

ASYLUM AND IMMIGRATION APPEALS — A PERSONAL PERSPECTIVE



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I am one of seven lawyers working in the Civil Appeals Office. I jointly case manage the immigration and asylum caseload of the Court of Appeal along with Sarah Iwi and my jobshare partner, Lisa Smith. Prior to our arrival in February 2006 Sarah Iwi, a lawyer with 16 years' experience in the Civil Appeals Office, case managed this group alone. However, with the coming into force in April 2005 of The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act") the asylum and immigration caseload of the Court of Appeal sharply increased and there was a need to recruit an extra lawyer to share the workload.

A significant part of our group's work in the Civil Appeals Office is to maintain an overview of all the immigration and asylum cases set down in the Court of Appeal with a view to linking cases which raise a similar legal issue; setting up a test case or cases and standing out other similar cases to await judgment in the test case(s). This assists the Court of Appeal in giving clear guidance in this complex area of law which is so heavily reliant on case law. Recent examples of test cases in this Court include **DK (Serbia) and Ors [2006] EWCA Civ 1747** which clarified the correct procedure to be followed by the AIT when hearing reconsiderations; **HB (Ethiopia) and Ors [2006] EWCA Civ 1713** which gave guidance on the effect of delay on claims under Article 8 of the European Convention of Human Rights; and **JM (Liberia) [2006] EWCA Civ 1402** which overturned the AIT and held that human rights claims are justiciable even when removal is not imminent.

THE NEW "SINGLE TIER" APPEAL SYSTEM

The major change introduced by the 2004 Act was the abolition of the Immigration Appellate Authority with the two tier appeal system involving an initial appeal to an Adjudicator and a further right of appeal on a point of law to the Immigration Appeal Tribunal (IAT). The 2004 Act replaced this with the Asylum and Immigration Tribunal (AIT) and a "single tier" appeal system with "limited onward review or appeal".¹ It was part of the government's "firmer, fairer, faster" approach to immigration and asylum. What did this major restructuring of the appeal system really mean in practice?

SIMILARITIES BETWEEN THE "OLD" AND "NEW" APPEAL SYSTEMS

A simplified summary can be found in the table below of the core elements of the "old" appeal system governed by the Nationality, Immigration and Asylum Act 2002 and the new appeal system under the 2004 Act. The similarities are stark.

¹ Paragraph 6 of the Explanatory Notes to the 2004 Act