therefore, careful thought would need to be given to presentation if the Bill was amended. It would also be important to ensure that the Government was seen to be working through its EU partners to help eliminate the problem at source.

I am copying this letter to the Prime Minister, members of HS and LEG and to Sir Richard Wilson and First Parliamentary Counsel.

JOHN PRESCOTT

Top – DN
cc MR
PJ

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
68 WHITEHALL LONDON SW1A 2AT

19 MAY 1999

Dear Jack,

ASYLUM AND IMMIGRATION BILL:
AMENDMENT TO S.2 OF THE ASYLUM AND IMMIGRATION ACT 1996

I have seen your letter of 10 May to John Prescott, seeking HS and LEG agreement to an amendment to the Bill to provide that in the context of transfers of asylum seekers under the Dublin Convention, EU Member States are to be regarded as safe third countries as a matter of law.

As you acknowledge, the amendments will be highly controversial, not least because they cut across Labour's policy in Opposition. But they seem unavoidable and I am prepared to agree to the amendments being made, provided you secure policy agreement, and that you send me a copy of your strategy for minimising and dealing with the controversy. I entirely agree with Margaret Jay's comments that you and Gareth Williams will need to do all you can before the Bill arrives in the Lords to ensure the Labour Peers present a united front in support of the policy. You will also need to make similar efforts in the Commons.

I am copying this letter to the Prime Minister, the Deputy Prime Minister, members of HS and LEG Committees, the Foreign Secretary, and to Sir Richard Wilson and First Parliamentary Counsel.

Regards

Margaret

MARGARET BECKETT

The Rt Hon Jack Straw MP
Home Secretary

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HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

18 MAY 1999

The Rt Hon The Lord Irvine of Lairg QC
Lord Chancellor
House of Lords
LONDON
SW1A 0PW

cc Sally Morgan & ptr.
Fine, as far as it goes,
but not the central issue!

DN
C; RR
PU

MW
19/5

Dear Derry.

ASYLUM AND IMMIGRATION BILL: AMENDMENT TO SECTION 2 OF THE ASYLUM AND IMMIGRATION ACT 1996

This letter sets out further explanation of the proposal, outlined in my letter of 10 May to John Prescott, to amend Section 2 of the Asylum and Immigration Act 1996.

I am grateful for your agreement to proceed with this proposal, indicated in your letter of 14 May to John Prescott.

I am sorry that my letter to John of 10 May did not respond in detail to the points raised in your minute to the Prime Minister of 20 April. I had hoped to speak with you before I wrote but in the event there was not time before I left for Bonn on 10 May. I did not want to delay the letter given the pressing timetable for introduction of the proposal.

... There is no perfect solution to the problems we are facing in implementing the Dublin Convention. I attach a letter from Hugh Giles of the Attorney General's Chambers, setting out the Law Officers' views on the proposal (and other options that we had been considering). It is my view that I can discharge the UK's obligations under the 1951 Convention when returning an asylum seeker to a Member State under the Dublin Convention by operating a statutory presumption to the effect that other Member States are to be deemed compliant with the 1951 Convention. I hope that I can persuade both Parliament and the Courts of this.

I accept that there is a risk that in some cases the courts may take the view that this is a rebuttable presumption. This is a point that is made also by the Law Officers. Nonetheless, it seems likely that such cases would be the exception rather than the rule given the clear steer which Parliament would have provided.

4941js

You raised the potential conflict between the proposal and the recent judgements of the courts in cases of Aitseguer and Gashi. I accept that these present some difficulties but I do not think they are insurmountable. As I indicated in my letter of 10 May to John Prescott, I intend to argue that these judgements are not inconsistent with our proposal – on the basis that we are now able to present more information about the French and German systems.

I was grateful for your alternative suggestion of changing the burden of proof in such cases. However, I do not consider that this would achieve a sufficient improvement. Firstly when the test "no real risk" was established in the Court of Appeal in *Canbolat* the Court commented that there might not be a significant difference with the test "no reasonable degree of likelihood". So such a test might not be interpreted by the courts as making much difference in practice. Secondly, such a change would imbed the existing principle that I should give detailed consideration to the risks in individual cases, which is of course something we are trying to steer away from. So the risks of legal challenge on the same scale as at present would remain.

