

# Improving the Speed and Quality of Asylum Decisions



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL  
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# executive summary

- 1 In 2003, 49,370 people applied for asylum in the United Kingdom. Amongst its other responsibilities, the Home Office's Immigration and Nationality Directorate (the Directorate) is responsible for deciding these applications, and for supporting applicants during the process. Its objective is to process applications efficiently, focusing the asylum system on those genuinely fleeing persecution by taking speedy, high quality decisions. Speedy initial decisions, and decisions on any subsequent appeals, also 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.<sup>1</sup> The Directorate spent £1.86 billion in 2002-03 on all its operations, including £1.07 billion in providing accommodation and financial support to asylum applicants and their families.<sup>2</sup>
- 2 There were 12.6 million admissions of foreign nationals from outside the European Economic Area to the United Kingdom in 2002. In the same year, 26,560 people (known as port applicants) lodged an asylum application at a port or airport. Applications for asylum lodged by people already in the United Kingdom, known as in-country applicants, totalled 57,570. The data on asylum applications has been drawn from statistics published by the Home Office. At the request of the Prime Minister, we were asked to audit the reliability of the statistics appearing in the Home Office's quarterly Asylum Statistics. The results of our audit have been published separately<sup>3</sup> and the data and conclusions in this report should be read in the context of the outcome of that audit.
- 3 The Directorate is required to examine whether applicants have a "well-founded fear of persecution" as defined by the 1951 Convention and interpreted through UK case law. Policy guidance is prepared by senior officials in the Directorate as to the criteria to be taken into account when exercising judgement and on Her Majesty's Government's attitudes to the nature of regimes in different countries. This guidance is adjusted from time to time under Ministerial Direction as necessary. But within this guidance, there remains a good deal of latitude for the judgement of individual caseworkers, who have much to consider as well as the examination of many different documents. This opens up the process to possible error, appeals and delay. A more simple system might enable significant savings to be made, but would generally require changes to current government policy, so is outside the remit of this report. This report does, however, consider the scope to improve processes within current policies and systems, focusing on the speed of initial decisions and appeals, and the quality of initial decisions.

<sup>1</sup> The Directorate grants "Humanitarian Protection" or "Discretionary Leave" to applicants that it recognises to be in need of short-term protection. Before April 2003, short-term protection was known as "Exceptional Leave to Remain".

<sup>2</sup> Further details of the support available is provided in Appendix 1.

<sup>3</sup> *Asylum and migration: a review of Home Office statistics, HC 625, Session 2003-04.*

# Recommendations

## We recommend:

### To reduce the amount of "down time" in processing applications:

- i** The Directorate should draw more upon lessons to be learned from the fast track procedures and from systems overseas, for example by conducting interviews earlier in the process; reducing the elapsed time normally allowed for considering applications; and despatching decision letters more quickly once the decision is reached.
- ii** The Directorate should make maximum use of the capacity available for processing applications via its fast track procedures. The Directorate, for example, should keep staff responsible for screening applications regularly informed of the types of cases suitable for fast track processing and review cases periodically to ensure that the sifting process is working effectively.
- iii** When implementing any new arrangements it has to improve the timeliness of the appeal process, the Appellate Authority should draw, for example upon the lessons to be learned from Harmondsworth where a fast track appeal process has been introduced.
- iv** The Appellate Authority should make better use of the capacity of all its court centres, particularly those centres currently underutilised for immigration purposes, for example by further sharing of spare capacity with other courts.

### To improve the management of backlog cases:

- v** The Directorate and Appellate Authority should draw up contingency plans to enable them to increase their processing capacity quickly should they be faced with a rapid increase in the number of applications in the future.
- vi** The Directorate should keep better information on cases should backlogs build up and use this information to decide how to tackle the backlogs. Key data should include the age of the case, the applicant's country of origin and other data on the nature of the application, for example whether there are any dependants.
- vii** The Directorate should evaluate promptly any new information it receives from third parties regarding potentially fraudulent applications.

