Independent Appeals Body call for evidence

Helen Bamber Foundation submission

22 April 2026

Introduction

The Helen Bamber Foundation (HBF) is a specialist clinical and human rights charity that works with survivors of human trafficking, torture and other forms of extreme human cruelty. Our multidisciplinary and clinical team provides a bespoke Model of Integrated Care for survivors which includes medico-legal documentation of physical and psychological injuries; specialist therapeutic care; a medical advisory service; a counter-trafficking programme; housing and welfare advice; legal protection advice; and community integration activities and services.

The nature of the proposals contained in this call for evidence are wide-ranging and raise important issues of access to justice and procedural fairness. We would therefore like to put on record our key concerns about the process:

- Inadequate information has been provided to allow respondents to understand the detail of the proposals and respond in a meaningful way. With the explanations that have been provided, the rationale and analysis of potential impact is inadequate given the vast changes being proposed. There is very little material provided to justify the proposals and to explain how they will meet the policy objectives (e.g. relevant impact assessments, data, statistics, modelling, forecasting or analysis). Therefore, in some of our responses we are commenting in the abstract.
- The initial four-week deadline for response was not sufficient, notwithstanding the short extension of seven-working days that was granted. This was especially the case for a call for evidence covering such a range of complex and diverse issues; during a period which included two bank holiday weekends (Easter and May bank holiday) and school holidays, when many will not be working. Many organisations, including HBF, asked for the timeline to be meaningfully extended, given the serious implications of these proposals. Ordinarily we would expect a call for evidence to be a preliminary step to a full 12-week consultation, such as occurred in the Family Returns consultation.

In addition to our concerns about process, HBF is deeply concerned about the content of the proposals:

- The call for evidence has failed to identify the root causes of the asylum backlog and delays in the appeals system. In HBF's view, the most effective way to reduce the asylum appeals backlog would be the investment of resources to improve the quality of first-instance decision making, thereby reducing the number of appeals before the First-Tier Tribunal (Immigration and Asylum Chamber) (FTT-IAC). The National Audit Office's 'Analysis of the asylum system' report, published in December 2025, noted that "decision quality remains a challenge, with 42% of sampled decisions in a rolling twelve months to May 2025 having significant or fail errors". 66% of initial decisions are overturned. Furthermore, in HBF's experience, the delays in the FTT-IAC are often the result of the Home Office's failure to engage with the evidence submitted in a timely manner.
- In light of the above, it is unclear what justification exists for introducing a parallel appeals system. The evidence simply does not show that creating a new body resolves any of the real or purported problems in the existing system. Furthermore, there has been no consideration of how the new appeals body would fundamentally differ from the FTT-IAC.
- The call for evidence recognises that "*Appeals often involve complex questions of fact and law, and it is essential that individuals have access to justice and an effective remedy to challenge a refusal where their protection needs or human rights are at stake. The new Independent Appeals Body must therefore be equipped to deliver rigorous, timely and high-quality decisions, and be fully integrated within the wider immigration and asylum system*." It is therefore highly disappointing that the proposals for an Independent Appeals Body would instead undermine judicial independence and the rule of law; place decision making for complex matters of law with Adjudicators that will not need to have legal training, qualifications or expertise, and who are therefore unsuited for hearing these appeals; compromise basic standards of procedural fairness and safeguards; and damage access to justice. Proposals to introducing Non-Legal Members to Tribunals were suggested in 2014 and those proposals were founding seriously wanting.
- There is a long standing, well-evidenced, crisis in legal aid. The proposals do nothing to address that, and risk creating a system in which serious errors will be made without an effective remedy.
- What is required is a holistic approach to the asylum process from start to finish, otherwise the problem will simply be shifted to other parts of the process, increasing overall delays – as is currently the case. Most of the proposals we are being asked to respond to are areas where existing frameworks, mechanisms, bodies and procedures exist, and there is no explanation as to why they are deficient and how they relate to the proposed solutions of judicial capacity and the single appeals route.

We urge the government to engage in a genuine consultation with reasonable timeframes about how to improve the current immigration and asylum system as a whole. Critical to this is addressing the well-documented legal advice crisis of legal aid droughts and deserts throughout England and Wales, alongside measures to improve first-instance decision making, and reversing the current practice of law and policy reforms that increase the complexity of these cases and escalate the precarity of people seeking safety.