I am copying this letter to the Prime Minister, the Foreign Secretary, members of HS and LEG and Sir Richard Wilson.

Yours ever,

Jack.

JACK STRAW

4941js

E

THE LEGAL SECRETARIAT TO THE LAW OFFICERS
ATTORNEY GENERAL'S CHAMBERS
9 BUCKINGHAM GATE
LONDON SW1E 6JP

General enquiries 0171-271 2400
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cc ADs

Harry Carter Esq
Legal Adviser's Branch
Home Office
50 Queen Anne's Gate
London SW1H 9AT

21 April 1999

Dear Harry,

IMMIGRATION AND ASYLUM BILL: AMENDMENT TO SECTION 2 OF THE INMMIGRATION AND ASYLUM ACT 1996

The Solicitor General and the Lord Advocate ("the Law Officers") have considered your letter of 7 April and I am writing with the agreement of Alex Gordon to record their views.

The Law Officers considered first the various options for dealing with the difficulties of removing asylum claimants to other Member States. The aim of the proposals is to reduce, or remove, the opportunities that an asylum-seeker has to seek judicial review of a decision to remove him to a safe third country under section 2 of the Asylum and Immigration Act 1996, while at the same time ensuring that the United Kingdom complies with its international obligations. While they would not entirely dismiss the proposals, the Law Officers agree with your analysis of the difficulties of each of the options at paragraphs 15 to 18 inclusive. In addition to the points that you make, the Law Officers note that incorporating the EU Joint Position could not affect the correct interpretation of who constitutes a refugee under the 1951 Convention.

The Law Officers considered whether the option outlined at paragraphs 19 to 24 inclusive offers a way forward. They note that amendments to domestic law cannot affect the United Kingdom's obligations under the 1951 Convention. If, therefore, the United Kingdom could, in certain circumstances, be in breach of the Convention by removing an asylum-seeker to a Member State (as the court held it would be in the case of *Aitsegeur*) then that possibility would remain after the proposed amendment to the legislation.

The Law Officers are not persuaded that there is a significant distinction to be drawn between a Member State adopting an approach that is in breach of the Convention and actually removing an asylum-seeker in breach of the Convention. The Law Officers believe that the United Kingdom may well be in breach of the Convention if it removes an asylum-seeker to a third country and there is a real risk of that country removing him in breach of the Convention.

Furthermore, the Law Officers consider that there must be a considerable doubt as to whether a court would refrain from intervening on a judicial review when, in its view, to remove someone to another Member State would place the United Kingdom in breach of its international obligations. For example, to remove an asylum-seeker to a third country which takes a narrower view than the United Kingdom of what constitutes a social group for the purposes of the 1951 Convention would be to place that individual in a less advantageous position than an individual whose substantive asylum application falls to be considered in the United Kingdom. In these circumstances, the Law Officers believe that a court might well seek to intervene notwithstanding the proposed amendment to the legislation.

The Law Officers, however, accept the difficulties that have been caused by these recent judgments. They also note that the proposed amendment would give effect to the objectives and functions of the Dublin Convention. The Law Officers remain concerned with the proposal both in terms of the United Kingdom's compliance with its international law obligations and in respect of whether it will actually achieve its objective. If, however, it is felt that there is a pressing need for an amendment to the legislation they agree that this option offers the best alternative yet identified.

The Law Officers next considered the options set out in paragraphs 25 to 27 of your letter in relation to the *Shah and Islam* case. They agree with your view that the first option, legislating to reverse the judgment of the House of Lords, would be a rather crude approach. They point out that Parliament would be legislating to ensure that the courts apply its own definition rather than the definition contained in the Convention. This, of course, would raise fundamental questions about the United Kingdom's compliance with its international obligations.

