



House of Commons  
Committee of Public Accounts

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# Improving the speed and quality of asylum decisions

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**Fourth Report of  
Session 2004–05**

*Report, together with formal minutes,  
oral and written evidence*

*Ordered by The House of Commons  
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## The Committee of Public Accounts

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The following was also a member of the Committee during the period of this inquiry.

Ms Ruth Kelly MP (*Labour, Bolton West*)

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Powers of the Committee of Public Accounts are set out in House of Commons Standing Orders, principally in SO No 148. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pac>. A list of Reports of the Committee in the present Session is at the back of this volume.

### Committee staff

The current staff of the Committee is Nick Wright (Clerk), Christine Randall (Committee Assistant), Leslie Young (Committee Assistant), Ronnie Jefferson (Secretary), and Luke Robinson (Media Officer).

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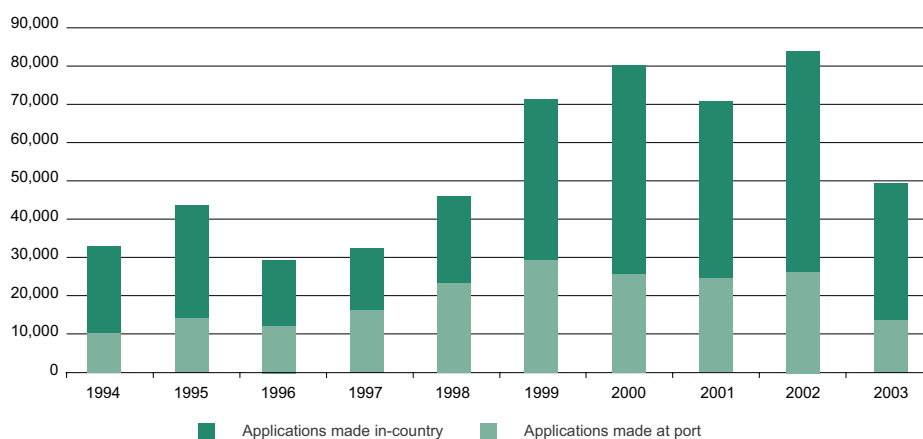
# Summary

## Introduction

Over recent years the number of asylum applications made in the United Kingdom has fluctuated significantly, with a peak of 84,130 applications in 2002 (**Figure 1**). Since 2002, the number of applications has fallen steadily with 49,370 applying for asylum in 2003 and further reductions since. The Home Office has had difficulty matching its handling capacity to the volume of new applications, resulting in large backlogs. At its peak in 1999, the number of applications outstanding in the system stood at 129,000. By December 2003, the number of applications outstanding stood at 63,700, comprising 24,500 undecided applications, 12,000 appeals lodged with the Directorate but not yet lodged with the Appellate Authority and 27,200 in the appeal system.

**Figure 1: Asylum applications in the United Kingdom, 1994–2003**

Asylum applications in 2003 fell significantly below the high levels of 1999–2002



Source: National Audit Office analysis of Home Office asylum statistics

The Home Office's Immigration and Nationality Directorate's objective is to process applications efficiently, focusing the asylum system on those genuinely fleeing persecution by taking speedy, high quality decisions. They are also responsible for supporting applicants during the process. Speedy initial decisions, and decisions on any subsequent appeals, reduce the cost of the asylum process, mainly through reductions in support and accommodation costs, and allow the Directorate to take action to remove those applicants who fail to gain asylum or short-term protection.

Applicants may be granted asylum which allows them to "settle" in the United Kingdom with no restrictions on the time they are permitted to stay, or be granted short-term protection for a limited period, or have their application refused. Applicants who are refused asylum have a right to appeal against the Directorate's decision. Appeals are heard by independent adjudicators who are members of the judiciary. The adjudicators are supported by the Immigration Appellate Authority which is part of the Tribunals Group within the Department for Constitutional Affairs.

The Directorate spent £1.86 billion on its operations in 2002–03, including £1.07 billion in supporting asylum applicants. In the same year, the Immigration Appellate Authority spent £101 million on dealing with appeals from immigration and asylum cases.

This Committee last reported on the work of the Immigration and Nationality Directorate in 2000.<sup>1</sup> In its Report the Committee found that continuing backlogs within the Directorate had caused enormous personal distress to applicants. The problems had been exacerbated by inadequate contingency planning when the introduction of new software did not work as expected.

On the basis of a Report by the Comptroller and Auditor General,<sup>2</sup> we examined the Home Office, and the Department for Constitutional Affairs on their effectiveness in tackling the influx of asylum applications; and whether there was scope to improve the timeliness and quality of decision making.

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1 7<sup>th</sup> Report from the Committee of Public Accounts, *Home Office: The Immigration and Nationality Directorate's Casework Programme* (HC 130, Session 1999–2000)

2 C&AG's Report, *Improving the speed and quality of asylum decisions* (HC 535, Session 2003–04)

# Conclusions and recommendations

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## Part 1: Matching decision-making capacity to the number of applications

1. **Departments should compare the additional administrative costs of resourcing to meet surges in demand, with the additional programme and other costs which will arise if backlogs are allowed to accumulate.** The National Audit Office estimated that up to £500 million might have been saved if the Home Office had been able to put in place sufficient staff and infrastructure to meet the significant rise in asylum applications in 1999 and 2000. Instead, backlogs of applications accumulated, increasing support and accommodation costs paid to the applicants and their families while decisions were awaited, and making the removal of unsuccessful claimants more difficult.
2. **Departments also need to consider the end to end impact on delivery chains of tackling major shifts in demand for services.** The Home Office's decision to move caseworkers from deciding applications to work on removing failed asylum seekers helped to increase the number of removals, but impacted adversely on the clearance of the application backlog. While some £50 million was saved by increasing removals, the National Audit Office estimated that the impact on the backlog of applications may have cost some £200 million of the overall £500 million potential savings forgone.
3. **The Treasury should be sensitive to the risk of administrative cost limits inhibiting timely action to save programme expenditure,** especially where the costs fall on one Department and the potential savings on another. There may be an "invest to save" case to avoid significant backlogs accumulating at points in the delivery chain, increasing programme costs because administrative costs are capped.

## Part 2: Improving the timeliness of decision making

4. **The Department should look to expand its fast track procedures, drawing on its experiences at Harmondsworth and Oakington and on those of other countries such as the Netherlands.** At Harmondsworth, the initial decision and appeal stages currently take three and four days respectively. In the Netherlands, some 40% of asylum applications are handled through fast track processes taking around 7 working days, whereas only 9% of cases are fast tracked in the United Kingdom.
5. **The Department for Constitutional Affairs should consider whether a more demanding joint target could be set to improve the Appellate Authority's speed in handling appeals,** and hence reducing costs for the taxpayer in supporting asylum seekers until their appeal is determined. The Directorate and Appellate Authority had a joint target for 2003–04 to clear 60% of all applications within six months. Almost half of all applications, however, did not proceed to the appeal stage and therefore only a small proportion needed to be cleared quickly through the appeal stage for the target to be met.
6. **Cases not dealt with through the fast track process have a target of 61 days for a decision even though on average a caseworker spends only some nine hours on**

**the case to reach a decision.** Whilst recognising that applicants need time to prepare their case, the Home Office should seek to shorten elapsed times by reducing the time taken to fix an interview and despatch decisions, and by drawing on processes employed in its fast track centres.

### Part 3: Improving the quality of decision making

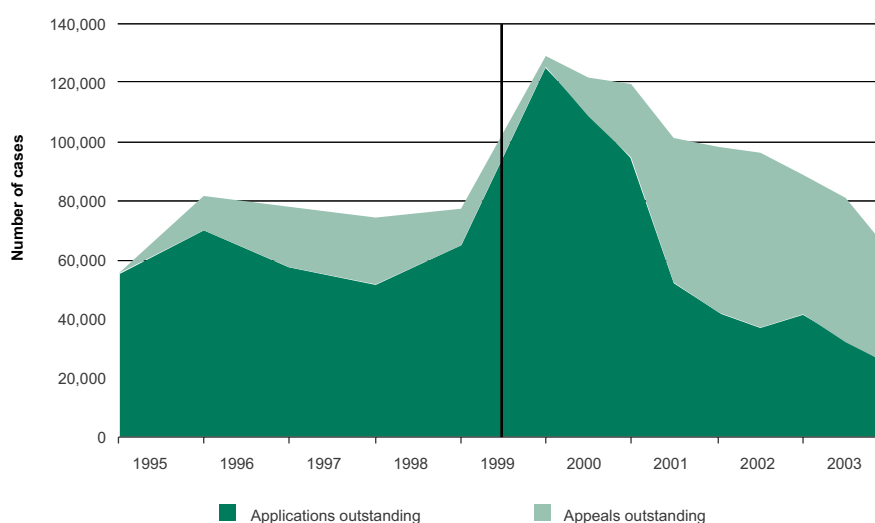
7. **Over the last five years, the proportion of appeals allowed has consistently exceeded the Directorate's target of 15%,** and has frequently exceeded 20%. The appeals allowed rate has also varied significantly for applicants from different countries. The Directorate should examine why appeals are upheld, particularly amongst nationalities where appeal allowed rates are highest, and disseminate the lessons for improved decision-making to its caseworkers.
8. **In 2003, applications for asylum were received from some 146 different nationalities, placing a significant burden on caseworkers in understanding the country circumstances,** especially as these can be localised within a particular country. The Home Office should expand, beyond more senior staff, the number of caseworkers with expertise on particular countries or regions of the world to improve the quality and consistency of its decision-making.
9. **The cost of legal aid for asylum applicants in the United Kingdom is expected to be £146 million in 2004–05, and accounts for example for 30% of the cost of the initial decision stage.** The Department for Constitutional Affairs reported that it had not compared the cost of legal aid with that of other countries. It should act to fill this gap in its knowledge.
10. **The Directorate has put in place procedures to detect possible multiple applications, but has not always acted promptly to investigate concerns raised by third parties about potentially fraudulent claims.** Amongst a sample of 65 backlog cases examined by the National Audit Office, four contained evidence from third parties that the claims could be fraudulent but no action had been taken. There should be a clear contact point within the Directorate for whistleblowers and for following up information received, and robust procedures for acting upon likely cases of fraud.

# 1 Matching decision-making capacity to the number of applications

1. The number of people seeking asylum in the United Kingdom stood at the highest recorded levels between 1999 and 2002, before almost halving in 2003. The high levels of applications led to a large backlog of cases awaiting an initial decision and subsequently to an increasing volume of appeals. At its peak, in 1999, the number of applications outstanding in the system stood at 129,000 (Figure 2). At the time of our previous examination, in 2000, the Home Office had been unable to predict when the backlogs of applications would be cleared, and the backlogs have persisted. In June 2004, however, the Directorate forecast that the number of applications outstanding at the initial stage would be reduced to “work-in-progress” levels by the end of 2004. The Appellate Authority’s forecast for its work-in-progress at the end of 2004 was for between 24,000 and 27,000 cases.<sup>3</sup>

**Figure 2: Undecided asylum applications and appeals, 1995–2003**

The backlog of asylum applications and appeals peaked in 1999 at 129,000 cases, and stood at over 60,000 cases in December 2003



## Notes

1. **Applications outstanding** includes some cases that were being worked. It excludes secondary casework such as the Directorate’s reconsideration of flawed initial decisions. Numbers of applications outstanding before 2000 are not directly comparable with later years because methods of collecting data were less reliable in earlier years.
2. **Appeals outstanding** includes some appeals that have been listed for hearing or heard but not decided. The backlog of appeals prior to 2000 may be under-stated owing to incomplete information at the Directorate.

Source: National Audit Office analysis of Home Office asylum statistics

3 7<sup>th</sup> Report from the Committee of Public Accounts, *Home Office: The Immigration and Nationality Directorate’s Casework Programme* (HC 130, Session 1999–2000), para 6(i); C&AG’s Report, para 3.4, Figures 3 and 14

2. Applicants are not usually allowed to work while they are awaiting a decision on their claim but they can apply for financial support and accommodation while their case is considered. In 2002–03 the average cost of processing an application at the initial decision stage, including support costs, was estimated as £3,380, and the average cost of an appeal to adjudication stage was estimated at £4,520. Cases can become more complex to resolve the longer they are in the system. For example the applicants' dependants may arrive, and the political situation in the country of origin may alter. If subsequently refused asylum, it becomes more difficult for the applicants to leave and for the Directorate to remove them.<sup>4</sup>

3. The National Audit Office estimated that around £500 million, mainly support and accommodation costs, could have been saved if sufficient capacity had been in place in 1999 and 2000 to maintain outstanding applications at work-in-progress levels, although they also recognised the practical issues to be overcome in deploying sufficient staff and infrastructure. The Home Office acknowledged that it had not anticipated the rise in applications in 1999 and 2000, and that it did not have sufficient trained personnel available. This situation had been exacerbated by the failed implementation of a new computer system considered in our earlier report.<sup>5</sup> The Directorate had increased the number of caseworkers from 355 in August 2000 to 769 in February 2001, and the Appellate Authority had increased court room capacity and the number of adjudicators. The Home Office was now working with the Foreign Office and the Department for Constitutional Affairs to better predict the volume of applications likely to be received from different countries and to take action to anticipate these changes. The Department for Constitutional Affairs also believed that more effective planning systems were now in place.<sup>6</sup>

4. Having increased the number of caseworkers dealing with applications to 769 in February 2001, the Directorate then decided to redeploy some staff working on applications to removing failed applicants. The National Audit Office estimated that had the staff been left in place for a further six months, the backlog at the initial stage would have been almost cleared and estimated costs of around £200 million (part of, not additional to the £500 million) could have been avoided. The caseworkers would then have been available for redeployment. The Home Office considered that the obligation to support families up to the point of removal would have reduced such savings. The Directorate also estimated that approximately £50 million had been saved on asylum support costs by increasing the number of family removals as a result of the redeployment of the staff and that further savings may have arisen from deterring unfounded applications as a result.<sup>7</sup>

5. The Directorate has continuing commitments under fixed-term contracts agreed with landlords to pay for accommodation for asylum seekers despite reductions in the numbers. As the number of applicants has fallen, homes previously used to accommodate asylum applicants have fallen empty. The Home Office explained that to avoid paying spot market prices for accommodation, it had signed longer term contracts. The reduction in asylum

4 C&AG's Report, paras 7, 3.10

5 7<sup>th</sup> Report from the Committee of Public Accounts, *Home Office: The Immigration and Nationality Directorate's Casework Programme* (HC 130, Session 1999–2000)

6 Qq 14, 17, 27, 44–47, 145; C&AG's Report, para 3.8 and Appendix 5

7 Qq 12, 14, 86; Ev 18; C&AG's Report, para 3.9 and Appendix 5

intake and backlogs had, however, occurred more quickly than it had expected, and it was now renegotiating the contracts to help reduce costs.<sup>8</sup>

6. The Directorate and Appellate Authority are now dealing with a rise in the number of people seeking to renew their permission for short-term protection. Short-term protection is granted for a limited period of time to those unsuccessful asylum applicants who have a need for international protection or have other compelling reasons for not being removed. Until 2003, applicants gaining protection were often granted four years Exceptional Leave to Remain after which they would, upon application, usually be granted indefinite leave to remain. Since April 2003, the Directorate's normal policy had been to grant initial protection for no more than three years and to grant further leave (whether limited or indefinite) only where an applicant still qualified for such leave at the time of their subsequent application. The Directorate recognised that the change in policy would place new demands on its own resources and on the appeal process. Three teams of case workers were processing such applications and this number would be doubled. Less pressure from new asylum applications would enable it to manage the additional workload.<sup>9</sup>

7. The Directorate had sought to expand its removal capacity to deal with the number of failed applicants coming through the system. The number of removals increased from around 7,500 in 1999 to 17,000 in 2003. The Home Office acknowledged, however, that the number removed was significantly lower than the number refused asylum. Some countries of origin were reluctant to provide the necessary documentation to enable failed applicants to return and some applicants concealed their real identity. The Directorate had opened discussions with a number of countries to improve the arrangements for obtaining documentation. Failed applicants might also access services to which they are no longer entitled, for example education services, and therefore had less of an incentive to leave voluntarily.<sup>10</sup>

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8 Qq 32–33

9 Qq 50–56; C&AG's Report, para 1.9

10 Qq 48, 78–80, 86, 136–137

## 2 Improving the timeliness of decision making

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8. The main elements of the Directorate's decision-making process are described in the box below.

