



**ICAR Statistics Paper 2**  
**ASYLUM DECISION MAKING AND APPEALS PROCESS**

March 2009 update



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## Introduction

This document looks at the statistics relating to the UK decision-making and appeals process. It provides a statistical summary for the years 1998-2007, highlights and examines various issues relating to these statistics, identifies key trends and provides an explanation of the legal process where appropriate. A separate [paper](#)<sup>1</sup> is available on statistics relating to asylum seeker applications in the UK, which provides more detailed information on the number of applications that are made and the outcomes of initial decisions and appeals (including overall rates), and on technical statistical issues.

For further information about international refugee law and UK asylum law and process see ICAR's [Navigation Guides](#).

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<sup>1</sup> ICAR (2009): Key Statistics about Asylum seeker Applications in the UK, Updated February 2009. Available at: <http://www.icar.org.uk/Keystatisticspapers>



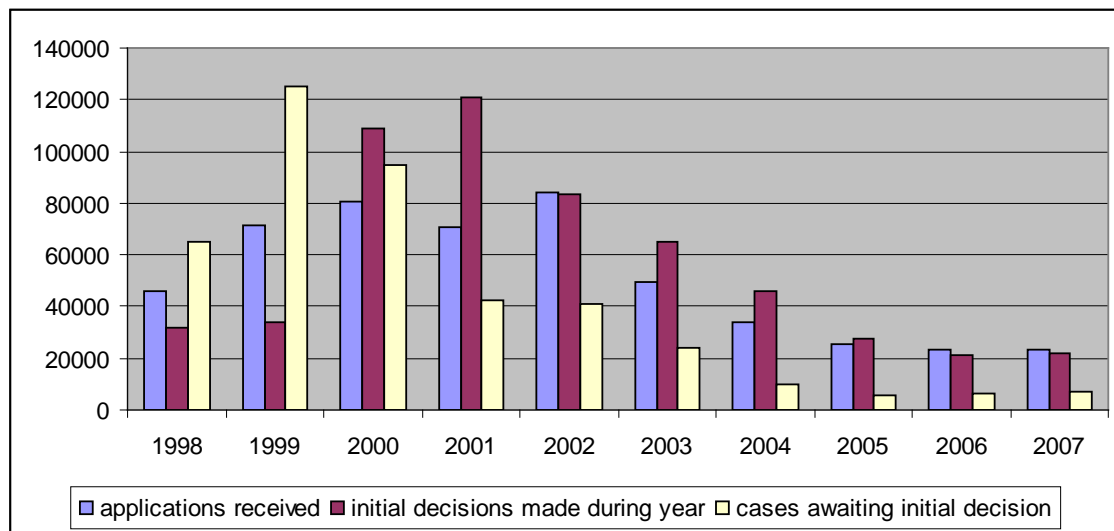
## Initial decisions, targets and backlog

During the 1990s the backlog of initial decisions on asylum cases grew and reached a peak in 1999 when, by the end of the year, there were 125,100 people awaiting a decision on their case. In 1998 the government announced a special backlog clearance policy in the White Paper entitled '*Fairer, faster and firmer*'<sup>2</sup>.

In 1999, 11,140 people were granted indefinite leave to remain (ILR) or exceptional leave to remain (ELR) as a result of the backlog clearance policy.<sup>3</sup> In 1999 there was also an increase in the proportion of initial decisions (excluding backlog clearance cases) to grant refugee status, which was largely due to increased grants to Kosovans. From 2000 onwards the number of cases awaiting initial decision decreased systematically, reaching its lowest point in 2005 with 5500 cases. At the end of 2006, the number of cases awaiting initial decision rose to 6,400.

In 2007<sup>4</sup>, 21,775 initial decisions were made, 4 per cent higher than the 20,930 initial decisions made in 2006<sup>5</sup>. The level of initial decisions was lower than applications in 2007; hence the number of cases awaiting initial decision increased to 6,800 (based on the cumulative effect of applications received, decisions made, and applications withdrawn, applied to the total backlog figure produced from the manual count at the end of August 2001).

Chart 1 – Asylum applications, decisions and backlog



<sup>2</sup> <http://www.archive.official-documents.co.uk/document/cm40/4018/4018.htm>

<sup>3</sup> Heath, T., Jeffries, R. and Purcell, J. (2004) Asylum Statistics United Kingdom 2003, 11/04, 24 August 2004. London: Home Office. <http://www.homeoffice.gov.uk/rds/pdfs04/hosb1104.pdf>

<sup>4</sup> Home Office (2008), Asylum Statistics United Kingdom 2007, 11/08, 21 August 2008. London: Home Office. Available at: <http://www.homeoffice.gov.uk/rds/pdfs08/hosb1108.pdf>.

<sup>5</sup> These figures are of initial decisions, so data about the outcome of appeals or other subsequent decisions is excluded.

