Report of Interim Findings

The Independent Asylum Commission's nationwide review of the UK asylum system in association with the Citizen Organising Foundation.

Commissioners

Sir John Waite (Co-Chair)
A former Judge of the High Court (Family Division) and of the Court of Appeal, former President of the Employment Tribunal & until recently Chair of UNICEF UK.

Ifath Nawaz (Co-Chair)
President of the Association of Muslim Lawyers, member of the Policing and Security working group appointed by the Prime Minister in the wake of the bombings of 7 July 2005, a Commissioner on the Lunar House Report.

Countess of Mar
A cross-bench member of the House of Lords, and the holder of the original Earldom of Mar, the oldest peerage title in the United Kingdom; previously sat on the Asylum and Immigration tribunal, the panel hearing immigration appeal cases, for over two decades and resigned when she became disillusioned with the system.

Shamit Saggar
Currently Professor of Political Science at the University of Sussex and Chair of the Law Society's Consumer Complaints Board. Previously a Senior Policy Advisor in the Prime Minister's Strategy Unit, Cabinet Office; a Reader in Political Behaviour at Queen Mary, University of London; a Harkness Fellow at UCLA, and a Yale World Fellow at Yale University.

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Canon Professor Nicholas Sagovsky, Canon Theologian at Westminster Abbey. A Commissioner on the South London Citizens Lunar House Report.

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Director of the Institute for Human Rights. A public affairs specialist and lawyer with a background in human rights law and immigration, Katie has worked for a number of voluntary sector organisations.

Lord David Ramsbotham GCB CBE
Her Majesty's Chief Inspector of Prisons between December 1995 and August 2001 and a former army general.

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Recently appointed member of the United Nations Subcommittee on Prevention of Torture and President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Prior to this, she was a freelance researcher and academic.

Earl of Sandwich
A cross bencher in the House of Lords with an interest in international relations and refugee issues.

Zrinka Bralo
A journalist from Sarajevo who has campaigned for refugee and human rights since her exile in 1993. In the past ten years she has worked as a journalist, commentator and researcher. She is Executive Director of the Migrant and Refugee Communities Forum in West London.

Bishop Patrick Lynch
Rt Reverend Patrick Lynch is the Auxiliary Bishop for the Roman Catholic Archdiocese of Southwark. He has worked extensively with many different migrant communities during his ministry and was ordained bishop in 2006.

Jacqueline Parlevliet
Deputy Representative of the United Nations High Commissioner for Refugees in London (Observer status)

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For more information see
www.independentasylumcommission.org.uk.

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REPORT DESIGNED BY SUE DRANSFIELD • PRINTED BY RAP SPIDERWEB

Executive summary

The Independent Asylum Commission (IAC) is conducting a nationwide citizens' review of the UK asylum system. It has collected evidence from several hundred individuals and organisations, through public hearings, written and video evidence, and research. The provisional findings of the Commissioners are set out at the end of each Section headed *Commissioners' Interim Findings*.

In 2006 the then Home Secretary, John Reid, included the asylum system in his condemnation of a department that was "not fit for purpose". These Interim Findings provide a provisional assessment of whether the UK asylum system is 'fit for purpose' yet. The Commission will publish its final conclusions in May, June and July 2008, and will make credible and workable recommendations for reform that safeguard the rights of asylum seekers but also command the confidence of the British public.

Key Conclusions

1. The Commission has found almost universal acceptance of the principle that there must be an asylum system, and that it must be applied fairly, firmly and humanely. These criteria must be fulfilled for the UK system to be 'fit for purpose'.

2. The Commission has found that the UK asylum system is improved and improving, but is not yet fit for purpose. The system still denies sanctuary to some who genuinely need it and ought to be entitled to it; is not firm enough in returning those whose claims are refused; and is marred by inhumanity in its treatment of the vulnerable.

How we decide who needs sanctuary

- The Commission commends the strenuous efforts being made by the Border and Immigration Agency to deal with asylum claims more effectively.
- Despite these efforts, a 'culture of disbelief' persists among decision-makers. Along with lack of access to legal advice for applicants this is leading to perverse and unjust decisions.
- The adversarial nature of the asylum process stacks the odds against asylum seekers, especially those who are emotionally vulnerable and lack the power of communication.

How we treat those seeking sanctuary

- The Commission has found that the treatment of asylum seekers falls seriously below the standards to be expected of a humane and civilised society.
- The detention of asylum seekers is over-used, oppressive and an unnecessary burden on the taxpayer, and that the detention of children is wholly unjustified.
- Some of those seeking sanctuary, particularly women, children and torture survivors, have additional vulnerabilities that are not being appropriately addressed.

What happens when we refuse people sanctuary

- The Commission recognises that refused asylum seekers should not be treated over-generously. However, the enforced destitution of many thousands of refused asylum seekers is indefensible and runs the risk of placing a shameful blemish on our nation's proud record of providing for those who come here in search of sanctuary.
- The current arrangements for returning people who have been refused sanctuary are not effective enough and are sapping credibility and public confidence in the asylum system.
- There can be no criticism of cases where refused asylum seekers are encouraged, by fair and positive means, to leave the UK. Enforced returns, on the other hand, have not always been handled with the necessary sensitivity.

For further information see www.independentasylumcommission.org.uk. For media enquiries contact Jonathan Cox on 07919 484066.

Contents

Glossary

Abbreviations

AIT	Asylum and Immigration Tribunal
APCI	Advisory Panel on Country Information
API	Asylum Policy Instruction
ARC	Application registration card
ASAP	Asylum Support Appeals Project
AST	Asylum Support Tribunal
ASU	Asylum Screening Unit
AVR	Assisted Voluntary Return
BIA	Border and Immigration Agency
BID	Bail for Immigration Detainees
CAB	Citizens Advice Bureau
CGC	Country Guideline Cases
CMR	Case Management Review
COI	Country of Origin Information
CRC	(UN) Convention on the Rights of the Child
DDA	Detention Duty Advice
DL	Discretionary leave
ECHR	European Convention on Human Rights
EU	European Union
HP	Humanitarian protection
IAA	Immigration Appellate Authority
IAT	Immigration Appeal Tribunal
ICMPD	International Centre on Migration Policy Development
ILPA	Immigration Law Practitioners' Association
IMB	Independent Monitoring Board
IOM	International Organisation of Migration
IRC	Immigration Removal Centre
JCHR	Joint Committee on Human Rights
LGBT	Lesbian, Gay, Bisexual and Transgender people
LSC	Legal Services Commission
NAM	New Asylum Model
NASS	National Asylum Support Service
NCADC	National Coalition of Anti-Deportation Campaigns
NGO	Non-governmental organisation
NHS	National Health Service
NSA	Non-suspensive appeal
OEM	Operational Enforcement Manual
OGNs	Operational Guidance Notes
OISC	Office of Immigration Services Commissioner
RCO	Refugee Community Organisation
RST	Refugee Survival Trust
SEF	Statement of evidence form
SIAC	Special Immigration Appeals Commission
STHF	Short Term Holding Facility
TA	Temporary admission
UASC	Unaccompanied asylum seeking children
UNHCR	The Office of the UN High Commissioner for Refugees
VARRP	Voluntary Assisted Returns and Reintegration Programme

Introduction

by Sir John Waite and Ifath Nawaz, Co-chairs of the Independent Asylum Commission

Asylum is one of the most prominent issues in contemporary politics. How are we to deal fairly with those who come to our country in search of sanctuary from persecution? How can we ensure that their cases are heard with all speed consistent with justice, and that all are treated with the right balance between firmness and humanity? How far does the present system show itself to be fit for that high purpose?

To answer these questions, a wide body of citizens, drawn from all parts of the country, has invited our team of Commissioners to conduct a truly independent review of the UK asylum system, from beginning to end. We have been gathering evidence since October 2006, and now present our Interim Findings. After a period of consultation and constructive dialogue we will publish our final conclusions and recommendations in subsequent reports in May, June and July this year. Our aim will be to produce recommendations for reform that are fair as well as forceful, and realistic as well as humane. We must have an asylum system that safeguards the rights of asylum seekers but also commands the confidence of the British people.

We have heard hundreds of testimonies, read hundreds of submissions and received evidence from a wide range of individuals and organisations: the government; individual asylum seekers and refugees; NGOs from the Refugee Council to Migration Watch; three ex-Home Secretaries; and the general public – specifically those who are worried about abuse of the asylum system.

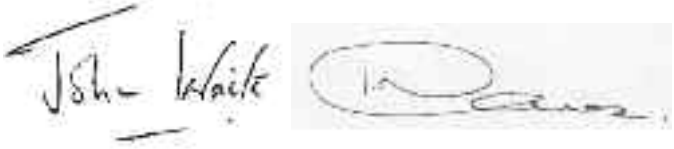
In all these numerous encounters, every single person has expressed their commitment to providing sanctuary to those who are fleeing persecution. So the question is not *should* we be providing sanctuary, but *how* are we providing sanctuary? In these Interim Findings, the Commissioners set out their provisional assessment of the asylum system in the UK and address the question: is our asylum system fit for purpose yet?

Sir John Waite

Ifath Nawaz

We hope that this Report of Interim Findings will do justice to all those who submitted evidence to the Commission, and will pave the way for our final recommendations that will strive toward an asylum system which serves those in need of sanctuary with the dignity they deserve, and which deals effectively and humanely with those whose claims to sanctuary have to be denied. A system, in short, of which we can, as a nation, be proud.

We commend this report to you, the reader, and to the ordinary members of the Citizen Organising Foundation who asked us to conduct this enquiry.



What is the Citizen Organising Foundation?

The Citizen Organising Foundation is the UK's primary Training Institute supporting the development of broad based community or citizen organising across Britain and Ireland. It is both a 'Guild of Community Organisers' and a Training Organisation – and has trained over 2,000 grass roots community leaders in 'community organising techniques and campaigning tactics' since the Institute was founded in 1989. COF's primary affiliate community organization is LONDON CITIZENS. London Citizens has earned a reputation for taking effective action to pursue change. Members include churches, mosques, trade unions, schools and other civil society organisations. In their own words:

"We work together for the common good, acting out of shared humanitarian values of justice, dignity and self-respect."

Member communities re-build public relationships locally and work together for the common good on the problems facing their communities. TELCO (The East London Citizens Organisation) launched the first 'Living Wage' campaign in the UK and has had a major impact on low pay in the Capital's institutions, from hospitals and global banks, to universities and City Hall. During 2004 London Citizens won agreement for 'ethical guarantees' in the London Olympics bid. For further information see www.cof.org.uk

History of the Independent Asylum Commission

In 2004 South London Citizens, a coalition of churches, mosques, schools, trades union branches and other civil society groups who campaign for the common good, conducted an enquiry into Lunar House, the headquarters of the Immigration and Nationality Directorate (IND), now the Border and Immigration Agency (BIA).

They published their report, *A Humane Service for Global Citizens* in 2005, and it was well-received by IND, who have since implemented a number of its recommendations and continue to liaise with a monitoring group from South London CITIZENS.

The report's final recommendation was that there should be an independent citizens' enquiry into the implementation of national policies on asylum. The Independent Asylum Commission was launched in 2006 in the House of Commons, and has since been collecting evidence from a wide range of witnesses across the UK – from asylum seekers and refugees to those citizens who feel the system is being abused.

Aims

The Independent Asylum Commission aims to:

- Conduct an independent citizens' enquiry into the UK asylum system
- Identify to what extent the current system is effective in providing sanctuary to those who need it, and in dealing with those who do not, in line with our international and human rights obligations
- Make credible and workable recommendations for reform of the UK asylum system that safeguard the rights of asylum seekers but also command the confidence of the British public

- Work constructively with the Border and Immigration Agency and other appropriate bodies to implement those recommendations.

The Independent Asylum Commission is concerned only with those who come to the UK seeking sanctuary from persecution and makes no comment on economic migration. Resettlement of refugees and integration of those granted refugee status are also beyond our remit. The Commission has striven to listen to all perspectives on this debate and work constructively with the major stakeholders while retaining its independence from the government and the refugee sector. We hope that this report will uphold the UK's proud and historic tradition of offering sanctuary to those who are fleeing from persecution.

Methodology

The Independent Asylum Commission is the largest enquiry on this issue ever undertaken. The Commission used a number of methods to ensure that the widest possible range of voices were heard: from those concerned that the asylum system is too generous, through to those concerned that the rights of asylum seekers are not being respected.

As with the South London Citizens enquiry, the Independent Asylum Commission is seeking a constructive dialogue with the Border & Immigration Agency and other stakeholders, and has adopted the formula that proved so successful with the Lunar House enquiry:

i. Identifying key issues of concern and good practice to affirm
ii. Presenting the supporting evidence from hearings and written testimony
iii. Seeking a response on each issue from stakeholders
iv. Assessing the stakeholder response
v. Publishing final conclusions and recommendations

The following methods were used to gather evidence:

- Seven themed public hearings in Birmingham, West London, Cardiff, Glasgow, Leeds, Manchester and South London;
- Special hearing in Belfast;
- Seven closed evidence sessions held at Westminster Abbey;
- Comprehensive thematic briefings on all aspects of the UK asylum system produced by the Information Centre about Asylum and Refugees (ICAR) based at City University;
- 180 submissions to the written call for evidence from January to November 2007;
- Over a hundred video submissions to the call for evidence from January to November 2007;
- Key stakeholder interviews on public attitudes to asylum in Barking and Dagenham, Hackney, Birmingham, Plymouth, Sheffield, Oxford, Cardiff and Glasgow;
- Focus groups to be held in Barking and Dagenham, Hackney, Birmingham, Plymouth, Sheffield, Oxford, Cardiff and Glasgow;
- The CITIZENS SPEAK consultation asking for the public's views on sanctuary in the UK;
- People's Commissions held across the UK to recommend the values and principles that should underpin UK asylum policy.

For more copies of this report write to IAC, 112 Cavell St, London, E1 2JA,
email evidence@cof.org.uk or call 020 7043 9878.

Participants

The Commission received evidence from the following individuals and organisations.

Private Sessions

Allen Mackey, Immigration Judge
Ann Owers, Her Majesty's Chief Inspector of Prisons
Bob Orr, Minister, Immigration, Canadian High Commission
Chris Nash, Head of Policy and Advocacy, European Council of Refugees and Exiles
Dr Ann Barker, Chair of Border and Immigration Agency Complaints Audit Committee
Ed Owen, former Special Adviser to Rt Hon Jack Straw MP (Home Secretary 1997-2001)
Gavin Lim, Quality Initiative Team, United Nations High Commissioner for Refugees, London
Jeremy Oppenheim, Director for Social Policy & Stakeholder Champion, Border & Immigration Agency
Jon Cruddas MP, Barking and Dagenham
Justin Russell, Head of Asylum Policy, Border and Immigration Agency
Marek Effendowicz and Jan de Wilde, International Organisation of Migration
Maurice Wren, Co-ordinator of Asylum Aid and Chair of the Asylum Rights Campaign
Miranda Lewis, Senior Research Fellow, Institute for Public Policy Research (ippr)
Most Rev'd Rowan Williams, Archbishop of Canterbury
Nancy Kelley, Head of Policy, Refugee Council
Neil Gerrard MP, Chair of the All Party Parliamentary Group on Refugees
Rt Hon Charles Clarke MP, Home Secretary 2005-2006
Rt Hon David Blunkett MP, Home Secretary 2001-2004
Rt Hon Michael Howard MP, Home Secretary 1993-1997
Sarah Cutler, Assistant Director, Bail for Immigration Detainees
Sehba Haroon Storey, Chief Asylum Support Adjudicator
Sile Reynolds, Protection Sensitive Borders Officer, Refugee Council
Sir Andrew Green and Harry Mitchell, Migration Watch
Steve Moxon, Home Office whistleblower
Syd Bolton, Legal and Policy Officer, Medical Foundation for the Care of Victims of Torture

Written submissions of evidence

Agnes Orosz, Yarl's Wood Befrienders, Bedford
Amnesty International
ASIRT
Association of Visitors to Immigration Detainees
Asylum Aid
Asylum Link
Asylum Support Appeals Project
Asylum Welcome
Bail for Immigration Detainees
Bath Centre for Psychotherapy and Counselling
Black Women's Rape Action Project
Boaz Trust
British Red Cross
Careers Scotland
Cath Maffia, Nurse and Midwife, Manchester
Churches Together in Britain and Ireland
Citizens Advice Bureau
Craven and Keighley Area Quakers Refugee Care Group
Crossroads Women's Centre
Derby Refugee Centre
Dr Ashton, Leicester City NHS
Dr Colsom Bashir, Clinical psychologist, Prestwich
Dr Nancy Darrall, Bury
Dr Patricia Hynes, Middlesex
Eagles Wing Support Group, Bury
Elaine Montgomery, Supported Housing Officer
Friends of Oakington
George House Trust
Guy and Judy Whitmarsh - Ludlow
Haslar Visitors' Group
Helen Bolderson
Helen Weir - ESOL coordinator, Middlesbrough
Immigration Advisory Service
Immigration Law Practitioners' Association
Institute of Race Relations
Inter-Agency Partnership on Asylum Support
International Lifelink
Justice First
Kurdish Community Forum North East
Lazarus Refugee Concern
Leicester City NHS
Lewes Group in Support of Refugees and Asylum Seekers
London Detainee Support Group
Marina Bielenky, Psychotherapist, Cirencester
Margaret Trivasse, Primary Care Counsellor, Bradford
Marion Grant - Counsellor, Manchester
Maryhill Integration Network
Medical Foundation for the Care of Victims of Torture
National Aids Trust
NCADC
North Glasgow Framework for Dialogue
Nottingham and Nottinghamshire Refugee Forum
NSPCC
Oxfam
Patricia Holden
Peterborough Action on Asylum
Positive Action for Refugees and Asylum Seekers
Psychologists Working with Refugees and Asylum Seekers
Refugee Action
Refugee and Migrant's Forum
Refugee Children's Consortium
Refugee Council
Refugee Resource
Refugee Survival Trust
Refugee Voice Wales
Refugee Women's Strategy Group
Rev David W Joynes, Oldham
Rev Dr Dick Rodgers, Birmingham
Rev Larry Wright, former chaplain manager, Yarl's Wood
Save the Children
Scottish Refugee Council
Scottish Refugee Policy Forum
Scottish Trades Union Congress
Shirley Wise, volunteer befriender, Otley

Slough Refugee Support
South London Refugee Association
Southampton and Winchester Visitors Group
St Paul's Methodist Church, Blackburn
Stanley H Platt, Adviser on Immigration and Asylum, the Methodist Church
The Children and Young People HIV Network
The Churches Commission for Racial Justice
Toryglen Framework for Dialogue Group
United Nations High Commissioner for Refugees, London
University of Hull
Wages Due Lesbian
Watford and Three Rivers Refugee Project
Welsh Refugee Council
WinVisible
Zacchaeus 2000 Trust
Zimbabwe Action Group
Zimbabwe Association

90 asylum seekers gave evidence anonymously.

Members of the Public
1,100 mailing list subscribers
600 members of the public who attended Hearings and Roadshows in Birmingham, West London, Cardiff, Glasgow, Leeds, Manchester and South London
Listeners to BBC Radio Manchester, Leeds and Cambridgeshire who responded interactively
50 members of the public who wrote to the Commission independently
173 viewers of www.friction.tv who submitted their views

Funders

The Citizen Organising Foundation is a registered charity that receives no government money and is funded by the annual dues from member communities and grants from charitable trusts. The Independent Asylum Commission owes much to the generosity of the charitable trusts and individuals that have provided funding:

The Diana, Princess of Wales, Memorial Fund

The Society of Jesus
The Esmee Fairbairn Foundation

The Joseph Rowntree Charitable Trust
The M.B. Reckitt Trust
The City Parochial Foundation
The Waterside TRust
The Bromley Trust
The Network for Social Change

The United Nations High Commissioner for Refugees, London
St Mary's Church, Battersea
Garden Court Chambers
UNISON Scotland
Mr T. Bartlett Esq.

Staff and Steering Committee
The Independent Asylum Commission has been supported by three staff members:

Jonathan Cox
Commission Co-ordinator

Chris Hobson
Commission Associate Organiser

Anna Collins
Commission Communications Officer

A debt of gratitude is also owed to previous staff members Bernadette Farrell, Fran Smith and Roxanne Abdulali.

The Commission has been guided by a steering committee:

Neil Jameson
Executive Director, Citizen Organising Foundation

Maurice Wren
Chair of the Asylum Rights Campaign (ARC) and Co-ordinator, Asylum Aid

Louise Zanre
Director of the Jesuit Refugee Service UK

Nicholas Sagovsky
Commissioner

Volunteers
The Commission has received invaluable support and assistance from its Regional Organising and Advisory Committees across the UK:

West Midlands:
Andrew Crossley, Claire Daley, Dave Stamp, Sami Aziz, Shari Brown and many others.

West London:
Catherine Howarth, Helen Ireland, Jerome Phelps, Kat Lorenz, Louise Zanre, Maurice Wren, Sarah Cutler, and many others.

Wales:
Anna Nicholl, Gill Dowsett, Pierrot Ngadi, Sian Summers, Sian Thomas, Temba Moyo and many others.

Scotland:
Aideen McLaughlin, Akhlam Souidi, Anna Ritchie, Beltis Etchu, Claire Paterson, Gary Christie, Mary Senior, Mick Doyle, Naomi McAuliffe and many others.

Yorkshire and the Humber:
Charlotte Cooke, Dave Randolph Horn, Max Farrar, Ian Martin, Richard Byrne, Vicky Williams and many others.

North West:
Nigel Rose, Dave Smith, Emma Ginn, Hermione McEwan, Julia Ravenscroft, Liz Wilkinson, Rachel Finn, Sophie King and many others.

South London:
Louise Zanre, Maurice Wren, Matthew Bolton and many others.

Belfast
Mark Beal, Christopher Common and many others.

Human Rights TV
With thanks to Jack Adams and all the volunteers at Human Rights TV (www.humanrightstv.com) who have recorded and archived every public hearing for posterity.

Human Rights TV is established to "empower the voice seldom heard". They work with individuals and organisations to create an on-line historical archive of activities in human rights. The organisation is run by volunteers and has completed its pilot year. The work with the Independent Asylum Commission seeks to provide a level of media inter-activity for the Commissioners Report that is completely innovatory.

Credits to the Human Rights TV team:
Akane Takayama
Mike Smith
Marcus Ballard
Cyrus Azizzian
Joan Morris
Terry Smith
Sandy Mginqi
Jack Adams

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The report was written by the Commissioners and staff with expert support provided by Sophie Wainwright, Gareth Morrell and Dr Chris McDowell at the Information Centre about Asylum and Refugees (ICAR) at City University who produced thematic briefings to guide the Commission's work.

The writing team included:

Chris Hobson
Jonathan Cox
Nicholas Sagovsky
Sophie Wainwright
Gareth Morrell

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Tim Woodall, Dr Linda Rabben, Claudia Covelli, Alike Ngozi, Mpinane Masupha, Meggean Ward, Renae Mann, Daphne Buellesbach, Shirley Scott, Laura Jeffrey, Anita Fabos, Laura Evans, Catherine Westoby, Jack Adams, and Sarah Booker for the photography.

Section 1

How we decide who needs sanctuary

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CHAPTER 1

How asylum decisions are made

I was persecuted in my country for my journalism and it was not safe for me there. But claiming asylum in the UK was like jumping out of the frying pan and into the fire."

1. Initial determination of asylum applications to the UK

© Sarah Booker

Commissioner Jacqueline Parlevliet

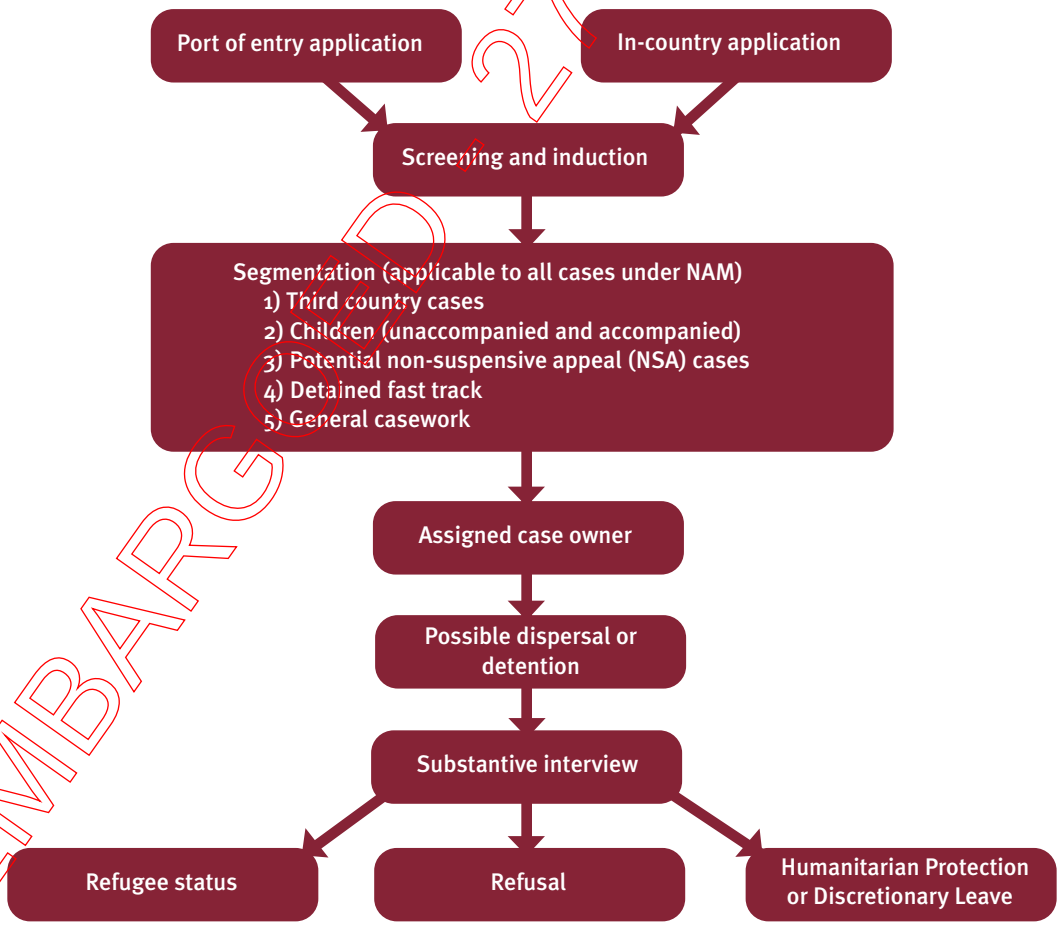
1.1 Responsibility

In a formal sense, the Home Secretary is responsible for the determination of asylum claims. However, it is the Asylum Directorate, part of the Border and Immigration Agency at the Home Office, which has the practical task of actually administering the asylum process. A person is not officially described as a refugee in the UK until they have been awarded refugee status as a result of the determination of their case. However, technically speaking, the state does not make someone a refugee; rather it recognises them to be one by declaring that their circumstances meet the criteria of Article 1(A) of the Refugee Convention. Article 1(A) defines a refugee as someone who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

1.2 Process

The following diagram shows the processes involved from asylum application to initial decision:

Diagram A – From entry to initial decision



2. Factors influencing initial decisions

There are three possible outcomes of a claim for asylum: the applicant will be recognised as a refugee and given five years limited leave to remain, be granted an alternative form of protection – Humanitarian Protection or Discretionary Leave – or their claim will be refused. An initial decision is made by caseworkers or immigration officers. Key factors influencing their decision are:

- The initial application
- Contents of the substantive interview
- Country of origin information
- Expert witness evidence

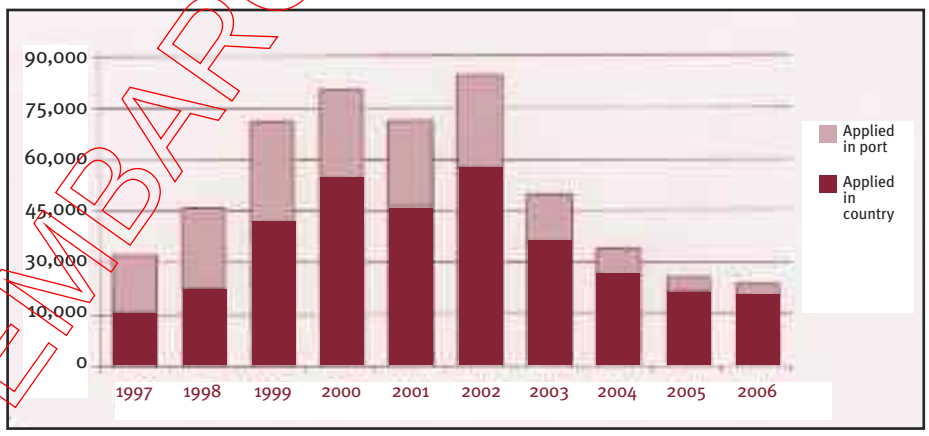
2.1 Making an initial application

Asylum applications can be made either at a 'port of entry', for example at an air/sea port or 'in-country' at an Asylum Screening Unit (ASU) in Croydon or Liverpool.