### **Main stages in the decision-making process<sup>11</sup>**

#### Initial decision stage

Applications for asylum may be considered by the Directorate's offices in either Croydon or Liverpool, or routed via one of the Directorate's fast track routes at Harmondsworth or Oakington. For applications not routed via one of the fast track routes, the main stages in the decision-making process include:

*Screening interview.* Applicants for asylum are required by law to make their applications in person at their port of entry or at one of the offices of the Immigration and Nationality Directorate. The Directorate then screens the applicants. The aim of the screening interview is to obtain personal information, to provide information to the applicant, to decide whether to provide support, and to obtain information to assist the decision making process.

*Submission of evidence.* The applicant is required to submit a Statement of Evidence Form within 10 working days of their screening interview. Some applicants choose to submit medical evidence as part of their claims.

*Substantive interview.* The applicant is usually interviewed by a caseworker at the Directorate's offices in either Croydon, Liverpool, Harmondsworth or Oakington. The aim of the interview is to verify the evidence already submitted, gather any other facts and address any outstanding questions.

*Decision.* The decision on the application is taken by a caseworker.

#### Appeal stages

Applicants who are refused asylum have a right to appeal against the Directorate's decision. For some applications, the appeal process can involve a number of consecutive stages, starting with a hearing before an adjudicator with recourse to the higher courts for a minority of cases.

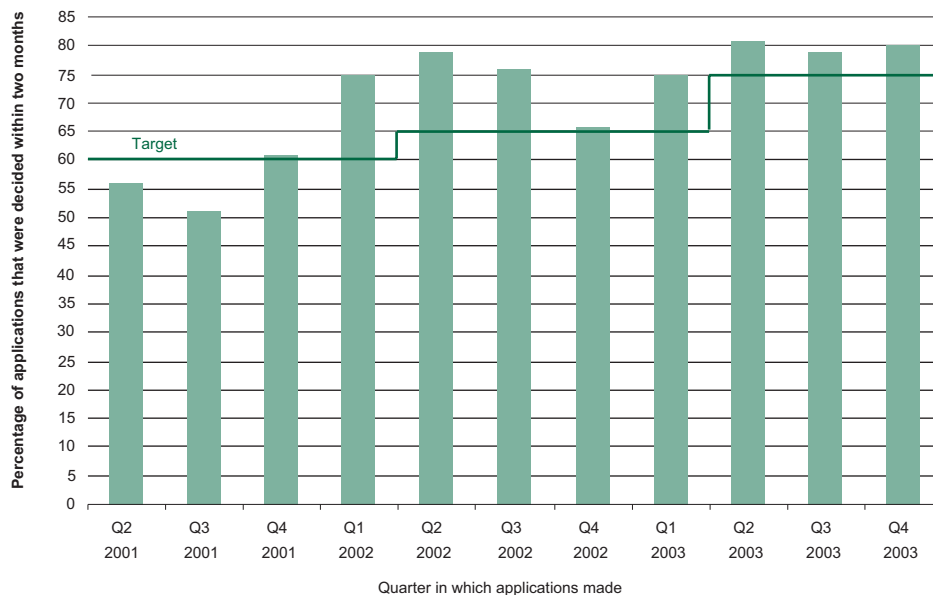
9. The Directorate has sought to improve the speed of its decision making. In 2002–03, 74% of relevant applications received an initial decision within the Directorate's target of two months (61 days), compared to 61% of relevant cases in 2001–02; and 80% of applications made between October and December 2003 have been decided within two months (**Figure 3**). For 2003–04, the Appellate Authority and the Directorate adopted a joint target to process 60% of applications through the system, including both tiers of appeal, within six months of the original asylum application. The target allows two months to reach the initial stage plus four months for the appeal stages. The Directorate and Appellate Authority reported that 63% of applications made between April 2003 and August 2003 had been processed within six months.<sup>12</sup>

<sup>11</sup> C&AG's Report, paras 1.12, 1.15

<sup>12</sup> *ibid*, paras 2.3, 2.16

**Figure 3: Timeliness of initial decisions on applications, April 2001–December 2003**

An increasing proportion of new asylum applications are decided within two months of the date of application



#### Note

The two-month target was introduced in April 2001

Source: National Audit Office analysis of Home Office asylum statistics

10. The National Audit Office reported that it requires an average of nine hours work by case workers to reach an initial decision but two months was generally allowed for considering most applications. The Directorate suggested that much of this time was used by applicants to prepare written evidence, seek advice and wait for a date for interview. The Directorate nevertheless acknowledged that there was significant scope to reduce the processing times and cited the work undertaken at its fast-track centres at Oakington and Harmondsworth.<sup>13</sup>

11. The process at Harmondsworth included the initial decision and appeal stages, with three days taken to reach a decision at the initial stage and four days at the adjudicator stage. The Directorate considered that performance at Harmondsworth was now comparable to the performance achieved in the Netherlands. The Netherlands took 48 working hours, around six to seven working days, to process applications through its fast track routes. The capacity of the Netherlands fast-track route is, however, greater than that in the United Kingdom, with 40% of all applications considered in this way compared to 9% in the United Kingdom in 2003. The Directorate believed that fast track capacity could be expanded, and said that the Government had put forward proposals to establish new accommodation centres.<sup>14</sup>

13 Qq 1–2, 5

14 Qq 4–6

12. The National Audit Office reported that most applications at the initial stage were decided by the Directorate in the period immediately before the two-month target date. Once the target was missed there was a decline in the rate at which cases were cleared, suggesting priority was given to meeting the target rather than handling older cases. The Directorate considered that a proportion of cases would always take longer, for example because the applicant was ill or because medical reports were required. Targets had been set at the four month and six month points to monitor performance on such cases. In 2002–03, for example, the Directorate had cleared 84% of all applications compared to its unpublished target of 75%. For 2003–04, it expected to meet its unpublished target of clearing 90% of new applications within six months of receipt.<sup>15</sup>

13. Where applicants appeal, the majority of time spent awaiting a decision will arise at the appeal stage. The delays include time spent within the Directorate reviewing the initial decision before the appeal is passed on to the Appellate Authority as well as the time taken to hear the appeal within the Authority. The joint target is for 60% of applications to be cleared through all stages within six months. Almost half of all applications, however, do not proceed to appeal either because asylum is granted at the initial stage or because the applicant decides not to proceed further. The Department for Constitutional Affairs considered, nevertheless, that the new target was challenging and had provided an incentive to speed up the end-to-end process. The appeal process was complex and sufficient time was needed to allow the parties to prepare.<sup>16</sup>

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15 Qq 142–143; C&AG’s Report, para 3.12 and Figure 17

16 Qq 10–11

## 3 Improving the quality of decision making

14. To be granted asylum, applicants must have a well-founded fear of persecution as defined by the 1951 United Nations Convention relating to the Status of Refugees (see box below). The Directorate faces a number of challenges in reaching a decision on applications. Many applicants do not possess any form of identification, possibly an unavoidable consequence of their departure from their home country, but also potentially due to their having been coached by their agents, or others, on how to make a convincing but false application and advised to destroy their documentation. Some applicants may also have been the victims of torture and rape.<sup>17</sup>

### What is a refugee?

A refugee is a person who, owing to a well-founded fear of being prosecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (United Nations Convention relating to the Status of Refugees, 1951).

An asylum applicant is someone who has applied for asylum or protection under either the 1951 Refugee Convention or the 1950 European Convention on Human Rights.

15. In the first six months of 2003 applications were received from 146 nationalities. The Directorate's caseworkers rely on up-to-date knowledge of the situation in relevant countries, sometimes in quite localised areas, to aid their decision making, referring to information kept on the Directorate's country information database. Caseworkers do not, however, necessarily specialise in dealing with applications from a particular country, which may make it more difficult for them to keep up-to-date and spot potentially false claims. The Directorate had tried to achieve specialisation where possible, at least by region. Its senior caseworkers were often specialists in particular countries, but to manage the volume and range of applications effectively some caseworkers had to deal with applications from more than one country.<sup>18</sup>

16. The number of asylum appeals allowed by adjudicators is one indicator of the reliability of the initial decision-making process. The Directorate expects at least 85% of appeals against its initial decisions to be dismissed, equivalent to an appeals allowed rate of 15%. The appeals allowed rate has, however, remained above 15% for most of the period since 1999 (**Figure 4**).<sup>19</sup> The Directorate acknowledged that in many cases the appeal had been upheld because of the quality of the initial decision. In some cases, nevertheless, a conscientious caseworker might have made a different judgement on the credibility of an applicant's claim from that of the adjudicator.<sup>20</sup>

17 C&AG's Report, para 4.3

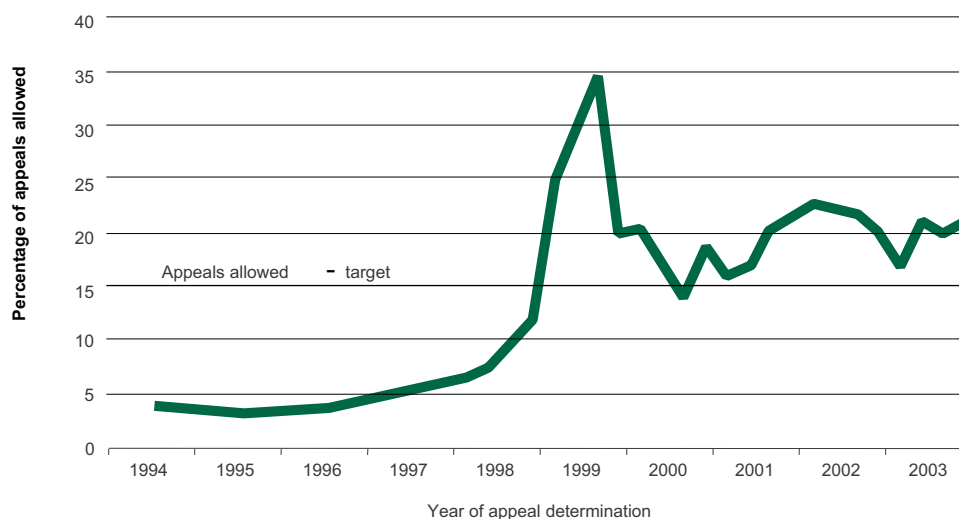
18 Qq 61-62, 128-129

19 Q 39; C&AG's Report, Figure 18

20 Q 35

**Figure 4: Appeals allowed against initial asylum decisions, 1994–2003**

The percentage of asylum appeals allowed has consistently exceeded 15% since 1999



#### Notes

- 1 The Directorate could not provide us with an explanation for the sharp increase in the rate of appeals allowed in 1999.
2. The number of appeals determined has grown substantially since 2000.

*Source: National Audit Office analysis of Home Office asylum statistics*

17. The appeals allowed rate varied significantly between applicants from different countries as difficult judgements were often involved. An analysis undertaken by the National Audit Office found, for example, that in 2003 the appeals allowed rate ranged from 9% for applicants from Iraq to 38% for those from Somalia and Sudan. The differences became more significant when the number of applicants winning their appeal was compared to the number granted asylum or short-term protection at the initial stage. During 2003, for example, the Directorate made initial decisions to grant asylum to 90 applicants from Turkey (and short-term protection to another 140 applicants) but a further 1,685 people from Turkey won their appeals against initial refusals (29% of appellants).<sup>21</sup>

18. The Directorate said that assessing the credibility of applicants from some countries posed a particular challenge. There were many well justified cases from Somalia, for example, but a significant number of claimants from adjacent East African countries pretended to be Somali, having destroyed their documents. Some claimants had also already achieved some form of status in another European country but then came to the United Kingdom to claim asylum here. Nevertheless, the Directorate accepted that the current appeals allowed rates for applicants from some countries were high. It had recently reviewed a sample of completed cases and planned to feedback the lessons learned to staff.<sup>22</sup>

<sup>21</sup> Q 38; C&AG's Report, para 4.10

<sup>22</sup> Qq 38–41

19. The Directorate may appeal to the Immigration Appeal Tribunal against an adjudicator's decision. The Tribunal had heard around 1,000 appeals from the Directorate. 350 applications first made in 2002 were allowed and 300 were remitted to the adjudicator for reconsideration. The Directorate reported that it regularly monitored the results of all appeals and sought to learn lessons.<sup>23</sup>

20. At appeal, the Directorate expects its case to be put by presenting officers, but the Directorate has been short of presenting officers since 2002. Presenting officers are civil servants who outline the Directorate's main reasons for refusing asylum, and cross-examine the applicant and other witnesses. The number of officers employed had increased but the Directorate was still not represented at 30% of asylum appeal hearings in February 2004 and 17% in March 2004. The Directorate was unable to comment on whether a greater number of appeals had been upheld in those cases where presenting officers were not available, but agreed that the shortfall in presenting officers was unsatisfactory. It had given priority to certain cases, for example those where the appellant was in detention, but acknowledged that the arrangements for deciding priorities were not systematic. In June 2004 50 new presenting officers were being trained and another 70 were due to be recruited. Its aim was to achieve 100% representation by the end of 2004.<sup>24</sup>