We now provide our response to the questions from the call for evidence most relevant to our work.

Access to justice, fairness and procedural safeguards

Q5. How can the new Independent Appeals Body ensure parties to the appeal have fair access to legal or immigration advice, representation and the practical support required to participate effectively in the process?

'Restoring Order and Control' stated that the new appeals body would include independent legal advice; this call for evidence states that a function of the Independent Appeals Body (IAB) is to enable access to legal advice. It is unclear what role this new body would play in terms of making arrangements for the provision of civil legal services.

Lack of legal advice and representation is a significant problem affecting all stages of the asylum process including appeals. Any increase in appeal hearings *must* be matched with a corresponding increase in capacity of legal representation otherwise there will be an increase in unrepresented appellants. Unrepresented appellants pose particular challenges for the First-Tier Tribunal (Immigration and Asylum Chamber) (FTT-IAC) under the current system. The problem is likely to be significantly exacerbated in a system where appeals are being determined by adjudicators who are not experienced lawyers and who are constrained by inflexible timeframes.

For survivors of torture, trafficking and other extreme human cruelty, legal advice and representation is vital to ensuring that they can navigate complicated immigration and asylum systems and put forward the necessary evidence to support their case, including medical evidence. The outcomes of immigration and asylum appeals are often dependent on the quality, knowledge and experience of legal representatives and services who advocate for survivors. Even the identification of survivors often cannot happen without the input of a high-quality legal representative.

The crisis in legal aid (detailed further below) leaves survivors without access to lawyers equipped to work on their cases, undermining their access to justice. The sector can be reinvigorated but it needs funding and a streamlined way of handling cases both for legal representatives and the Legal Aid Agency.

We maintain our recommendations that fundamental changes are required to address the deficit in civil legal aid:

- Increasing rates;

- Reverting to hourly rates;
- Improving the bureaucracy around legal aid contracts, audit and billing;
- Reviewing the scope of matters that fall outside of legal aid to reduce the administrative load.

Further detail on these points can be found in HBF's previous relevant legal aid consultation responses.

We maintain that, unless and until these systemic issues in the provision of legal aid are adequately addressed, the same issues (as detailed below) will continue to plague individuals going thought the asylum and immigration appeals process. At the very least, any new IAB should be cognisant and accommodating of a system in crisis. Some suggestions (by no means exhaustive) to address this would be:

- **Recognising the lack of widespread knowledge of legal aid processes among this client group and information sharing on where to access high quality lawyers.** In HBF's experience, clients who have never had legal representation before often do not know about legal aid. It usually falls to our in-house legal protection team to provide legal education to clients and help them to find a lawyer under the legal aid scheme. One way in which this could be addressed is joint working with the IAB to share information about where to access information regarding legal aid lawyers. Clear, plain English guidance on how to access legal representation could be included in all decisions, notices and hearing letters.
- **Providing dedicated resources to unrepresented appellants.** Including 'help desks' for unrepresented appellants. Identify unrepresented appellants early and direct them to relevant support services.
- **Allowing appellants sufficient time to find high quality legal aid representatives and providing adjournments where appropriate to facilitate finding those representatives.**
- **Recognising the multi-faceted reasons appellants change their legal representation.**
- **Recognising that it will rarely, if ever, be appropriate for a person seeking asylum to navigate the appeals process without legal representation.**
- **Monitoring outcomes for unrepresented versus represented appellants.**
- **Establishing formal links with refugee or migrant support organisations.**

Question 6. Can you tell us of your experience of immigration and legal advice, including whether you have concerns around access, availability or capacity.

A key component of our holistic model of specialist care is legal protection. In practical terms this means offering legal support to a client in collaboration with their lawyer. The majority of HBF clients have legal representation funded by legal aid.

Despite last year's increase to civil legal aid funding, there remain vast 'legal aid deserts' where no publicly-funded advice is available. 'Fixed fees' for certain cases make it near impossible to be paid for the entirety of work required to resolve someone's claim. The

Legal Aid Agency also places high administrative demands on legal advisors that require a huge amount of unpaid work. Within the immigration and asylum sector, countless legal aid lawyers were driven to leave the profession. As a result, there are fewer sufficiently qualified and experienced representatives able to take on complex cases.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) took whole areas of immigration advice outside the scope of legal aid provision. 'Exceptional Case Funding' was introduced for cases where it could be shown that an individual's human rights or EU legal rights were at risk of being breached unless legal aid was granted. This has created an unnecessary additional hurdle in obtaining legal aid for 'out of scope' matters, placing a further administrative burden on the remaining lawyers.