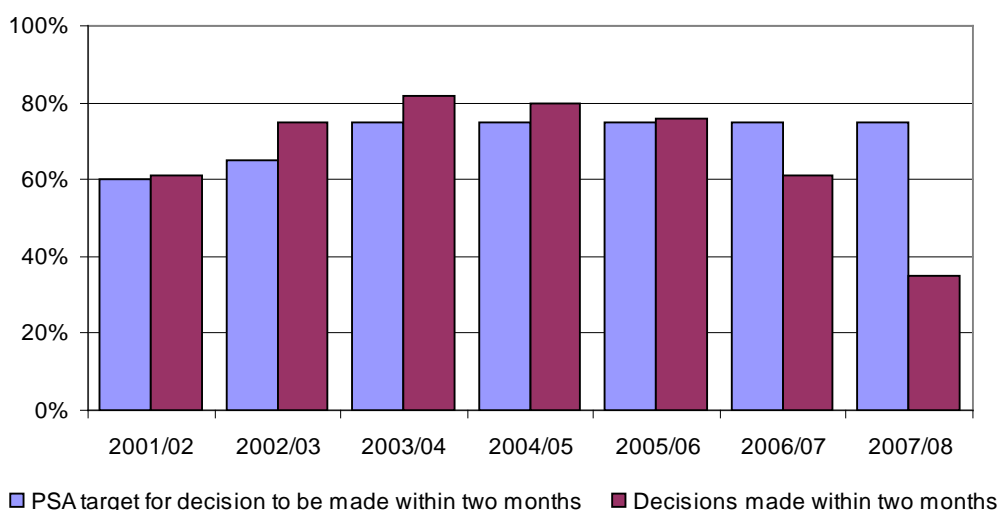


In 2006 the government set out a new backlog clearance policy in the form of a programme to deal with its backlog of 400-450,000 'legacy cases'.<sup>6</sup> According to the 2007 Public Service Agreement (PSA) it aims to complete this process by July 2011 and, before that, to achieve a resolution rate of 10,000 per month by June 2008. In order to facilitate this each case is assigned a single case owner, in line with the principle of single case ownership for new claims established by the New Asylum Model.<sup>7</sup>

The government announced two targets in the 1998 White Paper concerning the speed of the decision-making process: 'that by April 2001 most initial asylum decisions will be made within two months of receipt and that most appeals to Adjudicators will be heard within a further four months'.<sup>8</sup>

With regards to the first target, Chart 2 shows that over the 2001 to 2002 financial year the Home Office provided an initial decision within two months for 60% of new substantive cases. It also shows that in doing so, the Home Office met its PSA targets, which are issued every two years.<sup>9</sup> As also shown, 35 per cent of new substantive applications received in 2007/08 had initial decisions reached and served within two months, compared with 61 per cent in 2006/07.<sup>10</sup>

Chart 2 – Targets for initial decisions<sup>11</sup>



The second target identified by the Home Office in the White Paper was that appeals would be heard within a further four months from receipt by the Immigration Appellate Authority (IAA). The data for the speed with which the IAA decided appeals varies in its presentation. The 2002 asylum statistics publication states that

<sup>6</sup> Hansard (2006) Home Office reform action plan announced by the Home Secretary. Available at: <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060719/debtext/60719-1012.htm#06071967001673>

<sup>7</sup> HM Government (2007): PSA Delivery Agreement 3: Ensure controlled, fair migration that protects the public and contributes to economic growth, p.7. Available at: [http://www.hm-treasury.gov.uk/d/pbr\\_csr07\\_psa3.pdf](http://www.hm-treasury.gov.uk/d/pbr_csr07_psa3.pdf)

<sup>8</sup> Home Office (1998) Fairer, faster and firmer – a modern approach to immigration and asylum. Cm 4018 London: Home Office. <http://www.archive.official-documents.co.uk/document/cm40/4018/4018.htm>

<sup>9</sup> For more information refer to the Treasury website: [http://www.hm-treasury.gov.uk/pbr\\_csr07\\_index.htm](http://www.hm-treasury.gov.uk/pbr_csr07_index.htm)

<sup>10</sup> Home Office's Public Service Agreement target for 2004/05 was 75% and for 2005/06 was 75%, when the target period ended. At the time of writing, no PSA target (for decision to be made within two months) was found for 2006/7 and 2007/8. Therefore, the figures used for these years in chart 2 were the last available target (75%).

<sup>11</sup> The data for chart 2 was taken from Home Office Asylum Statistics Bulletins years [2002](#) (p. 9), [2003](#) (p. 12), [2004](#) (p. 15), [2005](#) (p. 14), [2006](#) (p. 16) and [2007](#) (p. 14).



43% of the asylum appeals received by the IAA during April 2001 to March 2002 were determined within 17 weeks,<sup>12</sup> which did not meet the Court Service target to clear 65% of asylum cases through both the Adjudicator and Tribunal levels within four months.<sup>13</sup>

During April 2002 to March 2003, 43% of appeals were also determined within 17 weeks, which did not meet the Service Delivery Agreement target to determine cases within four months, as described in the Lord Chancellor's Department Service Level Agreement.<sup>14</sup>

These two appeals-related targets were then superseded by the joint Home Office and Department for Constitutional Affairs Public Service Agreement Target, which changed the benchmark from the time taken to complete the appeals process to the overall time taken to decide substantive asylum applications, including appeals. During April 2004 – March 2005, 67% of new substantive applications were decided within six months, up to and including appeals, which met with the joint Home Office and Department for Constitutional Affairs Public Service Agreement Target (PSA) for 2004/5 of 60%. For applications received in 2003/4 the corresponding figure was 63%.<sup>15</sup>

In 2006, the benchmark changed again to the Asylum Conclusion Target: the time taken to grant asylum or remove the applicant from the UK. A Home Office paper set a new six month target of granting or removing 90% of new applications within six months by 2011.<sup>16</sup> This final goal is preceded by a series of intermediate targets and also goes on to figure as an indicator in the 2007 PSA.<sup>17</sup> For new applications made in September 2006 the intermediate target of granting or removing 35% of applications within six months by April 2007 was met, with a figure of 38%.<sup>18</sup> From June to December 2007, the target of 40% of cases concluded within six months was also met, with a figure of 46%.<sup>19</sup> The subsequent intermediate targets are: 60% of resolved cases within six months by the end of December 2008 and 75% by the end of December 2009.<sup>20</sup>

The backlog of decisions to be made by Case Owners has more than doubled since the second quarter of 2007 from 4,500 at the end of June 2007 to 8,700 at the end of June 2008. According to the National Audit Office<sup>21</sup>, the UK Border Agency will therefore find it challenging to conclude 60 per cent of cases within six months by December 2008. In their view then, the New Asylum Model is not able to cope with sudden changes in demand and there is a risk of a new backlog.