21. Around three quarters of applicants refused asylum or leave to remain at the initial stage, lodge an appeal. This rate is equivalent to just over half of all asylum applicants. Some applicants had good grounds for appeal, but the Directorate considered that in many cases the applicants appealed because they wanted to postpone their departure. Applicants might also be advised to appeal by their legal adviser even though their case was weak. The Legal Services Commission was introducing an accreditation scheme for solicitors dealing with asylum cases, which would be fully effective from April 2005. The Commission would also take over from solicitors the responsibility for assessing the merits of the case at the appeal stage and determining whether legal aid should be provided.<sup>25</sup>

22. Legally aided advice accounted for around 30% of the cost of the initial decision stage (excluding the screening interview) in 2002–03 (£1,010 out of £3,380). Based on feedback from adjudicators, the Department for Constitutional Affairs believed that the quality of representation was good, but acknowledged that some advisers could be better. The Directorate had referred around 300 cases of suspected abuse or malpractice by legal representatives annually to one or more of the relevant regulatory bodies. Neither the Department for Constitutional Affairs nor the Home Office had information on the comparative costs of legal aid for asylum applicants in other countries, including Scotland. The Department for Constitutional Affairs believed that the changes recently introduced by the Legal Services Commission, including the limits on fee rates and the number of hours chargeable at the initial stage, would achieve better control of the costs of advice. It expected these measures to save £30 million a year.<sup>26</sup>

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23 Qq 122, 126–127

24 Qq 63–65; C&AG's Report, para 4.32

25 Qq 67, 117

26 Qq 59, 69, 71, 98, 100, 107–108, 113; Ev 17–18; C&AG's Report, Appendix 3

23. The National Audit Office had identified cases where multiple applications had apparently been made by the same person, and cases where third parties had alerted the Directorate to possible concerns but which had not been followed up by the Directorate. The Directorate had established a separate unit to deal with multiple applications and all applicants were now fingerprinted. Efforts to eliminate the backlog and reduce processing times were also expected to reduce the risk that concerns raised by third parties were not acted upon. The Directorate could revoke asylum status if the claim upon which it was based was subsequently found to be fraudulent. It was, however, unable to report any cases where this had happened.<sup>27</sup>

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27 Qq 91–93, 133–134; C&AG’s Report, para 3.13, case examples G and H

# Formal minutes

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**Monday 17 January 2005**

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Allan  
Jim Sheridan

Jon Trickett  
Mr Alan Williams

The Committee deliberated.

Draft Report (Improving the speed and quality of asylum decisions), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 23 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Fourth Report of the Committee to the House.

*Ordered*, That the Chairman do make the Report to the House.

*Ordered*, That the provisions of Standing Order No. 134 (Select Committees (Reports)) be applied to the Report.

[Adjourned until Wednesday 19 January at 3.30pm

## Witnesses

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**Wednesday 30 June 2004**

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**Mr John Gieve CB, Mr Bill Jeffrey CB, Home Office, Mr Ian Magee CB, and Mr Martin John, Department for Constitutional Affairs**

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# Oral evidence

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## Taken before the Committee of Public Accounts

on Wednesday 30 June 2004

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Allan  
Jon Cruddas  
Mr Ian Davidson  
Mr Brian Jenkins

Jim Sheridan  
Mr Gerry Steinberg  
Mr Alan Williams

**Sir John Bourn KCB**, Comptroller and Auditor General, National Audit Office, further examined.

**Mr Brian Glicksman**, Treasury Officer of Accounts, HM Treasury, further examined.

### REPORT BY THE COMPTROLLER AND AUDITOR GENERAL:

#### Improving the Speed and Quality of Asylum Decisions (HC 535)

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*Witnesses:* **Mr John Gieve CB**, Permanent Under Secretary of State and Departmental Accounting Officer, **Mr Bill Jeffrey CB**, Director General, Immigration and Nationality Directorate (IND), Home Office, **Mr Ian Magee CB**, Chief Executive Operations and Second Permanent Secretary and **Mr Martin John**, Director of Tribunal Operations, Department for Constitutional Affairs (DCA), examined.

**Q1 Chairman:** Good afternoon, welcome to the Committee of Public Accounts, where today we are looking at the Comptroller and Auditor General's Report on improving the speed and quality of asylum decisions. We are joined once again by Mr John Gieve, who is the Permanent Secretary at the Home Office, Mr Magee, Chief Executive (Operations) at the Department for Constitutional Affairs and Mr Jeffrey, Director General of the Immigration and Nationality Directorate. We are also joined by Mr Martin John, who is Director of Tribunal Operations at the Department for Constitutional Affairs. Could I please start by asking you, Mr Jeffery, to turn to page 23 of the Report, Figure 10 and paragraph 2.11? If you scan through paragraph 2.11, which I am sure you have read, you will see in the second bullet point that it only involves about nine hours' work by case workers for an initial decision to be made. Is that right?

**Mr Jeffrey:** Yes, that is correct.

**Q2 Chairman:** If that is true, why do you need to allow two months for an initial decision to be made? If you look back to Figure 10 you will see the blue colour. It takes about two months, does it not, for an initial decision to be made. We are talking about nine hours' case work, so why so long?

**Mr Jeffrey:** It has to be remembered that the applicant has to be screened first to gather some basic information. There then has to be a more detailed interview with the applicant which can take an hour and a half or sometimes more. It is also fair to say that you have to remember where all this has come from, with very large volumes of outstanding

cases from the late 1990s. The decision which was taken around 2000–01 was to set as a target the completion initially of 70% to 75% of these cases within two months. That was significantly better than we had ever achieved in the past. We are achieving that and, as the NAO's Report points out, we can significantly improve on it.

**Q3 Chairman:** You can significantly improve on this.  
**Mr Jeffrey:** Yes, we believe so.

**Q4 Chairman:** What sort of timescale are we looking at? What sort of improvement are we looking at? We are basically talking about two months from an initial decision being made and we are talking apparently, according to the Report to which you signed up, about nine hours of case work. So I should like to know from you just how much further improvement you can make.

**Mr Jeffrey:** What we are doing, and what we introduced at Harmondsworth last summer, is piloting a much faster process in which the applicant is detained at Harmondsworth removal centre. The initial interview takes place within a day or so of the application being made. The decision is then taken within a few days of that and any appeal is dealt with, consistent with the statutory time limits which are laid down for appeals, in a matter of weeks.

**Q5 Chairman:** Less than a month?

**Mr Jeffrey:** Less than a month. We are doing that for approaching 10% and if one takes into account the Oakington fast track as well, which the Report describes, we are doing that for approaching 10% of the intake. In relation to the Harmondsworth

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experiment, we are removing just over 50% of all those whom we take into that fast track within around a month of their applications being received. We believe we can build that up, not indefinitely, because there are some very complicated cases which may take longer. We can cover more of the applicant population with a fast track process which really does turn the cases around more quickly than we have done in the past.

**Q6 Chairman:** Mr Gieve, can we look at an international comparison? Can we look at Appendix 6 on page 56 and what happens in the Netherlands, for instance, where 40% of applications are decided within 48 working hours? Why can we not achieve this level of performance? Why have we not achieved this level of performance?

**Mr Gieve:** The 48 working hours is about five or six working days, so that is not dissimilar from Harmondsworth.

**Q7 Chairman:** Which is in the future.

**Mr Gieve:** It is in the present now, but which we can expand in future. You will see also that a large proportion of asylum seekers remains in government accommodation throughout. As you know, we are planning to introduce accommodation centres of asylum applicants at the moment, but outside Harmondsworth and Oakington we have not been able to detain people in specialised accommodation centres. So a good deal of the time you talked about, the two months, is time for them to fill in a written form, take advice on that and arrange an interview, coming from wherever they are living to the right centre.

**Q8 Chairman:** Anyway, you agree that what we see happening in the Netherlands and indeed Germany is something to aim for, is it not?

**Mr Gieve:** The systems are very different. I was looking at some figures recently which showed that the Germans' backlog of initial decisions is bigger than ours. I am not going to say their system works better in all respects, but certainly the accommodation centres' proposal which we are working on has been based on experience from the Netherlands and some other countries.

**Q9 Chairman:** Mr Magee, will you please look at paragraphs 2.13 and 2.16 which you can find on page 24? I want to ask you about the decisions and appeals process. Is this target you have to complete—the decisions and appeals process for 60% of applications in six months—right? Is that your target?

**Mr Magee:** That is an overall target, because we are increasingly looking at this as an end to end process.

**Q10 Chairman:** So that is your target but is that target sufficiently challenging? If you look at paragraph 2.13, you will see that almost half the applications do not lodge an appeal. I am really putting to you that the target which you set yourself is not very challenging.

**Mr Magee:** On the contrary, it is actually quite challenging. We are just meeting it, but I am always ready to be challenged by more stretching targets.

**Q11 Chairman:** So what sort of target would you like us to put in this report?

**Mr Magee:** The obvious corollary of what you said in your first question is that more than half the cases do go to appeal. The appeal process is complex, it is judicially influenced, it requires that both parties have time to prepare and there are statutory time limits which govern the appeal process. As Mr Gieve was implying, we are always ready to learn from experience elsewhere. I would be unwise to commit today to any foreshortening of the target without thinking about the aspects which would impinge on the targets.

**Q12 Chairman:** Right. We can come back to that. Mr Gieve, could you please look at paragraph 13 on page 6? You will see there that the National Audit Office has put to us and to you that if you had not moved case workers into removals you could have saved £200 million. Are you happy with this figure?

**Mr Gieve:** I understand how it has been calculated as a matter of arithmetic. No, I do not agree that we could have saved £200 million by keeping our removals case workers on initial applications.

**Q13 Chairman:** I shall ask the National Audit Office for their view in a moment. They tell me also, in paragraph 3.8 on page 31 and Appendix 5, that if you had got a grip on this earlier and you had anticipated the problem you could have saved upwards of £500 million. I presume you cavil at that figure as well.

**Mr Gieve:** Again, as a matter of arithmetic as set out in Appendix 5, I can see how they have arrived at those figures. I do not believe that there were practical options open to us over the last three years which would have saved that sum of money.

**Q14 Chairman:** Why not? You are in charge of your department. You could have employed the extra case workers to deal with this backlog, could you not, instead of transferring people to removals work? The only effect of doing that was to allow backlog to happen. Do you accept that is precisely what happened?

**Mr Gieve:** No, I do not. There are two different numbers here: one is £500 million and the other is £200 million. On the £500 million, the calculation is that had we had the capacity to reduce very much more quickly than we did the backlog of initial decisions from 120,000 to the levels of work in progress and had we had the capacity in the appeals mechanism to deal with the appeals from those decisions and had we had removals capacity then either to cease support or remove the people who failed the appeals—we have reduced all that but if we had done it much faster—we could have saved some money. The truth of the matter is that we got into real difficulties at the end of 1999. We did not have the capacity in any part of the system to do that. We have been building it up as quickly as we can and in

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that sense theoretically, if we had been able to do it three times as quickly, life would have been better, but actually we have gone as fast as we can. On the £200 million, which is about what happened in 2001, the priority at that stage, seen from my angle, was to stem the flow of unfounded asylum applications, which was running at an extremely high level. We considered that having a credible threat of removal at the end of the process was a key part of discouraging the flow of unfounded asylum applications. We therefore thought it important to build up our removals capacity. In any event, the £200 million only makes sense if we had kept them working on initial applications, then found extra staff to deal with the appeals and also found extra staff on the removals side.

**Q15 Chairman:** Are you saying you could not have found these staff? Did you, for instance, draw on the resources of other government departments?

**Mr Gieve:** Yes, we built up our staff extremely quickly, apart from the DCA obviously. We have taken many people on transfers from other departments. I am not going to pretend we did everything perfectly; I am sure we made mistakes along the way. I do think this is a theoretical calculation of what would have happened if we had had on standby sufficient capacity to deal with 120,000 cases, plus the continuing inflow, more or less instantly.

**Q16 Chairman:** I think this is an absolutely central point. Could I ask the National Audit Office to comment on that and to back up the figures which are in this Report about the savings of £200 million and £500 million and comment on this apparent inability to save this money because there was not sufficient capacity in the system?

**Sir John Bourn:** The origin of these figures lies in the request made to me by the Committee to include more financial analysis in value for money reports. When we came to look at it, this was an area where it did seem that it was worth bringing out the cost of a backlog. You can put it like that. As Mr Gieve has been kind enough to say that he accepts my arithmetic, I accept that he does not live in an easy world. What I hope our calculations have done for the Committee is to underline the very substantial resource costs of the way in which the Home Office reacted to this issue and the way in which the public purse had to bear them. While absolutely acknowledging the difficulties to which Mr Gieve has drawn attention, I hope that our calculations, as the external auditor, our analysis of possibilities and, above all, in a sense, the general lesson that if you let backlogs develop you are really going to pay for them, which is what these figures illustrate above all, sound a warning note, not only in relation to the Home Office but in relation to responding to sudden increases in demand for services in public administration generally.

**Q17 Chairman:** I must let Mr Gieve reply to that point. I must put to you that you failed to anticipate that demand was rising, as surely would have

happened in the private sector. Because of your failure to anticipate demand rising you have had to muddle through and you may argue whether it is £200 million or £150 million, but the fact of the matter is that many more people were kept in this country who should not have been, dependants were arriving, the backlog built up because you had failed to anticipate demand.

**Mr Gieve:** First, in relation to the private sector, an increase in demand is generally a positive thing. In this case, absolutely, we failed to anticipate the very rapid rise in numbers of asylum applications in 1999 and 2000 and we did not have on standby the trained personnel needed to deal with them as they came in. That is absolutely true. If we had had, we would obviously have had much higher costs for some years before then, when we had people standing by with not very much to do, but we would have been able to deal with the surge of applications faster. All I would point out is that if you look at Figure 14, which is on page 30, you will see that we did deal with the backlog and have dealt with the backlog rapidly since then by building up our capacity.

**Q18 Mr Steinberg:** Figure 4 on page 13. Clearly the UK had the largest number of asylum seekers between 1999 and 2003, about 450,000. Why do they prefer to come to this country rather than, say, Italy or Spain? Why does nobody want to go to Portugal? We have a situation where half the population of Britain is trying to buy properties in Spain and no refugee wants to go there. Why is that?

**Mr Gieve:** First of all, as you will see, Italy does not count its asylum seekers in quite the same way as the rest. We have been attractive. I think there is a number of factors in that. Firstly, our economy has been doing extremely well, so there has been the prospect of work, especially in the South of England, which has not been true in many European countries. Secondly, there is the English language. Thirdly, we are a highly diverse international community.