If an asylum seeker makes a 'port of entry' application then they will usually be given an asylum screening interview by an immigration officer shortly after arrival or asked to return for one at a later date. The purpose of this interview is to establish the identity and nationality of the asylum seeker, their travel route to the UK, the documentation used to travel to the UK and to take the fingerprints and photographs of the principal applicant and his/her dependants. If an asylum seeker enters the country legally (i.e. by being granted leave on another basis, for example as a visitor or a student) or irregularly (by evading immigration control on arrival, for example being concealed in a lorry) and then makes an application for asylum then they are making their claim 'in-country'. Applications must be submitted in person at the Asylum Screening Unit of the Home Office in Croydon or Liverpool. In-country applicants are also given a screening interview by the Home Office. Asylum

> *"There is a sense in which the UK authorities assume, and wrongly so, that, when one flees persecution, they have all the time in the world to organise legal travel documents."*
>
> ***Submission: Zimbabwe Action Group***

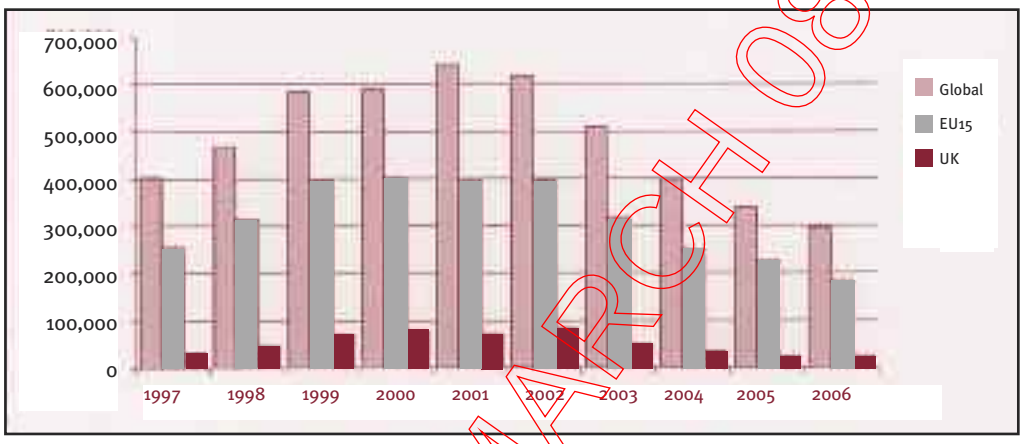
Graph A: UK Asylum Application 1997-2006



"Her description of the interpreter she was provided with was 'rude, loud and scary'. She was afraid that everyone could hear what was being said, and worst of all, it was a Tamil instead of a Sinhalese interpreter. She felt unable to complain as 'it was difficult to express dissatisfaction on my first day.'"

Submission: North Glasgow Framework for Dialogue

Graph B: UK, EU and Global asylum applications, 1997-2006



applicants are required to submit any other grounds for permission to remain in the UK at the same time as submitting their asylum application. This is part of the 'one-stop procedure' and ensures that any human rights grounds are considered alongside a claim for asylum.

2.2 Substantive interview

The purpose of the asylum interview is to establish whether or not an applicant is at risk of persecution for one of the five reasons outlined in the Refugee Convention and to assess their credibility. The interviewing officer will ask a range of questions relating to the applicant's history and reasons for flight. It is only in exceptional circumstances that legal representatives are funded by the Legal Services Commission (LSC) to attend interviews.[1] Applicants who are not entitled to have a funded representative at their interview can request to have the interview taped. This interview forms part of the evidence for the application and any subsequent appeals.

The interviewing skills of caseworkers have been criticised by both the Medical Foundation and UNHCR.[2] Of particular concern is the lack of preparation by caseworkers before they interview applicants including an insufficient knowledge of country information, lack of familiarity with the key issues and facts of the case or those of related cases.[3] There are also issues around the accuracy of transcription in interviews. A submission received from a qualified nurse and midwife details the experience of a Zimbabwean friend:

"A Zimbabwean friend, a fluent English speaker, read the transcription of his screening interview on the return journey to Manchester. In 5 instances, the case worker had written the exact opposite of what he had said. He challenged the statement, and these errors were corrected" *Cath Maffia*

1 The NAM pilot project in Solihull is funded by the LSC and makes provision for lawyers to be present at the asylum interview.
2 **Smith, E.** (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.
3 **UNHCR,** (March 2006) *Quality Initiative Project – Third report to the Minister*

The importance of interpreters in interviews has also been emphasised and in around half of the interviews observed by UNHCR the interpreter engaged in exchanges with the applicant that were not translated. In addition, the Commission has received evidence on several cases where interpreters have been present but have not been adequate. A submission from the Nottingham and Nottinghamshire Refugee Forum details their clients' experiences:

"I didn't understand the interpreter and because I didn't speak English I couldn't tell anyone. The interpreter wrote down that I was Ethiopian but I'm Eritrean. This has caused me a lot of problems" *Submission: Nottingham and Nottinghamshire Refugee Forum*

A number of instances were also observed by the UNHCR where the interviewer's disruptive behaviour had a negative impact on the interview.[4] One submission from a Zimbabwean man, travelling with his family, who due to visa restrictions travelled using a valid South African passport, describes how the immigration officer interviewing him responded to this:

"She just threw all the documents onto her desk and shouted to the rest of her colleagues ' This one is carrying South African passports and he says he is from Zimbabwe, he wants to seek asylum. Can you believe it? The bastard!' " *Submission: Anonymous*

2.3 Country information

This information is assessed in light of country reports and other documentation compiled by the Country of Origin Information Service (COI Service) in the Research, Development and Statistics (RDS) section of the Home Office. The Home Office also produce brief summaries – known as Operational Guidance Notes (OGNs) – of the political and human rights situation of a particular country. An independent Advisory Panel on Country Information (APCI) was established with a remit to consider and make recommendations to the Secretary of State about the content of country information.

Medical Foundation research identified frequent inconsistencies between the country of origin reports and the reasons for refusal given on a case[5] and the Independent Race Monitor has observed examples of an overly rigid interpretation of country information being used to refuse claims.[6] These findings have been corroborated by UNHCR's assessment of the application of country information by decision makers and the agency makes a recommendation that caseworkers should be given proper training in research methodology so that they can learn how to apply country evidence properly.[7] It has also been observed that there is an over-reliance on

Commissioner Nick Sagovsky

"TM was refused despite being a teacher, an MDC member with a letter from Tendai Biti (Secretary General of MDC Morgan Tsvangirai faction) confirming her membership and medical evidence because the interviewing officer wrongly thought that only Welshman Ncube was able to write MDC letters."

Submission: Zimbabwe Association

4 Ibid
5 **Smith, E.** (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.
6 **Coussey, M.** (2006) *Annual Report 2005/6 of the Independent Race Monitor*
7 **UNHCR**, Quality Initiative Project – Second report to the Minister

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Manchester Hearing

standard paragraphs (both in relation to country information and legal principles), rather than tailoring the reasoning of a decision to individual cases.[8]

Objective country evidence plays an important role in the determination of asylum claims and particularly in the assessment of credibility as it can provide context and understanding to a claim.[9] However, a number of concerns have been raised in recent years over the quality and bias of country information. As a result of debates during the progression of the Nationality, Immigration and Asylum Act 2002 the Advisory Panel on Country Information (APCI) was established to revise and make recommendations to the Home Secretary on the content of Home Office produced country of origin information. The Advisory Panel prepares detailed comments on the content of country information reports. Particular attention is paid to how accurate, balanced, impartial and up-to-date the reports are. The Research and Information Unit of the Immigration Advisory Service, in its submission to the Commission, suggests that under the present arrangement:

"Particular sources become the only 'truth' and anything at odds with them and the conditions they portray is disbelieved"

Submission: Research and Information Unit of the Immigration Advisory Service

There is an ongoing debate about the establishment of an independent documentation centre for the provision of country of origin information. Many NGO observers feel that such a centre would increase the actual (and perceived) objectivity of the country information made available to decision makers. They have also argued that there would be fewer disputes at the appeal stage about the reliability and accuracy of information between the appellant and the respondent.

2.4 Use of expert evidence

Failure to give expert evidence (such as medical and country expert reports) due consideration has also been noted as an important issue impacting the quality of decision making.[10] UNHCR found that one in five of the initial decisions made by caseworkers during Phase 4 of the Quality Initiative Project failed to take into account relevant evidence presented by the applicant, or their representative, before a decision on the case was made.[11]

The Research and Information Unit of the Immigration Advisory Service, in its submission to the Commission, highlights the difficulties in obtaining expert evidence:

"As the amount of time which legal representatives can receive funding during case preparation diminishes, so does the possibility of them providing detailed, case-specific COI."

Submission: Research and Information Unit of the Immigration Advisory Service

8 http://www.ind.homeoffice.gov.uk/6353/aboutus/unhcrreport2.pdf and **Smith, E.** (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.

9 **Thomas, R.** (2006) *Assessing the credibility of asylum claims: EU and UK approaches examined.* European Journal or Migration and Law 8: 79-96.

10 **Smith, E.** (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.

11 http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

3. Quality of initial decisions

Three main issues with the quality of initial decisions have been identified:

- Credibility and plausibility issues
- Inconsistency in decision making
- Lack of access to initial legal advice

3.1 Credibility and plausibility issues

The way in which Home Office caseworkers determine credibility has been subject to much criticism. It has been observed that there are three main ways in which an asylum claim can be found to be lacking in credibility. The first is through the identification of internal inconsistencies in the account of the claimant, the second involves the observation of contradictions between objective evidence and the claimant's factual account and thirdly, the plausibility, reasonableness or truthfulness of the claim may be doubted.[12]

Legislators have also increasingly sought to guide the decision maker's assessment of credibility[13] and under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 decision makers are required to take into account certain circumstances when deciding upon the credibility of an applicant. The circumstances include: failure to claim before being notified of an immigration decision; concealing information, providing misleading information or causing delay (including failure to produce a valid travel document); failure to claim asylum in a safe country and failure to claim before arrest.

Research by the Immigration Advisory Service into the assumptions that underpin Section 8 has found that there are a number of 'reasonable explanations' for the behaviour described above.[14] For example, applicants who have been victims of torture, rape, sexual violence or persecution may be reluctant to disclose their experiences at the earliest opportunity.[15]

The use of speculative arguments in Home Office Reasons for Refusal letters often involves the caseworker trying to guess the thought processes of the asylum applicant and deem what is plausible. However, these decisions are usually made on the basis of little or no evidence and without taking into consideration the impact of different political, social and cultural contexts.[16]

Research into the recall in the testimony of asylum seekers has questioned what can be regarded as a reasonable degree of error or omission and explored the impact of sleep loss, depression,

"I was persecuted in my country for my journalism and it was not safe for me there. But claiming asylum in the UK was like jumping out of the frying pan and into the fire. Refugee status is no good to a corpse – we need it while we are alive."

Cisse. Hearing: Birmingham. For full testimonies please visit www.humanrightstv.com

12 **Thomas, R.** (2006) *Assessing the credibility of asylum claims: EU and UK approaches examined*. European Journal or Migration and Law 8: 79-96.

13 Ibid

14 **Ensor, J.** (2006) *Credibility under the 2004 Immigration Act*, Abstracts from a paper given at the Conference 'On Asylum, Migration and Human Rights' of the University of Durham & The Medical Foundation for the Care of Victims of Torture

15 **Refugee Women's Resource Project, Asylum Aid** (March 2006) *'Lip Service' or Implementation? The Home Office Gender Guidance and women's asylum claims in the UK*, p.84

16 **UNHCR,** Quality Initiative Project – Second report to the Minister

pain, post traumatic stress disorder and other factors on accurate recall.[17] The Zimbabwe Association raise one such example in their submission:

> *"In one case a documented torture victim was interviewed while still traumatised and with little understanding of the legal ramifications of his comments."* ***Submission: Zimbabwe Association***

It has been observed that the decision maker is faced with a difficult task when determining whether inconsistencies in the accounts of claimants are the result of misrepresentation and exaggeration or whether they can be explained by other factors.[18]

The use of speculative arguments are not only a reflection of flawed credibility assessments but may also result from the application of an incorrect standard of proof, a failure to use country of origin information correctly and the adoption of a 'refusal mindset'.[19] Observers have commented on a 'culture of disbelief' or 'culture of refusal' that is perceived as prevalent in the Home Office decision making environment and encouraged by legislation such as Section 8 of the 2004 Act.[20] The Independent Race Monitor has noted that negative public discourse on immigration and asylum can impact decision makers by encouraging caution and suspicion.[21]

A submission to the Commission from ASIRT, on behalf of the Refugee Strategy Network, which offers immigration representation and advice up to level 3, suggests:

> *"[interviews] are routinely used as opportunities to seek out and highlight alleged discrepancies in the accounts of individuals who are frequently traumatised and bewildered by their experiences, rather than to enable applicants to impart full and relevant information."* ***Submission: ASIRT***

West Midlands solicitor Margaret Finch testified at the Commission's Birmingham Hearing that there was a deep cynicism at the heart of the Home Office asylum decision-making process that encouraged a culture of disbelief of asylum seekers' claims:

> *"There is a lack of open-mindedness. Solicitors find themselves fighting a guerilla war with the government to ensure the basic human rights of asylum seekers are protected".*

17 **Cohen, J** (2002) Questions of credibility: Omissions, discrepancies and errors of recall in the testimony of asylum seekers. International Journal of Refugee Law 13:3 293-309.

18 **Thomas, R.** (2006) *Assessing the credibility of asylum claims: EU and UK approaches examined.* European Journal or Migration and Law 8: 79-96.

19 **UNHCR,** (March 2006) Quality Initiative Project – Third report to the Minister

20 **Ensor, J.** (2006) *Credibility under the 2004 Immigration Act,* Abstracts from a paper given at the Conference 'On Asylum, Migration and Human Rights' of the University of Durham & The Medical Foundation for the Care of Victims of Torture

21 **Coussey, M.** (2005) *Annual Report 2004/5 of the Independent Race Monitor*

3.2 Inconsistency in decision making

A report by the National Audit Office in 2004 observed that the rate of successful appeals is much higher for some nationalities than for others. Reasons for this discrepancy offered by the Home Office are 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'. An additional factor has been identified by the National Audit Office who question how reliably caseworkers are able to assess the credibility of applicants where, on the face of it, their claim is well-founded. The submission from ASIRT, states:

> *"In our own agency's experience, refusals are frequently made purely on the basis of a caseworker's subjective opinion of what is or is not believable, and this is equally frequently done with regard to matters which have little subjective bearing on the core of an applicant's claim."*

The Independent Race Monitor notes that there continues to be a high appeal success rate for applicants originating from African countries. There is some evidence that caseworkers believe that applicants from the same region give similar stories because they have been coached and refusals of initial claims are based on relatively small discrepancies or plausibility issues.[22] However, the Home Office has responded to these criticisms by observing that there is not always a direct correlation between the quality of an initial decision and the outcome of an appeal as changing case law and country situations can have an impact.[23]

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The Legal Services Commission funds legal aid

3.3 Access to legal advice

Concerns have been expressed over asylum seekers' lack of access to good quality legal advice and representation for a number of reasons. It has been observed in evidence to the Joint Committee on Human Rights that the dispersal of asylum seekers to various parts of the UK can impact their case because they are unable to locate quality advisers in the area that they are dispersed to and their representation is interrupted.[24] Asylum seekers may also have difficulties determining which firms are reliable and have the expertise to help prepare a good case. Poor – or no – representation will obviously place an applicant at a disadvantage and can result in a case being refused. A Home Office publication[25] on the role of early legal advice in asylum applications found that competent legal representation in the initial stages can contribute to good quality decision making.

22 **Coussey, M.** (2006) Annual Report 2005/6 of the Independent Race Monitor
23 **Home Office** (November 2006) *Response to Race Monitor's Annual Report 2005-2006*
24 **Hansard** (20 November 2006) *Uncorrected transcript of oral evidence for Joint Committee on Human Rights on the Treatment of Asylum Seekers*
25 **Home Office** (June 2005) The role of early legal advice in asylum applications, Immigration Research and Statistics Service.

Commissioner Katie Ghose

4 Current initiatives and alternative approaches

4.1 Current initiatives

In 2003, UNHCR was invited to assist the Home Office in improving the overall quality of initial decision making, by auditing the Home Office's procedures and providing recommendations. The first phase of the Quality Initiative Project was implemented in spring 2004 and a needs assessment was carried out which focused on training programmes and the interpretation and application of the Convention. The second phase of the project involved the sampling of around 50 first instance decisions per month. The third phase saw the establishment of three Working Groups to look at the use of 'standard paragraphs' in decision making, the use of testable evidence and establishing the facts of a claim. In Phase 4 of the project the main focus of the work was an audit of interviews, primarily in Croydon and Liverpool.

In addition to participation in the UNHCR project the Home Office continues to carry out internal quality assurance checks on first decisions and the Treasury Solicitor also carries out an external assessment of the quality of decisions. Feedback is given to caseworkers on the outcomes of sampling and monitoring takes place when it is noted that a 'significant gap' exists between the decisions made by caseworkers and the outcome of appeals.[26]

4.2 Alternative approaches

Recommendations have been made for the introduction of a determination process that follows an exploratory approach to evidence rather than the more adversarial approach that defines the current system; the Canadian approach of using an independent board to determine asylum applications has been cited as an alternative model.[27] UNHCR has argued that the process of asylum decision making should be fact-finding and inquisitorial rather than adversarial so that the applicant is given the opportunity to address inconsistencies and contradictions.[28]

5 The New Asylum Model and emerging issues

In examining asylum determination, this report must consider relatively recent changes to the way decisions are made. Since 5 March 2007 the Home Office has been processing all new asylum claims under the New Asylum Model (NAM).

26 **Coussey, M.** (2006) *Annual Report 2005/6 of the Independent Race Monitor*

27 **South London Citizens** (2005) '*A humane service for global citizens*', Report on the Enquiry into the service provision by the Immigration and Nationality Directorate at Lunar House.

28 **UNHCR,** (March 2006) *Quality Initiative Project – Third report to the Minister*

Table A – Segmentation under NAM

Segment	Description
1. Third country	Applicants who claimed or could have claimed asylum in another EU country before arriving in the UK.
2. Children	Unaccompanied or accompanied applicants under the age of 18.
3. Potential 'non-suspensive appeal' (NSA)	Applications from one of the designated 'safe countries'. The applicant's right of appeal has to be exercised from outside the UK. Such cases are certified as 'non-suspensive appeal' cases.
4. Detained fast track	Following initial screening, any asylum seeker regardless of nationality can be detained in the fast track process if their case appears to be one that can be decided quickly. Exceptions include torture victims, age disputed minors, pregnant women and those with severe health problems.
5. General casework	Covers all remaining asylum cases.

5.1 Description of the New Asylum Model

The aim of NAM is to produce a faster and more streamlined asylum process.[29] Under NAM a single case owner has responsibility for a claimant throughout the asylum process from their application to the consequent granting of status or removal. This means more face-to-face contact with the applicant and includes an individually tailored 'case management plan'. The Home Office has set up 25 Asylum Teams to cover the major dispersal areas. There are eight teams in London (covering the South East), four in Solihull (Midlands), five in Leeds (North East), four in Liverpool (North West), and two teams each in Glasgow and Cardiff.

Another feature of NAM is the segmentation of cases. Upon an initial screening interview, asylum applicants are assigned to one of five 'segments' that determine the future pathway of their claim. The following segments are in operation:

Segment 1 – Third country cases

Applicants identified as 'third country cases' are likely to be detained and, where possible, removed to the appropriate country. As a result of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, a new third country regime came into force in October 2004. Under this regime the Home Office does not have to determine the substance of a claim if they are removing an individual to an EU member state (including the twelve accession countries) or Norway and Iceland. In such situations there is no in-country right of appeal and these countries are deemed safe under the Refugee Convention and European Convention on Human Rights. The Home Office is also able to remove applicants to other third countries that are identified as safe in relation to the Refugee Convention, although this is open to challenge by Judicial Review.

Segment 2 – Children

The segment responsible for asylum applications from children came into operation in April 2007 following an intensive training programme for case workers. It is expected that under NAM unaccompanied asylum seeking children will, for the first time, undergo a similar application

The New Asylum Model has ameliorated the situation a little, but some asylum decisions are still shocking – such as the rejection of a Somali woman's claim on the basis that her skin looked too dark for the ethnic group of which she claimed to be a member. The Home Office's interpretation of the 1951 Convention on the Status of Refugees is inhumane and in breach of pretty much all human rights standards."

Dr Jill Rutter, Senior Research Fellow, Institute for Public Policy Research (ippr)

Hearing: South London. For full testimonies please visit www.humanrightstv.com

process to asylum seeking adults. For example they will be interviewed by a case owner about the substance of their claim if they are 12 years old or over.

Segment 3 – Potential non-suspensive appeals

Applicants who are nationals of one of the countries designated 'safe'[30] do not have the right to appeal a negative decision on their case from within the UK if it is certified as 'clearly unfounded'. Such cases are known as 'non-suspensive appeals', or NSA cases. Applicants under this segment are either detained or processed by NAM teams.

Segment 4 – Detained fast track

If the Home Office decides that a claim can be processed quickly then the applicant can be detained at either Harmondsworth or Yarl's Wood Immigration Removal Centres. The time scale for this segment is significantly faster than for potential NSA cases, with initial decisions being made within 3-4 working days.

Segment 5 – General casework

All remaining asylum cases under NAM are interviewed within two weeks of an application, with the initial decision served in person within thirty working days.

5.2 Emerging issues under NAM

Some aspects of the New Asylum Model have been welcomed by refugee organisations.[31] The introduction of single caseowners, for example, it is argued will foster better levels of contact between applicants and the Home Office. It is also believed that accountability for decision making will improve if caseowners are responsible for asylum cases throughout the process and with the establishment of a formal programme of staff training and accreditation.[32]

The introduction of a pilot legal project in Solihull is regarded an additional positive aspect of the NAM. Implemented in October 2006 and funded by the Legal Services Commission, the legal pilot project offers an asylum applicant pre-interview legal advice and allows a designated solicitor to be present during the asylum interview. This helps to ensure that all the case details and evidence are provided. Refugee advocacy groups would like the Solihull pilot to be replicated and expanded to all NAM teams across the UK.

Despite these positive aspects, refugee organisations have also expressed a number of concerns in relation to the new model.[33] For example, that the implementation of segments will result in claims being pre-determined before they have been given substantive consideration. In addition, reporting arrangements under the NAM are particularly strict for some segments. Non-detained applicants under the 'non-suspensive appeal' segment are for example required to report daily to their case owners. If applicants are accommodated within three miles of a reporting centre, they are not given funds for transport. This has proved difficult for some claimants including the elderly,

30 There are currently 14 designated NSA countries: Albania, Bolivia, Brazil, Ecuador, India, Jamaica, Macedonia, Moldova, Mongolia, South Africa, Serbia and Ukraine. The following countries apply to male applicants only: Ghana and Nigeria. A draft order to add 10 more countries – Bosnia-Herzegovina, Mauritius, Montenegro and Peru; and, in respect of men only, Gambia, Kenya, Liberia, Malawi, Mali and Sierra Leone – to the list of designated countries is currently before Parliament for approval.

31 **Refugee Council** (2007) *Briefing: New Asylum Model*

32 **UNHCR** (March 2006) *Quality Initiative Project – Third report to the Minister*

33 **Refugee Council (2008)** *Asylum seekers' experiences of the New Asylum Model: Findings from a survey with clients at Refugee Council One Stop Services*

disabled and pregnant women. Additionally, while most welcome the formal programme of staff training and accreditation, issues with individual case workers remain. Giving testimony at our Birmingham Hearing in February 2007, Claudette, an asylum seeker from the Ivory Coast, broke down in tears as she recounted how the Home Office interpreter and an officer from the New Asylum Model – piloted in the West Midlands – laughed at her during her asylum interview.

The faster timescales under NAM has added implications for some groups, in particular women and victims of torture. The Medical Foundation has expressed concern that the speed of the fast track process under the NAM may mean that allegations of torture are not dealt with appropriately.[34] Similarly, it has been argued that asylum seeking women in particular may find it hard to fully express the details of their case within the short timescales. They may also not have adequate time to seek advice about making an application independently of their husband.

A survey of asylum seekers at the Refugee Council's One Stop Services who had experienced the New Asylum Model revealed that issues remained with:

- case ownership, where people were not always able to name their case owner and some had trouble contacting them;
- speed of processing of cases: 25% of respondents said that did not feel they had had adequate time to get information to present their case, and did not feel they had had an adequate hearing;
- access to legal advice: 29% of respondents only saw their legal representative after their substantive interview rather than before;
- reporting requirements: some requirements appeared onerous in terms of both cost and time;
- child care provision: lack of child care provision prevented people from concentrating on the process of being interviewed.

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CHAPTER 2

How asylum decisions are appealed

We are dealing with a particularly vulnerable client group – who could face torture and even death if a wrong decision is made – so it would be wrong to rule out looking at the legal aid rules again."

1 The appeals process

1.1 The right to appeal

In most asylum cases, a refusal of asylum is accompanied by an immigration decision; this is a decision that the applicant has no legal right to be in the UK and in such cases the applicant is able to lodge an appeal. The right to appeal against a negative decision on an asylum application has been increasingly restricted over the last few years; as a result there are certain categories of asylum applicants that are unable to pursue an appeal within the UK. These include individuals with cases certified as clearly unfounded and detained at Oakington; those identified as third country cases; and those with an earlier right of appeal or granted leave for 12 months or less.

The refusal of an asylum or human rights claim cannot be appealed if the Secretary of State certifies the claim by asserting that the matters that have been raised by the applicant should have been raised in an earlier appeal or in response to a one-stop notice. With some exceptions applicants can appeal the decision to refuse them refugee status, even if they are awarded an alternative form of status such as humanitarian protection or discretionary leave.[1]

Amnesty International (AI) has argued that the number of successful appeals proves that initial decision-making is seriously flawed. AI argues that the appeals stage is necessary for legitimate asylum seekers to present their cases again.[2] While this may be true to an extent, others have noted that changes in circumstances over time such as country situations and additional evidence may change the nature of the claim and partly explain the additional successes.[3] Amnesty share the view of the Home Affairs Select Committee that resources should be front-loaded to improve initial decision-making and thus reduce the need for appeals and decrease related costs.[4]

1.2 Managing appeals

In April 2005, the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 abolished the Immigration Appellate Authority (IAA) and replaced it with a single-tier body; the Asylum and Immigration Tribunal (AIT). Since May 2007, the Ministry of Justice has been responsible for the AIT. Previously, the AIT formed part of the Department of Constitutional Affairs. 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.[5]

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.[6] 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.