## To improve the quality of initial decisions:

### viii The Directorate should strengthen its quality assurance arrangements by:

- regularly analysing the reasons for initial asylum decisions being overturned and using the results to keep individual caseworkers informed of decisions taken on their cases;
  - investigating the reasons for any differences between the appeals allowed rates for applicants from different countries and taking action to address any systemic weaknesses in how cases are considered;
  - introducing supervisory review prior to initial decisions being despatched for those types of application most frequently overturned at appeal, for example applications involving particular nationalities;
  - expanding the random sample of refused applications examined by staff from the Treasury Solicitor's Department to provide a much greater degree of independent scrutiny and feedback on internal procedures; and
  - expanding the random sample covered by the Directorate's quality assurance process of applications where asylum has been granted at the initial stage. The sample should include a majority of the grants made annually at this stage. Case files should document reasons in sufficient depth to support the decision.
- ix** The Directorate should provide more training to caseworkers at the induction stage; provide more specialist training once they have experience; and update their knowledge and skills. Particular issues to cover in more depth could include: the preparation of refusal letters; understanding of human rights issues; the handling of certain types of cases, for example involving minors or victims of rape; and recent developments in the law on asylum.
  - x** The Directorate should build up the expertise of caseworkers by encouraging some to specialise more in dealing with applications from particular countries, regions of the world or types of cases - particularly categories involving a significant number of cases. Improved quality assurance arrangements should provide a sufficient guard against caseworkers becoming "case hardened".
  - xi** The Directorate should update its country information more frequently, sometimes daily, reflecting the rate at which country circumstances are changing and the number of applications likely to be received, to enable its caseworkers to take account of the latest position within the countries of origin.

## Background and analysis

- 4 Asylum applicants accounted for a small percentage of the 27 million foreign nationals entering the United Kingdom in 2002 (**Figure 1**).

### 1 Admissions to the United Kingdom, 2002<sup>1</sup>

*Asylum applicants account for a small percentage of the 27 million foreign nationals entering the United Kingdom.*

Total Admissions to the United Kingdom	
Admissions of British citizens	62.3 million
Admissions of other European Economic Area nationals <sup>1</sup>	14.4 million
Admissions of non-European Economic Area nationals (see box below)	<u>12.6 million</u>
Admissions of foreign nationals	27.0 million
Total Admissions	<u>89.3 million</u>
(An unknown number of foreign nationals entered the UK illegally)	



Admissions of non-European Economic Area nationals	
Admissions with a passport only	11.0 million
Admissions requiring entry clearance documentation, including visas	1.6 million
Total admissions	<u>12.6 million</u>
Temporary Admission granted on lodgement of asylum application	26,560 <sup>2</sup>

#### NOTE

- 1 The European Economic Area includes European Union member states and Iceland and Norway.
- 2 Asylum claims were also made by another 57,570 people who had been admitted to the UK with a passport or through entry clearance or who had entered illegally. There were 84,130 claims in total.

*Source: Control of Immigration Statistics 2002 (including the International Passenger Survey). These statistics have not been independently validated by the National Audit Office.*