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<sup>12</sup> Heath et al (2003). Asylum Statistics United Kingdom 2002, 08/03, 28 August 2003. London: Home Office. Available at: <http://www.homeoffice.gov.uk/rds/pdfs2/hosb803.pdf>

<sup>13</sup> 17 weeks calculates as 119 days, which is a little less than four months. Four months is defined as 122 days. See Heath et al (2004). Asylum Statistics United Kingdom 2004, 13/05, 23 August 2005. London: Home Office, p.12. Available at: <http://www.homeoffice.gov.uk/rds/pdfs05/hosb1305.pdf>

<sup>14</sup> Home Office (2003) Asylum statistics: 4th Quarter 2003 United Kingdom. London: Home Office. Available at: <http://www.homeoffice.gov.uk/rds/pdfs2/asylumq403.pdf>

<sup>15</sup> Heath et al (2006) Asylum Statistics United Kingdom 2006, 14/07, 21 August 2007. London: Home Office, p.16. Available at: <http://www.homeoffice.gov.uk/rds/pdfs07/hosb1407.pdf>

<sup>16</sup> Home Office (2006) Fair, effective transparent and trusted: rebuilding confidence in our immigration system, p.9. <http://www.homeoffice.gov.uk/documents/ind-review-250706/ind-review-eng?view=Binary>

<sup>17</sup> HM Government (2007) *op cit.* p. 5.

<sup>18</sup> See Bennett et al (2007) p. 17 and Explanatory Note 3. These statistics no longer refer to the previous joint Home Office and Department for Constitutional Affairs Public Service Agreement Target.

<sup>19</sup> Home Office (2008), *op cit.* p. 15.

<sup>20</sup> HM Government (2007): *op cit.* p. 21.

<sup>21</sup> National Audit Office (2009), the Home Office Management of Asylum Applications by the UK Border Agency. Report by the comptroller and auditor general | HC 124 Session 2008-2009 | 23 January 2009, p. 8. Available at : [http://www.nao.org.uk/publications/0809/management\\_of\\_asylum\\_appl.aspx](http://www.nao.org.uk/publications/0809/management_of_asylum_appl.aspx)



# Asylum appeals

## Appeals structure

Most people whose applications for asylum are refused have the right to appeal against this decision.<sup>22</sup> This allows Home Office decisions to be scrutinised by an independent judicial body, the [Asylum and Immigration Tribunal](#) (AIT),<sup>23</sup> which replaced its predecessors in April 2005. Appeal cases are examined to see if it would be a breach of the [1951 Refugee Convention](#)<sup>24</sup> or of the [Human Rights Act 1998](#)<sup>25</sup> to return individuals to their countries of origin.

Before April 2005 there was a two-tier asylum appeal system in the UK comprising the Immigration Appellate Authority (IAA) and the Immigration Appeal Tribunal (IAT). When this two-tier system was still in operation, appeals determined by IAA Adjudicators were either 'allowed' or 'dismissed'<sup>26</sup> and, in most cases, there was potentially a right to appeal further to the IAT if a case was dismissed. Individuals appealing to the IAT would have to be first of all granted leave (permission) for the appeal to be heard. Applications for leave to appeal could only be made to the Tribunal on a point of law, including a factual error sufficient to amount to an error of law. The majority of applications for permission were not allowed.

If permission was granted, the case would usually be heard by a three-person panel. Either the asylum seeker or the Home Office was able to appeal against the Adjudicator's decision in this way. The IAT would either allow or dismiss appeals, or remit them for reconsideration by an Adjudicator. The majority of appeals determined by the Tribunal relating to appellants were dismissed; whilst the majority of such cases brought by the Home Office were allowed.

[The Asylum and Immigration \(Treatment of Claimants, etc\) Act 2004](#)<sup>27</sup> introduced a new structure for immigration and asylum appeals, effective from April 2005. The act replaced this with a single body: The AIT, which originally came under the authority of the Department of Constitutional Affairs. Since May 2007, however, responsibility for it has fallen to the newly-formed Ministry of Justice. With the exception of national security-related cases, which are heard by the Special Immigration Appeals Commission (SIAC), all appeals against decisions made by the Home Office on asylum, immigration and nationality matters are heard by the AIT.<sup>28</sup> Appeals are conducted in one of nineteen 'hearing centres' located throughout the UK.<sup>29</sup>

Under the current system there are three types of appeal hearings: case management review (CMR) hearings, substantive appeal hearings and reconsideration hearings. The main purpose of the first hearing in the appeals process - the CMR hearing - is to ensure that the appeal is ready to go ahead. The key

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<sup>22</sup> When cases are certified as 'clearly unfounded' there is not an in-country right of appeal, but an appeal can be lodged from abroad.

<sup>23</sup> <http://www.ait.gov.uk>

<sup>24</sup> <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b66c2aa10>

<sup>25</sup> <http://www.hmsa.gov.uk/acts/acts1998/19980042.htm>

<sup>26</sup> When an appeal is allowed it means that the adjudicator has found the Home Office decision to be erroneous and that it would be in breach of the 1951 Refugee Convention and/or the 1950 European Convention on Human Rights to remove the appellant to their country of origin.

<sup>27</sup> <http://www.legislation.hmsa.gov.uk/acts/acts2004/20040019.htm>

<sup>28</sup> **Joint Council for the Welfare of Immigrants** (2006) Immigration, nationality and refugee law handbook. London: JCWI

<sup>29</sup> **Home Office** (May 2007) Asylum appeal hearings overview. Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/theappealsprocess/guidance/asylumappealshearingoverview.pdf?view=Binary>



issues to be determined by the appeal may also be identified at this stage. Appellants in the fast-track process are not entitled to a CMR hearing.<sup>30</sup>

AIT appeals are heard by one or more immigration judges and are sometimes accompanied by non-legal members of the tribunal. Immigration judges and non-legal members are appointed by the Lord Chancellor and form an independent judicial body. The AIT and its members adhere to a series of procedure rules and practice directions, the latter of which are issued by the President of the AIT.