A 'notice of decision' is issued to all asylum seekers who make an appeal. The notice explains the right to appeal, the time limit for appealing, whether the appeal can be made in-country and the

1 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
2 **Amnesty International** (Feb 2004) *Get it right – how Home Office decision making fails refugees*
3 **Thomas, R.** (2006) *Assessing asylum and immigration determination processes*, paper presented at the Asylum, Migration and Human Rights Centre
4 **Amnesty International** (Feb 2004) *Get it right – how Home Office decision making fails refugees*
5 **Home Office** (May 2007) *Asylum appeal hearings overview*
6 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*

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Commissioner Sir John Waite

grounds on which the appeal can be brought.[7] An individual has ten working days after the notice of decision is served to lodge an appeal and five days if they are being detained. For non-suspensive appeals from abroad, an appellant has twenty eight days to make an appeal.[8]

Appellants are required to complete a 'notice of appeal' form, within the timeframes specified above.[9] The notice of appeal form is an opportunity for the applicant to state their reasons for appealing, as well as request an interpreter. The AIT is responsible for booking an independent interpreter for appeals hearings where necessary.[10] The notice of appeal form requires the appellant to state their grounds for making an appeal. An appellant must state all grounds for appeal, as the AIT may not allow them to be mentioned at a later stage. To ensure speedier processing, all notice of appeal forms are now sent directly to the AIT rather than to the Home Office.[11]

Asylum seekers with an in-country right of appeal against an asylum decision cannot be removed from the UK whilst their appeal is pending and the appeal remains pending while it is waiting to be heard by the AIT. Furthermore, the Home Office cannot remove an asylum seeker who is still within the allocated timeframe to ask permission to appeal. An appeal ceases to be pending if the appellant withdraws the appeal, leaves the UK or if the Home Office certifies the appeal as a national security case, thereby transferring the appeal to SIAC.[12]

1.3 Non-suspensive appeal cases

The Nationality, Immigration and Asylum Act 2002 removed 'suspensive' or in-country rights of appeal from anyone whose asylum or human rights claim is certified to be clearly unfounded. A clearly unfounded claim is one that is so evidently without substance that it is certain to fail, for example if the case does not raise a fear of persecution for one of the reasons stated in the Refugee Convention.[13] In such cases, known as 'non-suspensive' appeals (or NSA), an asylum seeker can only appeal against a negative decision from abroad (in the country of origin) within 28 days.[14]

The Home Office has created a list of 'safe' countries whose nationals are likely to have their cases declared non-suspensive. At present the list consists of all member states of the European Union, as well as nationals from the following countries: Albania, Bolivia, Brazil, Ecuador, India, Jamaica, Macedonia, Moldova, Mongolia, South Africa, Serbia (including Kosovo, but not Montenegro), Ukraine, Ghana (male applicants only) and Nigeria (male applicants only).[15] A draft order was laid in Parliament on 22 May 2007 proposing designation of NSA for the following additional countries: Bosnia-Herzegovina; Gambia (in respect of men); Kenya (in respect of men); Liberia (in respect of men); Malawi (in respect of men); Mali (in respect of men); Mauritius; Peru and Sierra Leone (in respect of men).

7 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
8 **Home Office** (May 2006) *Operation Enforcement Manual, Section C – Appeals, asylum, human rights and racial discrimination claims, Chapter 20 – appeals*
9 **Home Office** (Nov 2006) *Immigration Directorates' Instructions – Chapter 12, section 4 – handling Appeals*
10 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
11 Ibid.
12 Ibid.
13 **Immigration Law Practitioners' Association** (January 2004) *Asylum – a guide to recent legislation*
14 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
15 **Home Office** (July 2007) *Non-suspensive appeals (NSA)*

In addition to the designated safe country list outlined above, the Home Office also has the authority to certify the case of an asylum seeker from any country as clearly unfounded, if they believe the claim to be without substance.[16] The only way to challenge a case that is certified as clearly unfounded is by judicial review.

It has been observed by various organisations[17] that NSA cases give rise to several problems. First, as a result of being certified 'clearly unfounded', an asylum seeker could be returned to a country where they fear persecution before being able to appeal. The Asylum Rights Campaign recommends that 'any reasoned dispute over the safety of country of origin should always attract an in-country right of appeal.'[18] Furthermore, it has been noted that in practice it is extremely difficult for an asylum seeker to be able to appeal from abroad and it remains unclear what responsibility the Home Office has for helping a successful appellant to return to the UK.[19]

1.4 The one-stop system

The one-stop procedure was introduced in October 2000 under the 1999 Act and was subsequently amended under the 2002 Act. It is intended to ensure that people applying to enter or remain in the UK are only able to make one application detailing all their reasons for seeking permission to enter or remain in the UK, receive one decision taking into account everything relevant to their case, and lodge only one appeal, if refused.

When an appeal is lodged, the appellant is also required to respond to a 'one-stop notice' and complete a 'statement of additional grounds' form outlining any additional reasons they have for wishing to stay in the UK, other than those they have already disclosed in their initial application. This includes human rights grounds and any other compassionate circumstances. All these issues will then be considered at the appeal hearing.[20]

1.5 Special Immigration Appeals Commission

Under Section 97 of the Nationality, Immigration and Asylum Act 2002 an appeal to the AIT against a negative asylum/human rights decision will not be allowed if the person's exclusion from the UK is in the interests of national security and the reasons for the decision can not be disclosed. In this small number of cases, there is instead a right of appeal to the Special Immigration Appeals Commission (SIAC). At SIAC hearings, appellants are entitled to two legal representatives: a special advocate appointed by the government who is allowed to view any sensitive material in closed session and make representations on behalf of the appellant; and another representative that represents the appellant in the open sessions. The SIAC panel consists of a High Court judge, an immigration judge and an expert in security matters and is subject to its own separate procedural rules.[21]

16 **Immigration Law Practitioners' Association** (January 2004) *Asylum – a guide to recent legislation*
17 **Asylum Rights Campaign** (2004) *Providing protection in the 21st century – Refugee rights at the heart of UK asylum policy*
18 Ibid.
19 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
20 **Home Office** (July 2006) *Immigration Directorates' Instructions – Chapter 12, section 1 – rights of appeal*
21 Ibid.

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Asylum and Immigration Tribunal where appeals are heard

Diagram A – The asylum appeals process [22]

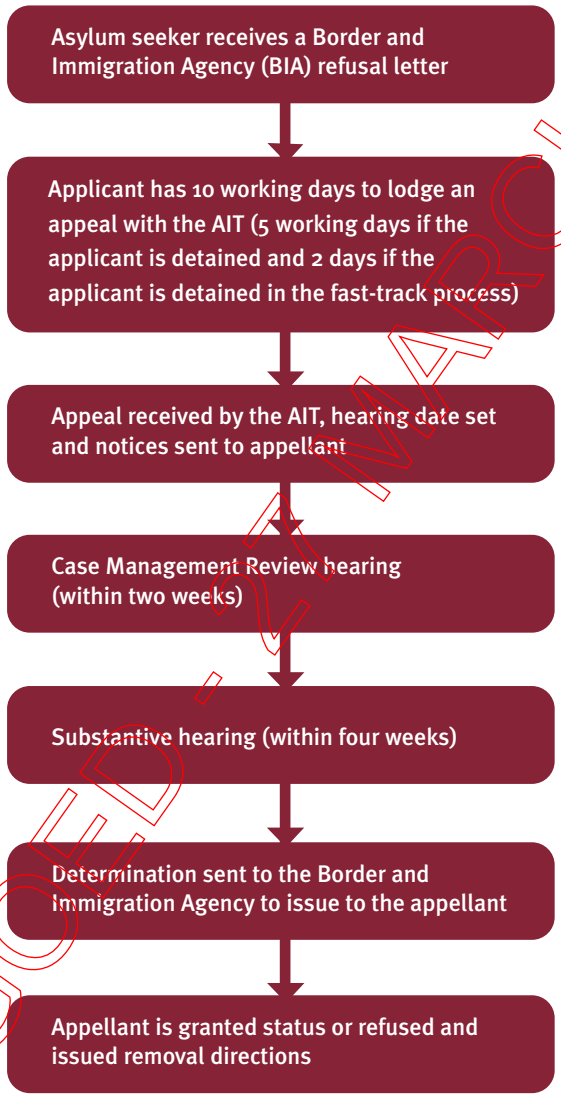

Diagram adapted from the AIT: http://www.ait.gov.uk/forms_and_guidance/documents/pdf/Asylum%20Appeals.pdf

2. Appeal hearings

Birmingham Hearing

2.1 Types of appeal

There are three types of appeal hearings: case management review (CMR) hearings, substantive appeal hearings and reconsideration hearings.

The substantive hearing is the main hearing in the appeals process and is normally attended by the appellant, their legal representative and a representative from the Home Office. The appellant is required to provide evidence at the hearing; this may include specific documents, expert evidence, country reports and witnesses. The burden of proof lies with the appellant, with the standard of proof being relatively low: i.e. a reasonable degree of likelihood of persecution under the Refugee Convention. The immigration judge (or panel) decides whether the appeal against the original decision of the Home Office should be allowed or dismissed. This is provided in writing to both parties within ten working days and is called a determination.[23]

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[24] on the grounds that the Tribunal made an error of law. 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.[25]

If there is a negative outcome as a result of a reconsideration hearing at the AIT, then it is possible to apply for permission to appeal to the Court of Appeal. A further appeal against the decision of the Court of Appeal can be brought, with permission, to the House of Lords, the highest court in the UK. Cases that are unsuccessful before the House of Lords may be brought before the European Court of Human Rights in Strasbourg.[26]

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. The Home Office is also entitled to apply for permission to move a judicial review.[27]

23 **Home Office** (Nov 2006) *Immigration Directorates' Instructions – Chapter 12, section 4 – handling appeals*
24 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.
25 **Home Office** (Nov 2006) *Immigration Directorates' Instructions – Chapter 12, section 4 -handling appeals*
26 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
27 **ICAR** (2006) *Asylum law and process navigation guide*

2.2 Fast-track appeals

An appeal becomes 'fast-tracked' in cases where an asylum seeker receives a negative initial decision whilst being detained in one of four Immigration Removal Centres (IRCs) (Campsfield, Colnbrook, Harmondsworth or Yarl's Wood). The process operating in Harmondsworth for male asylum seekers and Yarl's Wood for female asylum seekers is often referred to as the 'super fast track' process and is administered so that asylum seekers remain in detention throughout the asylum application process, including for any appeal they may lodge.[28] Asylum seekers in this expedited process are given two working days to lodge an appeal against a negative initial decision, in comparison to five working days for asylum seekers detained in other IRCs and ten working days for non-detained asylum seekers.[29]

Kerry Jopling, a solicitor from the Refugee Legal Centre in Leeds, speaking at the Commission's Leeds Hearing, criticised the fast track process for placing unrealistic time constraints on asylum applicants and legal representatives:

"Just because something is done quickly, does not mean it is done well. The over-riding concern should be to achieve a fair and just decision. Unfortunately, speed seems to have pushed justice into second place"

Hearing: Leeds. For full testimonies please visit www.humanrightstv.com

The human rights organisation Justice has also commented that the accelerated process does not allow an asylum applicant sufficient time to receive proper legal advice or effectively challenge a negative decision on appeal.[30] However, the Home Office maintains that there are several safeguards within the fast track process, including the option for legal representatives to make an application to transfer the claim from the fast track system to the mainstream system. [31]

3. Making decisions

One woman from Cameroon described her hope going into her tribunal:

"When I was refused by the Home Office initially I didn' t take it too badly as all the reasons for refusal I had answers for. I thought that people can make mistakes and the interviewer at the Home Office obviously didn' t understand everything that I was saying. I thought at the court I will have more of a chance to explain my story. I had faith because I was telling the truth that it would be ok."

28 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
29 Ibid.
30 **Justice** (2003) *Inquiry into asylum and immigration appeals: Committee on the Lord Chancellor's Department.*
31 For further information on Home Office safeguards regarding the detained fast track process see **Oakley, S.** (April 2007) *Accelerated procedures for asylum in the European Union: fairness versus efficiency,* Sussex Migration Working Paper no. 43

However, her hope turned to disappointment at the way she was treated by the judge at her appeal hearing:

"At my asylum tribunal the judge had concentrated on my health rather than the other things that had happened to me in Cameroon. She made me feel that I was just here to receive medical treatment" ***Submission: Anonymous***


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3.1 Approaches to decision-making

Prior to 2003, the appellate authority was experiencing a large backlog of cases. Measures introduced to increase the capacity to deal with larger numbers of appeals included recruiting more adjudicators, expanding courtroom space and making better use of court time.[32] The Department for Constitutional Affairs (now the Ministry of Justice) and the Home Office jointly agreed targets for processing appeals, meaning that judges hear three cases per day and make determinations on the next day. This led to criticism from some commentators that the appellate authority was 'imbued with a managerial culture' with a target-driven mandate that may compromise the quality of the appeals process. [33]

The Tribunal employs an adversarial approach in court, which means that judges remain strictly impartial and avoid intervening in the arena other than to seek clarification of points.[34] Several commentators have argued that an inquisitorial approach would be more appropriate for asylum appeals, where judges take a more active role in court.[35] This would enable judges to examine more closely the credibility of an appellant's account.[36] It has also been noted that under the Human Rights Act, judges are required to consider the impact of the European Convention on Human Rights on individual cases, and this may require a greater involvement on their part.[37] The Council of Immigration Judges has asserted that the standard of legal representation is 'very variable in quality' which raises the question of whether judges should take a more interventionist approach in court. It has also been argued that standards of representation are likely to fall as a result of legal aid cuts, creating disincentives for good quality caseworkers, thus increasing the need for such an approach.[38]

3.2 Use of evidence

There is an obligation on the state for collecting evidence for appeals, in the form of country information, and on the applicant, in the form of expert reports. Additional sources of information for the Tribunal are the appellant's oral testimony and the AIT's country guidelines determinations. The evidence used to judge appellants is based on the past history of the applicant and the social

32 **National Audit Office** (June 2004) *Improving the speed and quality of asylum decisions*
33 **Thomas, R.** (2005) Evaluating tribunal adjudication: administrative justice and asylum appeals, Legal Studies 25 (3)
34 **Migration Watch**, *House of Commons Select Committee on Constitutional Affairs Briefing paper*
35 **Thomas, R.** (2006) *Assessing asylum and immigration determination processes*, paper presented at the Asylum, Migration and Human Rights Centre;
36 **Migration Watch**, *House of Commons Select Committee on Constitutional Affairs Briefing paper*
37 **Blake, C.** (2001) Judging Asylum and Immigration Claims: The Human Rights Act and the Refugee Convention, *Public Money & Management* 21 (3)
38 **Thomas, R.** (2005) Evaluating tribunal adjudication: administrative justice and asylum appeals, *Legal Studies* 25 (3)

and political situation in their country of origin; the appellant's story must be consistent with the country information.

The Tribunal must also assess the credibility of the appellant's account. The AIT have been reluctant to issue guidance on assessing credibility and instead have urged adjudicators to use 'common sense and experience' in judging individual cases.[39] Adjudicators are required to scrutinise the behaviour of appellants for efforts to conceal information or to mislead, obstruct or delay the claim. This measure has been criticised for linking behaviour with credibility, when in certain circumstances there is no causal link between the two. For example, concealing a passport does not necessarily compromise the credibility of an appellant's story. Further, delays in presenting evidence may arise from appellants' histories of trauma or sexual violence which may cause them shame and difficulties expressing themselves openly.[40]

3.3 Expert reports

Legal representatives may request expert reports to support an appellant's application. Expert reports are usually written by country experts, such as academics or NGOs, or by medical experts, such as doctors at the Medical Foundation for the Care of Victims of Torture. Details of the case are relayed to the expert who then tailors the report to the individual case. One country expert has highlighted the importance of stating the impartiality of experts in the report – specifically that they do not know the appellant and that they cannot judge the credibility of their case. The expert must acknowledge points which question an appellant's account as well as those that corroborate it. It is also crucial that the expert does not act as an advocate on behalf of the appellant.[41] This latter point is included in the AIT's November 2006 practice directions outlining the duties of country experts. Also highlighted in the directions is that the duties of experts to the Tribunal override those to the appellant.

There is evidence of some disagreement between the Tribunal and individual experts on the question of who has greater expertise on the issues relating to appellants' cases. The AIT has claimed on occasion that experts have exceeded their role, whilst experts have criticised the AIT for not paying sufficient attention to their opinions. In addition, the Court of Appeal has criticised the Tribunal for insufficiently considering country expert reports, and the latter have been required to explain why they do not accept an expert report.[42]

Medical expert reports are sought to support a claim that an appellant has been tortured or ill-treated; this may be of a physical or psychological nature. Medical experts are required to match their clinical findings to the testimony of the appellant.

The Tribunal has been criticised for considering medical evidence after they have made their judgement on an appeal, and subsequently rejecting the evidence presented leading some commentators to argue that the evidence should rather be considered as part of the totality of evidence presented during an appeal.[43] It may however be argued that medical reports do not

39 **Thomas, R.** (2007) Risk, legitimacy and asylum adjudication, *Northern Ireland Legal Quarterly* 58 (1)
40 Ibid.
41 **Good, A.** (Oct 2003) Anthropologists as experts: asylum appeals in British Courts, *Anthropology Today* 19 (5)
42 **Thomas, R.** (2007) Expert evidence in asylum appeals: an update, *Immigration Law Digest* 2 13(2)
43 **Thomas, R.** (2007) *Expert evidence in asylum appeals: an update, Immigration Law Digest* 2 13(2); **Jones, D.** and **Smith, S.** (2004) Medical evidence in asylum and human rights appeals, *International Journal of Refugee Law* 16 (3)

provide conclusive proof of an appellant's account because doctors are not obliged to scrutinise the credibility of the account.[44]

A practical problem associated with expert reports is that they are often requested only days in advance of the court appearance, which does not provide sufficient time to prepare a high quality report.[45]

3.4 Country of origin information (COI)

The Country of Origin Information Service (COI Service) in the Research, Development, Statistics (RDS) department of the Home Office produces information on asylum seekers' countries of origin, for use by BIA officials involved in the asylum determination process. COI products focus on matters frequently raised in asylum and human rights claims, are compiled from material produced by external information sources, and are in the public domain. COI material produced by the Home Office is reviewed by the independent Advisory Panel on Country Information.

The COI Service currently publishes four products:

1. COI Reports: These are detailed summaries focusing on the main asylum and human rights issues in the country. They also provide background information on geography, economy and history. They are produced on the 20 countries which generate the most asylum applications in the UK and have been published twice yearly since 1997 but are now updated more frequently.
2. COI Key Documents: For countries outside the top 20 asylum intake countries but within the top 50, COI Service provides a product called 'COI Key Documents'. This brings together the same sorts of documents that feature in the source material for COI Reports, but with a brief country profile and index rather than an actual report. They are updated annually and may be issued on countries outside the top 50 asylum intake countries where there is a particular operational need.
3. COI Bulletins: Bulletins are issued throughout the year to provide up to date COI as required on countries for which a COI Report is not produced.
4. COI Fact Finding Missions: These are reports produced following fact finding missions to countries of origin.

The Tribunal has described the reports as providing a "reliable, reasonably impartial and up-to-date assessment" of country situations.[46] Country of origin information (COI) has however been criticised by refugee advocacy groups and country experts. It has been perceived to lack independence due to the position of the COI service within a government department.[47] It has been argued that information is repeated year after year, that the reports are not adequately sourced[48] and that undue weight is given to the reports compared with expert reports.[49] Audrey Smith of the Calderdale Immigration Support Service, speaking at the Commission's Leeds

44 Ibid.
45 **Bail for Immigration Detainees and Asylum Aid** (Apr 2005) *Justice Denied – Asylum and Immigration Legal Aid – a system in crisis*
46 **Thomas, R.** (2007) Risk, legitimacy and asylum adjudication, *Northern Ireland Legal Quarterly* 58 (1)
47 **Good, A.** (2004) Expert evidence in asylum and human rights appeals: an expert's view, *International Journal of Refugee Law* 16 (3); **Thomas, R.** (2007) Risk, legitimacy and asylum adjudication, *Northern Ireland Legal Quarterly* 58 (1)
48 **Good, A.** (Oct 2003) Anthropologists as experts: asylum appeals in British Courts, *Anthropology Today* 19 (5)
49 **Immigration Advisory Service** (Feb 2005) *Country Guidelines Cases: benign and practical?* http://www.iasuk.org/module_images/Country%20Guideline%20Cases-Benign%20and%20Practical%20TPPS.pdf

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Legal Services Commission

Hearing, recounted cases where asylum seekers' appeals had been hindered by outdated country information used by the Home Office, suggesting that the country the appellant comes from is safe when it is not:

"From the experience of our clients it seems clear that the Home Office is hellbent on finding reasons to discredit their stories. Caseworkers who should be assessing whether people are in danger and need protection just seem intent on disbelieving them"

Hearing: Leeds. For full testimonies please visit www.humanrightstv.com

In addition to COI reports, the Tribunal publish Country Guideline Cases (CGC), which detail situations in asylum seeker-producing countries and aim to make decision-making more consistent. The cases establish 'factual precedent' on which similar cases are subsequently adjudicated. The Immigration Advisory Service has expressed concern over the use of CGCs, which they see as based on poor, irrelevant, outdated or no country information, and citing no references for material used. [50]

4. Legal aid and accessing legal support

Publicly-funded legal advice and representation is available for asylum cases, as it is for other areas of the law. In England and Wales the legal aid fund is called the Community Legal Service Fund and is administered by the Legal Services Commission (LSC). Free assistance is available throughout the asylum process, for asylum seekers who either have no income, or a very low income. The LSC will only fund advisers that they have a contract with to provide specialist immigration advice.

Restrictions on legal aid have forced many law firms to withdraw from offering advice on asylum claims as they do not believe they can operate effectively within the new restriction of only being able to claim for five hours work per case. As a result it has been observed that many asylum seekers are unable to continue with their asylum application or mount a successful appeal against a decision that could be overturned, leading to the withdrawal of Home Office support and impending destitution.[51]

50 Ibid.

51 **Refugee Action** (June 2005) *Leicester Refugee and Asylum Seekers' Voluntary Forum, A report of destitution in the asylum system in Leicester.*

4.1 Legal aid

In April 2005, the government introduced legal aid cuts for asylum appeals (in addition to the cuts made in 2004 as described in the previous chapter), whereby retrospective decisions are made regarding the payment of legal fees for appeals work. This measure requires lawyers to make judgements about the potential of a case's success in order to assess the financial implications of representing a client. The government recognises that cases may not be clear prior to the appeal and therefore provide suppliers a risk premium to offset the risks of taking on clients; this comes to 35% of Controlled Legal Representation rates or 35% uplift of working hours for non-profit organisations.[52] Cost orders are made by the Tribunal following the appeal or by the High Court at review stage. Legal suppliers can apply for a review of the decision to the AIT, through a paper-based process. The review of a funding decision is made by a different senior immigration judge to the one who made the initial funding decision.

The former Department for Constitutional Affairs launched a six-week consultation in November 2004 seeking views from a range of organisations on the proposed legal aid cuts. As a result of the consultation, the government made some alterations to the proposals. However, the Coalition Against the Legal Aid Cuts (CALAC), a pressure group with 120 members including human rights groups, refugee community organisations (RCOs) and law centres, argued that the cuts would deter good quality lawyers and enable poor quality lawyers to prosper. One organisation highlighted that since the introduction of the new contract, the number of asylum seekers unable to access legal representation has increased, especially at the appeals stage. It has also been argued that the cuts exploit appellants, who may need to fund appeals privately.[53] Germain, a political activist from the Democratic Republic of Congo, explained to the Commissioners how his story had not been believed by the Home Office, and that he had been forced to attend his appeal despite being extremely ill.

"Back home my father was beheaded because of our political activities. I was arrested, gaoled, beaten daily, sexually assaulted and was forced to watch my sister being raped by guards. I claimed asylum in the UK, was refused and appealed. I was ill but the judge refused to adjourn the hearing – I travelled to Bradford but was immediately hospitalised."

Germain, an asylum seeker from the Democratic Republic of Congo
Hearing: Leeds. For full testimony please visit www.humanrightstv.com

Since that hearing, Germain has had to represent himself. His appeal has been rejected and he is destitute – sleeping rough and relying on charity.

"There is a major lack of legal representatives in Leeds and we try to fill the hole by using volunteers – but demand always outstrips what we can supply. The impact on the asylum seeker of not having proper support to prepare for an appeal is huge."

Karen Gray,
Manuel Bravo Project

Hearing: Leeds. For full testimonies please visit www.humanrightstv.com

52 **Department for Constitutional Affairs** (Nov 2004) *The Asylum and Immigration Tribunal – the legal aid arrangements for onward appeals*

53 **ILPA response to Department for Constitutional Affairs** (Nov 2004) *The Asylum and Immigration Tribunal – the legal aid arrangements for onward appeals*

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Commissioner Zrinka Bralo

Further, refugee advocacy groups have criticised the LSC for lacking independence from the government, yet they are making decisions relating to legal aid that should be made by independent adjudicators at the appeal hearing.[54]

Paul Newell, Head of Civil Legal Aid at the Legal Services Commission, the government body responsible for overseeing legal aid, told Commissioners at the Leeds Hearing that reforms in the past few years had reduced the available budget for asylum appeals:

"The reforms that cap legal aid available to asylum seekers were designed to derail the legal aid gravy train – we were spending a lot of money on appeals and too many were failing. But we are dealing with a particularly vulnerable client group – who could face torture and even death if a wrong decision is made – so it would be wrong to rule out looking at the rules again"

Hearing: Leeds. For full testimony please visit www.humanrightstv.com

4.2 Issues with legal representatives

The Immigration and Asylum Act 1999 established an independent public body, the Office of Immigration Services Commissioner (OISC), to regulate immigration advisers and to promote good practice. Immigration advisers do not have to be trained solicitors, although many are. Since 1 April 2005 the Legal Services Commission (LSC) has required that all advisers are accredited if they wish to provide legally-aided immigration advice. The level of advice that an adviser can give is determined by the level of accreditation they have achieved. Nevertheless, it has been observed that the quality of asylum advice varies enormously and although there are some excellent practitioners, poor quality advice is still a major issue.[55]

Combined with a shortage of legal firms willing to take on cases and the exploitation of appellants forced to fund appeals privately, there are also numerous examples of poor and miscommunication, with appellants receiving the wrong information from their representatives, the relevant information being waylaid, appellants being dropped shortly before a case, and cases where appellants are moved and have to find new representation at short notice.

A written submission from a man from Guinea, settled in Hull, describes his difficulty in finding a local solicitor to take his case:

"I want people to understand that there are no asylum solicitors in Hull so we have to travel a long way with a minimum amount of resources."

54 **Bail for Immigration Detainees and Asylum Aid** (Apr 2005) *Justice Denied – Asylum and Immigration Legal Aid – a system in crisis*

55 **Mayor of London** (2005) *Into the Labyrinth: Legal advice for asylum seekers in London,* (Greater London Authority)

A solicitor from Rotherham eventually agreed to take on his case, but dropped it two days before he was due in court, because he believed that his appeal would fail. The asylum seeker represented himself and was granted refugee status.