**Q19 Mr Steinberg:** Benefits?

**Mr Gieve:** Possibly, lastly, because our asylum system has been a slow system. It is a very generous system and people have used it to stay during the process. I should say that since then, we have seen the biggest reduction of anywhere in Europe in the number of asylum claims, that is in the last year between 2003 and 2004.

**Q20 Mr Steinberg:** I would hope so. So many were applying to come in the first place. Why is Russia classed as unsafe now?

**Mr Jeffrey:** I do not know that Russia is classed as unsafe.

**Q21 Mr Steinberg:** People are applying for political asylum.

**Mr Jeffrey:** The fact that people are applying from a country does not mean we regard it as unsafe. What I would say is that Figure 4 is very much a picture of the past; it is a picture of the period of years when entry into this country was at its absolute highest.

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What we have done in the last 12 or 18 months is to reduce the intake greatly through doing all sorts of things.

**Q22 Mr Steinberg:** The point I am trying to make is that we are accepting asylum applications from countries which clearly do not appear to be unsafe in the first place. Turkey wants to join the EU, does it not?

**Mr Jeffrey:** Yes.

**Q23 Mr Steinberg:** So why is it unsafe to live in Turkey?

**Mr Jeffrey:** I repeat what I said. The fact that we entertain applications does not mean that we regard the country as unsafe.

**Q24 Mr Steinberg:** But we accept political asylum seekers from these countries. Why?

**Mr Jeffrey:** We have an obligation under the 1951 Convention on Refugees to consider claims for asylum which are put to us. Clearly some from nationals of some countries are weaker than others.

**Q25 Mr Steinberg:** So if somebody from France could apply for political asylum you would have to look at it?

**Mr Jeffrey:** Theoretically, but in relation to European Union countries there is a different set of processes.

**Mr Gieve:** We are not giving all these people political asylum. We are giving a very small proportion political asylum. The point you are making is that they are claiming asylum.

**Q26 Mr Steinberg:** Can I claim political asylum somewhere else?

**Mr Gieve:** Yes.

**Q27 Mr Steinberg:** In Scotland? I cannot think who would want to go to Scotland, could you? I am surprised they do not come here looking for political asylum themselves. If you read this Report, frankly the theme the Chairman was making is quite a reasonable theme. When I read the Report it just seemed that there was a total lack of planning and anticipation and all you were doing was reacting all the time. You were just reacting to the situation. There was a huge rise in applications from 1999 and over 50% appealed against the original decision. Why does it appear that you were caught out in Figure 12 on page 26? Clearly you were just caught out in 2000 and 2001, were you not? Because you were caught out, the number of appeals determined then dropped dramatically. Why were you caught out? Why were you not prepared?

**Mr Gieve:** Actually this shows the number of appeals increased from year to year but, you are right, there were several factors in 1999. This Committee has done two reports about what happened in 1999. At that stage we were introducing a new IT system, which did not work as expected. We ran down our staff on the basis that it would.

**Q28 Mr Steinberg:** You expected IT to work? You were clearly a very optimistic man, were you not?

**Mr Gieve:** I am talking about the department rather than me, but nonetheless the department was caught out on a major IT case handling programme. At the same time, because of the Kosovo conflict, the number of asylum claims went up very, very rapidly. You are quite right, we had not seen that coming. You are saying that if an event happens we should have foreseen it. We try to foresee as many events as we can, we do lots of planning, but we were caught out on this occasion.

**Q29 Mr Steinberg:** All right, you were caught out. Then if we turn the page to Figure 13, you set up courts to hear the appeals but again it just was not planned right, was it? You got it wrong again. Here you were, with 26 courts in Hatton Cross, but in North Shields you only had 10 courts.

**Mr Gieve:** What you are saying to me is that we should have the capacity to handle a surge of cases; we should have spare capacity.

**Q30 Mr Steinberg:** Yes. What I am saying is that you had spare capacity.

**Mr Gieve:** Now you are saying that we should not have spare capacity in North Shields.

**Q31 Mr Steinberg:** No, I am not saying that at all. I am sorry, that is a typical civil servant. What I am saying is that you have spare capacity which is not being used, why do you not use that spare capacity? I have no objection at all to you having spare capacity, but then do not just sit on your backside and not use it.

**Mr Magee:** That is a matter for me to respond to rather than John. Actually the capacity is running overall at 83%. That compares favourably with a lot of the other jurisdictions which there are in the UK. The National Audit Office has drawn attention to four courts in particular and has said we should do better. The good news is that we are actually doing better and that, if you take the updated figures right to the middle of this year, we are now talking, for example in North Shields, about 67% usage rather than 50%, in Bradford 73%, Stoke 68% and Manchester 91%. How are we doing that? Partly learning lessons from elsewhere, partly by looking to combine jurisdictions, so for example in North Shields, the County Court work, which is quite different work, is being housed in the building which takes the asylum appeals. We are looking, on the contrary, to make the very best use of the capacity we have.

**Q32 Mr Steinberg:** I hope so. We are told in the Report that there were 63,700 cases outstanding at the appeal stage: 15,500 awaiting an adjudicator; 11,700 awaiting determination by a tribunal. Here we are again with a lack of planning, because you must have envisaged this happening, but you have not done anything about it. When you do something about it, what happens? We read on the BBC News over the weekend—I just happened to be browsing—that about 25,000 properties rented by

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the government to house asylum seekers are empty because of lack of tenants which is costing us—it does not say, but it was quite a considerable amount I understand. So here you are, you get on top of a problem but then you have not planned for when you are getting on top of a problem because you have made ridiculous contracts with the people who own the properties. You still have to pay them even though the properties are empty. Lack of planning again, or are you a victim of your own success?

**Mr Magee:** There are two issues there. I shall deal with the first one, which is about the court room capacity and planning. As John Gieve said, in answer to a different question, some things were foreseen; with the best will in the world other increases which have caused problems for the system over the last few years people would have struggled to foresee, the impact of a Kosovo or whatever. On the contrary, with the expansion of court room capacity, the expansion of judiciary to deal with the appeals, the expansion by well over 100% of numbers of interpreters needed, a tribute needs to be paid to Martin John and his staff for the way they have dealt with what was a crisis at one time and the way they have tried to plan forward for the future.

**Q33 Mr Steinberg:** What about the houses?

**Mr Gieve:** When we set up NASS (National Asylum Support Service) at the beginning in 2001, we were facing a crisis in housing people. We wanted to get them out of Dover and London and the South East. We were desperate for housing and we had to go on the open market and get it where we could. In negotiation, we obviously at that time had to choose between how much we paid on the spot market, like we do per bed for emergency accommodation, and how far we offered people the assurance of an income for several years, when you get it cheaper because they can count on it for a few years. At the moment we are a victim of our own success and we have reduced the asylum intake and backlogs by more than anyone expected a few years ago, but we are now working on renegotiating those contracts in order to minimise the cost.

**Q34 Mr Steinberg:** A victim of your success.

**Mr Gieve:** Do you think it is a success or not that asylum applications have come down? When the Prime Minister told us we had to halve the number of unfounded asylum applications, I thought that was a pretty stiff target and I think that IND (Immigration and Nationality Directorate) did extremely well to do it.

**Mr Steinberg:** Congratulations.

**Q35 Chairman:** Mr Steinberg was asking about appeals against asylum decisions. He did not refer to Figure 18 page 39 which we should put on the record. This shows that if we are looking at appeals against initial asylum decisions the overall proportion upheld has increased, despite the fact that we read in paragraph 4.11 that you set up a project to deal with this. What went wrong?

**Mr Jeffrey:** Certainly it is the case that the success rate on appeal in the last few years has been higher than it was before. We regard that as something we should be addressing because it obviously is related to some extent to the decisions taken. It is worth bearing in mind that the proportion of allowed appeals depends on a number of factors and it has been the case recently that there is a gap between the original decision and the appeal hearing and circumstances can change in the course of that time passing. Also, the nationality mix does have an impact. There are some nationalities where there are particularly difficult issues around whether the person's story is as they claim, whether they are even the nationality they claim and credibility is an issue. A lot of these cases which we lose on appeal are undoubtedly to do with the quality of the original decision, but some reflect the fact that sometimes a conscientious decision taker will take a different view from a conscientious adjudicator on the credibility of the account which has been produced.

**Q36 Mr Allan:** Can we stay on that appeals issue? If we look at Figure 19 on page 40, which tells us about the percentage of appeals allowed, we see for Somalia 38%. What that looks like to me is that you are operating a policy of refusing them all and then seeing who is persistent enough to get through the appeals procedure. Is that a fair assessment? Somalia has not changed in donkeys' years. It has been a mess forever.

**Mr Jeffrey:** I do not think it is a fair assessment and Somalia is a very good example of what I was talking about. There are undoubtedly a significant number of very well justified cases which genuinely demand a great deal of sympathy involving people from Somalia who have come here in recent years. There is also a significant number of claimants who we believe are either from adjacent East African countries and pretending to be Somali, having destroyed their documents, or who have already achieved some form of status in another European country, come here and then claimed asylum, having already done so somewhere else. Disentangling these two phenomena, one extremely genuine and the other rather exploitative, is what this is in some ways all about. We may not get it right, but one should not assume from the fact that the appeals success rate is high, that we get it as wrong as all that.

**Q37 Mr Allan:** In a sense what you are saying then is that you do not expect to get the initial decisions right in the case of complex countries like Somalia; you need the appeals process to do the job properly.

**Mr Jeffrey:** I am not saying quite that. I am saying that we do our best to take the correct decision first off, but there may well be a difference of view between the decision makers and the adjudicator who hears the same facts, but is sometimes more ready to believe what is said than the original decision maker might have been; sometimes new facts have come into the picture in the intervening period. One thing which may lead to some narrowing of the gap is that the faster we get and the

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more we do get on top of this, the less likely it is that a long period will have elapsed between the original decision and the hearing of the appeal.

**Q38 Mr Allan:** High rates exist in various countries, Somalia 38%, Zimbabwe 28%, Turkey 29%, Iran 30% and so on. In all of these high number cases, it cannot be acceptable, that only a percentage of initial applications is being dealt with correctly. 38% is just a phenomenal amount of appeals allowed. It does not seem like an appeals process any more, it seems like an initial determination when you talk about those numbers.

**Mr Jeffrey:** It is a high figure and it has caused us to look quite carefully. Recently we have analysed a sample of cases involving Somalia to see whether we can learn something from what is happening at the appeals stage. That will be fed back to the case workers. This is an issue which the NAO Report touches on and we do attempt to learn from the appeal process and to play back our perceptions of why we lose cases into the original decision taking. I take the point.

**Q39 Mr Allan:** Am I right in thinking that the public service agreement target for 2005–06 is that you should only have 15% of appeals successful, that you should be getting 85% of them right?<sup>1</sup>

**Mr Jeffrey:** Yes, that is correct.<sup>1</sup>

**Q40 Mr Allan:** Any chance of you meeting it? You are hovering around 20% and it does not seem to be declining. Any chance you will meet it in 2005–06?

**Mr Jeffrey:** I hope we can and we are certainly doing work which would take us in that direction.

**Q41 Mr Allan:** What happens if you do not?

**Mr Jeffrey:** It will be a setback because we take these targets seriously.

**Q42 Mr Allan:** Your performance related pay does not depend on it.

**Mr Jeffrey:** No, it does not.

**Q43 Mr Allan:** May I move on to the substantive issues which the Chairman raised at the beginning around the money. I have sat here since being elected in 1997. I have sat through hours and hours of immigration and asylum legislation, I have dealt with not as many as cases as other colleagues round the table but a steady stream of cases going through. All the time it has looked to me like the problem has been in the administration rather than anything else; not the legislation but the administration has been failing. I want to go back to this critical 1997–99 phase. Mr Gieve, you said that in that period you were putting this new Siemens business computer system in IND, so you were doing that in that 1997–99 phase. Is that correct?

**Mr Gieve:** Yes. Actually it turns out none of us was there at the time, but yes, Home Office was putting it in then.

**Q44 Mr Allan:** You were also moving offices in Croydon. I remember ringing up to ask about a case file and being told that it could not be accessed because it was in a multi-storey car park for storage and everyone was banned from going in to retrieve the case files during the day because of the exhaust fumes. It just seemed like the whole place was in meltdown and this was across the whole field of immigration and nationality. Would it be fair to say that 1997–99 was a rotten time for the department? You were not performing.

**Mr Jeffrey:** I too was among those not present, but that is a very accurate description. What clearly happened over that period was that the combination of the failed computer system, the fact that in anticipation of the computer system staffing reductions had been assumed and the massive increase in the asylum intake which has been remarked on earlier in this hearing, together drove the directorate into crisis. In many respects, the story of the period since then has been of a climb gradually, but I believe quite successfully, out of that crisis. Your Committee had a hearing on an NAO Report on the Siemens Business Systems system and the case working programme, as it was known. At that time John Gieve's predecessor was unable, on being asked by the Chairman, to predict when we would have removed the backlog of asylum claims and indeed any other kind of case work. As a matter of fact we have removed that backlog of initial asylum applications and it is down to an enormous amount of hard work by the staff that we have done so.

**Q45 Mr Allan:** Was not the other typical factor there that the Home Office could not have got any more money anyway, because the government had taken a decision in 1997–99 not to increase spending and certainly you at the Home Office were going to be at the back of the queue, behind Health and Education and everyone else. It seems to me that penny wise, pound foolish decisions were being made that investment was not being put in in 1997–99. What the evidence of the Report shows is that if that investment had gone in, far more would have been saved for the public purse.

**Mr Gieve:** I must say that I have not been right over the papers for 1997–99 and actually I was in the Treasury at the time, so I am caught either way. The position was, you are right, that the Siemens system was not just about asylum, it was about all case work and the concept behind it was that we moved to multi-skilled groups working on all forms of case and, planned as part of that, was a reduction in staff and as the reduction in staff started, the system did not work and then they were hit by this particularly difficult surge in asylum claims. The special feature of asylum claims is that the law is extremely generous in many ways about the rights of people claiming asylum and it has taken us some years to get out of what was definitely a crisis. You are now

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<sup>1</sup> *Note by witness:* I would like to point out that the figure of 85% of asylum decisions upheld by adjudicators is an internal target and not part of the Public Service Agreement. The PSA target for 2005–06 includes IND taking high quality decisions, with 85% of asylum decisions assessed by external assessors found to be fully effective or better.

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saying we should not have got into the crisis. I can agree with that, it would have been much better not to, but that was where we were.