Once the AIT has made its decision and issued a determination, either party can request a Reconsideration on the grounds that the AIT made an error of law. This is known as an onward right of appeal. Reconsiderations are first considered by a senior immigration judge at the AIT and if successful, will result in an order for the AIT to reconsider the original determination and hear the case again. If a Reconsideration is refused, then in limited cases the AIT's decision can be reviewed by the High Court on the grounds that the Tribunal made an error of law.<sup>31</sup> Reconsiderations cannot be sought if the AIT sat as a panel of three or more legally qualified members when it heard the original appeal and any appeal is instead directed to the Court of Appeal on a point of law.<sup>32</sup>

## Outcomes of appeals

The number of appeals lodged with the IAA/AIT reached a peak in 2003 at 70,575. It has since dropped year on year, down to 7,840 in 2007. This trend mirrors the fall over the same period in asylum applications and therefore the numbers of applicants refused. Between 2002 and 2006 more appeals were determined than were lodged, reducing the level of work in progress at the IAA/AIT and reflecting increased capacity.

Table 1: Total number of appeals determined<sup>33</sup>

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007 <sup>34</sup>
Number of appeals determined	25,320	19,460	19,395	43,415	64,405	81,725	55,975	33,440	15,955	14,935

The increase in appeals to the IAA/AIT prior to 2005 seems to be in keeping with an overall increase in applications, decisions and refusals for the period examined. The following chart compares the number of asylum applications, the number of refusals of asylum claims and the number of appeals that are lodged. It should be noted that some of the applicants refused full refugee status will have been granted another form of status, but that they are still able to appeal the decision to refuse to be granted refugee status. Additionally, some of the applicants refused asylum only have a right to appeal the decision from outside the country.

<sup>30</sup> **Ibid**

<sup>31</sup> The High Court operates in England and Wales, in Scotland it is known as the Outer House of the Court of Session and in Northern Ireland it is called the High Court in Northern Ireland.

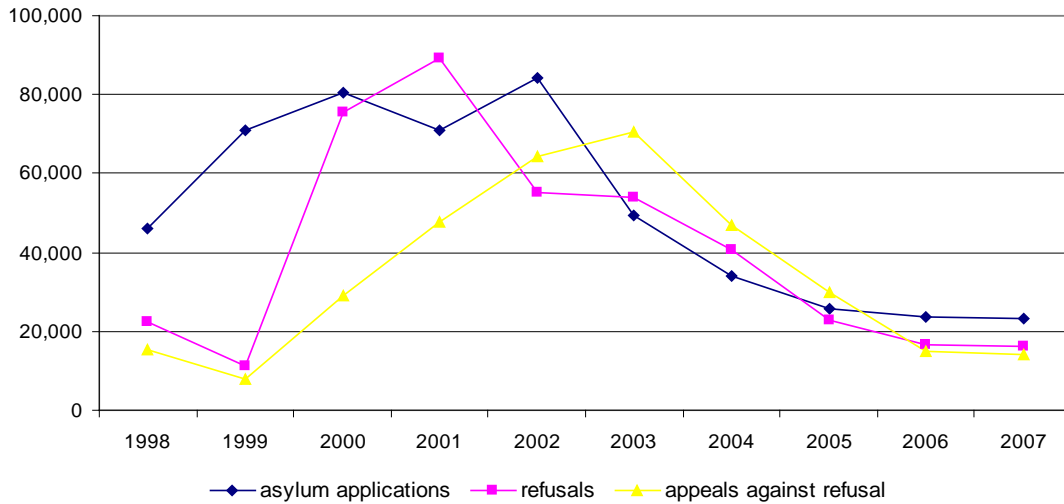
<sup>32</sup> **Home Office** (Nov 2006) Immigration Directorates' Instructions - Chapter 12, section 4 -handling appeals [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk)

<sup>33</sup> **Home Office** (2008), *op cit.* pp. 51, Table 7.1.

<sup>34</sup> 2007 figures are provisional. 2005 and 2006 figures are revised.

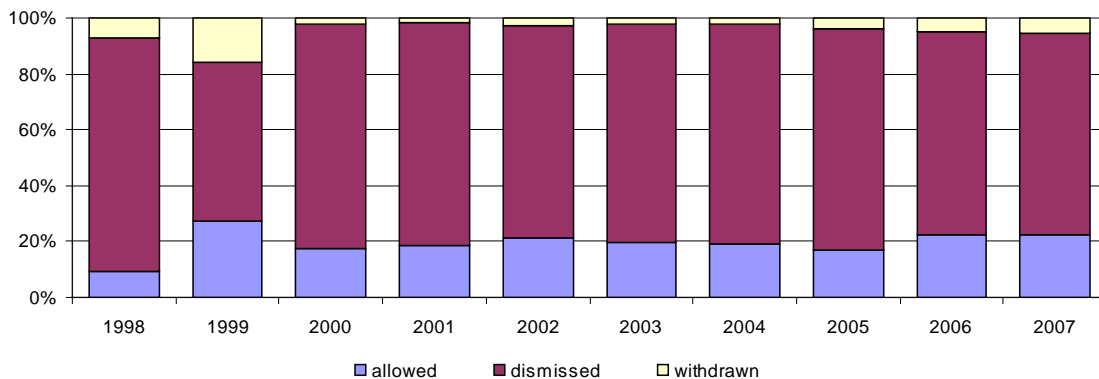


Chart 3 – Asylum applications, refusals and appeals<sup>35</sup>



In 2004 the National Audit Office noted that 'since 1998, the number of appeals lodged has increased from 14,320 to a peak of 74,365 in 2001 reflecting, in part, the rapid increase in the number of applications. However, the proportion of initial refusals *that are subject to appeal* has increased from an estimated 65 per cent of applications made in 2000 and refused, to around 77 per cent of the applications made in 2002 and refused'.<sup>36</sup> In other words, proportionally more refusal decisions were being appealed. This may reflect increased provision of information and advice to applicants, and the merits of individual cases (including changes in the mix of nationalities applying, and changes in the situations in countries of origin).