A Somali asylum seeker who fled to the UK with her daughter, had problems accessing legal support to fight her appeal. She told the Commission of the difficulties she experienced when she was moved from Liverpool to Barnsley and had to find a new solicitor. She had to sell her support vouchers to pay for legal help and when she eventually found one, there was not enough time to prepare her case:

"I think about me and my child and I wish we had never come to the UK – nobody wants us. They say claiming asylum is not a crime, so why are there these invisible bars around us?"

Hearing: Leeds. For full testimony please visit www.humanrightstv.com

4.3 Changes to legal aid

In July 2006 the Department for Constitutional Affairs and the Legal Services Commission launched a consultation on the recommendations of Lord Carter's independent review into legal aid procurement. Proposed changes to the current system include: the introduction of 'fixed fees' for immigration and asylum work; the incorporation of translation and interpretation costs into the fixed fee; and the introduction of an enhanced rate for 'complex cases' that require four times the value of fees.

A number of concerns have been raised by legal practitioners and advocacy organisations in relation to the proposals. It is felt that fixed fees and an enhanced rate will deter advisors from taking on cases that are too complex and encourage practitioners to cut corners. There are concerns that the costs of interpreters and translators will not be adequately covered by the fee and representatives will be tempted to rely on untrained interpreters, such as the friends and family of the client, which could impact cases negatively. Finally, it is feared that these proposed reforms will mean that small specialist practices will find that it is no longer viable to work within the LSC funding model and there will be even fewer quality advisers in the field.[56]

"My appeal failed and I spent four months homeless and hungry. One day it became too much and I tried to kill myself at Leeds train station. I will never forget the kind lady who took my hand and stopped me – but I would prefer to die than go back to Sudan."

From an asylum seeker dropped by his lawyer the day before his appeal. Hearing: Leeds. For full testimonies please visit www.humanrightstv.com
Submission: Anonymous

56 **Children's Society** (2006) *Response to Legal Aid: A Sustainable Future*
Immigration Law Practitioners' Association (October 2006) *Response to Legal Aid: A Sustainable Future*
Asylum Aid (2006) *Response to Legal Aid: A Sustainable Future*
Hansard (20 November 2006) *Uncorrected transcript of oral evidence for Joint Committee on Human Rights on the Treatment of Asylum Seekers*
http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/uc60-i/uc6002.htm

Commissioners' Interim Findings – How we decide who needs sanctuary

The UK needs a fair and just asylum system that assures sanctuary to those who genuinely need it and denies it to those who do not. The Commissioners recognise the efforts made to improve initial decision-making through initiatives such as the New Asylum Model.

Despite some improvements there has been insufficient appreciation of the fact that asylum seekers are in a unique position and require to be recognised as such and to be treated distinctively from other areas of Home Office responsibility such as economic migration.

The strongly adversarial nature of the current decision-making process frequently results in unfairness. Some asylum seekers are unable to do justice to their own case because of ignorance or extreme vulnerability, coupled with a prevalent 'culture of disbelief'. Decision makers appear to be given inadequate training and little encouragement to take a more inquisitorial approach to ensure that any apparent weaknesses in the applicant's case are not due to health or language problems, or lack of adequate representation.

Key findings:

- **That there have been commendable efforts to improve the calibre and training of decision-makers in recent years**
- **Despite these efforts, a 'culture of disbelief' persists among decision-makers which coupled with inadequate qualifications and training is leading to some perverse and unjust decisions**
- **That the adversarial nature of the asylum process (though not inherently unfair) stacks the odds against the asylum seeker seeking sanctuary**

The Commissioners affirm:

That the UK Government remains committed to the principle of protection for refugees and provides refugee status or other forms of protection to thousands of people each year

That the Government recognises the need to support asylum seekers while their claim is processed and that for applicants whose claim is refused support continues to be provided for families with children under 18 until they are removed

That the Government resources a wide range of NGOs including the Refugee Council, Refugee Action and Migrant Helpline to provide independent advice to asylum seekers and refugees while they go through the system

The Government's intention to improve the quality and speed of decision-making under the New Asylum Model and Case Resolution

That the Border and Immigration Agency involves the United Nations High Commissioner for Refugees in quality checking a sample of asylum decisions

That Country of Origin Information is unclassified and publicly available for independent scrutiny

The Government's intention to simplify asylum legislation by consolidating the numerous Acts passed since 1993

The Commissioners express concern:

At the difficulty of accessing the asylum system for people who need sanctuary

- That the lives and welfare of people in need of sanctuary are put at risk as a consequence of policies designed to prevent illegal immigration to the UK and Europe
- That some new arrivals have extreme difficulty claiming asylum in-country due to the limited number of Asylum Screening Units and the inadequacy of their opening hours
- That some asylum seekers are penalised when they arrive in Britain with a forged passport or without any passport having done so for understandable and non-criminal reasons

At the unacceptably poor standard of some initial asylum decisions

- That there is inadequate understanding among decision-makers of the different circumstances faced by asylum seekers who are seeking sanctuary from persecution
- That there is a lack of consistency in the quality of first-instance decision-making and that the workloads of New Asylum Model case owners may be too high
- That the high rate of cases won on appeal indicates a high rate of poor initial decisions
- At the style and content of substantive interviews by BIA decision-makers. The Commission received evidence of the inappropriate use of leading questions at interview; non-implementation of gender-guidelines when engaging with traumatized women; inappropriateness of interpreters with regards to ethnic and religious sensitivities; inappropriate questions to assess religious conversion; and errors in transcription
- That BIA decision-makers may not always have access to up-to-date and relevant Country of Origin Information, nor apply it appropriately to each case to help them make good decisions.
- That the appeal stage is becoming part of the first-instance decision-making process rather than a process of independent review, meaning that Border and Immigration Agency decision-makers do not always conduct a proper analysis of the individual protection claim

That the adversarial asylum system is heavily weighted against the asylum seeker

- That some asylum seekers who have their initial decisions 'fast-tracked' have less chance of receiving a fair hearing
- That there is a lack of legal advice for asylum seekers during their initial interview leading to unjust decisions
- That the right to appeal is curtailed if an asylum seeker comes from a supposedly safe third country
- That there is a shortage of solicitors to represent appellants and that asylum seekers are denied justice if their solicitors do not appeal in time or do not have the relevant information
- That cuts in the legal aid budget have led to an increase in appellants appearing unrepresented
- That there is insufficient opportunity for redress if an asylum seeker's appeal is not heard, if they are not properly represented, or if they are failed through maladministration or other human error
- That the Asylum and Immigration Tribunal may not issue adequate guidance for immigration judges assessing the credibility of appellants
- That good medical export reports to support an appellant's case are hard to obtain, expensive and are not always given due consideration
- That the way courts use expert witnesses and County of Origin Information is not consistent
- That segmentation of fast-track appeals and the tight time-frame for preparing a case for detained fast-track leads to too many people appearing without proper legal or other representation

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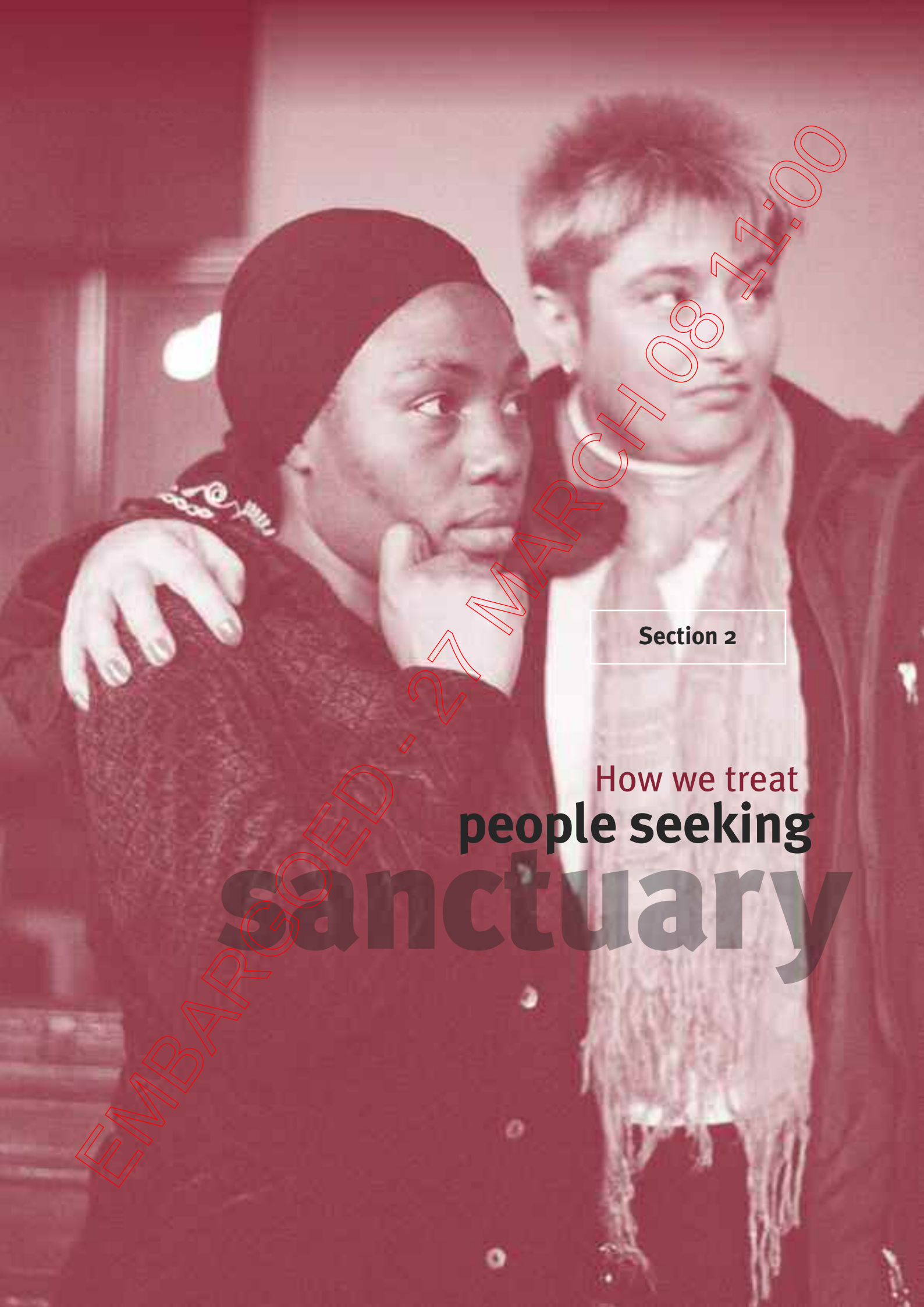

Section 2

How we treat people seeking sanctuary

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CHAPTER 3

Material support for asylum seekers

Sometimes when people arrive in the UK on a Friday at Manchester Airport, by the time they get to the Asylum Screening Unit at Liverpool they find the office shut and are unable to access any support. So they begin their time in the UK with three nights of destitution."

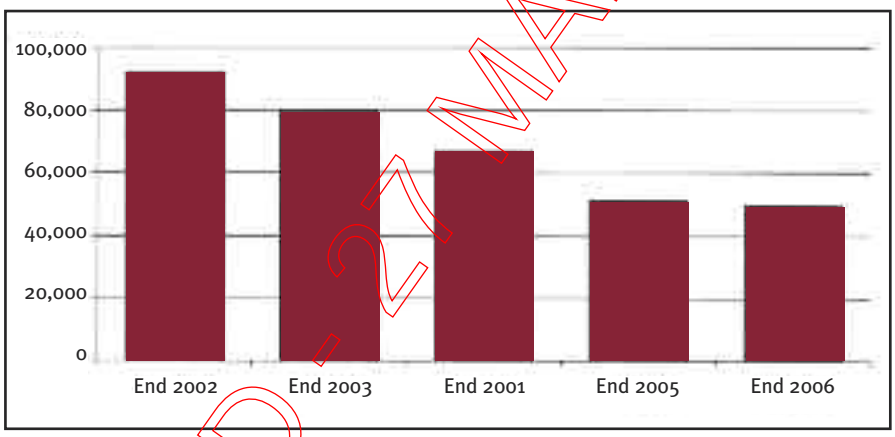
1. Application procedures

Asylum seekers are not generally allowed to work while their claim for asylum is being processed, however in cases where an applicant has waited longer than twelve months for an initial decision they may request permission from the Home Office for the right to work. Permission to work is only granted if the delay in reaching an initial decision cannot be attributed to the asylum applicant.[1] Due to this restriction on permission to work, many asylum seekers are unable to support themselves during the asylum process and are therefore dependent on Home Office support. Asylum seekers who have their claim refused, yet are unable to return to their country of origin for certain reasons (for example in cases where there is no viable route of return) do not have the right to work. In such situations, applicants are eligible to receive Section 4 or 'hard case' support.[2]

"Sometimes when people arrive in the UK on a Friday at Manchester airport, by the time they get to the Asylum Screening Unit at Liverpool they find the office shut and are unable to access any support. So they begin their time in the UK with three nights of destitution."

Nigel Rose, Refugee Action. Hearing: Manchester. For full testimonies visit www.humanrightstv.com

Graph C: Number of asylum seekers in receipt of support



1.1 Applying for support

In order to be eligible for Home Office support, asylum seekers have to undergo a needs assessment to prove they are destitute. Asylum support is only provided to asylum seekers who appear to be destitute or who are likely to become destitute within a specified time; this is known as the destitution threshold. Applicants have to demonstrate to the Home Office that they do not have enough means to support themselves for 14 days for new applicants or 56 days, if they have already been previously supported by other means, for example by friends or relatives.[3]

Asylum seekers may apply for support when they claim asylum, either on arrival at a 'port of entry' or 'in-country' at one of the Asylum Screening Units (ASUs) in Croydon or Liverpool. On arrival, asylum applicants are housed in 'initial accommodation', which can be in the form of induction centres or hostel-type accommodation. This accommodation is short-term providing a stop-gap before an asylum seeker is moved into dispersal accommodation where they remain while their application is being processed. It has been argued by refugee advocates that at the start of the asylum process, asylum seekers are not given sufficient information about the support available to them once they submit a claim.[4]

1 **Home Office** (2005) *Policy Bulletin 72 – Employment and voluntary activity*
2 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
3 **Home Office** (August 2006) *Policy Bulletin 4 – Determining whether persons who apply for asylum support are destitute*
4 **Refugee Action** (2006) *The Destitution Trap*

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Commissioner John Montagu, Earl of Sandwich

1.2 Appealing a negative support decision

If an asylum seeker does not agree with a Home Office decision to refuse them support, they have a right to appeal against this decision. However, appealing against a decision not to grant support can be a difficult procedure. Asylum seekers are not always aware of their right to appeal against this decision and often have difficulty accessing legal advice or representation for the appeal as no legal aid is available.[5] Asylum support appeals are heard by the Asylum Support Tribunal (AST), which operates as an independent body and hears appeals against any refusal or withdrawal of asylum support.[6] When determining an appeal an adjudicator may make one of three decisions: they may allow the appeal; they may dismiss the appeal; or they may remit the appeal requiring the Home Office to make a new decision. If the decision by the Home Office remains negative for a second time, the asylum seeker has the right to lodge a further appeal. Asylum seekers are unable to obtain legal aid for asylum support hearings and if an appeal is unsuccessful asylum seekers are required to support themselves for the remainder of their asylum claim.[7] In 2007, of the cases dealt with by the AST, 62% were refused (dismissed, invalid, no jurisdiction), 22% were allowed (unconditional, conditional or remitted), and 16% were withdrawn.[8]

2. Level and suitability of support

2.1 Basic support

Prior to July 2006, Home Office asylum support was administered by the National Asylum Support Service (NASS). As part of a Home Office restructuring, NASS ceased to exist as a directorate in 2006 and at present all asylum support issues are dealt with and processed by NAM caseworkers in the Home Office's Border and Immigration Agency (BIA).[9]

Asylum seekers who qualify for Home Office support are provided with 'no-choice basis' accommodation, usually in a dispersal area, and a weekly subsistence cash payment. Some asylum seekers choose to receive subsistence support only, which enables them to avoid being subject to dispersal. Asylum applicants who qualify to receive accommodation are not able to choose the location they are dispersed to.

While the initial aim of the dispersal programme was to move asylum seekers to areas where there were appropriate levels of social housing, in some areas the Home Office was unable to secure a sufficient supply of this type of accommodation. Consequently, other sources of housing were used, including contracting private landlords to provide suitable accommodation.[10] In 2002,

"Sometimes when the family is eating dinner I leave and walk in the streets and come back pretending to have eaten. I can cope without food, but not without a home."

Submission: Anonymous via Asylum Link Merseyside

5 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers*
6 http://www.asylum-support-tribunal.gov.uk
7 **Asylum Support Appeals Project** (February 2007) *"Failing the Failed" – How NASS decision making is letting down destitute rejected asylum seekers.*
8 http://www.asylum-support-tribunal.gov.uk/decisions/statisticsLatest.htm#2007
9 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
10 **Citizens Advice Bureau** (2002) *Process Error*

the Home Office acknowledged that there were inconsistencies in the quality of the accommodation according to different types of housing provider and contractual arrangements.[11]

Furthermore, much of the designated social housing, in which asylum seekers have been housed for long periods of time, has been found to be sub-standard. The nature of the dispersal strategy often meant that asylum seekers were housed in 'hard to let' properties or tower blocks awaiting demolition. Consequently, improvements to the properties or investment in renovation or development were unlikely to take place.[12] The Joint Committee on Human Rights concluded that there is evidence to suggest that some of the accommodation provided to asylum seekers violates Article 8 of the European Convention on Human Rights on the right to respect for home, family and private life. In addition to the standard of housing, suitability has also been an issue, with families often placed in long-term shared accommodation or those with disabilities provided with accommodation that is not suitably accessible.[13]

2.2 Level and suitability of support

Subsistence support is currently set at 70% of income support levels for adults and at full income support levels for dependant children under the age of 18. The amount of cash support provided to asylum seekers depends upon the ages and number of dependants the applicant has.[14] Pregnant women and parents with children under the age of three are entitled to additional payments for the purchase of healthy foods. Babies under the age of one receive an additional £5 per week and pregnant women and children (aged 1- 3 years) can apply to receive an additional weekly supplement of £3. Asylum seekers are also eligible for a single one off payment of £300 per child to help with the costs arising from the birth of a child.[15] However, it has been suggested that insufficient information has been provided about supplementary support.[16] There are also instances in which an individual has been left without support when transferring from one form of support to another or following a change of individual circumstances. These procedural delays are exacerbated by poor communication. In a report published in 2002, the Citizens Advice Bureau identified numerous instances of communication difficulties between asylum seekers and NASS.[17]

Critics suggest that it is demeaning to provide only a fraction of the support available to permanent residents in the UK to asylum seekers and is potentially stigmatising to be

Table A – Weekly subsistence rates for asylum seekers[18]

Couple	£64.96
Single parent aged 18 or over	£41.41
Single person aged 25 or over	£41.41
Single person aged 18 – 24	£32.80
Person aged at 16 – 18 (except a member of a qualifying couple)	£35.65
Person aged under 16	£47.45

11 **Home Office** (2002) *Report Of The Operational Reviews Of The Voucher And Dispersal Schemes Of The National Asylum Support Service*
12 **HACT** (2003) *Between NASS and a Hard Place*
13 **Citizens Advice Bureau** (2002) *Process Error*
14 http://www.bia.homeoffice.gov.uk/asylum/support/cashsupport
15 **Home Office** (April 2007) *Maternity payment and additional support for expectant mothers during pregnancy*
16 **Citizens Advice Bureau** (2002) *Process Error*
17 **Citizens Advice Bureau** (2002) *Process Error*, Chapter 4
18 http://www.bia.homeoffice.gov.uk/asylum/support/cashsupport

administered in a parallel system. The introduction of this level of support is a response to the government's assertion that access to the UK welfare system is a significant pull factor for economic migrants entering the asylum system. However, Oxfam, in its submission to the Commission, states that:


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> *"Oxfam continues to be against benefits for asylum seekers that are lower than for UK citizens and believes that they should be allowed to work while undergoing the asylum process"*
>
> ***Submission: Oxfam***

Generally, however, the Joint Committee on Human Rights concluded that the subsistence support available to asylum seekers is largely seen as an adequate amount to cover the costs of asylum seekers' basic needs on what is considered, under NAM, as short-term. There are some concerns, however, over asylum seekers being unable to afford items related to specific health or childcare needs or the imposition of additional costs from the asylum system itself, such as travelling to BIA offices.

2.3 Ending support

If an asylum seeker is granted leave to remain in the UK (i.e. refugee status, humanitarian protection or discretionary leave) the Home Office offers them a grace period of 28 days in which asylum support is continued whilst the applicant is expected to find the means to support and accommodate themselves. If an asylum seeker's claim is refused they are granted a 21 day period of Home Office asylum support, after which they effectively become refused asylum seekers pending removal.[19]

2.4 Support statistics

Home Office figures indicate that between July and September 2007 the number of asylum seekers applying for Home Office support was 4,145. Of this number, 3,300 (80%) of applications were from single adults and 850 (20%) were from family groups.[20] In this period, 68% (2,835) of applications were for accommodation and subsistence support, with 21% (850) of cases being for subsistence support only. The remaining 11% of applications were recorded as invalid or the application type was not specified at this stage. The top six nationalities applying for asylum support were from Iran, Iraq, Eritrea, Somalia, Zimbabwe and Afghanistan.[21] Home Office statistical publications do not specify the outcome of the 4,145 applications made for asylum support.

In September 2007 the total number of asylum seekers including dependants in receipt of asylum support was 48,470. Of this total, 10,160 asylum seekers were receiving subsistence only support, 37,060 were supported in dispersal accommodation and 1,250 were being supported in initial accommodation (including induction centres), prior to dispersal. The five local authorities with the highest number of asylum seekers in dispersal accommodation were Glasgow, Birmingham, Leeds, Manchester and Newcastle.[22]

19 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
20 A family group consists of a principal applicant with at least one dependant
21 **Home Office** (2007) *Asylum Statistics: 3nd quarter 2007, UK*
22 **Home Office** (2007) *Asylum Statistics: 3nd quarter 2007, UK*

3. Issues with delivering support

Within the support system asylum seekers have often experienced procedural errors or administrative delays in the receipt of their support and voluntary sector agencies have identified numerous cases of asylum seekers being unable to collect their cash support at designated post offices.[23]

It has been argued that a lack of clarity over responsibility for certain aspects of the support system has allowed some asylum seekers to 'fall through the cracks' in the system.[24] A report by Islington Borough Council has suggested that gaps in the provision of nationally organised asylum support have put additional pressure on Local Authorities' general asylum budgets and their budgets for mainstream services.[25] Peter Olner, of the No Recourse to Public Funds Network, a group representing local authorities who support destitute asylum seekers with additional welfare needs, told the Commission:

"The question that the Border and Immigration Agency must ask itself is why are so many people choosing to live in destitution rather than return to their home country? ... We believe that the Home Office should either reimburse local authorities for the costs they incur in supporting refused asylum seekers, or provide support centrally for asylum seekers until they leave the country, rather than until the point that their claim is turned down."

Hearing: Manchester. For full testimonies visit www.humanrightstv.com

The Home Office argue that under the New Asylum Model, a number of these problems should be eliminated. Under the new model, each asylum seeker receives a designated caseworker from the submission of the claim to the time of an initial decision. Consequently, the caseworker should be in a position to provide the asylum seeker with the relevant information about the support that is available, how to apply for it and how to appeal against a negative decision. With a single agency responsible for more aspects of the whole asylum system and a single member of staff responsible for each asylum applicant, the system should also be less susceptible to breakdowns in communication. Additionally, there has been an increase in the number of operational NAM offices in comparison with the Asylum Screening Units. However, some refugee agencies are concerned about the rate at which NAM will be expected to incorporate the work of NASS and also about the level of training NAM caseworkers will receive specifically on the provision of asylum support.[26] It is too early to make an assessment on the success of NAM in alleviating some of the systemic problems with the provision of asylum support.

23 **Citizens Advice Bureau** (2002) *Process Error*
24 **Refugee Survival Trust and Oxfam** (2005) *What's going on?*
25 **Islington Borough Council** (2006) *Destitute People from Abroad with No Recourse to Public Funds*
26 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers*

4. Exclusions from support


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Commissioner Silvia Casale

Other than failing the initial needs assessment, there are several reasons why asylum seekers may be excluded from receiving asylum support:

- They may fail to meet one of the criteria under which support is conditional.
- They may be excluded under Section 55 of the Nationality, Immigration and Asylum Act 2002
- They may be excluded under Section 9 of the Asylum and Immigration Act 2004

4.1 Failing to meet the criteria

Home Office asylum support is conditional and may be withdrawn at any point if one or more of the following occurs:

- if an asylum seeker is absent from their accommodation for lengthy periods;
- if an asylum seeker is found to be sharing their accommodation with others;
- if the accommodation is severely damaged by the applicant;
- if an asylum seeker is excluded from accommodation because of bad conduct;
- if the Home Office suspect the asylum seeker to have other financial means;
- if an asylum seeker fails to attend interviews or comply with reporting arrangements;
- if an asylum seeker provides the Home Office with false or incomplete information.[27]

Many of these criteria are similar to those that are conditions of a successful asylum claim, such as absence of criminal or violent behaviour, yet others are merely procedural. For some asylum seekers, the nature of the system or the support they receive can make it difficult to satisfy these conditions. The most notable example of this is difficulty attending meetings and reporting to asylum offices in relation to their claim. It can be difficult for asylum seekers to meet the travel costs sometimes associated with these meetings; non-attendance can result in the removal of support. Under more recent guidelines however, asylum seekers are able to make a claim for reimbursement of travel costs relating to their asylum claim, though some agencies claim that this procedure is also often subject to the sort of delays discussed above. Equally, an asylum seeker can suffer the removal of support if he or she fails to respond to a request for information relating to either their asylum support within five days or relating to their asylum claim within ten days. This could often be difficult to achieve for asylum seekers who were regularly moved and whose records are not updated by the Home Office. In effect the support system finds it difficult to keep up with the transience of the asylum seeker experience as dictated by the wider asylum system.[28]

4.2 Section 55

Under Section 55 of the Nationality, Immigration and Asylum Act 2002, asylum seekers have to apply for asylum as soon as 'reasonably practicable' after arriving in the UK in order to be eligible for asylum support.[29] Failure to do so may lead to a refusal by the Home Office to support an asylum seeker for the duration of the asylum process and in recent years this legislation,

27 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
28 **Refugee Survival Trust and Oxfam** (2005) *What's going on?*
29 **Home Office** (July 2007) *Policy Bulletin 75 – Section 55 Guidance*

"When we were made subject to Section 9 we were eight people with nothing to live on. For two years we lived on £30 a week donated by local supporters...I lost 11 kilos in that period. I didn' t feel like a human being."

