

# RIGHT FIRST TIME

How UK Border Agency officials and legal representatives  
can work together to improve the asylum system

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2013

### **About Asylum Aid**

Asylum Aid is an independent, national charity working to secure protection for people seeking refuge in the UK from persecution and human rights abuses abroad.

In the last two decades we have provided legal advice to more than 30,000 asylum seekers and refugees, many of whom have fled persecution and torture in the most dangerous countries in the world. This frontline experience helps inform our policy work, so that we campaign effectively at the heart of government.

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Asylum Aid wishes to thank the following for their involvement in the project:

Dick Williams, Amna Mahmoud, Chris Ellingham and Fran Smith  
The Greater London Authority  
The UK Border Agency  
The Legal Team at Asylum Aid

This paper was drafted by Frances Smith, who also facilitated the *Right First Time* project.

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## PREFACE

While there is consistent public support for providing protection to people who have fled persecution and human rights abuses overseas, the UK asylum system commands little confidence.

Increasingly, the UK Border Agency is seen to struggle in its asylum work. It fails to reach just and timely decisions on who needs international protection and who does not, continues to see large numbers of its decisions overturned on appeal, and watches still more unresolved cases mount up in large backlogs. These failings are hopeless for people who turn to the asylum system in desperation, in addition to being both expensive and politically damaging.

Asylum Aid believes that only by addressing the abiding poor quality of decision-making can the system be reformed. As a minimum this requires better training of UKBA decision-makers, to increase their understanding of the law and of the Refugee and Human Rights Conventions, as well as adequate resourcing for quality-assured legal representation. Important as these actions are, however, they will not be sufficient on their own.

Poor decision-making persists because it is deeply rooted in a pervasive and profoundly adversarial ‘culture of disbelief’. We believe that a key to unpicking this regressive culture is to change the attitudes and then the approach of both UKBA officials and the legal representatives with whom they deal every day, by encouraging and fostering relationships of mutual understanding and respect. By doing so, we are confident that the quality of decision-making will improve and that efficiency and credibility of the system will be enhanced.

The UKBA and LSC’s Early Legal Advice Project (ELAP) was established in the Midlands in 2010 to try to change the internal culture of the asylum decision making process and it has made significant progress in demonstrating that improved relationships between officials and representatives lead to higher quality decisions. ELAP is due to report in 2013, but as the only NGO member of the Project Board, Asylum Aid, working with the Greater London Authority and the UKBA in London, decided to test this approach in London with the Right First Time project.

We brought together a group comprising Asylum Aid solicitors and caseworkers and UKBA caseowners and senior caseowners. We gave them time, a ‘neutral’ venue and an independent facilitator, and this report documents the results. What follows is an early outline of how a fair, functioning asylum system might operate, with experts on both sides working more effectively, doing the jobs for which they are trained, in an environment geared towards reaching asylum decisions that are well-grounded, sustainable and ‘right first time’.

**Maurice Wren, Asylum Aid**

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## SUMMARY OF KEY POINTS

- Legal representatives and UK Border Agency officials agreed that better “structured communication” early in the asylum process, about the nature of the claims to be determined and the evidence to support them, would lead to better decisions
- Legal representatives and UK Border Agency officials agreed that structured communication, along with the submission of ‘witness statements’ in advance of asylum interviews which detailed the claim and the evidence to support it, were likely to lead to significant savings in time and money
- The ‘culture of disbelief’ within the UKBA must be addressed urgently
- The quality of legal representation varies enormously. Work should be undertaken by representative, regulatory and funding bodies to address this
- Legal aid should be ‘frontloaded’ so as to incentivise the submission of detailed witness statements and other evidence, before the first UKBA asylum interview

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# Right First Time workshops: Conclusion and recommendations

## 1. Background

1.1 UKBA and Asylum Aid participants came together in four workshops held between October 2011 and March 2012 with the primary aim of identifying ways of working that would increase the number of asylum applications decided right first time and as soon as possible.

1.2 This was a joint initiative by the Greater London Authority (GLA), Asylum Aid and UKBA London Region. It arose from discussions at the London Strategic Migration Partnership (LSMP) about the role of legal advice in deciding asylum claims. The LSMP is led by the Mayor of London and supported by the GLA. This paper sets out the conclusions and recommendations of the workshops. The views expressed are those of workshop participants.

## 2. Process

2.1 A total of nine volunteers from UKBA and Asylum Aid took part in the workshops, and eight attended regularly. Five were from UKBA: three senior caseworkers and two case owners; three were from Asylum Aid: two solicitors and one caseworker. The first three workshops were independently facilitated and two GLA officers sat in as observers on each workshop. The final session, which focussed on ways forward, was attended by representatives from a broader group of stakeholders and was chaired by a GLA officer.