The Law Officers also do not consider the second option identified to be feasible. This would involve allowing the Secretary of State to interpret the Convention in a way which accords with the approach adopted by one or more Member State. The Law Officers agree that this would produce uncertainty and would be difficult to operate.

In conclusion, the Law Officers acknowledge the difficulty that has been caused to the Home Office by the case of *Shah and Islam* but they do not consider either of the suggested options to be viable.

I am copying this letter to Alex Gordon, Chris Whomersley and Edward Caldwell.

Yours,

Hugh

HUGH GILES

RESTRICTED - POLICY

FROM THE RT HON HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND HOUSING

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3000
FAX: 0171 890 4489

The Rt Hon John Prescott MP
Deputy Prime Minister and
Secretary of State for the Environment,
Transport and the Regions
Eland House
Bressenden Place
LONDON
SW1E 5DU

DW
cc: PJ.

OUR REF: IDC (99) 127

18 MAY 1999

Dear Deputy Prime Minister

REVIEW OF THE HABITUAL RESIDENCE TEST

I have seen a copy of Alistair Darling's letter of 4 May to Alan Milburn seeking agreement to his proposed reforms of the habitual residence test.

As you know, the habitual test applies not only to decisions on claims for social security benefits but also to decisions on applications to local authorities to join the housing register and for assistance under the homelessness legislation. I was therefore very interested to learn of the decision of the European Court in the Swaddling case and of Alistair's proposals for a package of minor adjustments to the operation of the test.

I very much welcome both developments, if they are likely to deliver a test which better targets 'benefit tourism' and removes difficulties for UK citizens and others who are returning to resume habitual residence here. I agree that the change imposed by the decision of the European Court should not be limited to European nationals only, but should apply to all claimants.

I note that Alistair estimates that, overall, these changes will cost the social security programme £10m per annum. There will also be some additional costs to local authorities in connection with claims for housing assistance and for housing benefit, although these costs should be very much smaller.

I support the proposed reforms, which, I think, would be welcomed by local government as improving fairness and simplifying the administrative process.

I am copying this letter to the Prime Minister, members of HS Committee and to Sir Richard Wilson.

Yours Sincerely,

Tom Woolley

PP HILARY ARMSTRONG
(Approved by the Minister
and signed in her absence)

File

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

18 May 1999

Dear Mara,

UNMARRIED PARTNERS CONCESSION

Thank you for your letter of 7 May, which provided an update on the question of amending the unmarried partners concession.

In view of the additional points you have made, the Prime Minister is now content to proceed with the proposal to reduce the prior co-habitation period to two years, and to introduce a two-year probationary period. However, he remains concerned about the fact that immigration issues are very sensitive at present, and will expect the announcement to be handled carefully, and not in a high-profile manner.

I am copying this letter to Sebastian Wood (Cabinet Office).

Yours ever,

David

DAVID NORTH

Mara Goldstein,
Home Office.

mel

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

18 MAY 1999

The Rt Hon John Reid MP
Secretary of State for Scotland
Dover House
Whitehall
LONDON
SW1A 2AU

P

DN

C: RR
PU

Dear John,

SUPPORT ARRANGEMENTS IN SCOTLAND FOR ASYLUM SEEKERS

This letter sets out how I would expect new Scottish Ministers to be involved if there were ever a need to invoke the power to direct a local authority to make available spare accommodation to house asylum seekers. It also addresses Donald Dewar's concerns about the financing of this.

I spoke to Donald last week about this, following my letter to him of 5 May, and I explained that the arrangements that we would need to put in place to ensure that Scottish Ministers had a proper say in when the power to direct authorities to make spare housing available would need to be a little more detailed than set out in my letter.

His essential concern was with the burden that the new support arrangements, and the consequent dispersal of asylum seekers might place on Scottish authorities. Given that the power to direct is very much a power of last resort, Scottish Ministers would not really be able to exert proper influence simply by placing a veto on any direction issued to an individual Scottish authority. But conversely, were it necessary to have recourse to such a power, it would need to be used within the context of overall policy on support for asylum seekers.