**Q46 Mr Allan:** This Committee is all about learning from past mistakes and this was not unique. When the former Republic of Yugoslavia blew up, we had exactly the same problem. As constituency MPs we were dealing with claims in 1997 from people who had come from the earlier conflicts in the 1990s in the former Republic of Yugoslavia. It just seems that you were institutionally incapable of responding to increased demand.

**Mr Gieve:** No, I do not think that is fair. Although there were problems with asylum, as you can see from Figure 14, from the previous Yugoslav problems, at that time the balance of applications around Europe was very different. Germany in particular was taking the bulk of the asylum applicants. There was a real change in 1999 and you are right, we did not anticipate that.

**Q47 Mr Allan:** Do you get predictive figures from the Foreign Office now on where is going to blow up and future indicators of where asylum claimants are going to come from? Or do you do that yourselves?

**Mr Gieve:** We work with the Foreign Office and one of the features of what we have been trying to do is to work more closely with Foreign Office and DCA on risk analysis in a wide range of countries. We are taking asylum applications from people from about 150 countries overall and we do not do a full risk analysis for all of them. For the bigger countries and the ones where the risk are greatest, yes, we do.

**Q48 Mr Allan:** Having offered you something of a pat on the back for now having got your determinations a lot faster, is the issue of what then happens moving up your agenda? We have this wonderful flow chart which is great for telling us how it all works. At the end it says "Applicant now removable". I think most of us are seeing an increase in people coming to us saying they have been through all the process and they are now getting no support whatsoever, they are being evicted, told to live on the street—I know this is our fault, we passed the legislation—but they are not being removed. I wrote to the Immigration Service this week and they said they have no plans to remove this individual, but there is no support available for him. How do your priorities move now? You can quickly get people to the stage where they are on the streets, but you do not seem to be as quick to get them to the stage where they are on the plane to go home again.

**Mr Gieve:** We have been increasing removals year by year, as this Report shows. You are absolutely right, though, that they are still at a low level compared with the number of applications. That is for a number of reasons. There are some countries where it is very difficult to remove to and we are working with the Foreign Office again to try to open up routes to those countries. There are some countries which have very exacting requirements for documentation. China is an example of that where they are reluctant to take people back unless we can

prove absolutely that they are Chinese citizens. When people are not co-operating that can be extremely difficult. The other reason is that very often people do not want to go and especially they do not want to go if they have a livelihood here. The decision that we end support at the end of the process, when you have gone through all the appeals, not for families but for single applicants, is intended to provide some of the incentives which will encourage people to leave.

**Q49 Mr Allan:** Starve them out.

**Mr Gieve:** There has to be an end point, does there not, otherwise the process is seen to be ineffective?

**Q50 Jon Cruddas:** May I ask a few questions about short-term protections and refer you to Figure 6 on page 15? Under the old system, before 2002–03, you had a system of four-year exceptional leave to remain, which was often translated into indefinite leave automatically. That is how I understand the system. Is that correct?

**Mr Jeffrey:** Yes.

**Q51 Jon Cruddas:** After the 2002–03 legislation we now have a system of humanitarian protection or time limited leave to remain.

**Mr Jeffrey:** That is right.

**Q52 Jon Cruddas:** I want to look at the purple bit of Figure 6. If you put a line down at 2002, does that not mean that a lot of those in the purple group, which is pretty significant, from about 20% up to about 30% through that period, in effect were granted short-term protection which meant that the exceptional leave was transferred into indefinite leave to remain?

**Mr Jeffrey:** Yes.

**Q53 Jon Cruddas:** Therefore people did not come back into the system.

**Mr Jeffrey:** To the extent that they applied for indefinite leave to remain, it was generally granted.

**Q54 Jon Cruddas:** Do you recognise a problem then with the possible implications of the changes into this short-term protection in that thousands and thousands of people will be re-entering the system much more quickly?

**Mr Jeffrey:** They will in the sense that their case will be considered more actively than it would have been in the past. The thinking behind the change which ministers made at that point was, first of all, apart from those who are judged to be refugees, that we should only grant other forms of status to people who are covered by other international conventions and notably by Article—

**Q55 Jon Cruddas:** I understand the policy reasons. A conflict might be resolved and a community stabilised so therefore it becomes a four-year period. So the policy of creating a system of automatic indefinite leave to remain was changed. My point is administratively whether that change, which is rational policy-wise, is actually going to create

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another big backlog in future. To the left of 2002, and somewhere there is reference to some 67,000 cases being in this sort of grouping which do not actually come into the administrative system again, these are now going to be coming back into the system administratively after a year.

**Mr Jeffrey:** I take the point that there will definitely be more work involved in considering these cases than there might have been in the past. The thinking behind the policy was that there should be an active review at that point and that we should consider whether circumstances have changed, either in the applicant's life or in their home country.

**Q56 Jon Cruddas:** I take the point about the policy.

**Mr Jeffrey:** We now have three teams of case workers engaged on these active review cases. We are doubling that to six teams during the summer. You are right that it will be another demand on our resources, but in the somewhat easier circumstances we are in now, it is one we believe we can manage.

**Q57 Jon Cruddas:** I raise the point because I deal with a lot of asylum and immigration cases in East London and I am already beginning to see signs of these time limited cases coming back onto my desk and then they go back in the system. If they are refused after another application, they then have rights to appeal and the whole approach to this is to try to anticipate blockages, learning from past experience. But you accept that this could be something which is ticking which you need to keep your eye on.

**Mr Jeffrey:** Absolutely; yes.

**Q58 Jon Cruddas:** All of this Report, which is a very good Report, suggests the need to frontload the system in terms of the early application systems and the like. The point has been made to me that one of the ideas being looked at in the Home Office is to remove legal aid in the initial application period and have it available at the appeal process. Is that something which has been actively considered?

**Mr Jeffrey:** There has been some consideration of that and it is certainly the case that as of several months ago legal aid is not automatically available for the initial interview. Legal aid is still available, however, for appeals and for other stages in the process. Our DCA colleagues might want to say something about this.

**Q59 Jon Cruddas:** I was going to ask Mr John what likely savings this would generate. You must have modelled the possible savings.

**Mr John:** It is difficult to say. In terms of the expected savings from the modelling of this and other measures, they are in the order of £30 million, but it has to be said that we need to monitor the implementation closely to see whether or not that will actually turn out.

**Q60 Jon Cruddas:** It does not act as a disincentive to appeal, does it?

**Mr John:** From our perspective, we do not believe it acts as a disincentive. It is a function of what necessary support is needed at the decision-making stage. Crucially, at an appeal stage, if somebody's case has merits, then they will still be entitled to seek legal aid.

**Q61 Jon Cruddas:** May I ask a question about case workers? You have asylum applications from 146 different nationalities. I get the impression that you have had generic case workers. Is that the case?

**Mr Jeffrey:** No, that is not the case. It is somewhere between generic and specialised. We do try to achieve as much specialisation as we can. Our senior case workers are often considerable specialists in particular countries and we aim for specialisation, at least by region. In terms of managing the volume of applications from as many countries as you described, we do need to have a certain number of case workers doing more than one nationality.

**Q62 Jon Cruddas:** Is this something you are working on? I think I pulled this out of the NAO proposals. They might not have said this precisely, but if you have 20 countries which take up X% of all applications, presumably it would be rational to have banks of case workers who have proven knowledge of day-to-day changes in that specific country, who are experts. Is that the direction we are heading?

**Mr Jeffrey:** Yes. So far as possible, that is what we do already. The last time I sat in on an asylum interview, it was with one of our case workers who was interviewing a Somali applicant as it happens. The case worker was a considerable expert on Somalia, on the various clans there, on the issues which arise on applications. We cannot always do it, because we are talking about almost 150 nationalities, but to the extent that we can do it and still manage the business in the way that we want to, that is what we aspire to.

**Q63 Jon Cruddas:** Obviously that cross-relates with issues of training which are flagged up in this Report as well, in terms of building the service in the future. Paragraph 26, page 10 is about this issue of appeals and whether there is a presenting officer there. Does the proportion of successful appeals increase in appeals where there is no presenting officer there?

**Mr Gieve:** As I understand it, the statistics do not show a very clear story, but in managing our presenting officers, we try to get them to the most difficult cases. That is not always possible, but we have a prioritisation of cases. The simple statistics on what the appeal success rate is, is not telling the whole story.

**Q64 Jon Cruddas:** Do you grade cases you turn down in terms of the probability of successful appeals and therefore the availability of presenting officers?

**Mr Jeffrey:** It is not as simple as that. First of all, we are very keen to get to 100% on this.

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**Q65 Jon Cruddas:** That was my next question.

**Mr Jeffrey:** It is not satisfactory that we should be at less than 100%. Last month we got to 90%. We have 50 new presenting officers currently being trained and mentored who will come on stream quite soon and we are recruiting another 70 on top of that. There is a good prospect that by the end of this year we will be hitting 100% representation rate. In terms of how we deploy those we do have, we certainly give priority to cases, for example, where the appellant is detained, cases remitted back by the tribunal, particularly complex cases, that sort of thing. I would not say that it is very systematic, but we do enough of that nature for it not to be easy to interpret any information there may be about whether we are more successful when we are represented than we are when we are not.

**Q66 Chairman:** Just to be clear, if you look at Figure 6 on page 15 and the blue mountain which is “Granted either asylum or short-term protection under backlog criteria” that was a kind of amnesty to clear an earlier backlog. Then if you move forward to paragraph 3.3 on page 29, you can see “In October 2003, the Government announced that families who had applied for asylum before 2 October 2000 would be considered for permission”, so we are now creating another blue mountain to clear an earlier backlog. I just wonder—this may be entirely unfair, but I want to give you a chance to answer this—whether the system periodically runs out of control and you have to relax your criteria to clear backlogs and this will endlessly repeat itself.

**Mr Gieve:** There is a slightly different situation now than there was at that blue peak. That did coincide with the surge of asylum applications and was an attempt to deal summarily with the old list of those at a time when the business was in real difficulties in handling the volume of business. The ILR exercise we are currently engaged in is not motivated by an inability to handle the cases, but it is learning from experience where families have been living in the country for a substantial period, our chance of removing them, even if we win the case against their asylum application, is low and that therefore in those circumstances the balance of advantage is probably to acknowledge that.

**Chairman:** That underlines the importance of dealing with these things quickly.

**Q67 Jim Sheridan:** Does it give you concern that at least 50% of applicants go to appeal? Does that give you any cause for concern? Do you ask the question “Why”?

**Mr Gieve:** Yes. Clearly they have the right of appeal and that is right, because we do not always get things right or there are new developments which they can point to. Generally, we believe that many applicants want to postpone the hour of departure, so they appeal as a matter of course.

**Q68 Jim Sheridan:** That begs the question whether or not the applicant wants to appeal or indeed the applicant is encouraged to appeal. I draw your attention to page 50, Appendix 3. Each application

costs an average of £4,000 and there is a breakdown there of exactly where that £4,000 goes to. Certainly the two major factors are legal services and accommodation. I have a particular view about lawyers working on asylum applications. I think there are unscrupulous carpetbaggers within that profession who encourage asylum seekers to go through the process.

**Mr Gieve:** There is a variety of legal and other advisers working with immigration cases and many of them have the highest standards.

**Q69 Jim Sheridan:** Is it not the case that even in unwinable situations applicants are then encouraged to go forward with the application, not for the benefit of the applicant, but because it is seen as some sort of meal ticket by the profession.

**Mr John:** That is actually a matter of legal aid policy. In April 2004 we introduced a series of measures to try to clamp down on the potential for unscrupulous solicitors. The Legal Services Commission are introducing an accreditation scheme which will be fully effective from April 2005. Costs are being controlled by a maximum fee regime in terms of the number of hours which can be claimed, but, importantly, in asylum legal aid cases the merits test at appeal stage is no longer being applied by solicitors themselves; that is being brought in house to the Legal Services Commission. So the Legal Services Commission, through a range of measures, are actually introducing tighter controls, reducing the risk of unscrupulous solicitors being able to play the system in this way.

**Q70 Jim Sheridan:** What impact has that had on costs?

**Mr John:** It is too early to say at this stage what impact it has had. We are looking at that and monitoring that closely and will be evaluating it in the next couple of months once we have had three or four months running.

**Mr Gieve:** We also have an Immigration Services Commissioner who vets advisers; not lawyers but the immigration adviser firms.

**Q71 Jim Sheridan:** I personally have seen lawyers representing asylum seekers who suddenly find themselves driving big cars and purchasing big houses. I just find it upsetting that these vulnerable people are being used as meal tickets and the taxpayers are being taken for a ride. The Chairman commented earlier on costs in other countries and there were some positive aspects there. Do you have any indication of the cost to the taxpayers of other countries who may not have a legal aid system?

**Mr Jeffrey:** I do not have any information with me. I can certainly see whether, as a department, because we do talk closely to administrations in other countries, we have information of that sort. It is certainly very common in other European countries in particular for the equivalent of our appeals stage to be supported by the equivalent of our legal aid.

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**Q72 Jim Sheridan:** When you are speaking to other departments in other countries does it not cross your mind to ask how much it costs?

**Mr Jeffrey:** It does and I will check whether we have information of that sort.<sup>2</sup>

**Q73 Chairman:** Send us a note. Thank you.

**Mr Jeffrey:** Yes.

**Q74 Jim Sheridan:** Paragraph 3.13, page 35, talks about fraudulent claims “Some of these are found to be fraudulent, and it liaises with the Immigration Service who will prosecute perpetrators where it is practicable to do so”. Could you identify what “practicable” is and how many successful cases there have been in terms of fraudulent claims?

**Mr Jeffrey:** We certainly prosecute where we can. I do not have figures for prosecutions with me and perhaps I could give the Committee a note on that as well.<sup>3</sup>

**Q75 Jim Sheridan:** You have no idea how many people were prosecuted.

**Mr Jeffrey:** No, not immediately to hand.

**Q76 Jim Sheridan:** What is “practicable”?

**Mr Jeffrey:** Where the judgment on the normal criteria for prosecutions is that the case is more likely to succeed than not. It depends very much on the evidence which is available.

**Q77 Jim Sheridan:** Can I now move on to accommodation which is another major cost factor around asylum seekers? My understanding is that the accommodation centres are very well run and by extremely good and caring staff, but it does cause some concern in places like Dungable in Scotland which is designed to take families. It is a very sensitive issue and people try to keep the families together and not to break them up so they do not lose sight of each other. Is that the right way to go or is there another alternative in terms of keeping families together or separating them where parents have to be sent back where they came from and the children stay here?

**Mr Gieve:** We obviously try. It is very difficult to deal with family cases and we do try to avoid detention for any prolonged period of time. You are right that there have been some cases which have dragged on where the family has been in detention. Most families do live together in accommodation and currently family support is not withdrawn until they are removed. We are sensitive to the desirability of keeping families together; in fact about 60% of our total support costs goes to families. Of course they have rights under the Human Rights Act.