- 5 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. Figures for applications made in 2002, where most appeals have now been heard, suggest that 9 per cent of the 84,000 applications made were granted asylum by the Directorate at the initial stage with 20 per cent granted short-term protection, and a further 9 per cent had appeals allowed against initial decisions to refuse asylum.<sup>4</sup> Comparisons with other countries are complicated by the differing approaches adopted, for example, for granting permission to stay in general not just for reasons of asylum. In Canada, nearly 50 per cent of applicants are granted asylum by the end of the process. In Germany, out of the initial decisions made in 2001, 7 per cent of applicants were granted asylum and a further 21 per cent were granted lesser forms of protection. In the Netherlands, 25 per cent (in 2003) were granted recognition (on the grounds of either the Refugee Convention, the Human Rights Convention, humanitarian protection, the situation in country of origin or family reunification).
- 6 Applicants who are refused outright or who are refused asylum but granted short-term protection may have the right to appeal against the Directorate's initial decision. Appeals are heard by independent adjudicators, who are members of the judiciary at a level broadly equivalent to district judge. The Immigration Appellate Authority (the Appellate Authority) supports the adjudicators, who determined 81,725 appeals in 2003. The Appellate Authority is part of the Tribunals Group within the Department for Constitutional Affairs (formerly the Lord Chancellor's Department). Unsuccessful appellants may be granted leave for a further appeal to the Immigration Appeal Tribunal. Ultimately, applicants who are refused asylum or short-term protection are expected to leave the United Kingdom or else be subject to removal action. In 2002-03, the Immigration Appellate Authority spent £101 million on dealing with all appeals from immigration and asylum cases.
- 7 Applicants for asylum are not usually allowed to work in the United Kingdom while their application is being considered. Applicants can apply for financial support and accommodation whilst their application is being considered. In 2002-03, the average cost of processing an application at the initial decision stage, including associated support and accommodation costs, was estimated to be £3,380. Similarly, the average cost of an appeal up to the adjudicator stage was an estimated £4,520. These figures include average support and accommodation costs estimated by the Immigration and Nationality Directorate to be around £147 for each week an application is in the process.<sup>5</sup>
- 8 This report examines the Directorate and the Appellate Authority's arrangements for processing asylum applications, focusing on the speed of initial decisions and appeals, and the quality of initial decisions.



<sup>4</sup> Successful ("allowed") appeals may result in grants of asylum or short-term protection, or appeals by the Home Office to the Immigration Appeal Tribunal.

<sup>5</sup> This estimate is an average across all applicants. Some applicants may not require accommodation or support whilst others will require support for themselves and their dependants.

## Main conclusions

- 9 The numbers of people seeking asylum in the UK were 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 (both relatively and absolutely); and the recruitment of more staff, who were asked to handle asylum cases with, in our view, a basic level of training - and certainly less than the German and Dutch immigration departments, for example, give their staff. Furthermore, turnover of staff, drawn by rapid promotion to better paid jobs elsewhere in the Directorate and some outside the Civil Service, meant that the Department was putting more recruits into the "frontline". The Directorate, however, considers that whilst its training for caseworkers could be improved, its existing programme has been "fit for purpose" and that the results of its own quality assurance, suggesting that 80 per cent of decisions on sampled cases are fully effective or better, support this.
- 10 The challenges faced by the Directorate have been exacerbated by the large number of claims for asylum by people who have already entered this country legally in another capacity, as a student for example, or illegally. Some of these cases will be unfounded but can be the hardest to deal with because such applicants are more likely to have gained knowledge of how the system works.
- 11 Since 2000, the Directorate has improved the speed of its asylum decision making, principally by recruiting more staff and streamlining its processes. Figures kept by the Directorate and Appellate Authority suggest that the number of outstanding asylum applications and appeals stood at 63,700 in December 2003, comprising 24,500 undecided applications, 12,000 appeals lodged with the Directorate but not sent to the Appellate Authority, 15,500 awaiting appeal to an adjudicator and 11,700 appeals awaiting determination by the Immigration Appeal Tribunal. At 24,500 the number of undecided applications at the initial stage is now substantially less than the peak of 125,000 at the end of 1999, owing to the high volume of decisions made by the Directorate and assisted by a downturn in the number of applications since the beginning of 2003. The Directorate has introduced a range of measures which have helped, in part, to reduce the number of applications, including changes to border controls and restricting eligibility for support. The Directorate expects the number of undecided applications to continue to fall until routine work-in-progress levels are reached before the end of 2004, assuming the level of new applications and rate of decision making at March 2004 are maintained.