What I therefore suggested for Scotland is a rather different approach, along the following lines:

i) Both in consulting about, and in designating, a reception zone (the precursor to directing a local authority), the Home Secretary will set out the criteria to be used if it proves necessary to direct any authorities to provide accommodation; generally, the criteria will refer to the level of unused housing, and the suitability of the area for asylum seekers. Where a zone is to be in Scotland, these criteria may additionally include the need to spread the burden nationally across the United Kingdom; such an order may only be made following consultation with Scottish Ministers.

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ii) Before directing an English authority to provide housing stock the Home Secretary will assure himself that the specific criteria set out in a reception zone designation are met; in doing this he would clearly want to take the views of DETR Ministers who have the responsibility for housing. In Scotland, it will be for Scottish Ministers to do this; hence their agreement to the direction is required, but only within the specific limits set out in the order.

Donald also raised the question of how the cost of supporting asylum seekers would be met in Scotland. Generally the direct costs of providing accommodation will be the subject of a contract between the Home Office and the local authority. We would expect the local authority will make proper re-imbursement a condition of contract. Where the power to direct is invoked, the Bill (as amended in Committee) requires regulations to be made setting out the basis on which reimbursement is to be calculated; I would expect this to be the rent that would otherwise be payable, were the property to be let by the authority to someone on its waiting list in the normal way.

Beyond this, asylum seekers will draw on local authority services in the same way as other members of the population of the area. In general, for England and Wales, revenue support grant paid from central to local government follows population. So when (for example) some 20 000 asylum seekers move from the handful of London boroughs that are accommodating them at the moment to a larger number of authorities in the north of England, the "relevant population" of the former areas will decline, and those of the latter will increase. And albeit with a time lag for data collection, Standard Spending Assessments will follow accordingly. I am not aware that there are any in built in mechanisms that would automatically make a corresponding adjustment for population movements between England and Scotland. If you feel the numbers involved are sufficient to merit consideration, the logic would be for you to discuss with Alun Milburn and John Prescott how local government finance settlement totals might be adjusted to reflect this. This would have to be predicated by decisions on how many asylum seekers might be housed in Scotland.

I am copying this letter to the Prime Minister, to members of HS, to Donald Dewar, and to Sir Richard Wilson.

Yours sincerely,

Jack.

JACK STRAW

4911js

DEPARTMENT OF HEALTH

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

f

DN
~~E:OB~~
PD

The Rt Hon Alistair Darling MP
Secretary of State
Department of Social Security
Richmond House
79 Whitehall
London
SW1A 2NS

17 May 1999

Dear Alistair

REVIEW OF THE HABITUAL RESIDENCE TEST

I have seen your letter of 4 May to Alan Milburn in which you seek agreement to proposed reforms of the habitual residence test.

I can confirm that I am content for you to proceed as you suggest.

I am copying this letter to the Prime Minister, HS colleagues and to Sir Richard Wilson

FRANK DOBSON

Ps130505

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
68 WHITEHALL LONDON SW1A 2AT

f

17 MAY 1999

DN
C: 08
LPU

Dear Rod,

REVIEW OF THE HABITUAL RESIDENCE TEST

The President of the Council was grateful for her copy of your Secretary of State's letter of 4 May to the Chief Secretary (received here on 12 May).

Mrs Beckett fully supports the reforms which your Secretary of State proposes to make to the habitual residence test, but believes that the presentation of these changes will require very careful handling. On balance, she feels that it would therefore be better not to make the announcement during the gap between periods of election purdah.

I am copying this letter to Private Secretaries to the Prime Minister, members of HS and to Sebastian Wood.

Yours,

Helen Edwards

Helen Edwards
Private Secretary

Rod Clark
PPS/Secretary of State for Social Security
DSS
Richmond House
79 Whitehall
London SW1A 2NS

Top: DN
cc: RR
PJ

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

17 MAY 1999

The Rt Hon Alan Milburn MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1P 3AG

Dear Alan,

IMMIGRATION AND ASYLUM BILL: ASYLUM SEEKERS SUPPORT

We have come under strong pressure both in committee and outside on our asylum support proposals. I am quite clear that it is necessary to proceed with these proposals. They achieve the twin objectives, on the one hand of ensuring that we fully discharge our responsibilities for genuine asylum seekers, but on the other hand are an effective deterrent to those who seek to abuse the system.