Flores.
Hearing: Manchester.
For full testimonies visit www.humanrightstv.com

according to research, has resulted in a significant number of asylum seekers becoming destitute.[30] Evidence given to the Joint Committee on Human Rights (JCHR) in 2007 claimed that the sparse geographical spread of Asylum Screening Units means that it has been difficult for individuals to reach them to make a claim within three days, therefore excluding them from receiving asylum support under Section 55. Refugee Action suggested that this can deter people from entering the asylum system, generating more irregular migrants and exacerbating the problem of destitution.[31] Applicants who have made a late claim for asylum and therefore are not eligible for support under Section 55 have no right of appeal to the Asylum Support Tribunal and can only challenge the decision to refuse them support by judicial review.[32]

The number of asylum seekers being certified as Section 55 cases has significantly decreased in recent years following a Court of Appeal ruling in 2004 in which it was concluded that the Home Office was in breach of Article 3 of the European Convention on Human Rights in Section 55 cases where asylum seekers had no other means of support.[33]

Latest figures for July-September 2007 show that of the total number of applications for asylum support (4,145) 210 principal applicants were assessed as ineligible for asylum support on the grounds that the Home Office was not satisfied that the applicants' claims were made as soon as reasonably practicable.[34]

4.3 Section 9

A further way in which an asylum seeker may be excluded from Home Office support is under Section 9 of the Asylum and Immigration Act 2004. Section 9 applies to asylum-seeking families who have reached the end of the asylum process and exhausted all their appeal rights. If they are deemed not to be taking 'reasonable steps' to leave the UK they can have their financial support and accommodation terminated. In cases where families are made destitute, they can face having their children taken into the care of social services. The Home Office maintains that this legislation was introduced not to victimise asylum seeking families with children but to encourage them to take up voluntary return packages. The Eagles Wing, a support group from Bury, in its submission to the Commission, described the experience of families on Section 9 (Refugee Action and Refugee Council 2006, Inhumane and ineffective – Section 9 in practice):

"Families on Section 9 have suffered terribly and still do, having to beg for charity in the form of food parcels, and being unable to support their school children in normal school activities. Homelessness is a disgraceful but conscious part of this social policy. Members feel ashamed to be dirty, untidy or smelly, to need to beg for a shower, and to be unable to reciprocate people's kindness"

Submission: Eagles Wing Support Group, Bury

30 **Inter-Agency Partnership** (2004) *The impact of Section 55 on the Inter-Agency Partnership and the asylum seekers it supports*
31 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers*
32 **Immigration Law Practitioners' Association** (January 2004) *Asylum – a guide to recent legislation, 4th edition*
33 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
34 **Home Office** (2007) *Asylum Statistics: 3rd Quarter 2007, UK*

CHAPTER 4

Detention of asylum seekers

Frankly I have very bad memories of detention. It has taken away my zest for life."

1. Detaining asylum seekers

"Decisions to detain remain arbitrary and are to a large extent dependent on the bed spaces available to individual teams of Immigration Officers. The reasons on the checklist Immigration Officers use could equally apply to many other asylum seekers who are released into the community and who are not held in immigration detention."

Submission: AVID

Asylum seekers, including their dependents can be detained at any stage of their application to enter or remain in the UK – on arrival, with appeals outstanding, or prior to removal.[1]

1.1 Deciding when to detain

Detention may be authorised if the Home Office has 'good grounds' for believing that a person will not comply with requirements to keep in contact with them.[2] The decision to detain an asylum seeker is made by an individual immigration officer and is not automatically subject to independent evaluation of the lawfulness, appropriateness or length of detention. The discretionary nature of decision-making is considered problematic by commentators, who have voiced concerns that immigration detention, unlike in the criminal system, does not require judicial decision.[3] In its submission to the Commission, Amnesty International concludes that:

"As a result of its research Amnesty International found that detention was in many cases inappropriate, unnecessary, disproportionate and therefore unlawful."

Submission: Amnesty International

1.2 Description of the UK detention estate

The current UK detention estate can accommodate approximately 2,700 immigration detainees (see Table A). In 2008 the Home Office plans to open another IRC (Brook House) at Gatwick Airport, which will have the capacity to accommodate 426 immigration detainees. The centres in which people are detained are called Immigration Removal Centres (IRCs). The use of the word 'removal' has been criticised by advocacy organisations, who claim that many asylum seekers are detained in IRCs who have on-going claims and are not facing imminent removal.[4] In addition to IRCs, immigration detainees can also be held in prisons, police stations and short term holding facilities (STHFs), usually at ports. There are currently four STHFs in operation at Manchester, Dover, Harwich and Colnbrook and people can be held in these centres pending transfer to a residential holding centre or an airport.[5] Seven out of the ten IRCs are privately run and there are government plans to outsource the management of all IRCs. Commentators are concerned that private sector companies are less accountable for their actions, less open to public scrutiny and are bound by fewer rules than government agencies.[6]

There are approximately 500 immigration detainees held in prisons whose whereabouts are often unknown and unrecorded in Home Office statistics.[7] Advocacy organisations believe that conditions in prisons are inadequate for immigration detainees, especially due to the fact that

1 **Jackson, A.** (2003) 'The detention of asylum seekers in the UK: bail for immigration detainees,' *Feminist Review*, vol. 73, no.1, pp. 118-22
2 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
3 **Welch, M. and Schuster, L.** (2005) 'Detention of asylum seekers in the US, UK, France, Germany, and Italy: A critical view of the globalizing culture of control', *Criminology and Criminal Justice*, vol.5, p.331-355
4 **Jackson, A.** (2003) 'The detention of asylum seekers in the UK: bail for immigration detainees,' *Feminist Review*, vol. 73, no.1, pp. 118-22
5 **Bacon, C.** (September 2005) *The evolution of immigration detention in the UK: The involvement of private prison companies*, Refugee Studies Centre Working Paper no. 27
6 **Bacon, C.** (September 2005) *The evolution of immigration detention in the UK: The involvement of private prison companies*, Refugee Studies Centre Working Paper no. 27
7 **Ireland, H.** (ed.) (2006) *Immigration detention: A handbook for visitors*; 6th revised edition, AVID

prisons are primarily geared towards punishing and rehabilitating offenders.[8] Home Office figures show that on 29 September 2007, 1,625 people were being detained who had claimed asylum at some stage during their stay in the UK. This accounts for 70% of all immigration detainees and excludes persons detained in police cells and prison establishments. Of this total: 84% (1,360) detainees were male; 16% (270) detainees were female and 55 detainees were under 18 years old (30 boys and 25 girls).

1.3 Length of detention

Unlike most European countries and contrary to the recommendation made by the UN Working Group on Arbitrary Detention, there is no legal limit to the time a person may be held in immigration detention in the UK.[9] The UN Working Group recommended in 1998 that the UK government should specify an absolute maximum duration for the detention of asylum seekers and that this should become statutory, however, this recommendation has not been implemented.

The Operational Enforcement Manual states that 'in all cases detention must be for the shortest time possible', however those advocating on behalf of detainees have stated that this instruction is not adhered to in practice. Evidence gathered by Bail for Immigration Detainees (BID) revealed that detention periods of six months were not uncommon and in some cases detention was maintained for over two years, the worst case being a detainee held for just under three years.[10] The Association of Visitors to Immigration Detainees, in its submission to the Commission, states:

"We know of asylum seekers in the system detained for over a year and even up to 6 years while fighting to stay in the UK and while the Home Office has attempted re-documentation"

Submission: AVID

1.4 Detained fast-track system

Increasingly detention is being used to fast-track cases that the Home Office decides are straightforward and capable of being decided quickly. The fast-track process is currently in operation at the Oakington, Harmondsworth and Yarl's Wood removal centres. Oakington has been in operation since 2000 and was the first of the three centres to introduce the fast-track process. The fast-track system at Harmondsworth and Yarl's Wood is a key aspect of the Home Office's New Asylum Model which planned to process up to 30% of new asylum cases in this way by 2005.[11] The fast-track process in these two IRCs has been referred to as the 'super fast-track', due to the short timescales whereby an applicant is interviewed on the second day of detention, served a decision on the third day and is given two days to appeal.[12] HM Inspectorate of Prisons has criticised the short timescale stating that the seven day speed for processing detainees is

"When I went through the detained fast-track I felt like they were giving me a direction – straight back to my country. There was no way they could verify my story in two weeks. I was so naïve – I thought the Home Office would consider my claim fairly but they don' t want to hear my story."

John, Zimbabwean ex-detainee
Hearing: West London.
For full testimony visit www.humanrightstv.com

8 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
9 **Welch, M. and Schuster, L.** (2005) 'Detention of asylum seekers in the US, UK, France, Germany, and Italy: A critical view of the globalizing culture of control', *Criminology and Criminal Justice*, vol.5, p.331-355
10 **Bail for Immigration Detainees** (September 2002) *Submission to the United Nations Working Group on Arbitrary Detention: Immigration detention in the United Kingdom*
11 **Home Office** (February 2005) *Controlling our borders: Making migration work for Britain*
12 **Bail for Immigration Detainees** (October 2006) *Briefing on detained fast tracking of asylum claims*

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Harmondsworth Detention Centre

inappropriate for full consideration of complex cases.[13] Furthermore, a study into the detained fast-track process concluded that asylum seekers are being set up to fail because the system is too fast to give them a fair chance (99% of cases are refused), more than half of detainees at appeal stage are left without legal representation and being unable to apply for bail so remain in detention for long periods.[14] The Home Office believes that asylum seekers in the fast-track process are more likely to have weaker claims, hence the high refusal rates.[15]

In April 2005 an Operational Instruction for the detained fast-track process was introduced by the Home Office to define the circumstances in which flexibility should be introduced to the timescales.[16] The instruction states that applicants should be removed from the detained fast-track process if the time allowed is not sufficient to decide the case fairly. The operational instruction sets out a number of factors that should prompt the Home Office to take someone out of the fast-track process, or extend the timescale: for example in cases where a detainee is ill; when a case is deemed more complex than originally thought (for example alleged torture victims); in the event of non-attendance or late attendance of a representative; or in cases where

Table A – Description of the UK detention estate

IRC	Location	Run by	Detainees	Capacity [21]
Campsfield	Oxfordshire	The GEO Group	Male only	198
Colnbrook	Nr. Heathrow airport	Serco	Male only	313 (plus 40 STHF)
Dover	Kent	The Prison Service	Male only	316
Dungavel	Lanarkshire	Group Four Securicor	Mixed, family accommodation	190
Harmondsworth	Nr. Heathrow airport	Kalyx	Male only	501
Haslar	Hampshire	The Prison Service	Male only	160
Lindholme	South Yorkshire	The Prison Service	Male only	112
Oakington	Cambridgeshire	Global Solutions Ltd (GSL)	Male only	352
Tinsley House	Nr. Gatwick airport	GSL	Mixed, family accommodation	137
Yarl's Wood	Bedfordshire	Serco	Mixed, family accommodation	405
			Total capacity	**2,684**

13 **HM Inspectorate of Prisons** (April 2003) *Introduction & summary of findings: Inspection of five Immigration Service custodial establishments*

14 **Bail for Immigration Detainees** (July 2006) *Working against the clock: inadequacy and injustice in the immigration fast track system*

15 **Home Office** (February 2005) *Controlling our borders: Making migration work for Britain*

16 **Home Office** (April 2005) *Detained fast-track processes – Operational Instruction*

no competent interpreter is available during the asylum interview. In spite of this policy, research conducted on the fast-track process in Harmondsworth found that several detainees who were alleged torture victims had been processed in the accelerated system.[17] Paul Nettleship, a duty solicitor at Harmondsworth immigration removal centre, speaking at the Commission's West London Hearing, discussed what he viewed as 'serious flaws' in the detained fast-track system operating there:

"The Home Office fight tooth and nail to keep to the timetable of the detained fast-track system, but this compromises the integrity of the system. There is a culture of inflexibility in the fast-track system which leads to vulnerable asylum seekers like my client being denied protection. The detained fast-track process is a gateway to injustice."

Hearing: West London – for full testimony visit www.humanrightstv.com

1.5 Inspection and Accountability

HM Chief Inspector of Prisons has a duty under the 1999 Act to investigate and publish reports on immigration removal centres in the UK. This remit was extended as part of the Immigration, Asylum and Nationality Act 2006 to include a statutory requirement to investigate all short-term holding facilities and escort arrangements. Criteria for inspection include whether detainees are safe; treated with respect; engaged in constructive activity; able to maintain contact with the outside world and prepare for their release, transfer or removal.[18] Eileen Bye, from HM Inspectorate of Prisons, told Commissioners that, while there had been some improvements in recent years, there had been an insufficient improvement in the welfare of detainees. Commenting on the 'shunting' of detainees between centres, Ms Bye said:

"The movement of detainees between immigration removal centres by the authorities is also a serious problem. Within the space of just a few days, one detainee we interviewed was moved from Dungavel in Scotland, to Colnbrook near Heathrow, then to Lindholme near Doncaster, and then back down to Harmondsworth – which is right next to Colnbrook. This is disorientating and means the detainee loses contact with their friends, family, property and legal advisers."

Hearing: West London – for full testimony visit www.humanrightstv.com

Detention Centre Rules were established in 2001 to provide a further mechanism of accountability and to ensure conditions are consistent between centres. The rules provide comprehensive procedures for the treatment of those in detention, including standards for conditions within IRCs

17 **Bail for Immigration Detainees** (July 06) *Working against the clock: inadequacy and injustice in the immigration fast track system*
18 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*

"Frankly I have very bad memories of detention; It has taken away my zest for life. I am depressed. Often I have no appetite and don' t eat, I refuse to wash my self, I become anxious. This state of mind started and was worse in detention, but it has not lifted."

Submission: Anonymous

and provision of reasons of detention for detainees. Under the (non-statutory) rules, an Independent Monitoring Board (IMB) has been formed in each IRC. The board, consisting of members of the public who visit centres on a weekly basis, has a duty to provide annual reports to the Home Office.[19] In addition to the detention centre rules, an operating standards manual has been published by the Home Office to provide a means of raising standards and achieving a level of consistency across the removal estate.[20]

2. Conditions in detention

2.1 Habitation conditions

Conditions in detention vary considerably between centres; however recurring concerns raised by both advocacy groups and HM Inspectorate of Prisons include a lack of recreational activities, overcrowded accommodation, mistreatment by centre staff, long periods kept in cells, lack of privacy, visiting restrictions, limits on making and receiving calls, an absence of 24-hour medical provision and no facilities to deal with serious illnesses.[22] Other concerns include the insufficient provision of interpreting services which results in detainees having to interpret for one another and thereby breaching confidentiality and affecting the credibility of the system.[23]

Allegations of detainees being assaulted by immigration staff have been reported by NGOs and in the media.[24] In 2004 the Medical Foundation examined 14 cases of alleged abuse by staff; in twelve of the cases gratuitous or excessive force was used and at least four of the detainees in the study were found to have been tortured in their countries of origin.[25]

2.2 Access to bail

One of the ways in which an asylum seeker may be released from immigration detention is by being granted bail from either the Asylum and Immigration Tribunal (AIT) or the immigration authorities, including in some cases the police. Bail is not often granted by the immigration authorities, partly because they require substantial amounts from sureties (£2,000-£5,000), which in most cases an asylum seeker is unlikely to be able to provide. This has led to more detainees requesting bail from the AIT instead.[26]

Unlike criminal cases, immigration detainees do not have a right to a bail hearing. Legislation providing automatic bail hearings to all immigration detainees was passed in 1999, but was

19 **Ireland, H.** (ed.) (2006) *Immigration detention: A handbook for visitors*; 6th revised edition, AVID
20 **Home Office** (2006) *Operating standards manual for Immigration Service Removal Centres*
21 **Home Office** (February 2007) *New site for immigration centre*
22 **Silove, D., Steel, Z. and Mollica, R.** (May 2001) 'Detention of asylum seekers: assault on health, human rights, and social development', *The Lancet*, vol. 357, pp. 1436-37
23 **BID** (5 April 2006) *Fit to be detained? Challenging the detention of asylum seekers and migrants with health needs*
24 **BBC** (4 October 2006) *Detained immigrants 'are abused'*
25 **Medical Foundation for the Care of Victims of Torture** (2004) *Harm on removal: Excessive force against refused asylum seekers*
26 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*

repealed in the 2002 Nationality, Immigration and Asylum Act. The Home Office claimed that the concept of bail for all was '*inconsistent with the need to streamline the removals process and would be unworkable in practice with the continuing expansion of the detention estates.*'[27] Advocacy groups have argued that logistical or financial constraints are inadequate justification for the denial of the right to bail.[28]

The use of public funding for bail applications is subject to a merits test, which requires the legal firm to assess the chances of success to be greater than 50%. According to BID, the merits test is being wrongly applied and detainees are not being advised of their right to review a negative decision for public funding.[29] Furthermore, it has been documented that in some cases detained asylum seekers are resorting to representing themselves in bail applications.[30]

2.3 Legal advice and representation

Research and independent inspections have shown that difficulties in accessing quality legal advice and representation are even more acute when an asylum seeker is detained. This has been raised as an issue of concern by a number of organisations and HM Inspectorate of Prisons has drawn attention to the fact that 'access to competent and independent legal advice is becoming more, not less difficult, as fewer private practitioners offer legally aided advice and representation.'[31]

Organisations working with detainees have reported reluctance on the part of solicitors to take on cases where a client is detained. Solicitors feel that they cannot sufficiently prepare a case within the restricted timeframe set out by the Legal Services Commission (LSC) and there is often an assumption that the case will most likely fail. The additional time spent travelling to visit detainees and trying to secure their release are added burdens for solicitors particularly because detainees are frequently moved between removal centres. Detainees also experience difficulties in obtaining evidence from their countries of origin, especially because they have less opportunity to contact their community in the UK.[32] Furthermore, detainees can be transferred to other IRCs without adequate notice, making it even more problematic for regular contact to be maintained between detainees and lawyers.

Since April 2007 the LSC has piloted a scheme to award exclusive contracts to provide all legal services for immigration detainees. This includes basic advice surgeries, telephone advice, bail hearings and fast-track work. According to BID, these changes will hit detainees particularly hard and may make it even more difficult for detainees to obtain legal representation and may force detainees to seek the services of costly private law firms.[33]

Efforts to improve legal advice for detainees have been made, for example in December 2005 the LSC introduced the Detention Duty Advice (DDA) pilot scheme, which offers 30 minute free legal

"It is more than just physical torture, it is mental torture too. The staff made you feel like you don' t belong. I was treated like an animal"

Faith.
Hearing: West London.
For full testimony visit www.humanrightstv.com

27 **Home Office** (February 2002) *Secure Borders, save haven: Integration with diversity in modern Britain*
28 **Bail for Immigration Detainees** (September 2002) *Submission to the United Nations Working Group on Arbitrary Detention: Immigration detention in the United Kingdom*
29 **Bail for Immigration Detainees** (2006) *Memorandum to the Joint Committee on Human Rights – Uncorrected evidence on the treatment of asylum seekers*
30 **Bail for Immigration Detainees and Asylum Aid** (April 2005) *Justice denied, asylum and immigration legal aid: A system in crisis*
31 **HM Inspectorate of Prisons** (July 2004) *Inspection report on Dover Immigration Removal Centre*
32 **Bail for Immigration Detainees** (September 2002) *Submission to the United Nations Working Group on Arbitrary Detention: Immigration detention in the United Kingdom*
33 **Bail for Immigration Detainees** (October 2006) *Response to the LSC consultation on legal aid changes*

"B had been diagnosed with severe Post-Traumatic Stress Disorder... A doctor stated that he was too unwell to be detained but BIA refused to release him. He was extremely vulnerable and told us repeatedly that he was dying inside every day"

Submission: London Detainee Support Group

advice sessions in all IRCs to approximately 20 detainees per week. The DDA scheme has been welcomed by NGOs, but concerns still remain that the sessions are not sufficiently fulfilling the ongoing demand for quality legal advice and representation.[34]

3. Detention of vulnerable groups

3.1 Detaining those with health and welfare needs

Home Office operational guidelines state that detention is considered unsuitable, unless there are exceptional circumstances, for example those 'suffering from serious medical conditions or the mentally ill.'[35] A report by Médecins Sans Frontières found that IRCs lacked a systematic process of identifying and ensuring the release of detainees suffering from serious medical conditions or the mentally ill, in accordance with the guidelines issued.[36]

The lack of accountability in relation to privately sub-contracted medical companies operating in detention centres has also been raised as a major concern by several commentators.[37] Examples have been documented where detainees have not received adequate medical care for ongoing illnesses or have not been able to express themselves properly due to the insufficient provision of interpreters.[38]

Reports by advocacy groups working with detainees claim that mental health services are rarely of good quality. Referrals to specialist mental health services are limited and inconsistent; leading to problems going unaddressed despite evidence that many asylum seekers are distressed.[39] In addition the manner in which detainees with mental health problems are handled has been strongly criticised. For example medical emergencies or suicide attempts do not necessarily lead to release; instead they may lead to a detainee being transferred to a high security prison.[40] Furthermore, deaths in immigration detention do not have to be reported to any outside agency. Advocacy groups are concerned relatives of detainees may not receive adequate support and that deaths in immigration detention may not be brought to the attention of the Prisons Ombudsman

34 **Bail for Immigration Detainees** (2006) *Memorandum to the Joint Committee on Human Rights – Uncorrected evidence on the treatment of asylum seekers*
35 **Home Office** (2006) *Operational Enforcement Manual, Chapter 38 – Detention and temporary release*
36 **Médecins Sans Frontières** (November 2004) *The health and medical needs of immigration detainees in the UK: MSF's experiences.* Published as an annex in **BID** (May 2005) *Fit to be detained? Challenging the detention of asylum seekers and migrants with mental health needs*
37 **Bacon, C.** (September 2005) *The evolution of immigration detention in the UK: The involvement of private prison companies*, Refugee Studies Centre Working Paper no. 27
38 **Bail for Immigration Detainees** (May 2005) *Fit to be detained? Challenging the detention of asylum seekers and migrants with mental health needs*
39 **Pourgourides, C.** (2002) *A second exile: The mental impact of detention on asylum seekers in the UK*
40 **Weber, L.** (July 2003) 'Down that wrong road: Discretion in decisions to detain Asylum seekers arriving at UK ports' *Howard Journal of Criminal Justice*, vol. 42, no.3, pp. 248-262

or coroner.[41] Peter Booth, National Council Member for the Independent Monitoring Boards,told the Commission:

"We are concerned by health provision – although all centres are well covered for coughs and colds, they are not adequately covered for HIV and TB, and they are severely lacking in mental health provision."

Hearing: West London. For full testimony visit humanrightstv.com

Since 2000, ten immigration detainees have committed suicide and every other day a detainee makes an attempt at self-harm serious enough to require medical treatment. Asylum Welcome, in its submission to the Commission, identified the fact that:

"Poor mental health is exacerbated by poor communication with Immigration Service caseworkers and the attendant uncertainty regarding the outcome of an individual's case."

Submission: Asylum Welcome

From April 2006 to January 2007 there were 176 self-harm incidents that required medical treatment and 1,643 detainees were deemed at risk of self-harm. Campaign groups believe the actual numbers of self-harm incidents to be higher than reported.[42]

3.2 Detaining children and families

The government has stated that family detention is a regrettable but necessary part of maintaining effective immigration control, and that it is used sparingly and for as short a time as possible.[43] Organisations working with detained families argue that there is a gap between policy and practice, for example cases where families are held in detention for prolonged periods.[44]

Children can be made subject to detention through one or both of their parents. They may also be affected by the detention of one of their parents, in cases where a family is split up. Visiting detained family members is made even more difficult by the fact that a higher proportion of dispersal operates in the north of the UK and the majority of IRCs are located in the south.[45]

The Home Office believes the detention of families is essential in order to reduce the risk of people absconding. However research has found that families are more likely to stay in contact with the Home Office and adhere to immigration reporting conditions because they need access to services such as healthcare and education for their children.[46]

"We spent five and a half months in detention. It was extremely stressful for me as a mother, and my young children cried every day. Our children were locked up like prisoners. Which type of a human could keep a child locked up all day?"

Hearing: West London. For full testimony visit www.humanrightstv.com

41 **Bail for Immigration Detainees** (2005) *Self-inflicted deaths of asylum-seekers and migrants detained under Immigration Act powers in the United Kingdom*
42 **NCADC** (February 2007) *Self-harm in Immigration Removal Centres*
43 **Home Office** (February 2002) *Secure borders, save haven: Integration with diversity in modern Britain*
44 **Amnesty International** (June 2005) *Seeking asylum is not a crime: detention of people who have sought asylum*
45 **ILPA and Bail for Immigration Detainees** (October 2003) *Challenging immigration detention: a best practice guide*
46 **Cole, E.** (April 2003) *A few families too many; The detention of asylum seeking families in the UK, Bail for Immigration Detainees*

Father presents poem about the detention of his son

The Home Office does not produce statistics on where minors are detained, their nationalities nor on the number of age disputed cases.[47] However, it is clear from recent policy developments outlined above that the use of detention for children within asylum-seeking families is increasing; with an estimated 2000 children held in immigration detention in 2005.[48]

Children's organisations are concerned that the impact of detention on children is detrimental to their health and education.[49] Furthermore, a critical lack of effective child protection systems in IRCs and an absence of independent assessments about welfare and development needs of detained children have been highlighted in a recent Joint Chief Inspectors report on safeguarding children.[50]

The Immigration Service's Operational Enforcement Manual (OEM) specifies that unaccompanied minors must be detained only in the most exceptional circumstances and at most overnight. However, problems arise when the given age of a detainee is disputed by the Home Office. According to the OEM, where an applicant claims to be a minor but their appearance strongly suggests that they are over 18, the applicant is treated as an adult until such time as credible documentary or medical evidence is produced which demonstrates that they are the age they claimed.[51] NGOs have expressed concern that this policy can result in lengthy periods of detention while documentary evidence is obtained and considered.[52] Due to litigation in February 2006, the Home Office has now become more cautious about detaining age-disputed asylum seeking children, and they now are assumed to be children and are not put through the fast-track system.[53]

3.3 Women in detention

The detention of pregnant women is one of the main concerns for refugee women's advocacy groups. A report highlighting their plight draws attention to the fact that access to adequate nutrition and medical care is limited for pregnant women in detention, which may be damaging for their physical and mental health. The report calls on the government to stop the prolonged use of detention for pregnant women and mothers with young children and consider more suitable alternatives, such as regular reporting.[54]

UNHCR guidelines state that as a general rule the detention of pregnant women in their final months and nursing mothers, should be avoided due to their special needs.[55] In addition the Home Office's operational enforcement manual states that only in very 'exceptional circumstances'

47 **Home Office** (February 2007) *Asylum statistics*: 4th Quarter 2006, United Kingdom
48 **Crawley, H. and Lester, T.** (2005) *No place for a child – Children in UK immigration detention: Impacts, alternatives and safeguards, Save the Children UK*
49 **Crawley, H. and Lester, T.** (2005) *No place for a child – Children in UK immigration detention: Impacts, alternatives and safeguards*, Save the Children UK
50 **Joint Chief Inspectors** (2005) *Safeguarding children: The second Joint Inspectors' report on arrangements to safeguard children*
51 **Home Office** (2006) *Operational Enforcement Manual, Chapter 38 – Detention and temporary release*
52 **Crawley, H. and Lester, T.** (2005) *No place for a child – Children in UK immigration detention: Impacts, alternatives and safeguards*, Save the Children UK
53 **Joint Committee on Human Rights** (20 November 2006) *Uncorrected evidence on the treatment of asylum seekers*
54 **McLeish, J., Cutler, S. and Stancer, C.** (2002) *A crying shame: Pregnant asylum seekers and their babies in detention*. London: Maternity Alliance, Bail for Immigration Detainees & London Detainee Support Group.
55 **UNHCR** (February 1999) *Revised guidelines on applicable criteria and standards relating to the detention of asylum seekers*. Geneva: UNHCR

should pregnant women be detained.[56] Despite these instructions, organisations are aware of and have recorded instances where pregnant asylum seekers are detained, sometimes for many months.[57]

The New Asylum Model Quality Team recently undertook an evaluation relating to the compliance of the Asylum Policy Instruction (API) on gender at Yarl's Wood IRC. This consisted of examining all female cases passing through the detained fast-track system at Yarl's Wood during February 2006. The main recommendations included the need for a more robust referral mechanism for female cases, which considers the basis of an asylum claim prior to deciding whether it is suitable for a quick decision and improved training for caseowners on gender issues in the asylum process, including obligations under the Gender Asylum Policy Instructions.[58] APIs are guides to the Government's policy on asylum and are used on a daily basis by caseowners in the Home Office to provide guidance on all aspects of asylum policy.[59]

In spite of the NAM evaluation at Yarl's Wood, organisations remain concerned about the treatment of women in the detained fast-track process. BID is concerned with the quality and accessibility of legal representation provided for these women and it has documented cases where detained women in the fast-track process have not had sufficient time to prepare their case and were not able to disclose information about rape and sexual violence in time for it to be considered. Figures show that between May 2005, when the fast-track centre began to process female asylum seekers, up to the start of September 2006, of the 345 cases heard at the Yarl's Wood Asylum and Immigration Tribunal, 26% of the women did not have any legal representation at their appeal.[60] It is unclear whether this figure is due to the women being unable to access legal representation or failing the initial merits to qualify for legal representation in the first place.