2.2 The workshops first explored the pressures and constraints under which legal representatives and case owners work. This demonstrated how little participants understood of each others' work and helped to create a constructive joint approach to identifying steps to improving communication. UKBA participants have limited flexibility in managing their time, are under pressure to achieve outputs and frequently have little information about an asylum application before the asylum interview. Legal representatives are constrained by Legal Services Commission (LSC) contracts and the unpredictability of work. Time pressure is an issue for both groups.

2.3 Participants considered practical measures that would increase the likelihood of UKBA making the right decision first time, these focused on introducing structured communication between case owners and UKBA early in the asylum process. They distinguished between changes that could be made within existing systems and policies, and those that would require changes to policy or systems.

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2.4 At the final workshop, participants presented the findings and recommendations of previous sessions to the UKBA lead on the Asylum Improvement Programme, the Director of Asylum Aid and representatives of the United Nations High Commissioner for Refugees (UNHCR), Immigration Law Practitioners Association (ILPA) and LSC. A UKBA case owner presented case studies that outlined the benefits that resulted when she piloted workshop recommendations to introduce more structured communication with legal representatives.

2.5 The majority of recommendations were agreed by the entire group. The recommendation that legal representatives are present at the asylum interview was strongly supported by legal representatives, while UKBA case owners concurred that the presence of the legal representatives could be helpful in certain circumstances, their view was that generally this is not necessary.

### 3. Key overall findings

3.1 Structured communication between case owners and legal representatives early in the asylum process has the potential to:

- increase the likelihood that asylum decisions are right first time
- reduce the number of appeals allowed
- generate time and cost savings
- help ensure that protection is granted as soon as possible, which in turn will facilitate integration.

### 4. Recommendations that can be implemented within the existing system

Note: Workshop participants identified a number of practical steps that could be taken to deliver structured communication without substantial changes to the existing system. However, it was acknowledged that the ability of legal representatives to engage is likely to be constrained by the LSC funding regime.

#### **Structured communication**

4.1 UKBA should make case owners' contact details available to legal representatives, including their email addresses.

4.2 Legal representatives should, where this is in their clients' best interests, provide as much information as possible before the asylum interview, ideally a statement but at least an outline of the asylum claim (but see 5.4 below for limitations imposed by LSC funding).

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4.3 Case owners should initiate contact with legal representatives to indicate information that they would like before the asylum interview, and could use the invitation to interview letter to do this.

4.4 Case owners should communicate with legal representatives post interview to:

- raise any further issues arising from the interview
- invite the legal representative to address these.

4.5 When case owners request information, legal representatives should consider their clients' best interests and as appropriate.

4.6 Both UKBA and legal representatives should know how to escalate an issue, and who to contact in the absence of a case owner or a legal representative.

4.7 UKBA should introduce the above measures on structured communication via training, workforce development and performance management.

### **Expert Reports**

4.8 When case owners require an expert report, they should put this in writing to the legal representative as this drives LSC funding.

4.9 Case owners and legal representatives should be clear that case owners have discretion to delay a decision when awaiting medical reports from experts other than Freedom from Torture and The Helen Bamber Foundation.

### **UKBA Country of Origin Information (COI)**

4.10 Case owners and legal representatives should be aware that gaps in UKBA COI arising before or after the asylum interview can be addressed by:

- legal representatives providing background or expert reports and/or
- UKBA requesting COI to provide information on apparent gaps.

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## 5. Steps that would require changes to systems or policy

### **Credibility**

5.1 UKBA should address the culture of disbelief that continues to exist at UKBA, which would encourage legal representatives to engage in structured communication.

5.2 UKBA should address the confusing and possibly contradictory guidance on credibility, and use structured communication to help resolve credibility issues.

### **Structured communication**

5.3 UKBA should consider drafting a protocol and/or amending existing guidance to support structured communication, facilitating engagement in structured communication from case owners and legal representatives.

### **LSC funding**

5.4 The LSC funding regime should be “frontloaded” to facilitate the provision of legal advice early in the asylum process including: allowing legal representatives to engage in structured communication, to produce witness statements and to obtain expert reports where necessary; the current regime fails to do this and thus inhibits the chances of decisions being made right first time.

5.5 LSC should consider funding legal representatives’ attendance at asylum interviews to:

- give the client confidence and help them present their case clearly
- identify and address areas where the case owner has concerns, which would otherwise require time to read through interview records, listen to tape recordings and to take further instructions from the client
- enable the legal representative’s interpreter to identify possible problems with interpretation.

### **Quality of legal representation**

5.6 The quality of legal representation continues to vary enormously. Ways of encouraging legal representatives to engage in structured communication, where it is in their clients’ best interests, could be explored with LSC, OISC, Solicitors Regulatory Authority (SRA) and ILPA. Good practice guides were suggested as a way of doing this.

5.7 Addressing the culture of disbelief, revising UKBA guidance on credibility and drafting a protocol and/or amending existing guidance to include structured communication is crucial in obtaining the engagement of legal representatives.





policy paper #1