Now over 57% of people claiming asylum or appealing an asylum refusal before the First-Tier Tribunal are unable to access a legal aid representative. Research has shown that 90% of support workers interviewed struggled to find legal advisors for survivors of trafficking, with almost half reporting delays of six months or longer.

It is very difficult for people to find their own legal aid lawyers - many have never had legal representation before and often do not know about legal aid and/or they do not have the digital skills or ability to call and email numerous firms to lay out their case clearly and coherently. Referrals often go unanswered and those who do not have a third party, be it an NGO or support network, to help them do this will often struggle to find a lawyer. Further information can be found in Migrants Organise's most recent reports: A View from the Front Line, March 2026, and Threadbare: The Quality of Immigration Legal Aid, April 2026.

Where a client does not have a lawyer or where they are no longer able to afford a privately paid lawyer, the legal team prepare a referral to a legal aid representative. This can often be a time-consuming process requiring obtaining papers (i.e. by way of a subject access request to the Home Office) and gathering documentation to demonstrate that the client is eligible for legal aid. Additionally, we provide a legal summary of the client's history to aid the representative in quickly understanding the basis of the claim, which may help to secure their interest in taking the case on. We find that without preparing a referral in this way, the case is much less likely to be taken on. We believe access to justice should be a human right that is guaranteed; however charitable funds and resources are expended to ensure good quality legal aid representation is secured thus fillings gaps in the sector created as a direct result of LASPO.

There are many barriers/obstacles individuals encounter when attempting to access legal aid, including:

- There are not enough legal aid providers to take on work relating to immigration, nationality and asylum leaving people 'at risk of serious harm'
- There is inadequate provision for initial asylum-seeking applicants
- Remote legal advice is not a viable solution to the severe shortage of advisors

- There is a lack of specialist advisors to take on trafficking claims or domestic violence matters
- There is a serious shortage of free and low-costs advice outside of scope of legal aid in most parts of England and Wales
- Providers rely on mixed models of funding in order to supplement the provision of legal aid advice, which is often loss making
- Referrals often go unanswered and/or take many months to find an available legal aid representative
- Providers are at capacity and in some cases unable to take on cases prepared at the initial stage to appeal stage;
- Individuals struggle to access ECF without the assistance of a supporting organisation;
- The sector as a whole is overstretched and unsustainable with legal representatives having experienced vicarious trauma or burnout.

In addition to the above, in our experience, there are a number of additional barriers to accessing legal aid, and these are particularly acute due to the language barrier and the particular vulnerabilities of those who are survivors of trafficking and torture. Some of these factors relate to the individual and some relate to the sector. However, by far the driving factor in attempting to access legal aid is the state of the sector and the lack of good quality legal aid lawyers.

At HBF we are finding it increasingly difficult to make successful referrals as the pool of lawyers able to take on complex cases, which often need a medico-legal report, reduces. The result is that many of our clients continue to be represented by privately funded lawyers even where they are eligible for legal aid, and/or the lawyer does not have the requisite knowledge or expertise (or indeed trauma-informed ways of working) to adequately represent the client.

Where our clients are represented by poor quality lawyers, this results in significant intervention from HBF to assist the lawyer with the preparation and strategy of the case. A further result of the decreasing availability of good quality lawyers, is that HBF clients who are unrepresented often wait long periods until a lawyer of suitable quality and experience is available. This can be particularly difficult for the client who may be unable to properly engage in our service (for example in trauma-focused therapy) until their legal claim is in progress. These factors contribute to increasing the burden on legal aid resources.

Question 7. Do you consider changes are required to ensure early legal advice is a core part of the system to avoid delays and late claims, and to lead to better decisions? Please include any suggestions on how legal advice or representation could be improved.

Yes, changes are required to ensure that early legal advice is a core part of the system, to ensure fair and timely decision-making.

In HBF's experience, positive immigration/asylum decisions are often dependent on the quality and knowledge of legal representatives and services who advocate for survivors.