Chart 4 – Outcomes of IAA/AIT appeals<sup>37</sup>



<sup>35</sup> [ibid](#) Table 1.1, p. 27

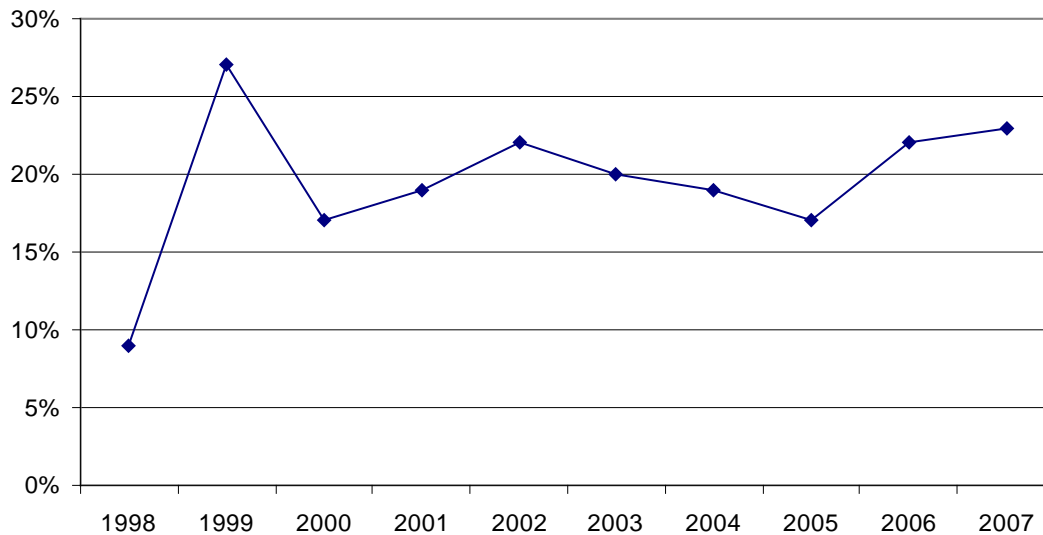
<sup>36</sup> National Audit Office (2004) Improving the speed and quality of asylum decisions. London: Audit Office. Available at: <http://www.nao.org.uk/idoc.ashx?docId=cae93fe3-4a7e-99f9-a20a1ac2b850&version=-1>

<sup>37</sup> Home Office (2008) [op. cit.](#), table 7.1. 2007 figures are provisional. 2005 and 2006 figures are revised.



As Charts 4 and 5 illustrate, in 1998 only 9% of IAA/AIT appeals were allowed but this increased sharply to 27% in 1999. There was a 10% drop the following year with the rate remaining at around 20% since. When asked, the Home Office were unable to explain to the National Audit Office why there was such a big increase in the number of appeals allowed in 1999,<sup>38</sup> apart from the reasons cited above.

Chart 5 – Percentage of IAA/AIT appeals allowed<sup>39</sup>



One of the ways in which the quality of initial decisions can be measured is by looking at the number of appeals that are allowed on either asylum or human rights grounds. In June 2004 the National Audit Office produced a [report](#)<sup>40</sup> on the speed and quality of asylum decisions, which highlighted some of the reasons why there had been an increase in the number of allowed appeals, including the increase in number of determinations (although the proportion allowed by the IAA/AIT fell between 2002 and 2005). The report found that in some cases caseworkers were too sceptical when assessing the applicant's credibility; that some did not make a proper assessment of whether there was a reasonable likelihood that individuals would face persecution if returned; and that they made mistakes when drafting refusal letters.<sup>41</sup>

The National Audit Office report also observed that the rate of allowed appeals varied according to nationality. Whereas 9% of Iraqi cases were successful at the appeal stage in 2003, 38% of Somalia and Sudanese cases were allowed. The Home Office felt that 'appeal rates are influenced by a complex interplay of factors, including: the country situation; case law; resourcefulness of applicants (for example in producing expert reports); and the ease with which caseworkers can disprove the key issues of claims'. The National Audit Office also questioned how reliably caseworkers are able to assess the credibility of applicants where, on the face of it, their claim is well-founded.<sup>42</sup>

Additionally, deterioration in the situation of countries of origin between the initial decision and an appeal hearing can result in appeals being allowed, although this effect should reduce as the speed of the asylum

<sup>38</sup> National Audit Office (2004), [op. cit](#)

<sup>39</sup> Home Office (2008), [op. cit](#), table 7.1. 2007 figures are provisional. 2005 and 2006 figures are revised.

<sup>40</sup> National Audit Office (2004), [op. cit](#)

<sup>41</sup> *Ibid*

<sup>42</sup> *Ibid*



process up to and including appeal has fallen. Finally, judges can take a particular view on a type of case or point of law, which will lead to decisions being overturned.

According to a more recent report by the National Audit Office on the Management of Asylum Applications by the UK Border Agency<sup>43</sup>, the New Asylum Model aims to achieve better quality decisions that stand up to scrutiny, thereby reducing the number and cost of appeals. In this respect, there is some evidence that the quality of decision-making is rising, but there is no means, as part of the process, to identify and reverse incorrect decisions. The only route open to reverse a decision is for the applicant to appeal to the Asylum and Immigration Tribunal. Around 70 per cent of asylum claims that result in refusal pursue an appeal and of these some 20-25 per cent are upheld.

## Second-tier appeals and reconsiderations

As explained previously, up until April 2005 under the old two-tier system run by the Immigration Appeal Authority (IAA), asylum seekers whose appeals were dismissed could apply for permission to appeal before a higher body (the Immigration Appeals Tribunal - IAT). If granted, this would result in a second appeal. Under the new system, the unsuccessful appellant can only apply to the one-tier Asylum and Immigration Tribunal (AIT) for a Review of their claim, which, if successful, will result in a Reconsideration.

A reconsideration case refers to an asylum decision by the Secretary of State, which is later required to be reconsidered before an appeal is sent to the AIT. This reconsideration is not an appeal but occurs as a result of additional information and/or significant changes in current circumstances and country information. For post-2005 data below, the figures used treat these Reconsiderations as equivalent to the former (IAT) appeals, referred to here on as 'Tribunal' appeals.

