

Justice for asylum-seekers

In recent years, asylum-seekers have been all too readily vilified by politicians and the media pandering to prejudice among a large section of the public. Immigration and asylum policy is never far from the press headlines, and provides fresh ink for the statute book as politicians vie to outbid each other in a Dutch auction of ever-restrictive laws. Into this mix pitched a new immigration minister, Phil Woolas, in October last year. He seems determined to court controversy around immigration and asylum policy by increasing the rhetorical heat as a prelude to introducing more legislation. The minister was so outspoken during his first weeks in office, it appears that Phil Woolas's boss, Home Secretary Jackie Smith, vetoed his proposed appearance on BBC1's 'Question Time' programme. Undeterred, the minister has made a series of comments to the media aimed at immigration lawyers and advisers who he accuses of giving asylum-seekers false hope by playing the system. In a *Guardian* interview in November last year, Phil Woolas floated the idea of trying to prevent more than one judicial review per claim. LAG believes he was preparing the way for the Borders, Immigration and Citizenship Bill which was announced in last month's Queen's speech, as a partial draft of the bill released last year introduced the idea of a 'single streamlined power of expulsion'. This links to a consultation paper published in August 2008 on the proposed redesign for the immigration appeals system. The paper outlined the plan to create a two-tier system and was motivated, in large part, by the desire to cut off access to the higher courts in immigration claims.

LAG argues that it is vital to have judicial oversight concerning the executive's decisions to maintain the rule of law. The government makes the laws, but it is up to the courts to ensure that they are applied correctly. Without this separation of powers, the legal process is wide open to manipulation through political interests, with the law on asylum especially vulnerable to political interference. By seeking to curtail asylum-seekers' rights to bring judicial review proceedings, the government has set itself on a collision course with the judiciary and lawyers; it is also in danger of replicating the characteristics of the regimes that force people to seek asylum in the UK in the first place.

Over the last year alone, 19 statutory instruments and rule changes were introduced in immigration law. In addition, in April last year the UK Border Agency replaced the Border and Immigration Agency (BIA). The BIA itself had only been in

existence for a year having replaced the Immigration and Nationality Directorate in April 2007. These changes illustrate the administrative and legislative flux around immigration policy that Phil Woolas and the government seem determined to continue, and which lead LAG to ask whether such an approach can be justified.

Though the number of asylum claims has risen in recent months, this is in line with trends that reflect the current international situation concerning those who have fled conflicts and repressive regimes in countries like Zimbabwe, Afghanistan and Iraq. Not surprisingly, Afghanistan and Iraq are still the countries from where most refugees hail. The UK ranks behind the USA, Canada and France in the number of asylum applications it received; there is no evidence that the UK is seen as a soft touch by economic migrants claiming asylum wrongly to gain entry. Most economic migrants come from EU countries and enter the UK legally. The number of such migrants is falling though, with a 36 per cent drop last year in Polish and other Eastern European nationals moving to Britain. The new points-based assessment system introduced in November last year will likely affect the numbers of non-EU migrants, but it is the recession that is likely to have the greatest impact by discouraging further the minority of those who might attempt to abuse the system by claiming asylum wrongly.

LAG argues that the degree of media and political fervour the issue of asylum attracts is disproportionate to the number of claims and their chance of success. In the first half of last year, 15,200 claims were reported. If these follow the pattern of previous years, around 28 per cent will be granted refugee status or humanitarian protection at the initial decision stage; a further 24 per cent will succeed at appeal. This means that under the immigration laws this government introduced, just over 50 per cent of asylum claims succeed despite the difficulties asylum-seekers face in getting representation and gathering evidence in their cases. If anything, the system should err more on the side of claimants because of the risk of death or torture for those who are refused asylum and sent back to their country of origin.

To an extent, Phil Woolas is trying to tackle a perceived problem that has already been resolved by legislation, alterations to the administration of the immigration system or, most likely, changing international conditions. Furthermore, asylum claims being received currently by the UK are nowhere near the 103,000 requests for refugee status made at the peak of such claims in 2002. Although LAG concedes that a return to such a level might be possible, the blame would be attributable to war, famine and rogue governments abroad rather than, as Phil Woolas suggests, UK lawyers exploiting the asylum system.

News 4-5

Government's 'disastrous' tough-on-crime policy/Bar Council reveals legal aid strategy/Legal aid redirected to credit crunch advice services/Lord Bach commissions NFP sector study/Legal aid minister gives evidence to Justice Committee/Awards celebrate work of 'human rights champions'

Features 6-11

Legal profession 6

The LALYs 2008: hope, alarm and inspiration ...

Legal profession 9

'A defence lawyer to his boots'/Jon Robins

Legal aid 10

Can the insurance industry plug the justice gap?/Jon Robins

Law & practice 12-30

Immigration 12

Recent developments in immigration law/Tooks Chambers' immigration team

Housing 19

New mortgage arrears protocol explained/Derek McConnell

Housing 21

Recent developments in housing law/Jan Luba QC and Nic Madge

Legal profession 29

Recent developments in practice management/Vicky Ling

Updater 30

LAG books/Community Care Law Reports/training

Noticeboard