Survivors of torture and trafficking require individual support throughout these arduous procedural systems, and assistance with providing the requisite evidence to substantiate their case, including medical evidence.

Properly funded, early access to legal immigration and asylum advice can ensure that issues are addressed as early as possible - sometimes without the need to access the appeals or judicial review systems. We see a clear correlation between access to early advice and frontloading of a client's case, and its swift resolution. Conversely, if someone has poor representation or no representation early on, issues can emerge in their case which are harder to address later, expending further resources and elongating their dependency on legal aid.

Good quality, free legal advice at an early stage not only saves money, time and valuable resources but is also much better for the health and well-being of the individual. Where survivors have not received legal advice at the outset of their claim for asylum or trafficking and/or their cases are not front-loaded with relevant evidence (such as a medical report or country expert report) before a decision is made, these cases can end up taking much longer to conclude. Research has shown that the cost saving to the state for every 100,000 clients in receipt of free legal advice was around £908 million in 2023.

A typical example of where someone would benefit from early legal advice and representation is in respect of their trafficking and asylum claims. Once the person is referred to the National Referral Mechanism and has claimed asylum, their two claims continue in tandem. If the case is sufficiently prepared and evidence (such as an expert report including a medico-legal report or county expert report) is provided from the outset, then this increases the likelihood that a positive decision will be made, and a grant of status will be issued. In this instance the frontloaded preparation negates the need for further funding of an appeal (freeing up valuable court resources) and reduces the need for additional support for asylum accommodation and financial support whilst an appeal continues and frees up the lawyer to take on another case. Quite clearly this also benefits the individual, who will no longer be in the asylum system and will be free to work (something they are only permitted to do in limited circumstances) and contribute to society as well as recover from their experiences

Properly funded early access to legal advice ensures that issues are addressed and rectified as early as possible often without the need for access to the court process resulting in a resolution for the individual sooner not only saving money, time and valuable resources but the health and well-being of the individual.

As set out in 2018 by the Public Law Project, there is evidence that indicates that the reduction in early legal advice shifts the burden of public spending, rather than reducing it. Where individuals are unable to access initial advice for their legal issues, there may be wider societal costs. For example, an additional burden placed on the NHS and welfare system where legal issues escalate to great societal problems such as homelessness.

Question 8. Drawing on the existing practices, procedural rules or approaches of the FTT-IAC, which do you consider could usefully be included, adapted or avoided in the design and operation of the new Independent Appeals Body? Please include any views on the current approach to publishing determinations.

HBF does not believe that the proposal for a new Independent Appeals Body is the correct policy response to a stated concern about the appeals backlog at the FTT-IAC. There is no evidence that this reform is needed nor that it would work.

We believe that the quality of decision making at first instance must be improved to reduce the number of poor decisions and therefore appeals in the first place. Furthermore, the most effective way to reduce delays at the FTT-IAC would be for Home Office Presenting Officers to genuinely engage with evidence submitted in a timely manner. The alternative that is being proposed puts the cart before the horse.

Nevertheless, we believe that the fundamental features of any appeals body should be:

- Legally qualified, experienced and independent Judges.
  The appointment of Adjudicators who would not meet the minimum standards required for FTT-IAC judges is a terrible proposal and should be scrapped.
  The nature of the issues that need to be determined in immigration appeals are complex, including the approach to factual matters. Errors may have very serious consequences for individuals and the public interest. This is why experienced lawyers, appointed following an independent and rigorous selection process, are best placed to act as judges in immigration and asylum appeals in a system with strong safeguards for their judicial independence. It is notable that a 2014 consultation lead by the Senior President of the Tribunals concerning the use of Non-Legal Members (NLM) on panels, concluded that even when using NLMs this would only occur where the President of the Chamber or Resident Judge had decided that it would be in the interests of justice for a NLM to sit as *part of the Tribunal* (emphasis added).
- Training and resources allocated to Home Office Presenting Officers so that they engage adequately with the review evidence that legal counsel submit.
  In our experience, communication and engagement from Presenting Officers is very poor and often obstructive, leading to delays. We rarely see proper engagement with the evidence submitted and we see Presenting Officers/the Home Office ignoring directions frequently, seemingly without consequence.

Question 9. How should the new Independent Appeals Body accommodate specific needs or vulnerabilities, including by providing reasonable adjustments or tailored procedural support, to ensure fairness and accessibility?