- 12** Processing applications quickly has depended on having the right decision making capacity in place and on addressing bottlenecks. The longer applications are left waiting for a final decision, the greater the cost to the taxpayer in support and accommodation costs. Some applicants, for example, caught in the backlogs have had to wait months, and some cases years, for their claims to be decided. Our analysis, based on unit cost estimates prepared by the Directorate and the Department for Constitutional Affairs alongside this examination, suggests that it can be more cost-effective to recruit additional caseworkers to take decisions quickly at the initial stage than leave them undecided provided there is sufficient capacity at the appeal stage to tackle the number coming through, and provided support is stopped for those whose claims are refused or they are removed. With sufficient staff and infrastructure to tackle cases as they arose between 2000 and 2003, we have estimated that the costs of support borne by the taxpayer might have been significantly reduced. Deploying sufficient staff and infrastructure would, however, have required substantial practical issues to be addressed, particularly in the early years and the Directorate notes that much of the cost of support is fixed in the short term. Families are supported beyond the refusal of their claims to the point of removal. There is an important lesson to be learned here for public bodies in general. Decisions over what capacity to maintain, and the associated costs, need to take account of the potential additional costs that may be incurred on other budgets, in this case support and accommodation costs, should administrative capacity fall short of the incoming volume of work.
- 13** In this instance, the Directorate expanded its operations significantly in 2000 and 2001, for example more than doubling the number of caseworkers from 355 to 769 between August 2000 and February 2001, with the Appellate Authority also expanding its capacity. These actions brought down the backlog and reduced costs. The Directorate considers that it would not have been able to expand its capacity to the extent required to clear applications as they came in, due to practical limits on recruiting and training staff and building up support infrastructure. The Appellate Authority told us that it had expanded its capacity in stages. In its view, limits on the availability of judiciary and interpreters - without compromising standards - would not have allowed the required capacity to be achieved in one go. If the Directorate had maintained the rate at which cases were being progressed in 2001 for longer, the backlog could have been reduced to work in progress levels more quickly. We estimate that if the rate at which cases were being processed at the initial stage had been maintained at 2001 rates into 2002, possibly for no more than six months, and the appeals and removals capacity had been available to deal with the increased flow, additional costs of up to £200 million might have been avoided. The Directorate judged that it needed to build up its removals capacity. In its view, if caseworkers had been retained on clearing initial decisions the costs saved would have been offset by the additional costs of not removing failed asylum applicants. These costs include direct costs (families who remain on asylum support until removal), and indirect costs - the Directorate believes that increasing removals has a deterrence effect on potential asylum applicants with unfounded claims coming to the United Kingdom in the first place. In the Directorate's view it is therefore difficult to assess with any confidence the financial impact of a decision to invest heavily in decision-making at the expense of other aspects of the process.

- 14** Over the last two years, the Directorate and Appellate Authority have sought to work together more effectively to target investment at key bottlenecks in the system, at both the initial decision stage and appeal, and more recently at the removal stage. This has allowed the Directorate to test out new fast track processes and to improve its management of the end-to-end process. However, we estimate that further reductions to the annual cost of processing asylum applications of at least £21 million could be made without cutting the time spent by caseworkers in processing applications. For example, the Directorate could interview applicants sooner, 33 days after their date of application rather than the average of 48 days, which would potentially save £17 million, based on 2003 application levels. More savings could be made if improvements in the quality of decision making fed through as reductions in the number of appeals. Both these savings and the savings associated with clearing backlogs would in part also depend upon the Appellate Authority processing any appeals lodged and the Directorate removing families whose applications had failed.
- 15** As the number of undecided applications approaches normal work-in-progress levels, the Directorate and Appellate Authority may decide to redeploy some of their existing resources to other priorities. Future management of processing capacity, including staff, equipment and office space will, however, need to remain sufficiently flexible to respond promptly should world events again lead to a rise in the number of applications. The Directorate and the Appellate Authority consider that they have learned from experience, and have sought to build in flexibility and improve resilience to better manage an increase in the numbers of asylum applications. The Appellate Authority expects to achieve this, for example, with a better balanced judicial complement using fixed term and salaried part-time contracts, a network of hearing venues and through the expertise it has developed in coping with recent volumes.
- 16** The drive to reduce processing times should work in step with efforts to improve the quality of decision making at the initial stage. The challenges faced by caseworkers, however, should not be underestimated. Many applicants do not possess any form of identification, some deliberately, whilst some, with harrowing stories, need to be treated with special sensitivity. Case example A below provides an example of the complexity of cases that caseworkers have to decide. The cases examined by us suggested that caseworkers had carried out the main checks expected. Our work, nevertheless, found a system where some caseworkers require more training for the scale of the task they face. Pressure to meet processing targets, the complexity of some cases and a lack of clear ownership within the process for decisions once the case is passed onto the next stage sometimes lead to issues having to be resolved unnecessarily at the appeal stage. With around three-quarters of applicants refused asylum at the initial stage appealing against the decision, around one-fifth of them successfully, significant costs are incurred in adjudicators addressing weaknesses arising at the front-end of the process. Measures to drive up quality within the Directorate have been in place for the last two years. A number of further initiatives have been in train since the beginning of 2004 including an action plan which comprises, for example, measures to test the competency of new caseworkers and strengthen quality assurance arrangements.