But the Bill is facing a lot of opposition. There is a risk of rebellion, and losing key policies, particularly in the Lords. That could prove very expensive. As you know, the measures in the Bill, and in particular the new support arrangements are intended to have a disincentive effect which could save £140 million a year.

There are a few issues on which our own supporters are extremely concerned. I am considering the scope for some movement on appeal rights for overstayers and a statutory presumption of bail, on which concerns have been expressed. But the main pressure has been on asylum support where I think a few concessions can be made which do no violence to our overall policy, but could significantly improve scope for handling the Bill. These, together with the financial implications are set out below. I would be grateful for replies by 28 May, in preparation for Report Stage.

This letter also addresses the question posed by the Prime Minister in the last paragraph of David North's letter of 10 May.

First, I propose that all asylum seekers should receive £10 per week of their overall non-accommodation financial provision in cash and the remainder in vouchers. The Information Document which we issued earlier indicated that

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adults and children under 3 years old would receive £7 per week and children aged 3-16 would receive £3.50 per week. This has come in for strong criticism and has attracted the argument that children will "only get 50 pence a day". In fact, of course, a family of four with two adults and two children would receive £90.80 per week of which £21 would be in cash. However, I do recognise that however extensive we make the voucher scheme there are likely to be a number of items which cannot be purchased (the most obvious example is bus fares) where more cash is needed. I therefore propose that the cash amounts for adults and children should be increased to £10 per week with a commensurate reduction in the voucher provision so that the overall financial amount remains the same.

This change is bound to have some impact on the pull factor. This is impossible to estimate but I believe it will be very marginal, and certainly very much less than if all support costs were paid in cash. I estimate that if 100 additional asylum seekers were to come here as a result, that would cost an additional £1 million.

I do, however, remain strongly of the view that it would not be appropriate to pay all of the financial provision in cash. That would, in my view, diminish our argument that we are setting up a scheme which will be a strong disincentive to economic migrants.

Secondly, I propose that in the event that asylum seekers remain in the asylum support system for a specified period, perhaps six months, there should be scope for the Asylum Support Directorate to consider making a discretionary grant for specific items where there is strong case to do so. We would need to set the rules so as to ensure there was no incentive to spin out a case. As you know, our plan is that by April 2001 initial decisions will be made on asylum cases in two months and any subsequent appeal will be dealt with in a further four months. But there are inevitably going to be some cases where asylum seekers will stay in the system beyond six months, particularly in the year from April 2000-April 2001. There may be circumstances in which asylum seekers would need to spend a little more than their weekly financial provision would allow on some replacement items, and in particular on clothes. While I would expect that clothing could normally be purchased at reasonable prices from the charity shops, I think some scope for a discretionary grant would be helpful.

If by April 2000 we are taking decisions in under 6 months, but most appeals stretch beyond then, a discretionary grant is likely to be taken up by all those (about 70%) who receive a first negative decision. If the grant were set at £50 per person (including each dependant) then the total cost for 25,000 asylum seekers would be £1.6 million. But we would expect these costs to reduce significantly in future years as we achieve our target times of two and six months.