Table 2: Appeals to the Immigration Appeals Tribunal (1998-2005) and Reconsiderations (AIT, 2005-2007) <sup>44</sup>

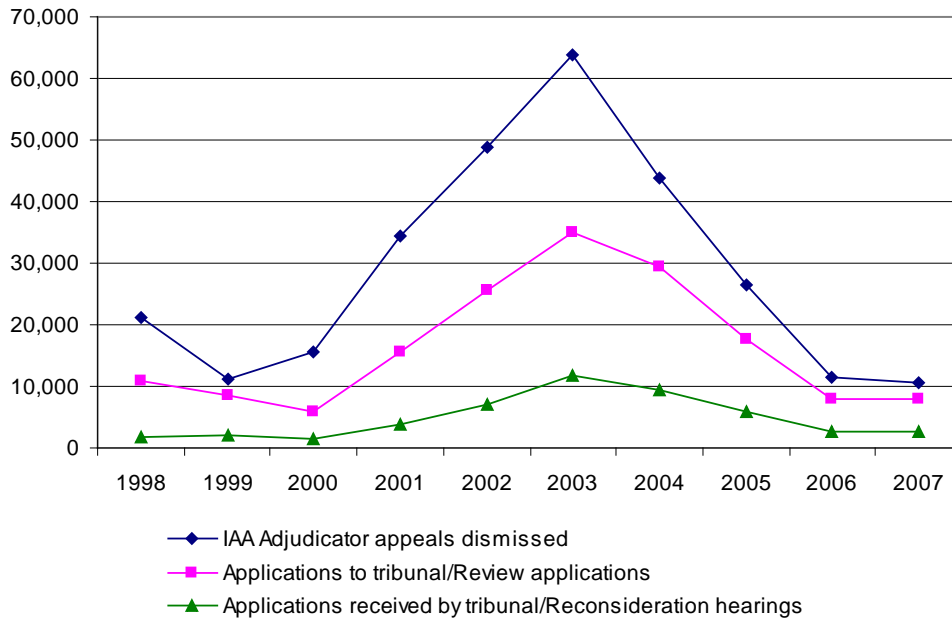
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Number of appeals dismissed	21,195	11,135	15,580	34,440	48,845	63,810	43,760	26,555	11,595	10,735
Number of applications for permission to appeal to the Tribunal/Review Applications	10,910	8,635	6,020	15,540	25,600	34,955	29,265	17,585	7,795	7,865
Number of appeals received by the Tribunal/Reconsideration Hearings	1,775	2,135	1,615	3,860	6,920	11,845	9,465	5,875	2,680	2,610
Number of appeals determined by the Tribunal/Reconsideration Hearings	1,090	1,790	2,635	3,190	5,565	9,450	8,785	7,750	4,405	3,795

<sup>43</sup> National Audit Office (2009), [op. cit.](#)

<sup>44</sup> Home Office (2008), [op. cit.](#), tables 7.1 and 7.2. 2007 figures are provisional. 2005 and 2006 figures are revised.

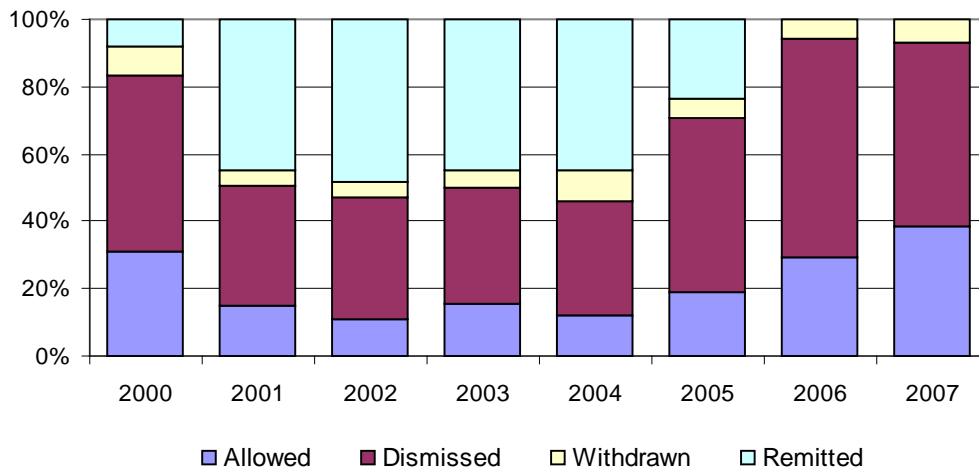


Chart 6 – Number of Tribunal Appeals/Reconsiderations<sup>45</sup>



From 2001 to 2003 there was a sharp increase in the number of applications for leave to appeal and appeals determined by the IAA/AIT. The increase in the number of appeals received by the Tribunal was in line with an increase in the number of Adjudicator appeals that were dismissed between 2000 and 2003 and reflects a general increase in the number of people in the system during this period. The level of Adjudicator appeals and Tribunal applications and appeals began to fall after 2003. This is likely to be a consequence of the sharp fall in asylum applications and therefore the total number of refusals from 2002 onwards.

Chart 7 – Outcomes of Tribunal (IAT) Appeals/Reconsiderations<sup>46</sup>



<sup>45</sup>Home Office (2008), [op. cit.](#), tables 7.1 and 7.2. 2007 figures are provisional. 2005 and 2006 figures are revised.