Our understanding is that the only guidelines currently in place to provide reasonable adjustments and accessibility needs are those provided for under the Joint Presidential Guidance Note No. 2 of 2010. This guidance is intended to cover children, vulnerable adults and sensitive witnesses. Consideration should be given to expanding the available provision

before, during and following the hearing. Currently as we understand it, requests are made as an application to the Tribunal, which are then considered by a Tribunal Caseworker.

However, it may be helpful for the appellant to know what provision is available to them to allow them to feel more comfortable within the court setting. Currently this is left to the legal representative to action and rarely strays outside of the standard: allowing time for additional breaks, a single sex Tribunal etc. However, if the client themselves is not aware of what is possible regarding reasonable adjustments or how support may be tailored to them, or if the quality of the legal representation is poor and they are not acting in a trauma-informed manner then the client is at a significant disadvantage. Currently there is no formal process in place to guard against poor quality representation not picking up on accessibility issues or tailoring support during the hearing. This is especially poignant where clients are increasingly unrepresented at appeal stage.

In our experience, where we have accompanied our clients to their appeal hearings, and despite it being raised in the medical evidence and by the instructing legal representative that the individual ought not to be questioned on a particular topic, routinely the Home Office Presenting Officer has aggressively questioned them and little use is made of the Guidance at 10.2 (iv) to curtail such cross examination by the judge. Indeed, we have attended several hearings where individuals were retraumatised as a result.

The nature of these hearings within the current Tribunal is adversarial, however a move to a more inquisitorial system, such as that in France may well yield more positive results in terms of clarifying issues without the need for an interrogation. For example, in hearings within the French asylum system there is typically a rapporteur and they often involve judicial panels including UNHCR appointees.

Expert evidence and country information

Question 10. How should expert evidence (including medical, country and technical expertise) be commissioned, quality-assured and used within the appeals process?

Expert evidence should continue to be commissioned in a manner that preserves the independence of experts and the ability of parties to present their case fully. It is important that appellants retain the right to obtain independent expert reports. Consideration may be given to mechanisms for facilitating access to experts, particularly where appellants are publicly funded or lack resources. To improve timeliness, the system should encourage earlier identification of evidential needs, such as by providing clear guidance on the types of cases where expert evidence is likely to be necessary and ensuring access to early legal advice to ensure such a need is identified early on in the proceedings

Timing and commissioning of medico-legal reports

'Frontloading' - that is, commissioning expert evidence at an earlier stage in the process - should be actively encouraged. Where possible this should take place at the pre-decision stage, or otherwise as soon as practicable after the decision has been made. In our

experience, as providers of expert medico-legal reports recognised by both the Home Office and courts and tribunals, reports are too often commissioned only once a hearing date has been listed. While this approach may ensure that medical evidence, particularly in relation to mental health, reflects relatively current circumstances, it also introduces inefficiencies. The process of then gathering comprehensive instructions and relevant documentation frequently causes delays in report preparation; the later the instructions for a medico-legal report, the more likely this is to interfere with the listed hearing date which in turn can lead to adjournments.

A key contributing factor is the current approach to funding. We understand that the Legal Aid Agency may refuse applications for expert reports at the pre-decision stage on the basis that it is premature; this then results in reports being commissioned much later in the process. A more effective system would place greater trust in the instructing legal representatives to determine when expert evidence is necessary, and at what stage, given their detailed knowledge of the case. Additionally, reducing the administrative burden associated with the need to obtain prior funding approval would likely remove an unnecessary step and improve overall efficiency within the process.

At the same time, it is essential that any system retains flexibility. There will inevitably be cases - particularly those involving vulnerable individuals - where expert evidence becomes necessary at a later stage. This may arise due to further disclosure, evolving accounts, or deterioration in an individual's physical or mental health. The framework should therefore allow for expert evidence to be commissioned outside of rigid timelines where there is good reason.

Importantly, earlier commission would also allow ample time for the decision maker to review expert evidence and either revise the decision made or maintain the decision and hence identify the 'issues in dispute' via the Respondent's Review. In our experience, too many such reviews are not fit for purpose because they do not properly identify issues in dispute, but rather, make generic points about the nature and purpose of medico-legal reports.