**Q78 Jim Sheridan:** May I go back to once the process is finished? My understanding is that of the actual cases where it was agreed that the asylum seeker should be sent back fewer than 10% are sent back.

**Mr Jeffrey:** I could not say that that percentage is correct. It is certainly the case that although we have increased the numbers of removals very significantly in the last few years it is still a lower number than the number of people refused. Last year we removed 17,000 people.

**Q79 Jim Sheridan:** Seventeen thousand out of what?

**Mr Jeffrey:** Seventeen thousand of those who were in a position to be removed. They may in some cases have been refused in earlier years; they may have been refused last year. The difficulty which arises, which is something we have been working very hard on with the Foreign Office and others, is that for some nationalities, although the eventual judgment of our own case workers and the appellate authorities is that they could return to their country of origin safely, it is extremely hard in practice to bring that about, either because they are concealing their nationality, or the authorities in the country concerned are reluctant to document them for a journey. We have a big programme of discussions and negotiations with the countries where that is a particular issue to see whether we can unblock things and remove significantly more than we are at the moment.

**Q80 Jim Sheridan:** Is that 10% figure significantly low or too high or in between? You mentioned a figure of 17,000; 17,000 out of a total of what?

**Mr Jeffrey:** Seventeen thousand removals in a particular year. Some of these people will have been in the country for several years, will have had their asylum claims considered and rejected in an earlier year and have disappeared from sight. We catch up with them and they are then removed. Likewise, some of those who were refused last year may well have lost touch with us deliberately and if we catch up with them at a later stage they will be removed. So it is hard to make the direct correlation you are making and say that there is a figure and it is 10%. I certainly would not deny for a moment that over a period of time the proportion removed is quite significantly lower than the proportion refused and we are trying to do something about that.

**Q81 Mr Jenkins:** When the Chairman asked you earlier about paragraph 13 on page 6 and the £200 million you said that it was only arithmetic. This Committee quite likes arithmetic, we quite like figures and we like to evaluate figures. Our title gives a clue I suppose: Committee of Public Accounts. When you read this Report were you surprised or delighted by it?

**Mr Gieve:** Neither surprised nor delighted by it. Coming back to this figure, I did not say that it was just arithmetic, I said that I understood how it had been calculated, but that in my view it did not represent a practical saving which we could have made.

**Q82 Mr Jenkins:** There is a qualification there as to how you allocated resources and it says quite simply that you decided to switch resources to increase removals, which might have a deterrent effect on

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<sup>2</sup> Ev 17–18

<sup>3</sup> Ev 18

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potential asylum applicants. So by how many did you increase the removals? How much did it save on accommodation, benefits, etcetera? What was the evaluation of the deterrent effect in pounds, so I can judge it against the evaluation of £200 million? If it is greater than £200 million, I think you did the right thing.

**Mr Gieve:** You are asking me to make a number of speculative judgments there but perhaps I could say first of all that what happened here was that we decided to build up our removals capacity and we trained our removals case workers on initial applications for a while, because we thought that would give them an understanding of the case work. Then at this point we removed them on to removals. One reason why the £200 million is not valid in my view—

**Q83 Mr Jenkins:** I am sorry, but you signed off this Report, did you not?

**Mr Gieve:** I did not agree that this was a figure which represented a real saving.

**Q84 Mr Jenkins:** You did not agree this Report.

**Mr Gieve:** I did not agree with this judgment about £200 million. I agreed that they could put the number in, but as you will notice, it goes on to say that we do not accept it.

**Q85 Mr Jenkins:** Who signed the Report off?

**Mr Gieve:** I signed the Report off.

**Q86 Chairman:** To be fair to Mr Gieve, he has always made it clear that he did not necessarily accept this figure of £200 million. That is why I put the questions to him right at the beginning and this is why it is a bit of a departure for this Committee, but it was the Committee who asked the National Audit Office to provide this kind of financial benefit, which has been very helpful. Mr Gieve is unable to argue with the actual figures. He does say that theoretically they could be right, but in fact they do not take account of the difference in capacity. Is that a fair summary of what you said?

**Mr Gieve:** That is a fair summary and if you look at the bottom of paragraph 13 it makes plain that we do not accept this as a judgment on what we could have saved. May I just make one point about that? Over half the support costs—and we are really talking about support costs here—relate to families and we only cease supporting families at the point at which they are removed. This figure of £200 million assumes that if we had had a higher level of dealing with initial applications we would also have speeded up our appeals and our removals. What I am saying is that we need the staff in removals to get the removals up. In terms of numbers of principal applicants, the numbers of removals increased from around 7,500 in 1999 to 9,000 in 2000 and in 2001 we started removing dependants so the total came to 10,500, then nearly 14,000 and last year 17,000. So we have increased the number of removals. I can give you a note on what that saved in terms of the actual families removed, but the deterrence effect is, as you

will understand, a more difficult thing to quantify.<sup>4</sup> It is reasonable to say that unless there is a credible threat of removal, then the earlier process of deciding the applications is unlikely to be effective.

**Q87 Mr Jenkins:** Paragraph 1.2 on page 11 says that one of the reasons why they come to the UK, as you said and I just want to stress it, is slow decision making on asylum cases and a lack of an efficient removal system for people refused asylum. Now we are speeding up.

**Mr Gieve:** Yes. This was a Home Affairs Select Committee report in 2001 and I shared that analysis, which is why we needed to speed up our decision-making process and build up our removal capacity.

**Q88 Mr Jenkins:** Fine. Could you turn to page 36? There we have one case—and I know these are just individual cases to make a point in the large numbers; I know you have a very difficult job—of an applicant, which probably was a fraudulent case, or certainly not supported. He claimed asylum in December 1998 and was actually refused asylum in April 2004. That is quite a long period, is it not?

**Mr Gieve:** Yes and there remain a number of cases now, a few thousand cases, which are still quite ancient, which we are still working through. We had to decide when we were building up our system whether we focused on the oldest cases first, or whether we tried to deal with the new cases in an efficient way and then dealt with the old cases as we got the capacity to do so. We decided to do the second, partly because this is about sending signals to people who are thinking of coming to the country.

**Q89 Mr Jenkins:** Would this person still be sitting around living on benefits for those six years?

**Mr Jeffrey:** I do not know about the individual case, whether this person has been removed yet or not. If he was refused asylum in April, there is every possibility that he has appealed against that decision and that there is an appeal still pending.

**Q90 Mr Jenkins:** So he will be drawing his old age pension here before we determine his case.

**Mr Jeffrey:** Not necessarily. We are now essentially joining the system up more than it was before and where people's appeal rights are exhausted we are more consistently catching up with them at that point and bringing about their removal.

**Q91 Mr Jenkins:** The next case is one of multiple identities and you have flagged up that this person had three separate identities. Where do we go from there? What have you done with that case so far? Obviously this person is unsuitable, undesirable, claiming maybe three sets of benefits. What progress have you made with regard to this applicant?

**Mr Jeffrey:** Again I am not familiar with the individual case. It is obviously one which emerged in the course of the sampling exercise which the NAO did. Where there is a suggestion of separate identities, we are better equipped than we were

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before to draw that out. The fact that we now fingerprint all applicants means that we can spot cases where people have presented themselves under more than one identity. We have a separate, special, multiple applications unit which is doing nothing but trying to identify such cases.

**Q92 Mr Jenkins:** The picture at the bottom does not give much hope or confidence. I am surprised you let that picture be published actually.

**Mr Jeffrey:** It is a picture from the past I hope.

**Q93 Mr Jenkins:** I hope it is a picture from the past. I should like to go on to recommendations.

*The Committee suspended from 4.45pm to 4.58pm  
for a division in the House*

I take it you looked at the recommendations and you are thoroughly in favour of them. I should like to bring two to your attention. The first is “vii The Directorate should evaluate promptly any new information”. That was referring to Case H where outside information is coming in which indicates this person is making a fraudulent claim. What are we doing about it, rather than just filing it and forgetting it? Could you let me have a note telling me exactly what you intend to do about that?<sup>5</sup> The next one is “xi The Directorate should update its country information more frequently . . . reflecting the rate at which country circumstances are changing”. I cannot and shall not blame you for the herd which comes over the horizon: it is how you deal with it when it comes over the horizon. That leads me onto a point which you brought up, which I found very, very interesting. You were given this target to reduce the number of applicants. I found that rather a strange target. Within your area you can improve the processing when they get here, but how can you improve the number of applicants? Surely that depends upon circumstances in the originating country not yours?

**Mr Gieve:** There are things we can do. First of all, we are trying to discourage unfounded applications, but in our view the vast majority of applications over the last few years have been unfounded. There are things we can do and have done to reduce the numbers, particularly, for example, putting our immigration controls in Calais rather than Dover. If you find someone in Dover and they claim asylum they are in, but if you find them in Calais you can stop them crossing the Channel. Doing similar work in airports, requiring visas from some countries and so on are all ways in which you can actually make it difficult for people to come here who would claim asylum. Then of course there is the point to which you drew attention before, that if we can deal with cases quickly, efficiently, fairly and remove people if they are found not to have a well-founded claim, then that too is a discouraging factor. We saw that particularly with Eastern Europe when we introduced non-suspensive appeals. People were taken to Oakington for a few days; if their claims

were rejected, they were then deported and could appeal from their own country. We found that more or less completely stopped applications from those countries. So there are things you can do about applications.

**Q94 Mr Williams:** I shall just follow up slightly on what Mr Sheridan was questioning. Who monitors the lawyers and their charges and their practices as far as fees and cases for asylum are concerned?

**Mr John:** There are two elements to monitoring. There is the Immigration Services Commissioner, that is Mr Scampion, I believe.

**Q95 Mr Williams:** What is his responsibility?

**Mr John:** The accreditation of representatives in the field of immigration services.

**Q96 Mr Williams:** Would these be for advisory services rather than for lawyers who are going to deal with cases?

**Mr John:** That is correct. On the lawyer point, primarily it is the Legal Services Commission, in managing contracts with practitioners, which is the controller of those lawyers in the profession working on asylum cases.

**Q97 Mr Williams:** To whom is each of those accountable? In accountability terms where do they go?

**Mr Gieve:** The Immigration Services Commissioner is independent, but he is paid for by us.

**Mr Jeffrey:** He is appointed by the Home Secretary and his remit is effectively to regulate the provision of services by people who are not lawyers in this area. He is answerable in that sense to the Home Secretary, although independent, and makes an annual report to him.

**Mr Magee:** The Legal Services Commission is a non-departmental body with an independent chairman and independent members. It is linked with the Department for Constitutional Affairs.

**Q98 Mr Williams:** That is helpful; thank you. So it is outside your remit. That answers one of the things I would have been coming to: who is responsible for some of these so-called immigration services? As Members we have dealings with them and they are mixed; obviously we get some very good ones and we get some appalling ones who just do not bother to answer phones or even reply to MPs when they phone and we get lawyers who are the same. The other responsibility, managing the contracts, would that be the Lord Chancellor's? Who would be responsible?

**Mr Magee:** That would be the Legal Services Commission who are responsible for managing contracts. The arrangements which were being referred to earlier, which were introduced in April of this year to help control costs and standards, are policed by the Legal Services Commission. The fact that these arrangements were brought in, by implication recognises that there might have been a problem which needed to be addressed. As Mr John was saying, we do not have the definitive

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information, it having been only three months since this was introduced, to say what the effect of the changes has been.

**Q99 Mr Williams:** Have you referred solicitors or advisory organisations to either of these bodies to have them looked at in terms of their credibility?

**Mr Jeffrey:** Have we referred them?

**Q100 Mr Williams:** Yes.

**Mr Jeffrey:** Certainly if we come across legal representatives or other representatives we believe are behaving unprofessionally, we will draw them to the attention of the Office of the Immigration Services Commissioner or in some cases of the Law Society.

**Q101 Mr Williams:** In ballpark figures, I am not asking down to the last detail, have you referred to either?

**Mr Jeffrey:** I do not know the answer to that question.

**Q102 Mr Williams:** Does that mean there are so few you would not know, or that there are so many you could not remember?

**Mr Jeffrey:** I do not think it is negligible.

**Q103 Mr Williams:** You do not think it is negligible.

**Mr Jeffrey:** I do not think it is negligible, but we will try to provide a note on this.<sup>6</sup>

**Q104 Mr Williams:** It is not negligible. These are cases you have referred. Can you let us have a note for inclusion in our report of the numbers you have referred to either of those accountable organisations?

**Mr Jeffrey:** Yes, we can try to provide that.<sup>7</sup>

**Q105 Mr Williams:** That would be helpful.

**Mr Jeffrey:** I am not sure whether that information is collected in a central fashion, but we will certainly aim to provide a note of that sort.<sup>8</sup>

**Q106 Mr Williams:** I am just seeking information. I am not trying to catch anyone out, I promise you.

**Mr John:** Certainly adjudicators within the immigration appellate authority will on occasion make referrals to the Immigration Services Commissioner or to the Law Society where they feel reps or lawyers who have appeared before them, particularly on a consistent basis, have not been up to standard. I do not know whether the Chief Adjudicator, for instance, collects statistics. In the same vein as Mr Jeffrey, we can seek to provide that.<sup>9</sup>

**Q107 Mr Williams:** One has the impression that there is an enormous rip-off, so-called service being provided to many of these people who need proper representation. There seem to be organisations which entrap them almost as soon as they come into

the country and then give rather pathetic service to them, but are quite happy to accept their fees. Does that fit in with your own experience?

**Mr John:** It is difficult for me to comment in terms of the experience of adjudicators. That is not the kind of message I have received from adjudicators. Generally they feel the level of representation is very good. On occasions there are individuals who are not up to the mark in their view.

**Q108 Mr Williams:** Are you even aware of the charges any of these bodies make or does that not come within your remit? How have the costs you have quoted here been compiled? If some of the information is outside your department this may be a question for Sir John if you cannot answer.

**Mr Gieve:** The legal aid costs are within the DCA budget although they are administered through an NDPB. We do know what the costs of the legal aid are. There have certainly been occasions when the immigration department has felt there have been some pretty terrible services and I know they have referred people on to the authorities.

**Mr Magee:** We can help a little here. The scheme which was introduced in April of this year is an independently assessed accreditation scheme for solicitors working on the publicly funded cases. It is going to become compulsory by April 2005. It is being introduced gradually. The idea behind the scheme is that it controls costs by introducing maximum fees and by restricting the advice available for every asylum seeker at the initial stage of their claim to five hours. The intention is that that will save £30 million in a full year. Obviously it has not been running for a full year yet.