Yeukai, an asylum seeker from Zimbabwe, described being detained in three different detention centres during the course of her asylum claim, including with hundreds of foreign national prisoners awaiting deportation.

"I came to England because my political activities in Zimbabwe meant my life was in danger. But when I was locked up in Dungavel, having committed no crime, with six other women and hundreds of convicts, I wasn't sure whether this was Britain or Mugabe's Zimbabwe."

Yeukai, Zimbabwean asylum seeker Hearing: South London. For full testimony visit www.humanrightstv.com

"A lady I befriended had suffered incredibly in Uganda. She was a highly intelligent woman, but after her release she was unable to walk, eat, drink or look after herself. She was also mute. This was a direct result of her detention at Yarl's Wood. And yet the medical centre at Yarl's Wood insisted she had no medical concerns."

Gill Butler. Hearing: West London. For full testimony visit www.humanrightstv.com

56 **Home Office** (2006) *Operational Enforcement Manual*, Chapter 38 – *Detention and temporary release*

57 **McLeish, J., Cutler, S. and Stancer, C.** (2002) *A crying shame: Pregnant asylum seekers and their babies in detention*. London: Maternity Alliance, Bail for Immigration Detainees & London Detainee Support Group.

58 **NAM Quality Team** (August 2006) *Yarl's Wood detained fast-track compliance with the Gender API*

59 http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/

60 **Bail for Immigration Detainees** (September 2007) *Refusal Factory: Women's experiences of the Detained Fast Track asylum process at Yarl's Wood Immigration Removal Centre*

"On 3 separate occasions representations were made by the detention centres where she was being held that she was a victim of torture but these were all totally ignored and no action was taken to verify her allegations or to ensure that they were verifiable by the Medical Foundation."

Submission: Friends of Oakington

3.4 Other vulnerable groups

Asylum seekers who may have been victims of torture are an additional category of people the Home Office states should only be detained in exceptional circumstances.[61] However, research has shown that victims of torture are detained even in cases where the Home Office has prior information obtained during an asylum interview of an applicant's past torture.[62] Critics believe that instead of providing special care for torture victims, the Home Office may be subjecting them to the very conditions that are likely to hinder recovery.[63] In addition there is concern that the practice of detention discourages applications from asylum seekers who have experienced torture in their own countries and that the experience of being detained in the UK forces them to relive a painful past.[64]

Advocacy groups claim that there appear to be failures in the system of identifying torture victims in the detention population. Research into detainees with mental health needs revealed that in some IRCs initial health assessments do not always include a question on torture. The report concluded that if notification and referral of individuals who disclose torture by medical staff is not done, it is unclear how immigration staff acquire the independent evidence needed to ensure torture victims are not detained, in accordance with Home Office guidelines'.[65]

Notably there is a dearth of research or commentary on the detention of other vulnerable asylum seekers including the elderly, disabled and Lesbian, Gay, Bisexual and Transgender (LGBT) asylum seekers. The Operational Enforcement Manual states that the elderly, especially those requiring supervision, and people with serious disabilities are not normally considered suitable for detention. Organisations have observed that there is no guidance on what age is elderly or what amounts to a serious disability.[66] Research carried out by the Information Centre about Asylum and Refugees (ICAR) has found that organisations experience difficulties identifying and responding to the specific needs of lesbian and gay detainees because they may be reluctant to disclose their sexuality whilst in immigration detention. Furthermore, it was stated that IRCs need to be issued with guidelines about LGBT clients and be made aware of potential instances of homophobia, for example in situations where detainees are accommodated together with other detainees from the same country.[67]

61 **Home Office** (2006) *Operational Enforcement Manual, Chapter 38 – Detention and temporary release*
62 **Bail for Immigration Detainees** (May 2005) *Fit to be detained? Challenging the detention of asylum seekers and migrants with mental health needs*
63 **Silove, D., Steel, Z. and Mollica, R.** (May 2001) 'Detention of asylum seekers: assault on health, human rights, and social development', *The Lancet*, vol. 357, pp. 1436-37
64 **Immigration Advisory Service** (March 2007) *IAS evidence to the Independent Asylum Commission*
65 **Bail for Immigration Detainees** (May 2005) *Fit to be detained? Challenging the detention of asylum seekers and migrants with mental health needs*
66 **ILPA and Bail for Immigration Detainees** (October 2003) *Challenging immigration detention: a best practice guide*
67 **ICAR** (2006) *Interviews with Outrage and UKLGIG for the Researching Asylum in London (RAL) project*

4. Alternatives to detention

The UN Working Group on Arbitrary Detention recommends that in deciding to detain asylum seekers, non-custodial alternatives, for example reporting requirements and residence restrictions, should always be considered first.[68] The UN Special Rapporteur's report on the detention of migrants identifies a variety of alternatives to detention including release on bail, home detention, semi-liberty, payment of a certain sum as guarantee, police supervision, ban on leaving the country, obligation to reside at a given address with periodic reporting to the authorities and withdrawal of passports.[69]

In the UK, existing alternatives to immigration detention include temporary admission, bail, reporting requirements, electronic tagging and residence restrictions.[70] A study into the risk of detainees absconding, found that 90% of released detainees (i.e. who had originally been considered high risk absconders by the Home Office) complied with terms of bail and therefore, according to the researchers, were unnecessarily detained.[71] In a recent UNHCR report on alternatives to detention, it was noted that proper evaluation is required to determine whether other reception arrangements, such as dispersal, reporting requirements, accommodation centres and biometric identity cards, will be efficient enough at monitoring asylum seekers' whereabouts to allow for a reduction in the use of immigration detention facilities.[72]

The Border and Immigration Agency's 'Ten point plan for border protection and immigration reform' stated a commitment to seek alternatives to the detention of children within 360 days.[73]

68 **United Nations Working Group on Arbitrary Detention** (1998) *Country report to United Kingdom*

69 **United Nations Commission on Human Rights** (30 December 2002) *Report of the Special Rapporteur on specific groups and individuals: migrant workers.* Geneva: United Nations Economic and Social Council

70 **Bercow, J., Harris, E. and Lord Dubs** (July 2006) *Alternatives to immigration detention of families and children*, A discussion paper for the All Party Parliamentary Groups on Children and Refugees, Supported by the No Place for a Child Coalition

71 **Bruegel, I. and Natamba, E.** (June 2002) *Maintaining contact: What happens after detained asylum-seekers get bail?* Social Centre Science Research Papers, No 16, South Bank University

72 **Field, O.** (April 2006) *Alternatives to detention of asylum seekers and refugees*, UNHCR Legal and Protection Policy Research series

73 **Liam Byrne MP**, Minister for Immigration, *Border Security and Immigration: Our Deal for Delivery in 2008*, 14th January 2008

CHAPTER 5

How asylum seekers with additional vulnerabilities are treated

Nations are commonly judged by the standards of humanity with which they treat people who are seeking sanctuary from persecution. The Commissioners are disturbed to have found much evidence of shortcomings in the treatment of asylum seekers."

Asylum seekers with additional vulnerabilities

While it is possible to describe all those seeking asylum in the UK as being in a vulnerable situation, it must also be acknowledged that some individuals and groups have specific vulnerabilities based either on experience or situation. This chapter will explore the following additional vulnerabilities:

- Children and young people (both unaccompanied asylum seeking children and those in families)
- Women
- Those with health care needs
- Those with disabilities
- Survivors of torture
- Lesbian, Gay, Bisexual and Transgender

1 Children and young people

Children and young people seeking asylum in the UK fall into one of two categories

- Unaccompanied asylum seeking children
- Children and young people in families

1.1 Unaccompanied asylum seeking children

The Border and Immigration Agency (BIA) defines an unaccompanied asylum seeking child as a person who, at the time of making the asylum application:

- is, or (in the absence of documentary evidence establishing age) appears to be, under eighteen;
- is applying for asylum in his or her own right;
- and is separated from both parents and not being cared for by an adult, who by law or custom has responsibility to do so.

In a submission on unaccompanied minors from the Refugee Children's Consortium, a consortium of 30 leading NGOs, it is argued that:

"The asylum system was not designed for children and does not meet their needs...the BIA is not well placed to lead on policy for the care and support of unaccompanied children."

"The UK Government says that Every Child Matters – but if you are a separated child or the child of asylum seekers the Government thinks you don' t matter, as immigration control is given greater importance than child welfare. And even when the policies are good, there is a massive gap between policy and practice."

Dr Heaven Crawley, University of Wales, Swansea.
Hearing: Cardiff.
For full testimonies visit www.humanrightstv.com

It is further noted that:

"Children do not necessarily understand the complexities involved in the asylum system."

Asylum seeking children are afforded additional protection by the 1989 United Nations Convention on the Rights of the Child (CRC) and the Children Act 1989, which partly brings the CRC into UK law. The UK has placed a reservation on Article 22 of the CRC concerning the guaranteed protection of refugee children. The Joint Committee on Human Rights claims that the reservation of Article 22 leaves asylum seeking children with a lower level of protection in relation to a range of rights that are unrelated to their immigration status, therefore unduly discriminating against this vulnerable group.[1]

1.1.1 Asylum applications and process

When an asylum application is made by an unaccompanied minor, basic information is noted in a short screening interview. Unaccompanied children are given a statement of evidence form (SEF) to complete and a 'One stop notice', which requires them to detail any human rights that would be breached if they were removed from the UK.

"Before I got dispersed from London the Home Office had refused to accept I was underage. I was taken to the social services and a paediatrician concluded that I was 18 + with a two year margin of error."

Submission: Anonymous via British Red Cross

Under the New Asylum Model (NAM) several changes affecting the asylum process for unaccompanied children have been implemented since April 2007. The key amendments include:

- every child is assigned a specially trained case owner who they meet in person and who oversees their application from beginning to end;
- all unaccompanied children aged 12 or over are interviewed by a case owner about the substance of their asylum claim;
- unaccompanied children are given 20 working days to return their SEF form instead of the previous 28 days;
- instead of granting discretionary leave until a child turns 18, it is now granted until the child is 17 and a half.[2]

Refugee children's advocates are concerned that these changes may negatively impact on children's experiences of the asylum process. For example it is noted that if the asylum process, including the application to extend discretionary leave and the appeal against refusal to extend, is concluded before the unaccompanied child turns 18, then they will be classed as 'overstayers' and therefore they will be unlawfully in the UK. This could mean they may no longer have access to employment, benefits or a leaving care service from a local authority and will be potentially destitute.[3]

In February 2007 the Home Office published a consultation paper outlining its reform programme for unaccompanied children. In addition to the four main changes under the NAM explained above, the Home Office sought feedback from stakeholders on several proposals including plans to disperse unaccompanied children to other areas of the UK to relieve pressure on local authorities dealing with high numbers of unaccompanied children in London and the South East; to use x-rays

1 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
2 **Home Office** (5 March 2007) *Letter to members of the NAM and UASC Reform Stakeholder Groups on asylum process for minors – accompanied and unaccompanied asylum seeking children*
3 **Children's Legal Centre** (2006) *Information note on the New Asylum Model – minors segment*

(dental and possibly wrist and collarbone) as an additional age determination method; to extend the use of social workers to assess age at the two Asylum Screening Units; and to develop incentives for the voluntary return of minors by reducing the value of the package the longer the child delays in agreeing to return.[4] According to the Immigration Law Practitioners' Association (ILPA), it is expected that some of these proposals will be implemented in spite of feedback from key stakeholders.[5]

1.1.2 Decision making and credibility

According to government policy, applications for asylum from unaccompanied children should be considered in the light of the child's maturity. More weight should be given to objective factors of risk, for example the use of country evidence and information, from people who know the child, than to the unaccompanied child's subjective assessment of the situation.[6] Research into the quality of decision making for unaccompanied children indicates that this does not happen in practice. For example decisions do not tend to reflect the fact that the claim is by a child and no difference is made between adult and child refusal letters.[7] In addition, the report notes a lack of Home Office research into the reasons why children seek asylum. This it is argued, may be a reflection of the fact that many immigration officers do not accept the reasons children give for seeking asylum, such as 'forcible recruitment as child soldiers' and 'trafficking', as falling under the Refugee Convention. [8]

1.1.3 Support arrangements for unaccompanied children

Under the Children Act 1989 local authorities are responsible for unaccompanied asylum seeking children, as opposed to the Border and Immigration Agency which is responsible for the provision of support to all destitute asylum seekers and their dependants. The two relevant sections of the Children Act are section 17 and section 20. Until the 'Hillingdon Judgement' in August 2003, unaccompanied children under the age of 16 were supported under section 20 and those over that age were supported under section 17. The 'Hillingdon Judgement' means that all unaccompanied children should be supported under section 20 of the Act unless a full assessment of their needs indicates otherwise. The range of support available under section 20 is much more extensive and includes a care plan, the allocation of a social worker and sometimes residential care.[9] Ben Lea of Hillingdon Borough Council and a member of the Local Government Association's High Ethnicity Special Interest Group (HEASIG), told the Commission about some of the financial pressures this places on local councils:

> *"It costs Hillingdon Council £190 a week to look after one young asylum seeker, yet the Government only reimburses us £100 per person, which is paid up to eighteen months after the service has been delivered...it is unfair for our communities to*

4 **Home Office** (February 2007) *Consultation paper – Planning better outcomes and support for unaccompanied asylum seeking children*
5 **ILPA** (April 2007) *Information sheet on children's asylum claims*
6 **Home Office** (April 2006) *Asylum Policy Instruction – Children*
7 **Bhabha, J. and Finch, N.** (November 2006) *Seeking asylum alone – unaccompanied and separated children and refugee protection in the UK*
8 **Bhabha, J. and Finch, N.** (November 2006) *Seeking asylum alone – unaccompanied and separated children and refugee protection in the UK*
9 **Refugee Council** (January 2005) *Ringing the changes: The impact of guidance on the use of Sections 17 and 20 of the Children Act 1989 to support unaccompanied asylum seeking children*

foot the bill. We don' t blame the asylum seekers – it is not their fault – it is the Government's fault for not making up the shortfall in funding."

Hearing: South London. For full testimonies please visit www.humanrightstv.com

It is the responsibility of the Home Office to ensure that all unaccompanied children have been referred to the relevant social services department as soon as they make a claim for asylum. If the child gives an address in their application, then they will be referred to that area but if the child has no local connection or address then they will be referred to the local authority in which the application was lodged.[10] The local authority has a 'corporate parenting responsibility' for unaccompanied children and the Home Office provides local authorities with grants to cover the costs of the asylum seeking children for which they are responsible.[11] All unaccompanied children should receive a full needs assessment by social services in line with the national framework for the assessment of children in need.[12] Details of all unaccompanied children are passed to the Children's Panel of the Refugee Council who provide a range of support services including ensuring that all referrals have legal advice and interpreters.[13]

1.1.4 Age disputed cases

If an applicant claims to be under the age of 18 but the Home Office believes that they are over 18, then the stated policy is to treat them as adults until credible documentary or medical evidence confirms that the applicant is less than 18 years old. This means that applicants who are age-disputed will be offered the same asylum support as an adult asylum applicant. In borderline cases it is Home Office policy to give the claimant the benefit of the doubt. If a local authority disagrees with the Home Office assessment then the BIA will modify its decision so that it is in line with Social Services.[14]

The Home Office indicates that it will accept medical evidence on the age of applicants but also maintains that this is an inexact science and there can be a margin of error of several years either way of the estimate. The 'Merton case', which resulted in a judgement from the High Court, gives guidance on the requirements of a lawful assessment by a local authority of the age of an asylum seeker claiming to be under the age of 18. The guidance states that the decision-maker should not determine age solely on the basis of the appearance of the applicant, that appropriate information needs to be sought in order to determine age, and that the local authority must give adequate reasons for a decision that someone is not a child.[15]

"When one of your friends disappears it is very sad. But it also makes you think, will I be next? What is the point of studying if I am going to be deported any day now?"

Hearing: Cardiff. For full testimonies please visit www.humanrightstv.com

1.2 Issues affecting children in families

While unaccompanied children have very specific vulnerabilities, it is also important to be aware of the vulnerabilities experienced by children in asylum seeking families, as well as vulnerabilities experienced by young people both in families or unaccompanied.

10 **Home Office** (April 2007) *Processing asylum applications from children – instructions to NAM case owners*
11 **Free, E.** (2005) *Local Authority support to unaccompanied asylum-seeking young people – Changes since the Hillingdon Judgement* (2003), Save the Children
12 **Department of Health** (2000) *Framework for the Assessment of Children in Need and their Families*
13 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
14 **Home Office** (April 2007) *Policy instruction for NAM case owners on disputed age cases*
15 **Children's Legal Centre** (2003) *Information note on The Queen on the application of B v London Borough of Merton*, [2003] EWHC 1689 (Admin) (14 July 2003)

1.2.1 Removals

A separate chapter examines removals specifically, however, the Scottish Trades Union Congress (STUC), in their submission to the Commission, express concern about the impact of so-called 'dawn raid' removals on children, arguing:

"We are of the view that such actions by the immigration services breach the human rights of all concerned and also the rights of the children, as set out in the Children (Scotland) Act 1995 and by the UN Convention of the Rights of the Child (UNHRC), to which the UK is a signatory"

The STUC also express concern for the effect of such removals on other children, whether or not asylum seekers, of seeing their friends 'disappeared' overnight by the state.

1.2.2 Support

There are wide concerns over the possible implementation of Section 9 of the Asylum and Immigration Act 2004, which gives the Home Office power to withdraw asylum support from families with dependent children if they fail to take reasonable steps to leave the UK voluntarily when their asylum application has been turned down. If families are deprived of support, the children in these families may be separated from their parents and accommodated by local authorities.[16] Section 9 began as a pilot project in December 2004 in three areas (Central/East London, Greater Manchester and West Yorkshire) and involved 116 families. According to data collated by the Refugee Council, thirty six of the 116 families went 'underground' in order to avoid having their children taken into social services.[17] Whilst Section 9 still remains on the statute books, it has not yet been implemented nationally and both refugee organisations and local authorities alike have called on the government to repeal this piece of legislation.[18]

1.2.3 Detention

A separate chapter examines detention specifically, however, both the NSPCC and Save the Children, in their submissions to the Commission, called for an end to the detention of children for immigration purposes.

1.2.4 Education

Careers Scotland and a number of other organisations expressed concern about access to higher education. Save the Children, in their submission, said:

"Current UK policy does not adequately fulfill UK commitments under the UN convention on the Elimination of Racial Discrimination that: 'State Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of

"I have just finished my A-levels in Maths, Chemistry and Biology. I got As in all of them. The principal of the college called me and asked me which university I was going to? I felt a lump in my throat. I couldn' t even work, had no money."

Submission: anonymous via British Red Cross

16 **ILPA** (February 2006) *Child first, migrant second: Ensuring that every child matters*
17 **Joint Committee on Human Rights** (20 November 2006) *Uncorrected oral evidence on the treatment of asylum seekers*
18 **Refugee Council** (January 2006) *Inhumane and Ineffective – Section 9 in Practice; A Joint Refugee Council and Refugee Action report on the Section 9 pilot* and **ILPA** (February 2006) *Child first, migrant second: Ensuring that every child matters*

everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notable in the enjoyment of the following rights – (v) the right to education and training."

It is further noted that:

"An asylum seeker studying at undergraduate level at an English university must pay around £10,000 pounds per year as an international student, yet has no permission to work or to access a student loan."

2. Women

It has been suggested that women face significant barriers in reaching industrialised countries, including: lack of funds, responsibilities to family and dependents and restrictions on travelling alone.[19] The number of women applying for asylum in industrialised countries is significantly lower than the number of men (approximately 30% compared with 70% for men[20]).

2.1 Male bias in the system

Perhaps as a result of the smaller numbers of women than men applying for asylum, it has been argued that women are rendered 'invisible' in the asylum process,[21] from a lack of documentation of gender-specific persecution to failures to provide appropriate social services to asylum seeker women. Male bias, it has been argued, permeates social and legal processes in the asylum system.[22]

2.2 Specific issues faced by women

Concern exists that women who have been raped often have difficulties in having their claims believed. A submission from a psychotherapist who works with Gloucestershire Action for Refugees and Asylum Seekers, makes reference to one individual's case:

19 **Dumper, H.** (2002) *Is it safe here? Refugee women's experiences in the UK*, London: Refugee Action
20 **Heath, T., Jeffries, R. and Pearce, S.** (August 2006) *Asylum statistics United Kingdom 2005*
21 **Dumper, H.** (2006) *Women Refugees and Asylum Seekers in the UK*, Information Centre about Asylum and Refugees
22 **Dumper, H.** (2006) *Women Refugees and Asylum Seekers in the UK*, Information Centre about Asylum and Refugees

Drop in centre for asylum seekers

"One woman told me that she had been raped in the Democratic Republic of Congo, first by the chief of prison and then in descending order of hierarchy by every male in the prison, ending with the cleaner. She told me this only after 10 or more counselling sessions and then with great shame. Her demeanour was consistent with the nature of the trauma and I believe her. Her shame was then compounded by her failure to be granted Leave to Remain on the grounds of lack of credibility."

Submission: Marina Bielenky Gloucestershire Action for Refugees and Asylum Seekers

The UK added guidance on gender issues to the Asylum Policy Instructions (APIs) for caseworkers in March 2004. The guidelines aim to provide caseworkers with information about the additional issues they should consider in relation to women's claims, how to take gender into account when looking at instances of persecution and whether there has been a failure of state protection in cases involving women. However, a submission from the Scottish Refugee Policy Forum argues that these guidelines are not being followed. Women may not be actively encouraged to submit a separate claim from their husband or partner and many do not know that they have the option to do so. More broadly, women may not realise they have the possibility of claiming asylum. Further, practical arrangements can discriminate against women. The submission states that many women are unaware of their rights in relation to requesting a female interpreter and also draws attention to a lack of childcare facilities for mothers attending substantive interviews:

"If women are unable to find childcare, the interview would go ahead with children present in the room. We believe that this is unacceptable as it prevents women from disclosing traumatic experiences which may be crucial to their claim, can also be traumatic for the children and it can be difficult for both the mother and the case owner to concentrate and therefore can affect the quality of decision making."

Submission: Scottish Refugee Policy Forum

Witness at the Birmingham Hearing

3. Asylum seekers with health care needs

3.1 Access to healthcare

It is estimated that 20% of asylum seekers and refugees in the UK have severe physical health problems.[23] Asylum applicants and people granted refugee status, humanitarian protection and discretionary leave are at present entitled to free primary medical care and medical services provided by the National Health Service (NHS) on the same basis as other residents.[24] However, Department of Health guidance discourages GP surgeries from registering refused asylum seekers[25] and evidence suggests that asylum seekers can find it very difficult to register with a GP,[26] especially due to a lack of suitable documentation to prove their address and identity. This can lead to increased pressures on Accident and Emergency (A&E) departments, as asylum seekers may present with routine conditions that are not usually dealt with at A&E.[27] A report into the gaps and needs within health services for asylum seekers found that some services are struggling with the range of complex issues that are presented to them by asylum seekers. Furthermore, there was concern that some asylum seekers were avoiding using health services because of fear that using the service might negatively impact on the outcome of their asylum application.[28]

3.2 Healthcare for asylum seekers who have been refused

Asylum seekers whose claims have been determined and are not successful are no longer exempt from NHS charges for certain services. The Joint Committee on Human Rights' recent investigation into the treatment of asylum seekers heard testimony that asylum seeking patients with life threatening conditions and people with HIV/AIDS had been refused hospital treatment in the UK. The report documents cases of hospitals wrongly charging asylum seekers who were entitled to free treatment or refusing to treat asylum seekers if they could not pay the charges.[29]

3.2.1 Issues with charging for healthcare

There has been criticism of the change in the eligibility criteria for free access to the NHS. The main objections include:

- that there are moral reasons why anyone who approaches the NHS for assistance should be provided with help. This is especially the case when limited medical intervention is needed

23 **Refugee Council** (June 2006) *First do no harm: denying healthcare to people whose asylum claims have failed*
24 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
25 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
26 **Peel, M. and Burnett, A.** (2001) 'Asylum seekers and refugees in Britain: What brings asylum seekers to the United Kingdom?' **BMJ**, vol. 322, pp 485-488
27 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
28 **Kanani, A., Webster, A., Ndegwa, D., Murphy, D. and Stevens, R.** (2001) *Report on the gaps and needs within health services for refugees and asylum seekers*
29 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

even when it may not meet the criterion of being 'immediately necessary', in order to prevent a serious threat to health in the future.[30]

- that there is an economic benefit to treating medical conditions before they become an emergency.[31]
- that asylum seekers that have not been successful in their claim are not necessarily removed from the country straight away. They may remain in limbo for an extended period because it is not safe enough to return them home, or because there is just not the capacity to carry out their removal at that time. Whilst they are waiting to be removed unsuccessful asylum applicants will only be eligible for free access to emergency care or treatment that is 'immediately necessary'. All other forms of treatment will incur charges but they will not be entitled to benefits or able to work.
- that Doctors will have an increased workload as a result of having to administer the system.[32]
- that asylum seekers will be further stigmatised.[33]

3.2.2 HIV in asylum seekers whose applications have been refused

The National AIDS Trust's submission to the Commission states that:

"Asylum seekers are amongst the vulnerable communities most affected by HIV in the UK...The process of migration, including high risk of poverty and poor access to safer sex education and healthcare, can also contribute to the risk of becoming infected." ***Submission: National AIDS Trust***

While HIV testing and any associated counselling is still free for those asylum seekers who have failed in their application, medication is charged. The Refugee Council's 2006 report 'First do no harm: denying healthcare to people whose asylum claims have failed' details how a woman was offered a test but not treatment for HIV. They argue that:

"Not only is it inhumane to diagnose but not treat HIV, it also undermines the Government's commitment to managing spread and effects of HIV worldwide." ***Submission: Refugee Council***

In addition to these difficulties, a submission to the Commission from the George House Trust, a Manchester based charity that works with those with HIV, expresses concern that some of those who are HIV positive are ending up destitute. This exacerbates the complications caused by HIV as they cannot properly manage their condition, with some being coerced into having sex with people unaware of their health needs:

"It is a disgrace that refused asylum seekers are unable to access hospital care. It costs just £6,000 to pay for the medication to prevent the transfer of HIV from a pregnant woman to her baby, and half a million pounds to pay for support for someone with HIV for their whole life. Yet the Government is denying secondary healthcare to refused asylum seekers and babies are being born with HIV, entirely preventable."