<sup>46</sup>*Ibid*

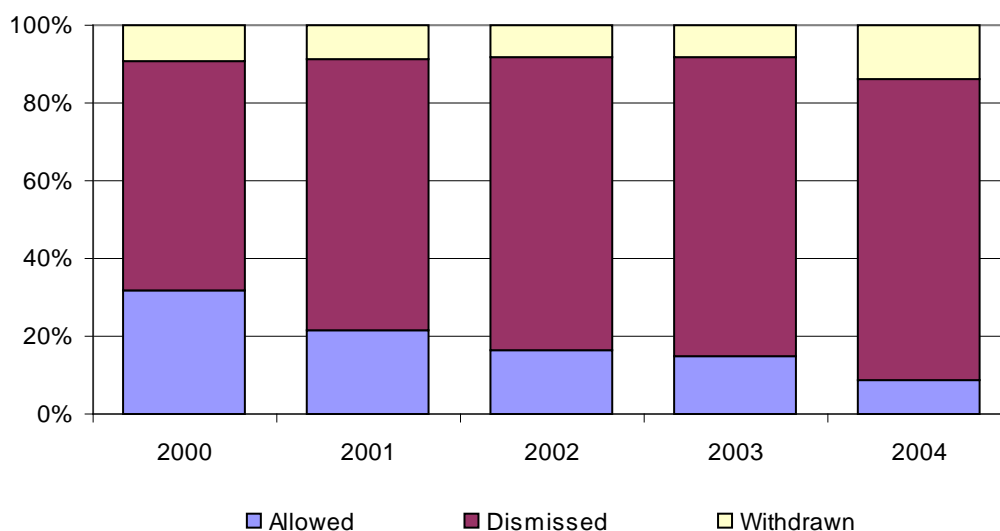


Chart 7 shows that more Tribunal appeals are dismissed than allowed and that the number allowed has declined. However, the numbers that were allowed are not insignificant which suggests that the Tribunal had an important role to play as a second-tier appeal body in the over-turning of Adjudicator decisions.

It is interesting to note that the proportion of cases that were remitted to an Adjudicator for a second hearing rose dramatically from 2001 to 2004, and it would be instructive to explore whether or not this was a result of changes in the decision-making of Adjudicators or the Tribunal.

As stated above, before April 2005 both an asylum applicant and the Home Office could appeal an Adjudicator's decision if leave was granted. The following two charts show the proportion of appellant (asylum applicant) and Secretary of State (Home Office) cases that were allowed and dismissed between 2000 and 2004. Most of the cases heard by the Tribunal were brought by appellants (3,365 in 2004) rather than the Secretary of State (who brought 1,505 in 2004), and it is possible to see from the graphs below that a much greater proportion of cases brought by the Secretary of State were allowed (the majority for 2000 to 2004) when compared with cases brought by the appellant, for which a large majority of cases in 2000 to 2004 were dismissed.

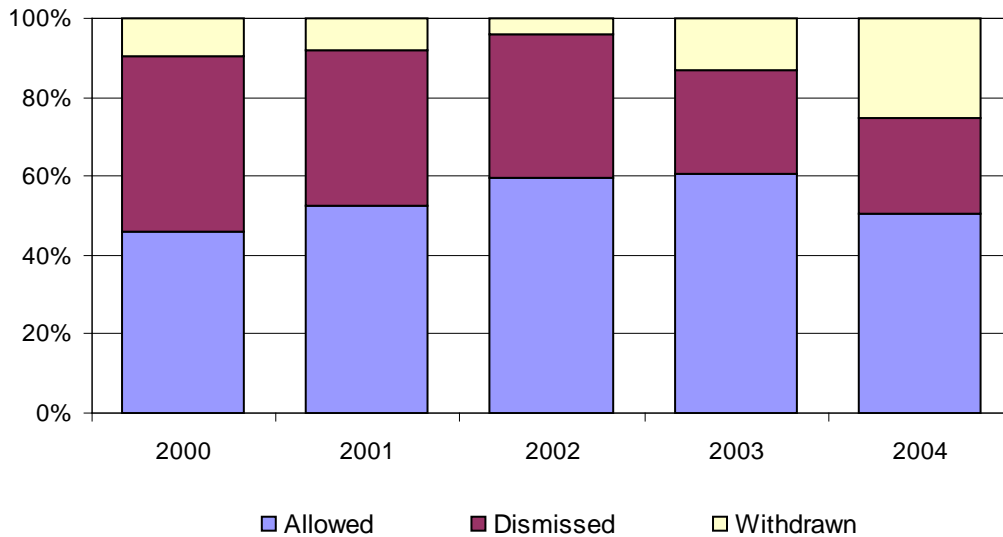
Chart 8 – Appellant cases<sup>47</sup>



<sup>47</sup> Heath et al (2005) Table 7.2. Data for 2005 and 2006 is not available in the corresponding annual statistics and it appears to have been discontinued.



Chart 9 – Secretary of State cases<sup>48</sup>



## Judicial review

As long as all statutory rights of appeal have been exhausted, an asylum seeker is also entitled to apply to the Administrative Court for permission to move a judicial review of any decision taken during the asylum process. A judicial review looks at whether a decision has been made fairly and properly rather than examining the facts of the claim. The test for a judicial review is whether or not the decision was 'Wednesbury unreasonable'. This means that the decision may be successfully challenged if it is considered so unreasonable that no 'reasonable public body' could have made such a decision.

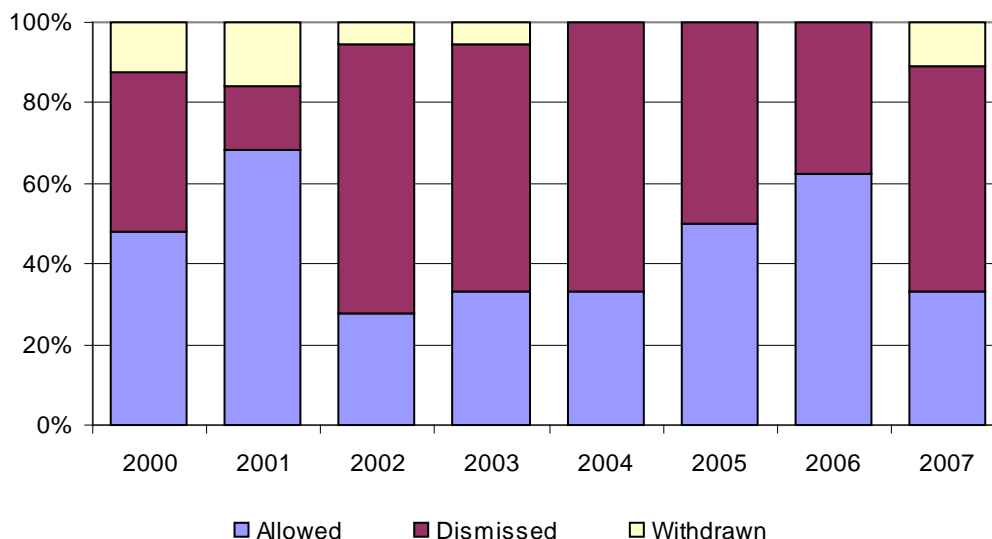
This is a very narrow test and limits the courts' power to supervise the executive. Examples of instances where an applicant may apply for permission to move a judicial review are: cases certified by the Home Office as clearly unfounded so that there is no in-country right of appeal (in this case it is the decision to certify that is being judicially reviewed) and cases that are certified on the grounds that there was an earlier right of appeal (again, it is the certificate that is being judicially reviewed). The Home Office is also entitled to apply for permission to move a judicial review.<sup>49</sup>

