



**JUSTICE submission to the Home Affairs Committee
of the House of Commons**

**Inquiry into immigration and asylum
removals**

OCTOBER 2002

SUBMISSION OF JUSTICE TO THE HOME AFFAIRS COMMITTEE OF THE HOUSE OF COMMONS

INQUIRY INTO IMMIGRATION AND ASYLUM REMOVALS

JUSTICE:

JUSTICE is a British-based, all-party, law reform and human rights organisation. It seeks greater fairness, effectiveness and the advancement of human rights within the legal system. JUSTICE works through policy-orientated research; interventions in court proceedings; education and training; briefings; lobbying and policy advice. It is the British section of the International Commission of Jurists.

This memorandum has been prepared specifically for the Home Affairs Committee inquiry.

INTRODUCTION:

The legal regime for removals

1. The Immigration and Asylum Act 1999 (the 1999 Act) made very significant changes to the way immigration law is enforced in the United Kingdom. Under the Immigration Act 1971, the principal means of removing those who entered the United Kingdom but subsequently overstayed their limited leave to remain or broke a condition of that leave, was deportation. Deportation is an order whereby the Secretary of State can require the expulsion of a person who is not exempt from deportation, and which precludes lawful re-admission to the United Kingdom while such an order is in force. Before a deportation decision can be implemented there is a right of appeal; to an independent adjudicator who can review the merits of the exercise of the discretion, as well as its legality. If, on consideration of the compassionate circumstances then in evidence before him or her, the adjudicator can allow the appeal on the basis that the discretion to deport should have been exercised differently.
2. By this means, there was a safety net of justice and an independent evaluation of the merits of cases, where persons with no claim to remain under the immigration rules could

present compassionate circumstances and ask for deportation not to be enforced. The compassionate circumstances of the case might include 'without fault' failures to comply with the rules: accidental omissions to renew visas and leave to remain, unforeseen breakdown in employment and business records, oppression and hardship in matrimonial relations, strong community ties in the form of presence of children, grandparents or siblings in the UK, or severe ill health and social isolation in the country of origin.

3. The 1999 Act finally removed this right of appeal in overstay cases (earlier legislation had severely restricted it in the case of those who had not been resident here for seven years). Indeed, it removed the power of the Secretary of State to deport for immigration breaches. Henceforth this power was confined to those who had a current leave to enter or remain, but were guilty of or suspected of conduct that made their presence no longer conducive to the public good. Instead, overstayers were to be administratively removed from the UK under s.10 of the 1999 Act as if they had been refused entry at the port or were being treated as illegal entrants. Administrative removal carried no right of appeal on the merits: that is to say, hard cases could not be sympathetically reviewed by an adjudicator
4. There was to be a human rights appeal under s.65 and, subsequently, a discrimination appeal in all cases of intended administrative removal, but this appeal was concerned with the high threshold question of whether removal was compatible with the Human Rights Act 1998 and the European Convention on Human Rights, rather than the lesser threshold of the balance of discretion.
5. Doubtless the ambitious targets set for removals by the Home Office in 1999-2000 were based on the assumption that tens of thousands of cases could be processed quickly through the system, and after asylum issues and any rare human rights points were dealt with, departures would be enforced by removal, with the use of detention immediately prior to removal. It is well known that these targets were predictably over-ambitious and have not been met.

Summary of JUSTICE's views

6. JUSTICE welcomes this discrete inquiry into this central aspect of immigration control and would commend four propositions to the Home Affairs Committee for consideration:
 - (i) the system for asylum removals under the 1999 Act is counter-productive to cooperation and voluntary surrender;

- (ii) humane departures essentially require that those to be removed accept the justice of the decision and the system underpinning it - forcible removals must be confined to the absolute minimum of intransigent cases;
- (iii) removals have not been effected because many people do not think that they have had a fair opportunity to put their case when their circumstances are considered, and exceptional leave to remain has been inappropriately refused in cases where it could have been granted;
- (iv) there should be more imaginative re-settlement incentives for those willing in principle to return but having concerns about so doing.

ASYLUM REMOVALS

7. The present regime for processing asylum claims has been the subject of frequent criticism elsewhere. JUSTICE finds it strange that what were perceived to be the weakest claims for asylum, and those with the greatest prospects of removal, should have been targeted for detention in the Oakington centres, and then, when their claims were rejected, the candidates were released into the dispersal system pending appeal and removal. Nothing was more designed to promote disappearances and promote lack of co-operation.
8. Dispersal frequently meant that claimants lost touch with legal advisers and community groups. They faced enormous difficulties in travelling to meetings, or to appeal hearings, where important decisions were made. They were thus processed in absentia without a full understanding of their case and the particular issues that arose.
9. A more holistic approach to dealing with a particular case, and rather less emphasis on each section of the system merely shifting the file off its desk, would encourage greater co-operation and promote effective removals.
10. The dispersal policy is now to be abandoned, but the damage it may have done to law-abiding instincts is great. The system should reward contact and co-operation, and penalise deliberate absconding and abuse of the system.