**Q109 Mr Williams:** So £30 million would be the cost in the last 12 months, would it? Would that be your experience?

**Mr Magee:** We cannot jump to that conclusion, because we have not seen the scheme in operation for more than three months at the moment and no evaluation has been done yet.

**Q110 Mr Williams:** I assumed that your saving of £30 million was based on experience of cost, but if you are saving £30 million the cost would be much higher. What figures do you have on cumulative legal aid costs, say year by year? Do we have any movement figures on that?

**Mr John:** We can give you a figure for the last financial year, 2003–04. The legal aid spent on asylum was £184 million.

**Q111 Mr Williams:** This is where we come across some difficulties. Would that be the total cost of legal aid cases which terminated last year or would that be the cost which actually accrued solely within the last year? Do you know off hand?

**Mr Magee:** I do not know off the top of my head which of those two it is.

**Q112 Mr Williams:** Do you have any impression whether the figure is rising or falling?

<sup>6</sup> Ev 18

<sup>7</sup> Ev 18

<sup>8</sup> Ev 19

<sup>9</sup> Ev 19

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**Mr John:** Our expectation is that the budgetary requirement for the year we are now in, 2004–05 will be no more than £184 million and that is partly a factor of the expected savings.

**Q113 Mr Williams:** That is presuming a saving of £30 million, which we have been told about. In other words you are expecting £210 million.

**Mr John:** We are expecting a saving of more than £30 million. The anticipated budget for the year 2004–05 is £146 million.

**Q114 Mr Williams:** I am not sure what else I can ask you as most of the things seem to be outside your responsibility. We get these stories in the press—I am not saying they are right, I am not saying they are wrong—about companies which have made more than £1 million in about two years. Does this ring true with you? Does it seem to fit in with your experience?

**Mr Magee:** I could not possibly comment on that because I would need to know about the cases. What I can comment on is the fact that the Legal Services Commission, and indeed the government, want to get a grip on cost in this area and to exercise proper control.

**Mr Williams:** Some of my questions obviously belong elsewhere, so I shall leave it there.

**Q115 Mr Davidson:** Would it be accurate to say that it makes absolute sense, it is a rational decision, for anybody who is refused asylum to appeal? There is no possible downside for the individual, is there? Who can tell me that?

**Mr Gieve:** People's circumstances are very different, but if they are pretty confident the appeal is going to be turned down and if they find that they are not much enjoying living here, then I dare say people do leave; not everyone does appeal.

**Q116 Mr Davidson:** I just want to be clear. Looking at the figures, some are not appealed and I am seeking to clarify in my own mind why that might be the case. I would have thought that if people had applied to stay here, sought asylum here, and been turned down, there would be no rationale why they would not then appeal against it because they could not possibly be worse off.

**Mr Gieve:** You have a wide variety of applicants from genuine—

**Q117 Mr Davidson:** Rather than just repeat the answer you gave me before, I understand that. Okay. I can also see advantages to appealing in terms of hanging on and waiting for another possible amnesty: your children get better education; you have access to services and so on. I am just anxious that the number of appeals which are lodged against your cases should not be used unfairly as an indication that you are coming to the wrong decisions. Some of the questioning earlier on was perhaps leading us to that. Can I just clarify the question of the lawyers? To a great extent I agree with my Scottish colleague about the position of lawyers and those who are encouraging people to

appeal for their own selfish interests. Given that changes are being made in the system in England and Wales, to what extent are you comparing the way in which the Law Society in Scotland and the system of legal aid in Scotland is operating with England and Wales? Are there any valuable lessons which can be drawn from that?

**Mr John:** I am not familiar personally with the Scottish legal aid system. I know there are differences.

**Q118 Mr Davidson:** You are in charge of this element of it down here, the tribunals and so on.

**Mr John:** I am in charge of the tribunal operations. The legal aid is actually—

**Q119 Mr Davidson:** Are there any differences in the operation of tribunals in Scotland as compared with England and Wales?

**Mr John:** There are some practical differences, from our experience of hearing asylum appeals in Glasgow, in terms of representatives with the Legal Aid Board and how they are funded. That does mean our hearings are longer in Scotland in terms of how evidence is presented. That is the main practical difference I am aware of. Beyond that I would need to go back and perhaps provide a note.<sup>10</sup>

**Q120 Mr Davidson:** Given that you have the same structure of tribunals operating under two apparently different legal aid systems, would it not have been sensible for you to compare and contrast on a regular basis to see whether or not there were any lessons which could be learned, particularly if you were seeking to make changes or wanting to comment on changes the government might want to make in England and Wales?

**Mr John:** Your point is a fair one, but I am not familiar with the extent to which the Legal Services Commission has compared and contrasted with the Scottish Legal Aid Board.<sup>11</sup>

**Q121 Mr Davidson:** And you have not, being in charge of the tribunals.

**Mr John:** That is right. I am in charge of tribunal operations.

**Q122 Mr Davidson:** Obviously some appeals which are successful are justified and you have outlined why that is. Is there a number of cases where you feel that you were right and the appeals process had it wrong and you would not change the decision you had made in the first place?

**Mr Jeffrey:** There are certainly cases where the adjudicator finds against us and as things stand we have an opportunity to appeal to the tribunal and take that opportunity and sometimes win.

**Q123 Mr Davidson:** What sort of percentage is that? Give me a feel for that.

**Mr Jeffrey:** I do not have figures in my head. I think the safest thing for me to do is to write to you.<sup>12</sup>

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<sup>10</sup> Ev 19

<sup>11</sup> Ev 19

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**Q124 Mr Davidson:** Is this a relatively small number?  
**Mr Jeffrey:** No, it is not insignificant.

**Q125 Mr Davidson:** Does “not insignificant” mean big?

**Mr Jeffrey:** In a proportion of cases, which I would guess is of the order of 5% or 10%, we go to the tribunal because we disagree with the adjudicator’s findings. It is a guess and the safest thing to do would be to write to you.

**Q126 Mr Davidson:** Clearly you are always going to lose some things which you think you should not have lost. I understand that is in the nature of the process. Are there any particular areas where you feel that there is a clash of policy between yourselves and the appeals mechanism? How is that then addressed? If you think you have it right, but they are systematically overturning you, then perhaps they have the policy wrong. How is that then resolved?

**Mr Jeffrey:** In the end the appellate authorities decide. Where there is a marked difference in practice, we do look very carefully at what the reasons for that might be.

**Mr Gieve:** On the question of policy, that is not really a problem we face with adjudicators, but there are cases where the courts find against, or re-interpret the legislation. You will have been voting on a number of cases where we have tried to restore the position or change it. Ultimately it becomes a question of legislation, but all of that is subject to the Human Rights Convention.

**Q127 Mr Davidson:** I just want to clarify in my own mind whether or not the feedback loop is operating sufficiently well to make you feel confident that aberrant decisions, either individual ones or in a category, are then able to be re-addressed in some way by the system, albeit that some people will have got through or been rejected and so on, and at some point the system re-connects. Is that a fair assessment?

**Mr Gieve:** Certainly we do constantly monitor what the results are and why and adjust our decisions to meet that where we think either we agree with them or alternatively they have clarified a point of law where we have taken a different view, but we accept that, or where it is just a fact of life we have to adjust to.

**Mr Jeffrey:** May I interject, because I have found the answer to your question in the NAO’s Report? In the footnote to Figure 5 it is reported that in an analysis of the tribunal’s determinations the tribunal has determined 1,000 appeals from the 2002 case load brought by the Home Office, of which 350 were allowed and 300 were remitted to the adjudicator for reconsideration. I have not been able to work out quickly what percentage that is, but it is not a small number.

**Q128 Mr Davidson:** In terms of changing grounds of appeals, one of the issues which concerns me is the coaching of applicants. As a constituency Member, and I am sure others have as well, I have had people

come to me who have clearly been coached. I remember one particular Iranian family who said that they had been told to say that they were Christians. They said they were not saying it just for the sake of argument, but they really were Christians. That is disingenuous in the extreme and you sympathise with them. To what extent do you feel that your system is quick enough to respond to coaching? What can be allowed through will obviously spread like wildfire through the ranks of those who are doing the coaching and those who are applying. Female genital mutilation as an argument against being sent back is suddenly another one which is appearing, certainly in my surgeries and I presume in some others as well. To what extent do you have mechanisms which allow you to take account of those when decisions are being made and at appeal stages as well?

**Mr Gieve:** You are quite right that this is a moving picture and people quickly find out which arguments are most likely to be successful and they try to adopt those. We have to adjust first of all to assess the truth or otherwise of it, but also develop our own understanding and arguments. You are absolutely right that in all immigration matters, but in asylum in particular, you are constantly having to adjust your practice because this is a two-sided business.

**Q129 Mr Davidson:** How can you assure me that your mechanisms are such that they allow you to respond quickly enough to these new waves of, as it were, fashionable arguments?

**Mr Jeffrey:** Our senior case workers play a large part here. They work with groups of basic case working staff and there is an extent to which they are encouraged to look out for trends of this sort. The staff themselves are alert to lines of argument which seem very similar. Sometimes the detail is identical from case to case. It bears out a point I was making earlier, that this is in many cases ultimately about credibility and it is very hard to get under the surface of an apparently credible story sometimes.

**Q130 Mr Davidson:** Can you just clarify a point for me? Am I right in thinking that anyone who is granted asylum anywhere in the EU is then subsequently able to come to the United Kingdom and settle freely?

**Mr Jeffrey:** They certainly have the right to come to this country. Whether they have rights of establishment here depends on whether they assume the nationality of the EU country in which they are living. I should like to check that.<sup>13</sup>

**Q131 Mr Davidson:** One of the arguments which has been advanced to me recently, again in my own constituency, is that one particular national group will seek to go to where it is fashionable, a particular line of argument is accepted, get accepted there for asylum and then come to the UK, which is where they wanted to come in the first place. I wondered

<sup>13</sup> Ev 19–20

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whether or not there was any monitoring of this by you or whether or not you would have any reason to do so if in fact there was freedom of movement.

**Mr Jeffrey:** On some scale there certainly is a phenomenon of people acquiring some status in another European Union country and then using the travel documents issued by that country to come to this country, concealing the fact that they had that status and then applying to us for asylum. We have tried to get behind that by various measures taken at the ports and airports.

**Q132 Mr Davidson:** Can I be clear? Again, my understanding would be that if somebody in my constituency gets asylum, they are then free to live, operate, work and have travel documents which would enable them to travel elsewhere within the EU and indeed throughout the world.

**Mr Jeffrey:** I do not think that the grant of asylum in itself gives that freedom of movement. In the rest of the EU what it may well do is set them on the road to acquiring the nationality of the European Union state in which they are living. Once they are, for example, French, or German, or Dutch citizens, then they are perfectly free to come to this country as any other French, or German, or Dutch citizen would be.

**Q133 Mr Davidson:** This is a line I perhaps ought to pursue elsewhere. What happens in situations where applications for asylum are accepted and subsequently it is found that the grounds for asylum were fraudulent?

**Mr Jeffrey:** I cannot think of any cases where that has been undone.

**Q134 Mr Davidson:** Is there provision for it to be undone?

**Mr Jeffrey:** It would be open to us to revoke the status.

**Q135 Mr Davidson:** Again from my own constituency experience, I am aware of situations where people have quite openly boasted that they lied in their applications, had their applications accepted and are now telling other people to use exactly the same lies. I wondered whether or not there was a mechanism.

**Mr Jeffrey:** I cannot say immediately how often we do that, but it is certainly open to us, if we have evidence presented to us that there has been deception and people have misled us, to revoke the grant of asylum.

**Q136 Mr Davidson:** A further point in relation to removals and we have touched on some of these issues. My understanding is that when somebody is refused permission to remain and they are deemed appropriate for removal, their right to access UK facilities such as education and health and so on would cease. Is that correct?

**Mr Jeffrey:** Yes.

**Q137 Mr Davidson:** I have experience in my own area and I am aware of this in other areas where colleges are continuing to sign up people who have been refused permission to stay and are receiving the funding for these people, but no checks are made. Is there a mechanism by which there is a feedback in terms of who is entitled to claim free education and who has been refused permission to stay?

**Mr Jeffrey:** This is something which is more for the Department for Education and Skills, but it is something we are in touch with them about. It is certainly the case that access to main services for someone in the position you describe is not available. I would not care to say how detailed the checks colleges make are.

**Q138 Mr Davidson:** Do you have a mechanism by which you inform them? In a sense, would it be fair to say that none of that is your fault, it is all their fault, because you have given them the information already?

**Mr Jeffrey:** No, it would not be fair to say that.

**Q139 Mr Davidson:** Why in that case would it not be fair to say that? Why have you not given them this information?

**Mr Jeffrey:** If someone wants to access services in this country, then they need to establish a basis for doing so. They certainly would not be able, for example, to present to college authorities a passport which demonstrated they had leave to be in this country.

**Mr Gieve:** There is a question about how rigorous people are in quite a lot of services in checking entitlement. Some are not. Some people do not feel it is their job to do that. Just going back in terms of when people lose entitlement to support, as you know, we are changing this in the current Bill, but at present it is true that families continue to be entitled to support until the point of removal.

**Q140 Mr Davidson:** I do accept that. One particular case I am thinking of is where a husband and wife, both of whom have been refused permission to stay, are continuing to attend and indeed have just started a new session in a further education college. They were entitled to that at one stage while they were under appeal, which they managed to spin out for a long time. They have now been refused but they are continuing to sign on for another course with no check apparently being made. What I am not clear about is whether or not there would be a central register which that college should have consulted, whether or not that information has been made available by you to somewhere which they ought to have checked.

**Mr Jeffrey:** In relation to children, they go to school.

**Q141 Mr Davidson:** No, these are adults; not insignificant people; big people.

**Mr Jeffrey:** For those who are older it is fair to say that the system is not as systematic as all that, for reasons which we touched on a moment ago.

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**Q142 Mr Allan:** I did not want to let you get away without speaking briefly to Figure 17 on page 34 which is a wonderful graph showing how you meet your 60-day target, then as soon as you get to the 60 days it goes very, very flat indeed. I want you to justify that. I am concerned as to whether the target is distorting things so that cases which have not made the 60 days get put on some second-class pile and hang around to get picked up at the next four-month target.

**Mr Gieve:** You are right first of all that we do not just have a two-month target, we have a later target, in fact two later targets: four months and six months. The percentages being caught at those stages are all going up. We do not just abandon these cases. There is a proportion of cases, often the most well-founded cases, which actually take a long time; people are ill, or they need medical reports or whatever.

**Q143 Mr Allan:** This does appear to be an extraordinary flattening, it does not look natural. The fear is that there are some people here perhaps with well-founded cases who are now going to have to wait 120 days, with all that uncertainty, when their cases could be dealt with after 70 or 80, but because of the target you are saying either 60 or 119, but do not worry too much in between.