Lisa Power, Terence Higgins Trust. Hearing: Cardiff. For full testimonies please visit www.humanrightstv.com

30 **Migrant & Refugee Communities Forum** (2004) *Proposals to exclude overseas visitors from eligibility to free NHS Primary Medical Services: A consultation response* and **Pollard, A.** (7 August 2004) *Eligibility of overseas visitors and people of uncertain residential status for NHS treatment*

31 **Pollard, A.** (7 August 2004) *Eligibility of overseas visitors and people of uncertain residential status for NHS treatment*

32 **Refugee Council** (March 2004) *Changes to healthcare charges for asylum seekers*

33 **Migrant & Refugee Communities Forum** (2004) *Proposals to exclude overseas visitors from eligibility to free NHS Primary Medical Services: A consultation response*

"HIV is a public health issue. Placing people who are HIV positive into destitution means they are far less likely to have protected sex and possibly have to trade sex in some way in order to survive." ***Submission: George House Trust***

"I work as a counsellor with people who have mental health problems. In every case I have seen the asylum seeker has never had a mental health problem until they came to Britain."

Submission: Marion Grant

3.3 Mental health needs

Much mental ill health amongst asylum seekers is directly related to the asylum process and isolation as a result of living in an unfamiliar environment and culture.[34]

All asylum seekers are eligible to access mental health services at the primary care level and, following a GP referral, at the level of secondary care.[35] Some practitioners would like to see a culturally sensitive assessment of mental health needs built into the asylum process, applicable to all asylum seekers on arrival in the UK, which if necessary, should be conducted using properly trained interpreters.[36] Furthermore, it is recognised that mental health services should respond to the different stages of the asylum process and should be sensitive to periods where clients may be particularly vulnerable, for example on receipt of a negative asylum decision.[37]

Research has shown that in many cases, if social factors are properly addressed, such as poor housing or social isolation, then the mental health of asylum seekers can improve significantly.[38]

4 Disabilities

4.1 Disability in asylum seekers

Disabilities amongst asylum seekers may result from their experiences in their country of origin and be connected to the reason they are seeking asylum or they may be independent of it. Their specific needs have particular implications for service provision. WinVisible, a group that works with disabled refugee and asylum seeking women, in their submission to the Commission, argue that:

"The existence and situation of asylum seekers and refugees who have disabilities, often as a consequence of the wars, rape and other torture they fled, is largely invisible in all areas of policy-making, in service provision and public awareness."

Submission: Winvisible

34 **Misra, T., Connolly, A. and Majeed, A.** (July 2001) *Addressing mental health needs of asylum seekers and refugees in a London Borough: epidemiological and user perspectives*
35 **Home Office** (December 2005) *Policy bulletin no. 85 – Dispersing asylum seekers with health care needs*
36 **Watters, C. and Ingelby, D.** (November 2004) *Mental health and social care for asylum seekers and refugees*
37 **Watters, C. and Ingelby, D.** (November 2004) *Mental health and social care for asylum seekers and refugees*
38 **Summerfield, D.** (2001) 'Asylum seekers, refugees and mental health services in the UK', *British Journal of Psychiatry, vol. 25, pp.161-163*

4.2 Services for disabled asylum seekers

Asylum seekers are not entitled to disability-related benefits. They can request a community care assessment from social services and the relevant local authority decides whether they are eligible to receive services and whether they will charge for these services. It has been argued that entitlements to services for disabled asylum seekers are confusing and unclear. Lack of awareness of entitlements exists amongst service providers as well as asylum seekers themselves.[39] The Commission received evidence from a wheelchair user from Kenya who campaigned as a disability activist. No suitable NASS accommodation was available and so a solicitor appealed to the local council to ask them to take responsibility for housing him:

"The only accessible accommodation that the local council could find was in an elderly people's home. I lived there with three young disabled people for more than two years and 24 elderly people as well. The food and care were really inadequate. We had no spending money as the council said our needs were fully met at the home. We hated living there. We complained to the National Care Standards who agreed that the place was not 'ideal'. Now I live in rented accommodation, but it's not accessible. I have to use two wheelchairs to manage about in the house". ***Submission: Anonymous***

"The lodging I was given had no ramp, and so I had to be lifted by my neighbours every time I went into my home. I made friends quickly back then – I had to in order to survive!"

Romeo. Hearing: Cardiff. For full testimonies please visit www.humanrightstv.com

5 Torture survivors

5.1 Identifying torture survivors

The United Nations High Commissioner for Refugees (UNHCR) believes that mechanisms to identify survivors of torture and violence are required at the earliest possible stage of an asylum procedure and that treatment of such persons should be granted to specialist medical staff and organisations.[40] However, the Home Office states that it is not for the Border and Immigration Agency (BIA) to judge whether a referral to the Medical Foundation would be in the best interests of the claimant and only where appropriate will the BIA advise the claimant of the existence of such help.[41]

Under current government policy, in cases where independent evidence of torture exists, asylum seekers will only be detained in exceptional circumstances.[42] However, research has shown that torture survivors are detained even in cases where the Home Office has prior information obtained

39 **Harris, J.** (2003) *All doors are closed to us: a social model analysis of experiences of disabled asylum seekers and refugees in Britain*
40 **Medical Foundation for the Care of Victims of Torture** (2004) *Response to the Implementation of Reception Directive*
41 **House of Lords** (16 April 2007) *Written answers Immigration: Victims of Torture*
42 **Home Office** (2006) *Operational Enforcement Manual, Chapter 38 – Detention and temporary release*

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Witness at Manchester Hearing

during an asylum interview of an applicant's past torture.[43] A submission from Churches Together in Britain and Ireland on behalf of an asylum seeker from Uganda, details how his claims of torture, which he had made in first interview, were ignored and no attempt was made to conduct a medical report on abuse he had suffered. When he was examined there were further issues with access:

> *"[The Doctor], who had asked for a 90 minute visit, was allocated 60 minutes. He was not given a proper medical examination room, but directed to use a legal interview room in which they placed a couch. [The Doctor] also had problems with security about bringing medical instruments into the centre, such as a tendon hammer, pins, a tuning fork and cotton wool."*
>
> ***Submission: Anonymous via Churches Together in Britain and Ireland***

The Medical Foundation is opposed to any asylum procedures taking place until a thorough medical assessment has been carried out and the asylum seeker has been allocated a GP.[44] Under the New Asylum Model, organisations have called for a degree of flexibility relating to the treatment of torture survivors. There are concerns that substantive asylum interviews may take place before a detailed health assessment and therefore potential identification of a torture victim has occurred. [45]

5.2 Issues when applying for asylum facing survivors of torture

A submission from The Bath Centre for Psychotherapy and Counselling highlights some of the issues faced by torture survivors in applying for asylum:

> *"We are frequently dismayed by the apparent stance of the Home Office in assuming that our clients are lying to gain asylum. Sometimes they look for inconsistencies as proof of this but we know from our understanding of the nature of trauma that memories can easily become fragmented, particularly when under pressure...Feelings of shame are prevalent among people who have been tortured, particularly if this involved their sexual organs. Having to air this as part of an asylum claim is very distressing."*
>
> ***Submission: The Bath Centre for Psychotherapy and Counselling***

43 **Bail for Immigration Detainees** (May 2005) *Fit to be detained? Challenging the detention of asylum seekers and migrants with mental health needs*

44 **Medical Foundation for the Care of Victims of Torture** (May 2006) *Response to NAM quality team proposition paper: Improving asylum decisions through early and interactive advice and representation*

45 **Medical Foundation for the Care of Victims of Torture** (May 2006) *Response to NAM quality team proposition paper: Improving asylum decisions through early and interactive advice and representation*

A submission from PsyRAS (Psychologists working with Refugees and Asylum Seekers), argues that:

"Torture survivors have been found to be less likely to volunteer information about their experiences at interview when not asked...which reflects the fact that vulnerable people with mental health problems may be reluctant or unable to talk about their experiences and less able to assert themselves if not given appropriate support to disclose." ***Submission: PsyRAS***

Difficulties in disclosing information on torture may lead to some asylum seekers being incorrectly processed in the fast-track system. The Medical Foundation believes that to avoid such mistakes all asylum seekers must be treated as potential torture survivors first and foremost.[46] In the case of allegations of torture, it is Home Office policy for claims to be deferred or put on hold whilst medical evidence is sought, but only if the person has received an appointment with the Medical Foundation in writing. [47]

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Scarring on the back of torture survivor

6 Lesbian, Gay, Bisexual and Transgender Asylum Seekers

The Home Office has generally recognised Lesbian, Gay, Bisexual and Transgender (LGBT) asylum seekers as a 'social group' under the 1951 UN Convention on the Status of Refugees since the case of *Shah & Islam* in 1999. In this case the House of Lords decided that groups who share an immutable characteristic "including women and homosexuals or other persons defined by sexual orientation" could constitute a social group if they face persecution in a country for being a member of that group. The UNHCR has recognised LGBT as constituting a social group under the convention since 1993. Since this shift in policy, the burden upon applicants has been to 'prove' their sexual orientation and to provide evidence that their treatment has amounted to persecution.

6.1 Key legal issues

There is no specific legislation relating to LGBT asylum seekers in the UK. Some critics have argued that international refugee law, and its subsidiary UK asylum law, are heterosexist in nature because responses to LGBT issues have been incorporated into existing legislation rather than separate legislation being drafted.[48] It has also been argued that LGBT issues do not appear to be taken into account when countries are included on the 'white lists' introduced in the 2002

46 **Medical Foundation for the Care of Victims of Torture** (May 2006) *Response to NAM quality team proposition paper: Improving asylum decisions through early and interactive advice and representation*
47 **Home Office** (undated) *Asylum Policy Instruction – The Medical Foundation for the Care of Victims of Torture*
48 **De Jong, A.** (2003) *LGBT Navigation Guide*, ICAR

"In Cameroon homosexuality is considered a crime. If you are convicted you can be imprisoned or fined. I was detained for two weeks by my partner's father because he blamed me for her death. Someone who worked with me helped me to escape to the UK."

Eva, asylum seeker from Cameroon
Hearing: Cardiff.
For full testimonies visit www.humanrightstv.com

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Nationality and Immigration Act. These countries are deemed safe by the Home Office, yet LGBT people may still suffer persecution there, for example in Jamaica.[49]

6.2 Issues of evidence

It has been argued that legal evidence of homosexuality is made problematic by the social realities of LGBT people.[50] The burden of evidence lies with the applicant as opposed to the Home Office. The credibility of LGBT asylum claims is hindered by several factors:

a) The conduct of the appellant – delaying the claim or disclosing new information late in the procedure can have a negative impact on their application. Many asylum seekers are unaware of their right to apply for asylum on the basis of their sexual orientation and this leads to many claiming on false grounds.[51] Many LGBT asylum seekers find it difficult to 'come out' to their legal representative or interpreter, particularly if they are from the same community, thus rendering the credibility of their sexual orientation questionable in the eyes of the courts. [52]

b) The conduct of courts, legal representatives and decision makers – decision makers may see former heterosexual relationships or having children as evidence of a false claim by LGBT asylum seekers.

c) The lack of country information – there is insufficient specific, detailed country information on the persecution of LGBT people for legal representatives to represent clients. Moreover, many human rights groups consider the subject taboo, consider LGBT rights a 'western concept' or risk funding for pursuing such work and therefore refrain from documenting human rights abuses based on sexual orientation.[53]

6.3 Sexual orientation guidelines

The UK Lesbian & Gay Immigration Group (UKLGIG) and the Immigration Law Practitioners Association (ILPA) are drafting sexual orientation guidelines with the purpose of enabling "practitioners and decision-makers to apply the Refugee Convention in a way which embraces the totality of human experiences", raising awareness of LGBT experiences of persecution and to assert and affirm the rights of LGBT individuals to international protection.

49 **De Jong, A.** (2003) *LGBT Navigation Guide*, ICAR
50 **McGhee, D.** (2000) 'Accessing homosexuality: truth, evidence and the legal practices for determining refugee status – the case of Ioan Vraciu', *Body and Society*, vol.6, no.1, pp.29-50
51 **Researching Asylum in London** (2006) *Interview with immigration lawyer working with LGBT asylum seekers*, 20/12/06
52 **Jivraj, S., De Jong, A. and Tauqir, T.** (2002) *Identifying the difficulties experienced by Muslim lesbian, bisexual and transgender women in accessing social and legal services*
53 **De Jong, A.** (2003) *LGBT Navigation Guide*, ICAR; **Amnesty International** (2001) *Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual identity*

Commissioners' Interim Findings–
How we treat people seeking sanctuary

Nations are commonly judged by the standards of humanity with which they treat people who are seeking sanctuary from persecution. The Commissioners are disturbed to have found much evidence of shortcomings in the treatment of asylum seekers – from the use of administrative detention to inadequacies of support.

While all asylum seekers are in a vulnerable situation, the Commissioners are concerned to find that some individuals, such as children, disabled people and torture survivors, have additional vulnerabilities that are not adequately recognised or reflected in their treatment.

Key findings:

- **That administrative detention is not necessary for most people seeking sanctuary, is hugely costly, and should never be used for children or pregnant women.**
- **That some of those seeking sanctuary have additional vulnerabilities that are not appropriately addressed in the way children, women, older, disabled, and lesbian, gay, bisexual and transgender (LGBT) asylum seekers, and torture survivors are treated.**

The Commissioners affirm:

The desire of the Home Office to find alternatives to the detention of children and families

The desire of the Government to resolve all outstanding and future asylum claims within a reasonable timeframe

The willingness of the Border and Immigration Agency to engage stakeholders in working for improvements to the treatment of people seeking sanctuary

The desire to review the UK's reservation to Article 22 of the UN Convention on the Rights of the Child

The Commissioners express concern:

At the use of administrative detention for asylum seekers

- At the cost of detention
- That insufficient reasons for detention are given, that individual circumstances are rarely stated and the decision to detain is not transparent and accountable
- That the levels of suicide and self-harm in detention centres are unacceptably high
- That detention is unacceptably open-ended and administrative with some individuals 'parked' in detention for substantial periods
- At the inappropriate detention for many convicted foreign prisoners alongside asylum seekers, which adds to the trauma of asylum seekers who have committed no crime
- That there is poor and inadequate access to legal advice and representation for detainees
- That detainees face extreme difficulties in communicating with the legal representatives advising them on their asylum claim
- That the recent introduction by the Legal Services Commission of exclusive contracts may mean that the choice of solicitors for detainees will become more limited
- That a bail system designed for those accused of criminal offending is being applied to asylum seekers, with insufficient modification to reflect the fact that they are not criminals
- That no presumption is applied in favour of bail and that detainees face difficulties accessing information about bail
- That there is a lack of representation available for detainees' bail hearings and solicitors refuse to

do bail hearings because the 'merits test' means they can only represent those who have a 50% chance of success
- That access to medication and psychiatric care is at present inadequate and should be improved
- That health care is not provided to detainees by the National Health Service
- That staff are not adequately trained to ensure the health and welfare of detainees
- That some detention facilities designed on presumption of short-term stays are being used for long-term detention and that there is inadequate tracking of the time individuals spend in detention
- At the use of the detained fast-track system, the high rate of negative decisions, the criteria for assigning a case to the fast-track system, and the lack of time allowed to prepare cases and appeals
- That there is inadequate access to internet, phones and phone chargers for detainees
- That there is inadequate access to interpreters for detainees
- That the Independent Monitoring Boards are not taking a more proactive role in monitoring the detention estate
- That recommendations made by reports from the Chief Inspector of Prisons into detention centres are frequently not implemented
- That there is an inconsistency of operating standards across the detention estate
- That, while we have encountered examples of staff acting in a proactive and positive manner, we have also found many examples of the opposite, and staff still do not receive adequate training in important issues such as mental health, religion, and racism
- That complaints are not soundly and independently investigated
- That the contracting out of detention services reduces transparency and accountability; it leads to financial constraints and a reduction in opportunities such as those of visiting or for communal religious observance
- That the role of chaplains in offering pastoral care is often not understood or is frustrated by Managers of Religious Affairs
- That detainees are frequently moved between different centres unnecessarily, and often a great distance from family and friends; that this also results in the loss of belongings
- That, while we are in favour generally of all alternatives to detention being given serious consideration, procedures involving a risk to human dignity are not subject to safeguards such as independent advice for the applicant and proof of genuine consent

At the inadequacies of support for asylum seekers

- At the service provided by BIA
- That it is so difficult for asylum seekers, their legal representatives, MPs and other interested parties to get answers to specific questions about cases and to track the progress of cases
- That reporting procedures can be traumatic and inhumane, for instance by requiring those in receipt of vouchers to purchase tickets for bus and train journeys to get to reporting centres
- That asylum seekers face destitution at the beginning of their claim because of lack of access to Asylum Screening Units
- That some asylum seekers experience destitution (homeless and lacking money for basic food or other necessities) due to maladministration
- That there are administrative delays in receiving support, for example catching up with changed addresses
- That there is no legal aid for asylum support hearings
- That there is no support available while waiting for a decision on support

At the treatment of children in the asylum system

- That children continue to be detained
- That the UK reservation on Article 22 of the UN Convention on the Rights of the Child currently means that there is a lower level of protection for children seeking asylum
- That vital decisions on unaccompanied asylum seeking children are taken without the presence of someone who represents the rights of the child
- At the lack of access to legal representation for unaccompanied asylum seeking children
- That support arrangements provided for unaccompanied children by local authorities are not fully reimbursed by central government
- At the culture of disbelief and related practice of age-disputing unaccompanied children who seek asylum
- That if there are reasonable grounds for suspecting a false statement of age, the dispute is not always promptly referred for independent assessment by suitably qualified experts using a humane and sensitive procedure
- That children and young people face exclusions from normal activities in which other children participate, such as travel or opportunities for tertiary education.
- That the threat to deny support to families of refused asylum seekers and to take their children into care remains part of Government policy

At the treatment of women in the asylum system

- That a woman's claim may often, to her detriment, be made together with that of her husband or partner, instead of being given independent consideration
- At the lack of understanding and recognition that women may have particular problems in accessing help and support
- That the Government's own gender guidelines are inconsistently observed
- That women are being wrongly selected for detained fast track against the guidelines in the Asylum Policy Instructions
- That the detention of pregnant women has a negative impact on their health and well-being
- That women's cases based on sexual violence are not properly presented under the fast-track system
- That gender-specific claims for asylum such as Female Genital Mutilation and trafficking are not adequately addressed by the asylum system

At the treatment of those with health needs in the asylum system

- That there is confusion and inconsistency over entitlement to health services
- That charging for secondary care is having a detrimental effect on the health and well-being of refused asylum seekers and may pose a health risk to the wider population
- That asylum seekers with health needs dispersed across the UK may suffer a break in continuity of care through dispersal
- That HIV/Aids treatment is denied to refused asylum seekers who cannot pay for treatment and the implications for this in terms of public health
- That there is a high level of mental illness among asylum seekers and that the asylum system fails to recognise this and in some cases exacerbates or causes stress
- That disabled asylum seekers are not entitled to disability-related benefits
- That the accommodation provided for disabled asylum seekers is sometimes unsuitable
- That vulnerable groups such as older and disabled detainees are not adequately protected in detention

At the treatment of torture survivors in the asylum system

- That torture survivors are often not identified by the system
- That torture survivors are being detained despite Border and Immigration Agency published guidance to the contrary
- That torture survivors are being fast-tracked against Border and Immigration Agency guidelines
- That, because of dispersal, torture survivors frequently do not have access to organisations such as the Medical Foundation for the Care of Victims of Torture
- That there is a lack of understanding among Border and Immigration Agency decision-makers of the reasons why a torture survivor might fail to disclose their experiences
- At the lack of recognition and understanding that expert medical reports may be slow to arrive, or be altogether absent

At the treatment of lesbian, gay, bisexual and transgender asylum seekers in the asylum system

- At the treatment of lesbian, gay, bisexual and transgender (LGBT) asylum seekers in the asylum system
- That some 'white list' countries, such as Jamaica, recognised as 'safe' may not be so for LGBT asylum seekers
- That LGBT asylum-seekers may be slow to 'come out' and have difficulty providing evidence to substantiate their claim
- That LGBT detainees are not adequately protected in detention

Section 3

What happens when we refuse people sanctuary

EMBARGOED - 27 MARCH 08 11:00

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CHAPTER 6

Destitution of refused asylum seekers

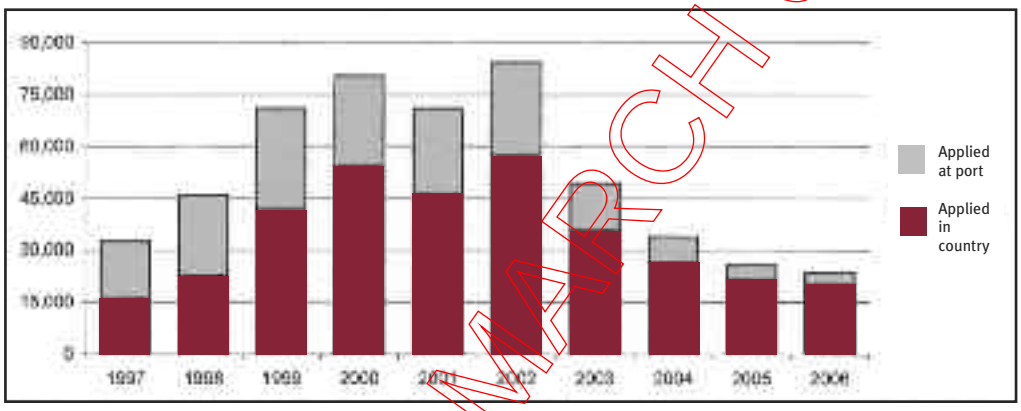
I couldn't go on living in destitution – I have words to describe what life was like for me at that time."

1. Support for refused asylum seekers

The Immigration and Asylum Act 1999 defines a person as destitute if they do not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met)

If an asylum seeker's claim is refused they are granted a 21 day period of Home Office asylum support, after which they effectively become refused asylum seekers pending removal.[1]

Graph D: Asylum applications and asylum removals



1.1 Section 4 support

In some cases a type of support known as Section 4 or 'hard case' support is provided to asylum seekers whose application has been refused, but who are destitute and have reasons that temporarily prevent them from leaving the UK. However, groups have contested the grounds by which an asylum seeker is deemed to be destitute. In its submission to the Commission, the Asylum Support Appeals Project suggests that:

"ASAP's experience shows that when considering applications for Section 4 support, BIA will often apply a much harder test than the regulations require, particularly if the applicant has been without support for some time."

Submission: ASAP

Circumstances in which an asylum seeker is eligible for Section 4 support include being unable to leave the UK due to physical impediment; in cases where there is no viable route of return; where an applicant is in the process of judicial review and in cases where the provision of support is necessary to avoid a breach of an applicant's human rights. Furthermore, an asylum seeker must demonstrate that they are taking reasonable steps to leave the UK in order to qualify for support, for example by signing up to the Voluntary Assisted Return and Reintegration Programme (VARRP) or by contacting their embassy and requesting travel documentation.[2]

An asylum seeker applying for Section 4 support has to accept both subsistence and accommodation, unlike in other Home Office provisions where applicants have the right to claim subsistence-only support. Accommodation provided under Section 4 consists of either shared self-catering accommodation or full board. Asylum seekers housed in self-catering accom-

1 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
2 **Home Office** (March 2005) *Policy Bulletin 71 – Section 4*

modation are given £35 per week in vouchers to cover the cost of food and other basic essential items. The provision of Section 4 support, similarly to other Home Office asylum support, is dependent on an asylum seeker adhering to specified reporting conditions.[3]

Home Office figures indicate that in September 2007 9,500 applicants excluding dependants were receiving Section 4 support. Iraqi nationals accounted for the highest number of refused asylum seekers in receipt of Section 4 support; 3,225 or 34% of the total number supported.[4]

1.2 Problems with Section 4

A number of problems were identified with the functioning of this provision and the suitability of the support. First, upon receiving notification that the application has been refused, asylum seekers are not automatically provided with Section 4 support nor are they informed in the same document that they have the right to apply for it. Consequently, many asylum seekers are vulnerable to destitution while awaiting a decision on their application for support under Section 4, while others who become destitute are unaware that this support exists. The latter experience can be exacerbated where Home Office support caseworkers assume that if an individual has survived without support for a prolonged period (for example between receiving support during an initial asylum application and applying for Section 4 support) that person must have access to alternative support.[5]

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Food parcel provided by a charity

To receive support under Section 4 a refused asylum seeker has to satisfy one of the following five criteria. They must:

i) be taking all reasonable steps to leave the UK
ii) be unable to travel due to illness or physical impediment
iii) have no viable route of return to country or origin
iv) have made a claim for judicial review of their asylum claim
v) or, the provision of support must be necessary to avoid a breach of the individual's rights under the Human Rights Act 1998

These criteria reflect the fact that people on Section 4 are theoretically awaiting removal from the UK. Many asylum seekers do not apply for Section 4 support because they fear that they will be automatically returned. Yet, as the second and third criteria demonstrate, this is not necessarily the case. Furthermore, the fifth criterion is included to allow the provision of support to people who have submitted a fresh claim for asylum which contains new information. There is evidence to suggest that this final condition is not sufficiently advertised nor effectively administered. Firstly, the NAM Case Owner's handbook does not make it clear that refused asylum seekers submitting a fresh claim are entitled to support under Section 4.[6] Secondly, there is evidence that in some cases Asylum Support Tribunals have suggested that individuals do not satisfy this condition on the basis that the claim may be rejected rather than on the absence of new information within the claim. In this respect, the Asylum Support Appeals Project (ASAP) suggests that the role and jurisdiction of asylum support staff has been confused with that of the asylum determination staff. [7]

3 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
4 **Home Office** (2007) *Asylum Statistics: 3rd quarter 2007, UK*
5 **Home Office** (August 2006) *Asylum Support Policy Bulletin 4*
6 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers*
7 **Asylum Support Appeals Project** (2007) *Failing the Failed?*; **Citizens Advice Bureau** (2006) *Shaming Destitution*

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In addition to the lack of clarity of the legislation, refugee advocacy groups also question the suitability of Section 4 support. Since April 2005, subsistence support available under Section 4 has been provided exclusively in vouchers. As noted above, a number of concerns have been raised about the suitability of this arrangement, including:

- paying in vouchers can stigmatise individuals and leave them vulnerable to harassment from shop assistants and customers;
- those paying in vouchers cannot receive change, which can mean losing a portion of Section 4 support or purchasing items that are not really required;
- vouchers are often only accepted for certain types of products considered as essential, preventing individuals from purchasing other goods or services such as basic medication, shoes and clothes, transport and phone cards;
- an informal market for these vouchers has emerged with buyers paying those in receipt of the vouchers only a fraction of their face value.[7]

There are also concerns about the allocation of accommodation provided under Section 4. As this support is intended to be emergency support pending an individual's removal from the UK, the housing stock allocated to Section 4 has proven to be insufficient. The Citizens Advice Bureau and ASAP cite evidence of delays in the allocation of accommodation, leaving individuals homeless after eviction from accommodation they have occupied for the duration of their asylum claim. [9] There is also considerable evidence that accommodation standards are inadequate, with properties suffering from lack of heating and hot water or being dirty and damp. [10]

"We are aware, for example, of one man with polio who has to regularly walk around five miles in order to use his vouchers."