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Thirdly, I am concerned that we are vulnerable to the charge of failing to meet the needs of children. Some of our backbenchers are very concerned that the asylum support proposals will remove some of the Children Act obligations in relation to children of asylum seekers. That is not the case. The only change which we are contemplating to the Children Act (in Clause 99 of the Bill) is to remove the obligation from local authority social services departments to support families with children who would otherwise be destitute where they can receive support under the new asylum support scheme. We are, therefore, lifting an obligation which would otherwise fall on local authority social services departments, and is the provision under which they currently support asylum seeker families, because equivalent provision is made in the Asylum Support Directorate. Mike O'Brien indicated in committee that the Asylum Support Directorate was contemplating contracting with local authority social services departments and voluntary organisations to provide "out of hours" support in emergencies. I am thinking of circumstances in which situations may arise whereby a family loses vouchers or has them stolen and there is no ability to obtain essential needs for children. Under those circumstances, I would envisage that asylum seekers could approach a nominated local contact point for emergency support pending the arrival of the next set of vouchers and cash. This will not need a change to the Bill, but it will mean that some local authority social services departments may be under contract to the new Asylum Support Directorate to provide this service.

The cost of the concession on contracting with social services departments and voluntary organisations is difficult to estimate in advance of any tender. We would expect to contract with, say, one local authority social services department per cluster area, to be ready to provide emergency support in certain prescribed circumstances. This could be in the form of a "retainer" plus reimbursement of actual costs of emergency support plus associated administration. For the moment we can only estimate that 10 such contracts at, say, £100k per year would cost £1 million.

I should be grateful if you could indicate that you are content with these proposals which I consider the minimum necessary to maintain the confidence of our supporters, and to agree that the costs be added to the asylum costs model. This would marginally increase the costs of asylum support over the CSR period and I would be grateful if this could be taken into account if we need to revisit the budget, on the terms agreed during the CSR, without either reopening the rest of the Home Office CSR settlement, or penalising me in terms of end year flexibility.

I am copying this letter to the Prime Minister, Deputy Prime Minister, other members of HS and LEG and to Sir Richard Wilson.

Yours ever

Jack.

JACK STRAW

4876js

Top: DM
cc: RR
JM
PJ

FROM THE LEADER OF THE HOUSE

HOUSE OF LORDS

14 May 1999

The Rt Hon John Prescott Esq MP
Deputy Prime Minister and
Secretary of State
Department for the Environment,
Transport and the Regions
6th Floor
Eland House
Bressenden Place
London SW1E 5DU

Dear Deputy Prime Minister,

ASYLUM AND IMMIGRATION BILL: AMENDMENT TO SECTION 2 OF THE ASYLUM AND IMMIGRATION ACT 1996: HOUSE OF LORDS JUDGEMENT IN SHAH AND ISLAM

I am writing in response to Jack Straw's letter to you of 10 May in which he seeks agreement to a modified proposal to amend Section 2 of the Asylum and Immigration Act 1996.

Amendments to the Bill appear inevitable given recent court cases. I would be very grateful if Jack would do everything in his power to brief Peers, and in particular Labour Peers, on the need for these amendments at this time. The treatment of asylum seekers has always been a "Lords issue". There are already stirrings within the Labour Peers group about this Bill and it is important that Jack and Gareth Williams do everything they can when the Bill arrives in the Lords to ensure that the Labour Peers take a united front in support of our policy. I am sure that this will be possible to arrange.

I am copying this letter to the Prime Minister, the Foreign Secretary, to members of HS and LEG; and to Sir Richard Wilson.

Yours sincerely,

PP **THE RT HON THE BARONESS JAY OF PADDINGTON**
(Approved by the Minister and signed in her absence)

(F)

From: Liz Lloyd
Date: 14 May 1999

Prime Minister

cc: Sally Morgan
David North
David Miliband
Alastair Campbell

Immigration for couples who cannot marry

Under the rules that we introduced in 1997, couples who cannot marry (both heterosexual and homosexual) have to show that they have been living together as a couple for 4 years. They then have to stay together for a further year

You will remember that Mike O'Brien was keen to shorten this to 2 years with an extended 2 year probationary period.

When asked about this you indicated that you would prefer to stick with the 4 year time limit in order not to re-open the whole question of gay immigration.

However, the context has changed somewhat, given that it is now common knowledge in the gay community (including PLP and Lords) that No 10 is blocking Mike. Chris Smith, Michael Cashman and Waheed to name a few have been in touch about it. People seem to be getting quite wound up. I am under the impression that Mike had virtually agreed 2 years with Stonewall which does, unfortunately, alter the situation.