The concept of a 'shelf life' for medico-legal reports should be approached with caution. While medical evidence - particularly relating to mental health - may evolve over time, this does not render earlier reports obsolete.

Where a report has been commissioned and prepared in a timely manner, provision should be made for relevant developments to be addressed through an updated streamlined report rather than requiring entirely new reports. This would promote efficiency while ensuring that decision-makers have access to up-to-date information.

Clear criteria could be developed to guide when an updated report is appropriate, such as a material change in the appellant's condition or where there has been a new disclosure that is clinically relevant to document.

We understand that, currently, no training on the nature and purpose of medico-legal reports is provided to the authors of Respondent's Reviews. This is a significant gap and should be addressed through mandated training.

Assurance of quality

There are already well-established frameworks governing the quality and independence of expert evidence, including existing Practice Directions, the principles set out in CPR Part 35 (which whilst not applicable in the Tribunal, provides helpful guidance) and the Istanbul Protocol in relation to medico-legal evidence of torture and ill-treatment, recognised best practice guides, Home Office policy guidance 'Medical Evidence in Asylum Claims' and a wealth of caselaw. Adherence to these standards should, in principle, ensure that expert evidence is objective, reliable, and of sufficient quality. Where experts fail to comply with their duties or lack independence, it is already open to the Tribunal to attach reduced weight to their evidence or reject it entirely.

The focus should therefore be on reinforcing and consistently applying existing standards, rather than introducing overly restrictive new mechanisms that may limit access to independent expertise.

The burden of proof in asylum and human rights claims rests on the appellant, therefore the need to commission expert evidence should remain with the appellant and their legal representative. It has always been within the Home Office's purview to commission evidence should it see fit to. However, this option has rarely been utilised. There is no reason to change this process.

In summary, expert evidence, and medico-legal reports in particular, should be commissioned as early as possible in the process, subject to appropriate flexibility. Barriers to early commissioning - particularly in relation to funding - should be reduced. Quality assurance is already underpinned by robust existing frameworks and should be reinforced through consistent application and improved training, particularly for Home Office decision-makers.

Finally, the system should recognise the evolving nature of medical evidence by allowing for updates through updated reports, rather than requiring repeated commissioning of full reports. This would promote both efficiency and fairness within the appeals process.

Question 11. What are your views on requiring parties to rely on a shared set of expert materials?

It is unclear what this proposal seeks to achieve. This proposal appears analogous to earlier proposals for a single joint expert panel, under New Plan for Immigration put forward by the previous government. Those proposals were widely considered to be impractical and ill-thought through. Similarly, the proposal for a set of shared materials is nascent at best, insufficiently defined and lacking in clarity as to its intended benefit.

Given the inherently adversarial nature of the immigration and asylum appeals system, it is difficult to see how an agreement to a shared set of materials would be reached in a

consistent and workable manner – especially in relation to medico-legal reports given the highly individualised nature of such reports. It is not clear how agreeing a shared bundle of expert materials would work. As set out in response to the previous question, it is generally the appellant's legal representatives that consider whether expert evidence is needed - to require the Home Office to agree to a set of shared expert materials assumes a level of cooperation that is unlikely to be realised in practice.

There is also a lack of clarity as to how such materials would be selected and at what stage of proceedings this process would take place. It is not apparent what mechanisms would exist to resolve disagreement between the parties, or how cases would proceed where one party fails to engage. Without clear procedural safeguards, this proposal risks creating further delays rather than reducing them. Importantly, parties must retain the right to challenge, supplement, or depart from shared materials where appropriate. This includes the ability to commission independent expert reports, particularly in areas such as medico-legal evidence. Restricting this right would risk limiting access to justice and could result in incomplete or inaccurate assessments.

More fundamentally, there are real concerns regarding access to justice. The proposal risks placing the decision-maker, or a body closely aligned with the decision-making process, in a position where it influences or determines the evidential framework of the appeal. This raises concerns about fairness and the equality of arms, particularly in cases involving vulnerable individuals who rely on independent expert evidence to substantiate their claims.