## Case example A

### The complexity of making decisions on asylum applications

Mr A from Somalia claimed that he feared persecution for his political activities and that his human rights would be breached if he were returned to Somalia because he would be tortured and killed. He claimed to have been an official of a party since the early-1990s that had fought alongside the Ethiopian army, aiming to establish a new government. He was then captured and tortured by a rival group before being released and fleeing to the UK. He had no passport and told the Directorate that Somalia, which does not have a functioning government, does not issue them.

At the two-hour asylum interview conducted through an interpreter, the caseworker asked Mr A nearly 100 questions covering his political activities and other aspects of his claim. The caseworker had to consider how much of the claim was to be believed and whether the believed elements amounted to a well-founded fear of persecution. In refusing the application, he said that he did not believe that Mr A had been so involved in political activities from the early 1990s as claimed and did not believe he had been detained and tortured. He provided some examples that placed doubt on Mr A's credibility.

Mr A then appealed against the decision to refuse asylum. In his written determination following the appeal hearing, the adjudicator expressed dissatisfaction that neither the Home Office nor Mr A had really explored the factual background in the kind of detail required. He considered that the country information did not descend to the detail required where an applicant's accuracy is challenged. He found that against a background of a chaotic and volatile country situation Mr A's case was unreliable and superficial in certain respects. The adjudicator also did not believe that Mr A had been detained and tortured or faced any risk more than the ordinary risk inherent in the civil war situation. He dismissed the appeal.

*Source: National Audit Office case study sample of new applications (Case 8)*

## Detailed findings

### The Directorate and Appellate Authority have reduced the time taken to process applications

- 17** Over the last two years, the Directorate and the Department for Constitutional Affairs have taken a range of actions aimed at reducing the number of asylum applicants in the asylum process and, over time, to reduce the total costs of asylum support. These include: measures to reduce the intake of asylum applications; the introduction of fast track processes; and additional resources to improve the asylum process. Since 2002-03, funding has been provided by a Single Asylum Budget, and the Directorate and the Department are dependent on success in reducing asylum support costs to be able to allocate funds to sustaining these initiatives.
- 18** Since 2000, the Directorate has made a determined effort to improve the speed of its asylum decision making. In 2002-03, 74 per cent of relevant applications received an initial decision within the Directorate's target of two months compared to 61 per cent of relevant cases in 2001-02; and, more recently, 80 per cent of applications made between October and December 2003 were decided within two months. Around 9 per cent of applications now receive an initial decision within a few days using the Directorate's fast track procedures which are suited to more straightforward cases.