<sup>48</sup> Heath et al (2005). Asylum Statistics United Kingdom 2005 14/06, 22 August 2006, Table 7.2. Available at: <http://www.homeoffice.gov.uk/rds/pdfs06/hosb1406.pdf>. As with chart 8, data for 2005 and 2006 is not available in the corresponding annual statistics and it appears to have been discontinued.

<sup>49</sup> ICAR (2006) Asylum law and process navigation guide, <http://www.icar.org.uk/download.php?id=83>



Chart 10 – Outcomes of Judicial Review hearings<sup>50</sup>



In the large majority of cases applications for permission to apply for Judicial Review is not granted (in 2004 1,130 decisions on such applications were made and 11% (130) granted permission). Also, from 2002 onwards a smaller proportion of Judicial Review cases have been successful. The graph above shows that, following a dip in 2004, a significant percentage of judicial review hearings were allowed from 2005 to 2006. However, this tendency appears to be reversing, as the percentage of judicial reviews allowed fell from 63% in 2006 to 34% in 2007.

Overall numbers of both appeals to the Tribunal and hearings for Judicial Review are low in comparison to the overall number of asylum claims, and in both cases the procedure of seeking leave to appeal to the Tribunal/leave to move to Judicial Review screens out a high proportion of applicants.

## Other factors affecting the outcome of asylum claims and appeals

Many refugee advocacy groups point to problems with the quality of initial decision-making and attribute delays in the asylum determination system to this. As noted in Chart 5, since 1999 the percentage of Adjudicator appeals that were successful has risen dramatically and has remained between 17% and 27%. Long-standing concerns about the quality of first decisions and of the country information used to make decisions have been highlighted by the Immigration Advisory Service (IAS)<sup>51</sup>, the Medical Foundation<sup>52</sup> and Amnesty International<sup>53</sup> who have argued that the poor quality of initial decisions is the reason why so many decisions are overturned on appeal. For its part UNHCR was invited by the Home Office to monitor its procedures, a process which began in 2004 under the name of the [Quality Initiative Project](#)<sup>54</sup>. Its subsequent series of reports have identified a number of flaws in the decision-making process.

<sup>50</sup>Home Office (2008), *op. cit.*, table 7.3.

<sup>51</sup> Immigration Advisory Service (2005) Country guideline cases: benign and practical? London: IAS. [http://www.iasuk.org/module\\_images/Country%20Guideline%20Cases-Benign%20and%20Practical%20TPPS.pdf](http://www.iasuk.org/module_images/Country%20Guideline%20Cases-Benign%20and%20Practical%20TPPS.pdf)

<sup>52</sup> Ellie Smith (2004) Right first time? Home Office asylum interviewing and reasons for refusal letters, London: Medical Foundation for the Care of Victims of Torture.

<sup>53</sup> Amnesty International UK (2004) Get it right: How Home Office decision-making fails refugees. London: AI UK.

<sup>54</sup> UNHCR submitted the Fifth Report of the Quality Initiative project to the Minister in May 2008. This report is available at: <http://www.unhcr.org.uk/what-we-do/documents/FifthReportkeyobservationsrecommendationsversionFINAL.pdf>



The Home Office has implemented a number of mechanisms that intend to assure the quality of decision-making. The National Audit Office report states that every month senior caseworkers randomly sample completed cases to check whether or not the decision is sound before it is sent out to the applicant.<sup>55</sup> The 2007 Public Service Agreement seeks to provide a better service by assigning each case a single case owner from start to finish, in line with the New Asylum Model. It also pledges quality control via 'regular reviews' of a sample of concluded cases. However the Agreement does not provide for any form of measurement of these goals.<sup>56</sup>

For a much fuller overview of the main issues identified by observers of the decision-making process both at the initial decision and the appeals stage, please see the relevant ICAR briefings produced for the Independent Asylum Commission.<sup>57</sup>

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<sup>55</sup> **National Audit Office** (2004). The Directorate had a Public Spending Agreement to meet for 2005-06, which was that 85% of cases assessed by IND and the Treasury Solicitor's Department were to be found to be fully effective or better. Performance for 2004/05 was 88% and 84% respectively. It would appear these targets have since been discontinued.

<sup>56</sup> **HM Government** (2007), [op cit](#), p.9.

<sup>57</sup> **ICAR** (2007) The operation of the asylum determination process, Available at: [http://www.icar.org.uk/bob\\_html/04\\_iac\\_briefings/The\\_operation\\_of\\_the\\_asylum\\_determination\\_process\\_June\\_2007.pdf](http://www.icar.org.uk/bob_html/04_iac_briefings/The_operation_of_the_asylum_determination_process_June_2007.pdf), and **ICAR** (2007), Asylum Appeals Process, Available at: [http://www.icar.org.uk/bob\\_html/04\\_iac\\_briefings/Appeal\\_Process\\_Sept2007.pdf](http://www.icar.org.uk/bob_html/04_iac_briefings/Appeal_Process_Sept2007.pdf)