**Mr Jeffrey:** It is still a rising trend after that. Our internal target in 2002–03, for example, was to complete 65% within two months and 75% within four months and by the four-month point we had completed 84%. Our target internally for the year 2003–04 is 90% within six months and we believe we are on course to meet that. It is true that there is a bit of flattening off, certainly in the week or so after the two-month period, but we are trying to clear what are in some cases very complicated cases as quickly as possible thereafter.

**Mr Allan:** Thank you, that is an encouraging answer.

**Q144 Mr Williams:** I ought to get a simple, straightforward reply. Does the Data Protection Act inhibit you at all in your work and also when you are dealing with enquiries from Members of Parliament?

**Mr Jeffrey:** It inhibits us in the sense that—and I am sure you will have discovered this yourself as a constituency Member—when someone who is not the applicant themselves, but who does have a very close interest in the outcome of the case, approaches us, sometimes through the Member of Parliament and often spouses who are separated come into this

category, we have, for reasons to do with data protection and privacy, to decline to give some of the information which is sought.

**Mr Williams:** I do not really want to pursue it here. Could you just give us a note of any circumstances in which it impinges on you adversely?<sup>14</sup> That is all I need to know. Thank you.

**Q145 Chairman:** A last question from me for Mr Magee. If you look at Figure 15 on page 31, you can see new applications and initial decisions and an inexorable rise in new applications from 1998 rising in 1999 to 2000. If you turn back to Figure 12 on page 26, which deals with appeals lodged and appeals determined, there is an inexorable rise in appeals lodged from 1998, going up in 2000 and 2001, obviously following on from the rise in new applications. What this leads me to feel is that actually your department and the Home Office should have realised what was going on, because it was as clear as daylight.

**Mr Magee:** I think it is very easy to see in 2004 how we might have reacted sooner collectively to a situation which we faced, than arguably it might have been in 2000–01, for reasons which were explored earlier. I return to the point that, faced with this explosion in cases, and particularly over the last 18 months or so, with Bill Jeffrey and Martin John working closely together, we have reached a position where we have learned the lessons from the way in which these cases might have been dealt with before, we have more effective planning systems in place. As the Committee has explored this afternoon, we do not have all the answers for you today, but I think a creditable management effort on behalf of the system as a whole to deal with the situation we faced.

**Mr Gieve:** We did know what the position was in 1999, we could see we were in difficulties and we had to try to build up capacity in all parts of the process, starting with the initial applications and then appeals and removals. I assure you that we have done that as quickly as we could and we can now show the results.

**Chairman:** Thank you very much gentlemen, that concludes our hearing. Clearly in our report we are going to have to consider the crucial point as to whether the decision to transfer case workers into removals was actually an appalling mistake which allowed the backlog to rise and created the situation we are now faced with. Clearly progress has been made since then, so at least you should be congratulated on that, gentlemen. Thank you very much.

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<sup>14</sup> Ev 20

## Supplementary memorandum submitted by the Home Office

## QUESTIONS 71–72 (JIM SHERIDAN): COST OF LEGAL AID IN OTHER COUNTRIES

Neither the Department for Constitutional Affairs nor the Home Office have information on the comparative costs of legal aid in other countries for asylum seekers. However, the Department for Constitutional Affairs would be happy to look into this further and report back to the committee in due course.

The European Council on Refugees and Exiles (ECRE) carried out a comparative study in 2000–01 of free and low cost legal assistance for asylum seekers. This was funded by the EU. The report sets out the level of legal support that is provided in each country but does not include details of the costs. The report may be accessed at the ECRE website ([www.ecre.org](http://www.ecre.org)) under Policy and Research.

QUESTION 74 (JIM SHERIDAN): PROSECUTIONS FOR FRAUDULENT CLAIMS

Offences commonly investigated by the Immigration Service include seeking leave to enter/remain by deception (ie those who claim in multiple identities), facilitation, obtaining asylum support by false representations and offences under the Forgery and Counterfeiting Act. The Immigration Service will review all files passed to it concerning fraudulent asylum claims and, where evidence exists that an offence under immigration legislation has been committed, will pass such cases to the CPS for prosecution. In deciding whether to do so consideration is given to whether or not there is sufficient evidence that an offence has been committed to support a realistic prospect of a successful prosecution. In 2003 at ports of entry and at the Asylum Screening Unit at Croydon 644 people were charged with criminal offences of whom 40 were charged with leave to enter by deception.

QUESTION 86 (MR JENKINS AND THE CHAIRMAN): SAVINGS MADE, IN TERMS OF ASYLUM SUPPORT COSTS, AS A RESULT OF THE INCREASED NUMBER OF REMOVALS OF FAILED ASYLUM SEEKING FAMILIES

We estimate that the increase in the number of family removals since 2001 will have saved approximately £50 million in asylum support costs by the end of 2004. Further savings have been achieved because of the impact of removals on deterring further asylum seekers.

*Assumptions underlying the estimate*

The increased speed and volume of failed asylum seeker removals that has been delivered since 2001 required casework support, without which the increase in removals would not have been achieved. The working assumption is therefore that, had we not increased the number of removals caseworkers from 2001–02, there would have been no increase in the number of removals above 2001 levels.

The savings figure has been projected to the end of 2004 for consistency with the approach adopted by NAO in Appendix 5 to their Report. The available statistics do not permit family removals to be isolated from total removals before 2001. In any case, for consistency with the NAO's approach, it is appropriate to base the analysis on a 2001 baseline.

Similarly, the above figure is based on the full cost of supporting a family (both fixed and variable costs). As singles will normally cease to receive support, before they are removed, the figure does not include any savings in respect of the additional removals of singles.

*Deterrence effect*

The estimate of £50 million reflects only the direct saving in asylum support costs from removing increased numbers of families. It does not allow for the further costs saved because of the deterrence impact of increased removals, which it is not possible to quantify. The substantial reduction in the intake of asylum seekers into the UK has been due to a number of factors but one reason has been the clear signal that has gone out that failed asylum seekers now find themselves more likely to be removed from the UK than in previous years.

This can be illustrated by considering the impact of the introduction of fast track processes, which focused on speeding up the asylum process and linking it to some form of detention. This allowed for a large proportion of applicants to be removed. For the relevant nationalities, there was an immediate and lasting reduction in the number of new asylum claims.

QUESTIONS 103–104 (MR WILLIAMS): THE NUMBER OF LEGAL REPRESENTATIVES THAT IND HAVE REFERRED TO EITHER THE OFFICE OF THE IMMIGRATION SERVICES COMMISSIONER (OISC) OR THE LAW SOCIETY

IND annually refers over 300 instances of suspected abuse or malpractice by legal representatives to one or more of the relevant regulatory bodies including the Law Society and OISC. The vast majority take the form of information reports, although a small number of formal complaints are also submitted to the Law Society in respect of improper conduct by solicitors. IND does not retain a central record of all referrals.

Information provided by IND regularly results in investigations or audits by the regulatory bodies. Sanctions taken include prosecution by the OISC, intervention in a firm by the Law Society or withdrawal of a legal aid contract by the Legal Services Commission.

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 QUESTIONS 105–106 (MR WILLIAMS): JUDICIARY REPORTING ON PERFORMANCE OF LEGAL REPRESENTATIVES

In the first instance an adjudicator who wishes to make a specific complaint regarding the conduct/standard of a legal representative forwards a note, giving some detail to the complaint, to the relevant Regional Adjudicator.

The Regional Adjudicator will determine the seriousness of the complaint, and weigh this against mitigating factors such as previous complaints made against the same firm. If they believe that local intervention would be more appropriate then correspondence is forwarded to the firm involved detailing the complaint made against them, asking for a reasoned reply, and stating that the correspondence will remain on file.

In circumstances where the Regional Adjudicator believes the complaint is serious enough to warrant official action it is forwarded with a covering note to the Deputy Chief Adjudicator who forwards the complaint onto the OISC/Law Society wherein a caseworker will instigate a formal investigation. Once this has been completed findings are forwarded to the Deputy Chief Adjudicator and the original complainant.

The Deputy Chief Adjudicator also receives regular updates from the Law Society in relation to firms in which they have intervened, which are circulated amongst the Regional Adjudicators.

## QUESTIONS 119–120 (MR DAVIDSON): DISCUSSIONS BETWEEN LEGAL SERVICES COMMISSION AND SCOTTISH LEGAL AID BOARD

Each year a quadrilateral meeting takes place between the Legal Services Commission, Scottish Legal Aid Board, Northern Ireland Law Society and the Legal Aid Board (Ireland). The respective organisations discuss common issues and areas of interest.

During the development of the asylum legal aid reforms last year there was informal contact at official level with the Scottish Executive (which has responsibility for Scottish Legal Aid). It is common practice to keep the relevant bodies in Scotland and Northern Ireland in touch with changes to the legal aid system in England and Wales.

## QUESTION 123 (MR DAVIDSON): APPLICATIONS FOR PERMISSION TO APPEAL TO THE TRIBUNAL MADE BY THE SECRETARY OF STATE

Data on the exact proportion of allowed appeals at the Adjudicator tier that result in applications for permission to appeal to the Tribunal by the Secretary of State cannot be provided. This information has only recently been recorded on IND's case information database in a way that would allow this calculation to be made.

Historic rates of application by the Secretary of State seeking permission to appeal to the Immigration Appeal Tribunal (IAT) can be produced from Immigration Appellate Authority statistics. It should be noted that, given the timescales involved in processing appeals, not every appeal allowed at the Adjudicator tier in a particular period will apply to the IAT in the same period.

As an indication of the relative proportion of cases where permission has been sought, the IAA statistics show that 13,509 appeals were allowed by Adjudicators in 2002. During the same period, IND sought permission to appeal in 2,379 cases. For 2003, the figures are 15,660 and 4,059 respectively.

## QUESTION 130 (MR DAVIDSON): IMMIGRATION CONTROL

People who have been recognised as refugees by another country, including a Member State of the EU, are subject to the United Kingdom's normal immigration controls. There is no automatic right for refugees recognised elsewhere in the European Union to settle here.

Until last year there was no visa requirement for visits of three months or less for those holding Refugee Convention travel documents issued by countries which were signatories to the Council of Europe Agreement on the Abolition of Visas for Refugees. This exemption was however suspended as there was evidence of abuse.

The United Kingdom will in some instances accept responsibility for the protection of a refugee recognised elsewhere, and give them indefinite leave to enter or remain (ILTE/R) as a refugee. Any such decision will be based upon the exercise of the Secretary of State's discretion outside the Immigration Rules. Some cases will fall within the scope of the Council of Europe Agreement on the Transfer of Responsibility for Refugees (EATRR). We are at present satisfied that these arrangements are not being abused.

The European Commission has been investigating the possibility of bringing forward a Community instrument on the transfer of refugee status between EU Member States, probably by an extension of the Directive concerning the Status of the Third-country Nationals who are Long-term Residents to include

refugees. The United Kingdom has the right under a protocol to the Treaties to decide on a case by case base whether to participate in Community legislation on immigration and asylum. We do not participate in the "parent" directive referred to above.

The Home Office does not include figures on transfer of refugee status in the quarterly bulletin of asylum statistics. We know however from case working figures that these numbers are extremely low.

QUESTION 144 (MR WILLIAMS): DATA PROTECTION ACT

Mr Williams asked whether the Data Protection Act 1998 (DPA) inhibits the work of IND. Under the DPA, generally speaking, we are not permitted to provide personal information on an individual to a third party and as a result are not able to provide information to MPs who write to us on behalf of third parties.

In particular, we regularly receive requests for information from MPs on behalf of estranged spouses who are alleged to have been subject to abuse. The spouses seek personal information about their ex partner. Until recently we have not been permitted to provide information, as the spouse is a third party. However, recent legal advice suggests that there is some scope to be a little more forthcoming with information that we supply in reply to MPs.

Ministers have therefore recently agreed that in future in such cases IND should disclose the following information:

- confirmation of whether according to our records, the former spouse is still in the UK or has left the country;
- confirmation in cases where we intend to take no further action against the former spouse; and
- confirmation of whether an application for leave to remain on the basis of marriage to the constituent has been granted or refused.

In addition to this, once a case has reached appeal and been determined, the contents of the appeal determination are a matter of public record and may also be disclosed.

3 August 2004

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**Further supplementary memorandum submitted by the Home Office**

QUESTION 93 (MR JENKINS): A NOTE ABOUT RECOMMENDATION VII, WHICH STATES "THE DIRECTORATE SHOULD EVALUATE PROMPTLY ANY NEW INFORMATION IT RECEIVES FROM THIRD PARTIES REGARDING POTENTIALLY FRAUDULENT APPLICATIONS"

IND has recently introduced new procedures for handling allegations about potentially fraudulent applications. The processes ensure that information is available to the most relevant part of the business, as promptly as possible, so that it can be taken into account in deciding the next stage of an application. Most allegations are received in a central unit and then sent to the most appropriate intelligence unit to be evaluated.

The procedures ensure that IND meets its legislative obligations over handling such information and its duty of care to protect the individuals who supply it. About 2,000 allegations are received by IND every month. Not all information received is actionable, as there may be insufficient detail to identify specific individuals.

*Handling of allegations about asylum fraud*

As part of the effort to target fraud in the asylum system, IND has set up an intelligence unit in the Asylum Casework Directorate. The unit has lead responsibility for collating information on asylum abuse. When information is received that a particular applicant is not genuine the unit sanitises the information to protect the identity of the source, and if appropriate disseminates a report to the officer dealing with the application.

Information received through allegations cannot be used directly in making a decision, cannot be referred to in any refusal, and cannot be used in any appeal. However if high quality information is provided it may allow the interviewing officer to spend more time over the interview, to ask specific questions, or to question in more detail specific aspects of the applicant's account.

Sometimes the information received is of sufficient quality to allow specific checks to be made which cast doubt on an applicant's account. It may for example help show that an applicant applied for a visa in a different identity. It is ultimately up to the asylum caseworker to weigh information provided by the applicant along with any information that can be used from other sources, and make a decision on whether or not asylum should be granted

Where allegations specifically refer to a multiple applicant these are referred to a specialist team who double check for fingerprint matches. However most multiple applicants are identified through routine finger print matches rather than allegations.

Where individuals or organisations are identified as involved in fraud, either through intelligence or identified as a multiple applicant through a finger print match, prosecution action is considered, and the case is referred to an IND prosecution unit.

Information about organisations or legal advisors may also be disclosed to the regulators, such as the Office of the Immigration Services Commission and the Legal Services Commission, for their consideration.

*17 January 2005*

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