- 19** Around three-quarters of refused applications go to appeal, and over half of those appeals take more than four months to be determined.<sup>6</sup> The Appellate Authority has significantly increased the rate at which appeals are decided, from 1,600 to around 6,800 per month between 2000 and 2003 by recruiting additional adjudicators and expanding court capacity. Most of the new court facilities are well used although there is some scope to improve usage rates at three or four centres.
- 20** For applications not processed via one of the Directorate's fast track routes, our work suggests that there is still elapsed time when no activity occurs on some applications. The Directorate's introduction of fast track procedures, including the Appellate Authority's introduction of a fast track appeals process, has illustrated how, with innovative thinking, the overall process can be significantly shortened for straightforward cases. As already described, as backlogs begin to fall and resources become available, our work suggests that further time, and hence support costs, could be saved.
- 21** The time taken to process individual appeals depends upon the number of appeal stages engaged. In 2003, whilst initial decisions on new applications took an average of 63 days, appeals to the adjudicator took an average of 169 days (including 90 days before the Directorate passed the appeal to the Appellate Authority), and the relatively small proportion of appeals that went all the way to the Tribunal (where permission was given) took another 235 days on average.
- 22** Since April 2003, the Appellate Authority and the Directorate have adopted a revised target - to process 60 per cent 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 decision plus four months for the appeal stages. The Directorate told us that it and the Appellate Authority had processed 63 per cent of applications made between April and September 2003 within the six months. The Government announced in October 2003 its intention to introduce legislation to move to a single tier of appeal, with the majority of appeals heard and decided by a single judge. Provisions to this effect are in the Asylum and Immigration (Treatment of Claimants, etc) Bill currently before Parliament.

### Improving the quality of initial decisions

- 23** In recent years around a fifth of all appeals have been allowed, above the rate of 15 per cent expected by the Directorate. Whilst over 80 per cent of the Directorate's work meets its own quality targets and standards, our sample of case files and refusal letters identified weaknesses in the way that some of the applications are processed, including basic errors of fact and unclear language, and a lack of ownership amongst caseworkers for the final decision once the case is passed on to the next stage.
- 24** One of the steps that the Directorate has taken to improve the quality of its decisions has been to reinstate in February 2004 its minimum academic requirements (2 "A" Levels and 5 GCSEs, including English) for new asylum caseworkers at the Executive Officer grade. The Home Office had previously withdrawn the minimum academic requirements for all generalist grades in November 2000 in favour of an alternative competency-based approach and psychometric tests to help meet the Department's overall recruitment needs and to increase the diversity of applicants.

<sup>6</sup> Figures relate to cases reaching the appeal stage during 2003, and not a cohort of applications.

- 25** The Directorate could improve performance by preparing caseworkers better for making decisions; reviewing some decisions more frequently before they are despatched; and improving the feedback provided to caseworkers on the outcome of appeals. Each new caseworker receives an initial 11 days of training followed by a minimum of 11 days with mentoring and support before caseworkers are allowed to decide cases on their own, provided their supervisors are content they have the skills to do so. Initial training is relatively short compared with Germany and the Netherlands, for example, where the caseworkers receive around three months (or six months where new caseworkers have not already had legal training) and 40 days training respectively. Whilst systems for deciding asylum applications differ from country to country, with implications for the level of training required, lessons could be learned from elsewhere. Our work identified a number of areas where continuing training for caseworkers should be considered including developments in asylum law, preparation of refusal letters and human rights.
- 26** The Directorate's case is normally put at appeal hearings by presenting officers. The presenting officers outline the main arguments for refusing asylum and cross-examine the applicant and other witnesses. The Directorate aims to attend 95 per cent of hearings. However, the Directorate has not had sufficient numbers of presenting officers to attend the increased number of asylum appeal hearings. Adjudicators reported that presenting officers generally added value to appeal hearings helping to identify the key issues at stake, highlighting inconsistencies in the evidence submitted by the applicant and helping to explain the Directorate's arguments for refusal. In 2003, the Directorate introduced more regular recruitment campaigns for presenting officers. However, in February and March 2004 the Directorate was still not represented at respectively 30 per cent and 17 per cent of asylum appeal hearings. In the absence of presenting officers there is an increased risk that some appeal cases might be allowed without the Home Office case being fully considered. Increasing representation by presenting officers at appeal should contribute to a better performance at appeal by the Directorate.
- 27** It is possible that improving the quality of initial decisions could persuade some applicants, or their representatives, that their application has been fairly considered and reduce the likelihood of an appeal being made. However, it is not possible to forecast with certainty what impact these improvements might have on the overall cost of the appeal process, if any. Every one percentage point reduction in the proportion of applicants appealing, around 54 per cent of all applicants, could save around £3 million per year in support and operational costs, based on 2003 application levels.