Additionally, little to no thought has been given to the varying shades of evidence that may be provided in an appeal, including, but not limited to, medical records, doctors' letters and other expert reports. There is nothing in the proposal that addresses how evidence other than an agreed set of materials will be treated, and what weight will be given to it. This is particularly concerning in the context of medico-legal evidence, which is often inherently subjective and requires careful, case-specific evaluation

Finally, little to no justification has been provided for such a process to be implemented. The proposal is not sufficiently developed and raises significant practical and fairness concerns. Any approach to implement a sharing of materials as agreed between the parties must not inhibit an appellant's ability to instruct and rely on independent expert evidence.

Adjudicator recruitment, eligibility, impartiality and training

Question 12. What recruitment criteria would best ensure adjudicator independence, impartiality and credibility in the new appeals body?

There is no evidence to suggest that an inability to recruit appropriately qualified immigration judges is the main cause of the appeals backlog. Equally, there is no evidence that replacing legally qualified immigration judges with less qualified adjudicators would improve either the quality of decision-making or efficiency of decision-making.

Diverting resources to establishing an entirely new adjudicator recruitment framework including infrastructure, training, and monitoring *rather* than addressing known inefficiencies in initial decision-making is unlikely to resolve systemic delays and may instead risk reducing overall decision-making quality. Recruiting those without legal expertise will require the appeals body to invest in training, supervision and quality control that it does not have to do in the current system, because it recruits only from a pool of people who already possess the knowledge and experience. It is difficult to see how recruiting a cohort of inexperienced individuals and training them would reduce the backlog in the short to medium term, or why the upheaval of creating a new system would be preferred over better resourcing the existing system.

As noted in response to Question 8, the 2014 consultation carried out by the Senior President of the Tribunals in relation to the use of NLMs, found that they should only be used in cases where it would be in the 'interest of justice' and that judges should have discretion as to their use.

Importantly the NLMs were envisaged to be *supplementary,* rather than a replacement for appropriately qualified judges. That consultation also identified a number of concerns relevant to the current proposal including: the lack legal of expertise; the lack of clear evidence that NLMs improved the quality of decision making; potential weaknesses in assessing complex evidence and providing robust legal reasoning; inconsistency and unpredictability; and the fact that their use does not address the underlying systemic issues giving rise to delays or the backlog. We see no reason why the same concerns would not arise in respect of recruiting adjudicators.

The nature of the issues determined in immigration appeals are complex, including the approach to factual matters. Errors may have very serious consequences for individuals and the public interest. This is why experienced lawyers, appointed following an independent and rigorous selection process, are best placed to act as judges in immigration and asylum appeals in a system with strong safeguards for their judicial independence. Adjudicators are entirely unsuited for hearing these appeals.

Hearing methods, digital processes and efficiency

Question 20. What are the challenges and opportunities for paper-based hearings?

When hearings are paper-based the decision-maker loses the ability to probe the evidence through questioning. Immigration and asylum cases are rarely straightforward - they turn on complex legal questions, assessments of credibility, and the need to establish detailed factual accounts. Given all of this, we would be extremely concerned by a default assumption in favour of paper hearings. People without legal representation are especially vulnerable in this context. They are less likely to know what evidence is needed or how to present their case effectively, which makes it significantly harder for them to get a fair hearing.

This position is reinforced by the UNHCR Handbook for Parliamentarians on building state asylum systems, which is clear that oral hearings should be the norm in asylum appeals, with claimants able to request one where it is not automatically offered. The Handbook identifies a number of situations where an oral hearing is essential - including where a first-instance refusal rested on credibility findings that were not properly explored at screening or interview; where relevant evidence was not adequately drawn out or considered; where new evidence has come to light; or where there are legitimate questions about whether the original decision was procedurally fair.

Paper-based hearings should be reserved for a narrow set of circumstances - for instance, where the issue is purely administrative in nature, such as confirming that previously overlooked evidence has in fact been submitted, or where a claim has been assessed as manifestly unfounded and none of the concerns above arise. Where an oral hearing is refused, the decision-maker must explain why. And where an appellant is unrepresented, an oral hearing should never be withheld.

Question 21. What are the challenges and opportunities for virtual hearings?

There is existing research regarding the risks to fairness and fair hearings posed by these methods. Those risks would be exacerbated in a system whose independence is compromised and where judges who are not experienced lawyers are deciding cases using those methods.