In addition Mike has not signed any deportation orders on those whose claims between 2 and 4 years have been rejected. If we continue to stick to the four year rule deportations will begin very soon, and cause further commotion and public debate.

The Home Office's main argument for change is that we will come under ECHR pressure to change to 2 years. That means we will deport people now, who should not really be deported. Their argument is not particularly strong as the Law officers' believe that we have a fair chance of defending 4 years.

However, it is true that 4 years is an arbitrary figure, and that it is very hard for some people to stay together for that long because their visas are often for

only 2 or 3 years - e.g. if they are in England on a visitor's visa. Many London MPs have cited to me pretty moving stories of people about to be torn apart.

Moving to 2 years would be noticed by the press. But if we emphasise the increase in the probationary term the total is still four years and the numbers involved are not great - 50 to 100 a year.

Jack Straw has written again to back Mike (attached). Are you content to agree to the 2 year limit, or do you want to brazen it out and face the wrath of Stonewall etc.

let us agree but brazen it really! Liz

FROM THE DEPUTY PRIME MINISTER

Top. DN
cc: OB
RR
PJ

(F)

DETR
ENVIRONMENT
TRANSPORT
REGIONS

DEPARTMENT OF THE ENVIRONMENT,
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 0171 890 3011
FAX: 0171 890 4399

Our Ref: IDC/118

The Rt Hon The Lord Irvine of Lairg
Lord Chancellor
Lord Chancellor's Department
House of Lords
London SW1A OPW

14 MAY 1999

IMMIGRATION AND ASYLUM BILL - IMMIGRATION APPEAL TRIBUNAL LAY MEMBERSHIP

This letter gives you HS and LEG approval to the proposals in your letter of 29 April, subject to the points made by colleagues recorded below.

In your letter, you proposed to amend the Bill to restore your power to appoint lay members to sit in unsuitable cases. You explained that this change was primarily due to the evidence taken at the Special Standing Committee on the Immigration and Asylum Bill. Evidence received from the members of the Immigration Appellate Authority suggested that restricting membership to those with legal qualifications was likely to lead to a loss of public confidence in the Tribunal because it would reduce representation from women and ethnic minorities, and exclude valuable experience and expertise. Secondly, the presumption that most appeals would be heard in private and on the papers would give rise to difficulties, because oral hearings were needed to deal with mistakes of fact or the credibility of witnesses. You had therefore reconsidered your proposed changes to Tribunal membership and composition.

A reply was received from Jack Straw who was content. He said that your proposal that determinations in appeals to a Tribunal with lay members would be written by legally qualified chairman without reference to the lay members was particularly important. The measure would be vital in ensuring that determinations were promulgated quickly so that the overall six months time limit for dealing with application and appeals was maintained.

I am copying this letter to the Prime Minister, members of HS and LEG and to Sir Richard Wilson.

JOHN PRESCOTT

FLOAT
638570

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

DN
CC: BH
PJ

HOUSE OF LORDS,
LONDON SW1A 0PW

14 May 1999

The Rt. Hon. John Prescott MP
Deputy Prime Minister and Secretary of State for
the Environment, Transport and the Regions
6th Floor, Eland House
Bresenden Place
London SW1E 5DU

Dear John

LEGAL AID BOARD REPORT ON CONTRACTING OF IMMIGRATION WORK

The purpose of this letter is to advise that publication of the Legal Aid Board report "Exclusive Contracting: Access to Quality Services in the Immigration Category" has been brought forward to 18 May. I do not require responses to this letter.

I wrote on 6 May informing you that the Legal Aid Board's report on exclusive contracting for legal aid immigration and asylum work would be published by the Board in the week commencing 24 May. I attach a copy of my letter for reference.

It is necessary to bring publication forward to 18 May to avoid a clash with the planned publication of the Community Legal Service consultation paper on 25 May. That paper has been expected for some time and PQs are scheduled for that date to announce publication.