EXCEPTIONAL LEAVE TO REMAIN

11. One way of reducing contested or impractical removals is to increase the use of exceptional leave to remain in cases not presently covered by the Immigration Rules, where those concerned have genuine links with the United Kingdom or where removal is not practical because transport or other obstacles or other obstacles prevent it.

12. JUSTICE is dismayed by the recent announcement of Home Office sponsored amendments to the present round of immigration and asylum legislation that move in the opposite direction. It was, we suggest, regrettable for Home Office policy to change with respect to Iraqi Kurds in the year 2000 when there were no arrangements in place to give effect to the changes. Until then, it was recognised that Kurds could only (at best) return to the supposedly safe enclave of northern Iraq, and as there were no means of removing Kurds to this part of the country, one year's exceptional leave to remain should be granted to those who could not be returned elsewhere. In fact, Kurds remain irremovable today, but hundreds have been processed in perfectly unreal appeals, and left in limbo for years, without any status, right to work or social support, awaiting the day when conditions on the ground drastically change. This class of failed removals should never have been classified as removals at all. We hope that the Committee will be able to report in relation to this issue in time to influence the final shape of the current Nationality and Immigration Bill.
13. Other classes of people whose departure is presently frustrated by human rights appeals and judicial reviews could have benefited from a more generous discretion in respect of policies dealing with the sick and infirm, those with children who have established connections in the UK, and those with other legitimate connections that might have been considered compassionate.
14. The objective that policies should aim for is a full, frank and fair system, with an early interview to identify whether there are reasonable prospects of remaining, and an action plan for enforcing the removal of those who manifestly fall outside that criterion. This has not happened. Decisions have been slow and have not commanded respect by clients and counsellors alike when delivered.

INCENTIVES TO DEPART

15. Greater imagination could be used to achieve removals in difficult cases. Those who fear that their medical conditions will not be treated in a poor country could be assuaged if medication were to be made available at government expense for the foreseeable future. The costs of such a scheme would be considerably less than the costs of appeals, judicial reviews, detention, and enforced departure.
16. One of the biggest fears causing people to dig in and challenge removals by means both legal and unorthodox, is the concern that once removed they will never be allowed to return to the UK again to visit spouses, elderly relatives, children or even friends. An

imaginative approach would enable the fast tracking of in-country entry clearance applications, with indications given as to the likely outcome, if people co-operate by returning to their own countries to collect the requisite visa. Entry clearance queues have been used as a deliberate instrument of immigration policy in the past. Reduction of the queue by in-country processing, and an indication that a visa can be delivered within 28 days of return, would do much to restore confidence in those who have married whilst asylum seekers, or have other legitimate connections. Most of these cases have to be referred back to the Home Office by the Entry Clearance Officer in any case, adding six months or more to the anxiety of a disputed application.

17. One classic example is the Roma asylum claims from Eastern Europe. If some of these people were told that, instead of making weak asylum claims, they could be assisted to return to set up their own small business under the Association Agreements, a significant number of cases could be taken out of the system and speedy returns accepted. Instead of re-writing the Refugee Convention and making candidate countries of the EU inadmissible for asylum, the Home Office could anticipate the outcome of negotiations and reserve a number of work permits, skilled and unskilled, for these future beneficiaries of free movement rights.

DETERRENTS

18. By contrast, those with manifestly unfounded and abusive claims, who seek to disrupt the system by absconding, or offering violent resistance and the like, could be warned that if they persist in such behaviour this fact will be recorded and it will prejudice future claims for work permits or visitors visas.
19. Again, a transparent system of rewards and deterrents explained at the outset and communicated through professional advisers might well enable mutual respect and avoidance of the more bitter confrontations.

TIMING

20. It is obvious that it is deeply unfair for the Home Office to spend four years or more in deciding a protection claim from a difficult country and then to suddenly enforce the decision with a view to summary removal. Lives change. Community ties build up. Return may become more unjust and difficult.

21. Until the Home Office can deliver on a six months period for the fair and effective review of decisions, then special measures still need to be adopted towards those who are processed outside the targets set by the Home Office. Intervening community links should be considered with greater sympathy than at present.

ENFORCED DEPARTURES

22. Enforced departures will still occur, and they will be controversial and painful for all involved. However, removing appeal rights merely increases the bitterness and sense of injustice. The recent Ahmadi family case is very much in point. In order to make a propaganda point about firm immigration policy, a family with young children and a psychiatric history resulting from terrible experiences in Taliban Afghanistan were unlawfully removed, without their human rights appeal being heard, at great public expense.

23. The Committee may be interested to know how much by way of public funds this removal cost. There was some £40,000 -£60,000 for chartering the special plane, and several thousand pounds in legal fees in respect of four hearings concerned with the legality of the removal. There were then the package of offers made by the Home Office to avoid the embarrassing effect of its unlawful decision; flying lawyers and experts to Germany and video links for the substantive appeal. The lesson is less haste and greater speed, at considerably less cost in terms of both public funds and a sense of unjust treatment.

24. Where lawful and fair removals must be enforced, then using a cadre of trained and sympathetic officials to diminish conflict is necessary. Gags and manacles, compulsory sedation and undignified denial of access to sanitary facilities are demeaning to all who operate the system of immigration control.

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for
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