A report commissioned by the Paul Hamlyn Foundation, (examining specifically provision of immigration advice remotely), identified client groups for whom remote advice and casework are particularly challenging and this includes those seeking asylum and people with multiple vulnerabilities. Many of the issues highlighted here are more broadly applicable to hearings. Practical barriers to accessing advice safely include access to any private, safe line for communication but even where immediate practical barriers are not present, the report highlights the need to gain the trust of such clients as well as ensuring that safeguarding measures are in place in order to get the information necessary to progress the case. Doing this online "can be extremely challenging for providers and clients alike".

Research on the impact of remote hearings in immigration tribunals has highlighted that clients disclose less information; are more likely to become disengaged; and cultural differences in non-verbal communication are exacerbated. Communication problems between a client and their interpreter are more difficult to notice and rectify.

Question 22. What are the challenges and opportunities for in-person hearings?

In-person hearings should be the standard for asylum claims (as outlined in our answer to question 20). Such hearings are an important part of an appellant's understanding of transparency in the decision-making process and allows them to present their claim before the judge.

Research by the London School of Economics found that women with children are typically discriminated against. As such childcare should be provided to allow mothers to properly participate in their hearings. Any failure to do so is an affront to access to justice for an already marginalised group.

Compliance, engagement, timeframes and prioritisation

Question 26. What should constitute a reasonable timeframe for deciding cases?

Legal processes require adequate time for securing legal representation, acquiring and considering relevant evidence, identifying relevant experts, and preparing a case. This is central to the proper functioning of the justice system as it helps ensure rulings are fair, accessible and clear. It is even more necessary when a refugee's case is highly complex and sensitive in nature, involving the fundamental safety and liberty of a vulnerable person who may not speak English, and/or who struggles with digital exclusion. UNHCR is clear that an effective remedy "needs to be available in practice as well as in law", including allowing the appellant sufficient time to prepare the appeal. Quality, fairness and justice must not be sacrificed for speed.

Question 27. In what circumstances should exceptions be permitted?

Expediting procedures and fixed timescales for asylum appeals have been tried before and although the Home Office claimed that the necessary safeguards were in place to ensure procedures were fair this was not the case (see below). Rather than investing time and energy in creating parallel procedures with different processes for different individuals, the Home Office should focus on improving its existing decision-making system so that cases are dealt with fairly, consistently and efficiently.

There are many reasons why someone in the asylum system may not be possible for someone to present all relevant information in support of their claim at the earliest opportunity. These include failings within the process, such as a poor quality interview or difficulty accessing quality legal advice. The applicant may be too traumatised to recall coherently the events that led to their flight, particularly if they are a survivor of torture or trafficking. Research has highlighted that those seeking asylum "need time to process past traumatic events and to establish a sufficient level of trust and confidence to reveal the potentially painful and shaming details of their experiences" and that the asylum and immigration process needs to be sensitive to this.

HBF's own research has shown the effect of trauma on memory; the effect of shame on disclosure; the narrative dilemmas that victims of trafficking often face; and that "often false assumptions [are] made by decision makers regarding the credibility and reliability of testimony and there is well established research to show trauma impacts on memory recall and the ability of victims to verbalise what has happened to them."

It is vital that understanding of this is reflected in the approach of the IAB.

Question 29. How should the new Independent Appeals Body prioritise or accelerate cases, and should it adopt a more codified approach to case management than exists in the current FTT-IAC? You may wish to comment on whether certain categories of cases might be appropriately prioritised or accelerated, and what safeguards, fairness considerations, or operational factors should be taken into account, and on reasonable timeframes for doing so.

That an accelerated process may result in unfairness to some appellants, without appropriate safeguards, is trite. Learnings should be taken from the plethora of cases[1] following the closure of the Detained Fast Track (DFT). Multiple cases, and reports showed that accelerated processes tend to penalise the most vulnerable.

There are many cases where the appeal preparation has been done but the hearing itself is months away; it would be sensible to have an alert system to identify if a case can be 'bumped' up the list to be heard sooner (if the appellant and their legal representative agree) rather than wait resulting in some medical evidence becoming 'outdated' thus necessitating an adjournment for an addenda (see above response to Question 10 regarding the 'shelf-life' of a report).

For more information, contact Kamena Dorling, Director of Policy, at kamena.dorling@helenbamber.org

[1] *TN (Vietnam) & US (Pakistan), R (On the Applications Of) v Secretary of State for the Home Department & Anor* [2017] EWHC 59 (Admin)