I will be seeking collective agreement to the Government response to the Board's report, and intend to respond before the summer. As a holding position, I propose to say that the Government welcomes the report and will be considering the recommendations alongside the wider reforms proposed in the Immigration and Asylum Bill.

I am copying this letter to the Prime Minister, other members of HS and Sir Richard Wilson.

Yours ever,
Derry

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

6 May 1999

The Rt. Hon. John Prescott MP
Deputy Prime Minister and Secretary of State for
the Environment, Transport and the Regions
6th Floor, Eland House
Bresenden Place
London SW1E 5DU

Dear John,

LEGAL AID BOARD REPORT ON CONTRACTING OF IMMIGRATION WORK

The purpose of this letter is to advise that the Legal Aid Board will be publishing their report "Exclusive Contracting: Access to Quality Services in the Immigration Category" in May. In due course I will be consulting you separately on the merits of the report and the Government's response. I do not invite responses to this letter.

I enclose a copy of the Legal Aid Board's report on exclusive contracting for legal aid work on immigration. The report will be published by the Board in the week commencing 24 May. I asked the Board to provide the report in my response to their "Reforming the Civil Advice and Assistance Scheme" report in October last year.

The broad thrust of the report is as follows:

(i) The Board proposes to tackle the problem of abuse of the legal aid scheme by incompetent and unscrupulous immigration advisers primarily through exclusive contracting with franchised providers.

(ii) The impact of exclusive contracting will be to reduce the number of suppliers substantially. At present less than a third of publicly funded immigration work by value is carried out by franchised suppliers.

(iii) The overall shortfall in help that this contraction in supply entails does not mean that there will be the same shortfall in help for those with a genuine need, as a large amount of expenditure is currently wasted on weak cases and inefficient and even fraudulent practices.

(iv) The potential shortfall in supply may be made up in a number of ways including: offering preferential pay arrangements to franchised firms who are willing to expand; using "second tier" advice services of those experienced in the field to provide training, consultancy, and a

support network for less experienced front-line advisers; and contracting with voluntary agencies who are able to provide a nationwide service.

(v) The efficiency of supply would be improved by allowing for representation before the Adjudicators and the Appeals Tribunal, and the longer term possibility of the funding of the IAS and RLC being transferred to the Lord Chancellor from the Home Office.

I will be considering these proposals and seeking collective agreement for the Government response to the report. As a holding position, I propose to say that the Government is considering the report alongside the wider reforms proposed in the Immigration and Asylum Bill. It is not necessary to delay the report until we are ready to respond, as the report is the work of an independent body and we are not bound by its recommendations. Further, practitioners have been expecting the report for some time and any delay may be interpreted as an attempt by the Government to influence the report, which we must avoid, particularly during the passage of the Access to Justice Bill through Parliament.

I am copying this letter to the Prime Minister, other members of HS and Sir Richard Wilson.

Yours ever,

Derry

Top - DN
agree

(F)

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

13 MAY 1999

Your Ref: DL/132/279/7

The Rt Hon The Lord Irvine of Lairg QC
Lord Chancellor
House of Lords
LONDON
SW1A 0PW

Dear Derry,

OFFICE OF IMMIGRATION ADJUDICATOR

I support your proposal to take discretionary powers in the Immigration and Asylum Bill to appoint a Deputy Chief Adjudicator and Regional Adjudicators; and to remove the current arrangements for the designation of Special Adjudicators.

Thank you for your letter of 7 May.

I have noted your comments that a discretionary power to appoint a Deputy Chief Adjudicator and Regional Adjudicators will be largely presentational but I share your view that such a measure would be useful in increasing the confidence of the judiciary within the immigration and asylum appeals jurisdiction.

Given the shift in the balance of appeals work in recent years and the fact that recently appointed Adjudicators have been designated as Special Adjudicators on appointment there seems to be little point in continuing with the current arrangements for the designation of Special Adjudicators.

I am copying this letter to the Prime Minister, Ministers of HS Committee and Sir Richard Wilson.

Yours ever,

Jack.

JACK STRAW

4825-JS