Submission: Positive Action for Refugees and Asylum Seekers

1.3 Procedural delay, administrative error and poor decision making

Applications for Section 4 also suffer from delay and errors. In all the locations where research has taken place on destitution these are seen as the primary cause. This was most starkly the case in the study of applications to the Refugee Survival Trust (RST) in Glasgow, where they accounted for 52% of examples of destitution. Problems included delays in support following dispersal, support being incorrectly terminated, faulty application registration cards and vouchers not arriving at the correct address.[11] However, more recent research by the Asylum Support Appeals Project (ASAP) found that around 80% per cent of decisions relating to the provision of Section 4 support contained misapplication of the law or policy.[12]

1.4 Gaps and inflexibility in support structures

It has been argued by refugee advocacy groups that the support provided to asylum seekers at various stages of their claim is not organised in a joined-up manner. There are examples of destitution amongst asylum seekers whose claims had been refused and were in the process of applying for and awaiting a decision on Section 4 support, as the Home Office had no obligation to provide accommodation in the period between one form of support ending and another

8 Taken from **Asylum Support Appeals Project** (2007) *Failing the Failed?*; **Citizens Advice Bureau** (2006) *Shaming Destitution*; **Oxfam** (2000) *Token Gestures*
9 **Asylum Support Appeals Project** (2007) *Failing the Failed?*; **Citizens Advice Bureau** (2006) *Shaming Destitution*
10 **Lewis, H.** (2007) *Destitution in Leeds*
11 **Refugee Survival Trust and Oxfam** (April 2005) *What's Going On?*
12 **Asylum Support Appeals Project** (2007) *Failing the Failed?*

commencing.[13] The support system that is currently in place for asylum seekers is often incapable of adapting to a change in people's circumstances such as a new address or marital status. As the lives of asylum seekers become increasingly complex as a result of dispersal or the relocation of asylum facilities,[14] the system has found it difficult to cope. [15]

2. Destitution of refused asylum seekers

2.1 Evidence of destitution

The Immigration and Asylum Act 1999 defines a person as destitute if they do not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met); or they have adequate accommodation or the means of obtaining it, but cannot meet other essential living needs.[16] Some organisations define destitution as the inability to access statutory support mechanisms; others define it by an individual's reliance on friends, family and charitable groups for basic subsistence and/or accommodation. It has also been defined by its symptoms or effects, such as homelessness.

Accepting a wide definition of destitution, a number of recent studies have highlighted evidence of destitution among refused asylum seekers and, to a lesser extent, asylum seekers still awaiting the outcome of their claim. Numerous local or regional studies have been conducted, including research in Leicester,[17] Birmingham,[18] Scotland,[19] Leeds[20] and Coventry.[21] However, the inability of the government to provide figures on the number of refused asylum seekers remaining in the UK makes it difficult to estimate from a national sample the proportion that are destitute.[22] A submission from Leicester Refugee and Asylum Seekers' Voluntary Sector Forum details some of the difficulties in identifying destitute asylum seekers:

"The desire to remain invisible is also the likely explanation of why the agencies who patrol the streets of Leicester at night such as the Rough Sleepers Unit and Street Pastors verbally

"I felt like a lost person, moving from place to place. I suffer from arthritis and a serious gastric condition – in that state it is very difficult to live on vouchers worth just £35 a week"

70 year old female refused asylum seeker Hearing: Manchester. For full testimonies visit www.humanrightstv.com

13 **Refugee Action and Leicester Refugee and Asylum Seekers' Voluntary Forum** (June 2005) *A report of destitution in the asylum system in Leicester*

14 A particular example is the closure of the facility to apply for asylum in Glasgow. Asylum seekers arriving in Scotland have regularly sought support from the RST for travel costs to Liverpool, where they can claim asylum. See **Refugee Survival Trust and Oxfam** (April 2005) *What's Going On?*

15 **Refugee Survival Trust and Oxfam** (April 2005) *What's Going On?*

16 **Home Office** *Policy Bulletin no. 71* contains further information on the definition of destitution (paras 5.2 and 5.3)

17 **Refugee Action and Leicester Refugee and Asylum Seekers' Voluntary Sector Forum** (2005) *A report of destitution in the asylum system in Leicester*

18 **Malfait, R. and Scott-Flynn, N.** (2005) *Destitution of asylum-seekers and refugees in Birmingham*

19 **Refugee Survival Trust and Oxfam** (2005) *What's going on?*

20 **Lewis, H.** (2007) *Destitution in Leeds*

21 **Coventry Refugee Centre** (2004) *Destitution and asylum seekers: a human rights issue*

22 While acknowledging these difficulties, Refugee Action suggest that there may be 200,000 destitute asylum seekers in the UK **Refugee Action** (2007) *The Destitution Trap*

"I couldn' t go on living in destitution – I have no words to describe what life was like for me at that time. I tried to kill myself – only when I was pregnant could I stop taking pills"

Selam, a refugee from Ethiopia
Hearing: Manchester. For full testimonies visit www.humanright-stv.com

report that they rarely come across asylum seekers sleeping rough. Similarly destitute asylum seekers are rarely to be found begging on streets. Asylum seekers feel extremely vulnerable and make every effort to remain out of sight of 'officials'. As well as feeling open to personal attack and abuse the penalty of being discovered is likely to be deportation."

Submission: Leicester Refugee and Asylum Seekers' Voluntary Sector Forum.

There is evidence that of the asylum seekers identified as destitute a considerable proportion remain destitute for over six months and a minority are with dependants.[23] Many of the reports contain information about asylum seekers sleeping rough, relying on other asylum seekers for financial support and engaging in irregular and often exploitative employment in an attempt to meet their basic needs. Dave Smith of the Boaz Trust, a Manchester-based project offering support to destitute asylum seekers, told Commissioners that there is an even bigger issue of destitution for asylum seekers who have had their asylum claims refused but have not left the UK. The Boaz Trust has four hundred and fifty cases of destitute refused asylum seekers registered in the Greater Manchester area.

"In one case we had to help a lady who was nine months pregnant and had been released from detention with nowhere to go. There was no support for her from the state because of her status as a refused asylum seeker, and so we had to find her accommodation quickly. Cases like this are not uncommon."

Dave Smith, Boaz Trust.

2.2 Causes of destitution

Research and monitoring of destitution among asylum seekers and refugees in Scotland by Oxfam has found that destitution is experienced at every stage of the asylum process and also by those recently granted refugee status.[24] At the end of an asylum claim, whether the asylum claim is positive or negative, destitution can be experienced. If an individual's claim fails, asylum support is withdrawn after 21 days after which time 'hard case' support can be provided to individuals under Section 4 if they meet one of five criteria.[25] Many of these individuals are caught in the legislative gap where they cannot be given any leave to remain but also cannot be returned to their country of origin. Those granted refugee status have asylum support withdrawn after 28 days. As they often struggle to find alternative accommodation and employment in that space of time they are vulnerable to destitution. There are also various periods of transition in the asylum process during which applicants can fall through gaps in the support system.

23 **Lewis, H.** (2007) *Destitution in Leeds*
24 **Refugee Survival Trust and Oxfam** (2005) *What's going on?*
25 For an explanation of the five criteria see Section 3.1 of Home Office Policy Bulletin no. 71

3 Effects of destitution

3.1 Physical and mental health problems

Applications for support by destitute asylum seekers are often to cover food costs and other basic needs. Lack of support in these areas can obviously affect the physical health of an individual. This may be exacerbated by the removal of health provision for some categories of people.[26] Similarly, a number of recent research findings show negative effects on mental health. Destitute asylum seekers and refugees can suffer from extreme anxiety and depression. They can also suffer from disempowerment as a result of being dependent on Home Office support and then having that support removed.[27] Dr Angela Burnett, a GP, told the Commission about some of the impacts of destitution and the restriction of access to secondary healthcare on one refused asylum seeker she had worked with:

"When I met her she had been living on the streets in the UK for two years, severely anaemic due to a restricted diet, and having to walk approximately ten miles to report to the Home Office every week. Profoundly depressed and with symptoms of epilepsy, I would normally have referred her to hospital, but because she would have been faced with a bill she could not pay, a torture survivor was denied vital treatment."

Hearing: Manchester. For full testimonies visit www.humanrightstv.com

3.2 Social problems and exploitation

As many destitute asylum seekers become dependent on 'good will' support from family and friends, this can create strains on relationships, particularly if the resources of the family and/or friends are also very limited. Some research suggests that even where this support is available it is often in poor conditions and overcrowded housing.[28] Without entitlement to welfare support or access to the regular labour market, destitute asylum seekers can become involved in irregular employment often in exploitative, dangerous or irregular employment simply to survive. Research in Birmingham uncovered instances of prostitution and criminality amongst destitute asylum seekers and refugees.[29] Yet, by its very nature, this sort of activity is out of sight and difficult to quantify; it is probable that empirical evidence is likely to underestimate the extent of the problem. At the Commission's Manchester Hearing, Miranda Kaunang of Save the Children described the impact of destitution on young asylum seekers as "harsh and coercive"

"One man who attended PAFRAS was bleeding from numerous wounds on his head, shoulder, and back where he had been racially attacked and stabbed. However, he was afraid to go to hospital for fear that nurses or doctors would contact the police to report it as a crime."

Submission: Positive Action for Refugees and Asylum Seekers

26 **Refugee Action and Leicester Refugee and Asylum Seekers' Voluntary Forum** (June 2005) *A report of destitution in the asylum system in Leicester*
27 **Refugee Survival Trust and Oxfam** (April 2005) *What's Going On?*
28 **Malfait, R. and Scott-Flynn, N.** (May 2005) *Destitution of asylum seekers and refugees in Birmingham*
29 **Malfait, R. and Scott-Flynn, N.** (May 2005) *Destitution of asylum seekers and refugees in Birmingham*


© Sarah Booker

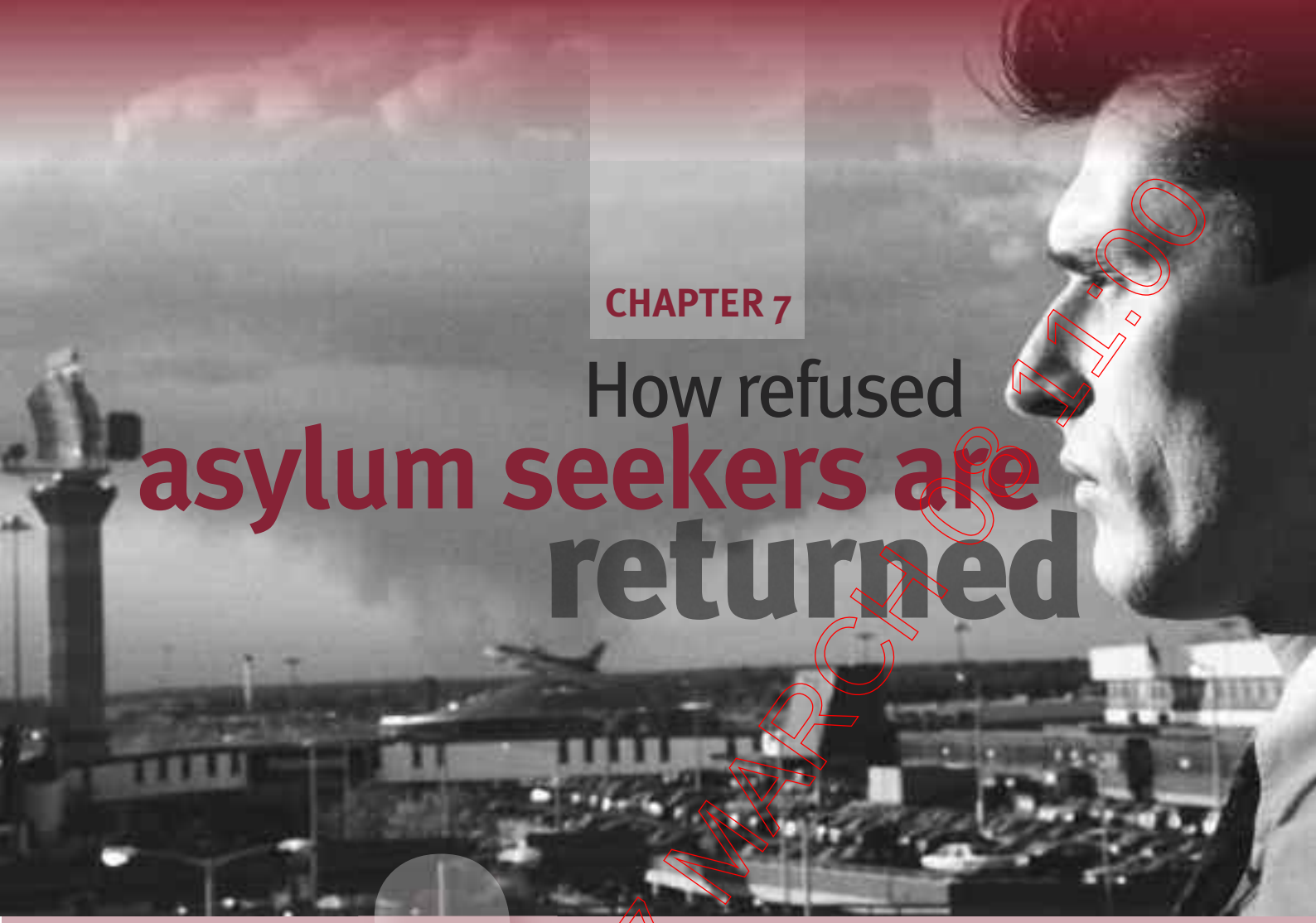
"These young people face extreme states of deprivation. They go without food, walk long distances to report to the Home Office, live in fear of the future and are vulnerable to sexual abuse and exploitation."

Hearing: Manchester. For full testimonies visit www.humanrightstv.com

The impact of destitution on refused asylum seekers was obvious in the testimony of Afshin Azizian, a refused asylum seeker from Iran who has been in the UK for more than eleven years. The Home Office took five years to assess his case and then refused him asylum. Unable to work and preferring destitution in the UK to the threat of persecution in Iran, Afshin lived rough, scavenging through rubbish bins and sleeping in a launderette. He suffered mental health problems and despite twice attempting suicide was subsequently released with no-one taking responsibility for his welfare:

"I lost my whole adult life in misery in this country. I was not poor in Iran – I did not come here for your money but I was seeking refuge. I ask those in the Home Office to think, if you were to spend one day in my shoes how would you like to be treated?"

Hearing: Manchester. For full testimonies visit www.humanrightstv.com



CHAPTER 7

How refused asylum seekers are returned

A hallmark of any successful asylum system is that it should deal – fairly, effectively, and at minimum cost to public funds – with those whose asylum claims have been refused."

1. Process and methods of enforced return

"Migration Watch express their longstanding support for the principle of asylum while calling attention to the need to remove those who are denied asylum if the system is to retain credibility and public support."

Sir Andrew Green Submission: Migration Watch

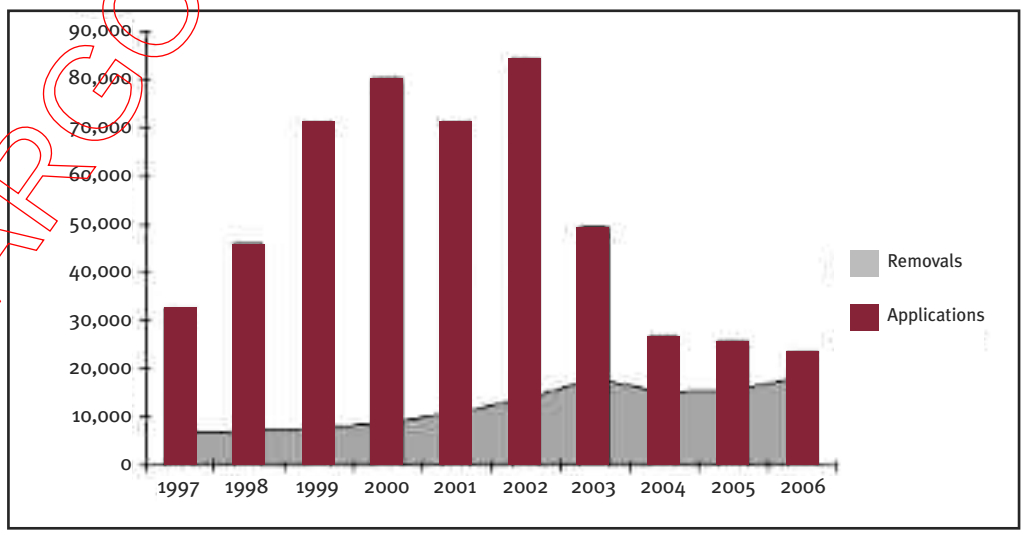
1.1. Types of enforced return

There are four distinct processes of enforced removal, all of which could potentially apply to asylum seekers.[1]

- Port removal – This applies to people who are refused entry to the UK. It does not necessarily indicate that their removal is immediate or that they remain 'at port' until removed. Some people who arrive in the UK are temporarily admitted while decisions are made over their eligibility to enter.
- Administrative removal – People can be removed through this procedure if they contravene any conditions attached to their residence in the UK, their leave to remain in the UK has expired or they have obtained any form of leave to remain through deception.
- Illegal entry – This applies to individuals that physically enter the country illegally, rather than are illegally resident (which can be the case above).
- Deportation – People can be removed through deportation if a) they are recommended for deportation following a criminal conviction, b) their presence is not considered 'conducive to the public good' or c) they are a family member of a person in the previous two categories.

The overwhelming majority of asylum seekers removed from the UK are subject to the procedure of port removal, since their temporary admission to the UK was granted in order for the claim for asylum to be determined. If this claim fails they are effectively and legally 'refused entry' to the UK, despite the fact that they were acknowledged to be present in the country when their claim for asylum was made. In most cases, any appeal against refusal will have a 'suspensive effect' on the power to remove. Asylum seekers may also be subject to administrative removal if it is ascertained that leave to enter or remain was obtained by deception. Asylum seekers can be removed by the 'illegal entry procedure' if they entered the UK illegally and subsequently claimed asylum. Asylum seekers can be *deported* after their claim has been determined if any of the three criteria for deportation outlined above apply.

Graph D: Removals and voluntary departures of asylum seekers from the UK



1 These definitions are taken largely from **Joint Council for the Welfare of Immigrant**s (2006) *Immigration, nationality and refugee law handbook*

1.2 Decision to remove

In order for an asylum seeker to be successfully removed, the Home Office is under an obligation to ensure that the removal will not be in breach of international law. The 1951 UN Refugee Convention and the European Convention on Human Rights (ECHR) both contain articles pertinent to the removal of asylum seekers. Article 33 of the 1951 Refugee Convention refers to the principle of *non-refoulement*. States are prohibited from returning refugees to countries where their life or freedom would be threatened on account of one of the five Convention reasons, these being race, religion, nationality, membership of a particular social group or political opinion. This protection is not afforded to cases where a refugee is a danger to the security of a country, for example when they have been convicted of a serious crime. Article 3 of the ECHR complements the standard of *non-refoulement* by requiring that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. For a removal to be in line with international law, these two principles always need to be taken into account by the government and removal orders are only meant to be issued when all legal avenues and remedies have been exhausted.[2]

In addition to these international standards, the Home Office's Immigration Rules outline the factors that should be taken into account when deciding whether to remove someone eligible for 'administrative removal' or deportation. These include the age of the applicant; their length of residence in the UK; the strength of their connections with the UK; their personal history and any domestic or compassionate circumstances.[3] In other removal cases (port removal and illegal entry) there are no equivalent factors set out in the immigration rules. However legal representatives are able to put forward arguments based on similar criteria.[4]

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Commissioner John Montagu, Earl of Sandwich

1.3 Procedures

The Border and Immigration Agency (BIA) of the Home Office is responsible for removing asylum applicants without permission to stay in the UK after they have come to the end of the asylum process. The BIA has an established network of local enforcement and removal offices, which deal with the all the procedural aspects of removal, including organising travel documents, arranging transport to airports and purchasing flight tickets.[5]

When a decision that a person is to be removed has been made, a notice will be issued to the person concerned informing them of the decision and of any right of appeal. Following the issue of such a notice, an Immigration Officer may authorise detention or make an order requiring them to report regularly to the police, pending the removal.[6] In cases where an asylum seeker is not detained, they will normally be issued a notice that they must attend a port at a particular time in order to be removed, as a condition of their continuing temporary admission.[7]

Since March 2007 it has been Home Office policy to give refused asylum seekers at least 72 hours notice before removal. This timeframe has to include two working days to allow an asylum seeker to make an application for judicial review.[8] Removal on the same day occurs only in exceptional

2 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
3 **Home Office** (2007) *Immigration Rules, Chapter 13*
4 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
5 **Home Office** (2007) *List of local enforcement offices*
6 **Home Office** (2007) *Immigration Rules*, Chapter 13
7 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
8 **Home Office** (March 2007) *Change of policy relating to the circumstances in which removal will be deferred following challenge by judicial review*

"People fleeing persecution thought they would be safe in Scotland. But many have been scarred by the experience or worse. One Tibetan asylum seeker set himself on fire and died of his injuries. Another asylum seeker jumped out of their tower block. There are many other people who are driven to this by fear of removal"

Roger. Hearing: Glasgow. For full testimony visit humanrightstv.com

circumstances and must be sanctioned by an officer at Assistant Director level or above within the BIA, with a reference to that officer made in writing to the applicant.[9]

Travel documents are required for all asylum seekers facing removal and are arranged by immigration staff at one of the Local Enforcement Offices. In cases where an asylum seeker does not possess any travel documents, the BIA can issue its own one-way identity documents. However, certain states only accept returned asylum seekers with documentation from their own country and in these instances the BIA is required to obtain documentation from the asylum seeker's original national authorities – usually the consular mission in the UK. This can considerably delay the removal process.[10]

1.4 Removal directions

Specific removal directions are given to the captain of a ship, the pilot of a plane or the train operator, as well as being issued to the person facing removal.[11]

1.5 Use of force

Removal may be carried out by force if necessary. Chapter 40 of the Operational Enforcement Manual states that where a person shows violent tendencies or a determination not to be removed, a 'discipline escort' may be required. Where more than two escorts are deemed necessary or in particularly disruptive cases, a prior planning meeting is usually arranged to discuss the case. The meeting may include the escorts, BIA representatives and where applicable, police officers, social services and the designated carrier.[12]

'Reasonable force' may only be used where necessary to keep a detainee in custody, to prevent violence and to prevent the destruction of property. Reasonable force may include the use of mechanical restraints where such restraint is proportionate and is the minimum necessary to ensure safe removal. Only those control and restraint techniques and procedures that have been approved by the government can be used. Mechanical restraints include the use of handcuffs and in very exceptional cases, leg restraints. No other form of restraint is permitted.[13] To protect both escort staff and asylum seekers from unfounded allegations of mistreatment, CCTV equipment has been installed in escort vans.[14]

1.6 Methods of transportation

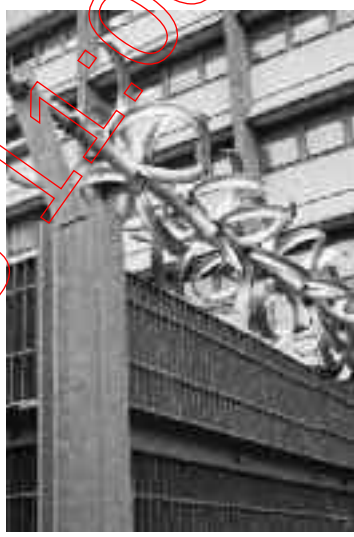
The removal of refused asylum seekers is carried out by private contractors. Since April 2005, Group 4 Securicor has been the main provider of all in-country escorting within the UK, as well as all escorted and non-escorted repatriation services overseas.[15] The contracted company is responsible for ensuring that all asylum seekers board a ship, aircraft or train in accordance with removal directions.[16] However, the final decision to carry individuals subject to removal is at the

9 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
10 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
11 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
12 **Home Office** (2007) *Operational Enforcement Manual, Chapter 40 – Overseas escorts*
13 **Home Office** (2007) *Operational Enforcement Manual, Chapter 40 – Overseas escorts*
14 **Amnesty International** (2005) *Seeking asylum is not a crime: detention of people who have sought asylum*
15 http://www.g4s.com/uk/uk-justice/uk-justice-detention_escorting.htm
16 **National Audit Office** (July 2005) *Returning failed asylum applicants – Report by the Comptroller and Auditor General*, London: The Stationery Office

discretion of the airline and the pilot, or in the case of removals by sea or train; the captain or train operator.[17]

Most removals take place via scheduled commercial flights. Some transport companies refuse to carry asylum seekers and many airlines place a limit on the number of immigration places available on each flight. A pilot can refuse to carry an asylum seeker facing removal on a scheduled flight, particularly if the asylum seeker causes a disruptive protest.[18]

Over the last year the Home Office has significantly increased the number of charter flights to certain countries as part of a continued effort to reduce the number of asylum seekers with unfounded claims remaining in the UK. A total of 78 charter flights were arranged between February 2006 and March 2007, 60 of which were flights to Eastern Europe and 14 to Afghanistan. Other destinations included Kurdistan, Democratic Republic of Congo and Vietnam. Observers and campaigners expect the use of charter flights for the large-scale 'group' removal of refused asylum seekers to increase in the future.[19]



Beckett House Reporting Centre

1.7 Where are people removed to?

The asylum seeker's destination depends on which of the four removal procedures has been used to enforce their departure. For deportation cases or those classified as administrative removal, asylum seekers can be sent to a country of which they are a national, or to which there is 'reason to believe' they will be admitted. If the Home Office is seeking to return someone to a country on the grounds that there is reason to believe they will be admitted, there must be clear evidence that the asylum seeker is likely to be accepted. It is not sufficient for the Home Office to claim that the person ought to be admitted.[20]

If an asylum applicant enters the UK via a third country within in the European Union, the Home Office usually seeks to remove the asylum seeker to the relevant country, for their authorities to deal with the application. These are known as third country cases. Where the third country accepts the person, these applicants can usually be removed with ease. Asylum seekers from third country cases may not be removed from the UK whilst their applications are outstanding and until the whole appeal process has been exhausted.[21]

"My children and I were treated like animals in that cage. We were hungry and had to watch while the guards ate at a petrol station. But the detention centre was even worse – we felt like criminals."

Anonymous. Hearing: Glasgow. For full testimony see www.humanrightstv.com

2. Voluntary return

An asylum seeker may decide not to continue their asylum claim but to return to their country of origin instead. This could be because the situation in the country of origin has improved and they feel it is safe to return. If so, they may be eligible for assistance from the International Organisation for Migration (IOM). The IOM runs the Voluntary Assisted Returns and Reintegration

17 **House of Commons Home Affairs Committee** (July 2003) *Asylum removals – Fourth report of session 2002-03*
18 *Ibid*
19 **NCADC** (April 2007) *Increased use of charter flights*
20 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
21 **National Audit Office** (July 2005) *Returning failed asylum applicants – Report by the Comptroller and Auditor General*, London: The Stationery Office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Programme (VARRP), which enables asylum seekers at any stage in their asylum claim to receive help and support in returning home.[22] The voluntary assisted return programme was established in 1999 following the Kosovo crisis. In July 2002, with the addition of the Reintegration Fund it became known as the Voluntary Assisted Return and Reintegration Programme – VARRP.[23]

Once an application for voluntary return has been made to IOM there are checks to ensure the person is eligible for the scheme. The timeframe for the return depends on various factors such as BIA approval, obtaining travel documents, availability of commercial flights and any special needs to be taken into consideration for the return travel. Applicants are entitled to withdraw from the programme at any stage. However the credibility of an outstanding asylum application may be adversely affected if the Home Office is made aware that the person has applied for the scheme.[24]

The support offered under the VARRP includes assistance with obtaining travel documentation and financial support (£1,000 per applicant) to cover the costs of the returnee's travel expenses as well as costs for immediate arrival and reception. The scheme also allows for longer term financial support for reintegration, for example assistance with setting up businesses, vocational training and education. The support is delivered in the form of targeted payments rather than cash, to meet the costs for vocational training courses at colleges or to help buy equipment and supplies to set up a small business.[25]

3. Barriers to removal

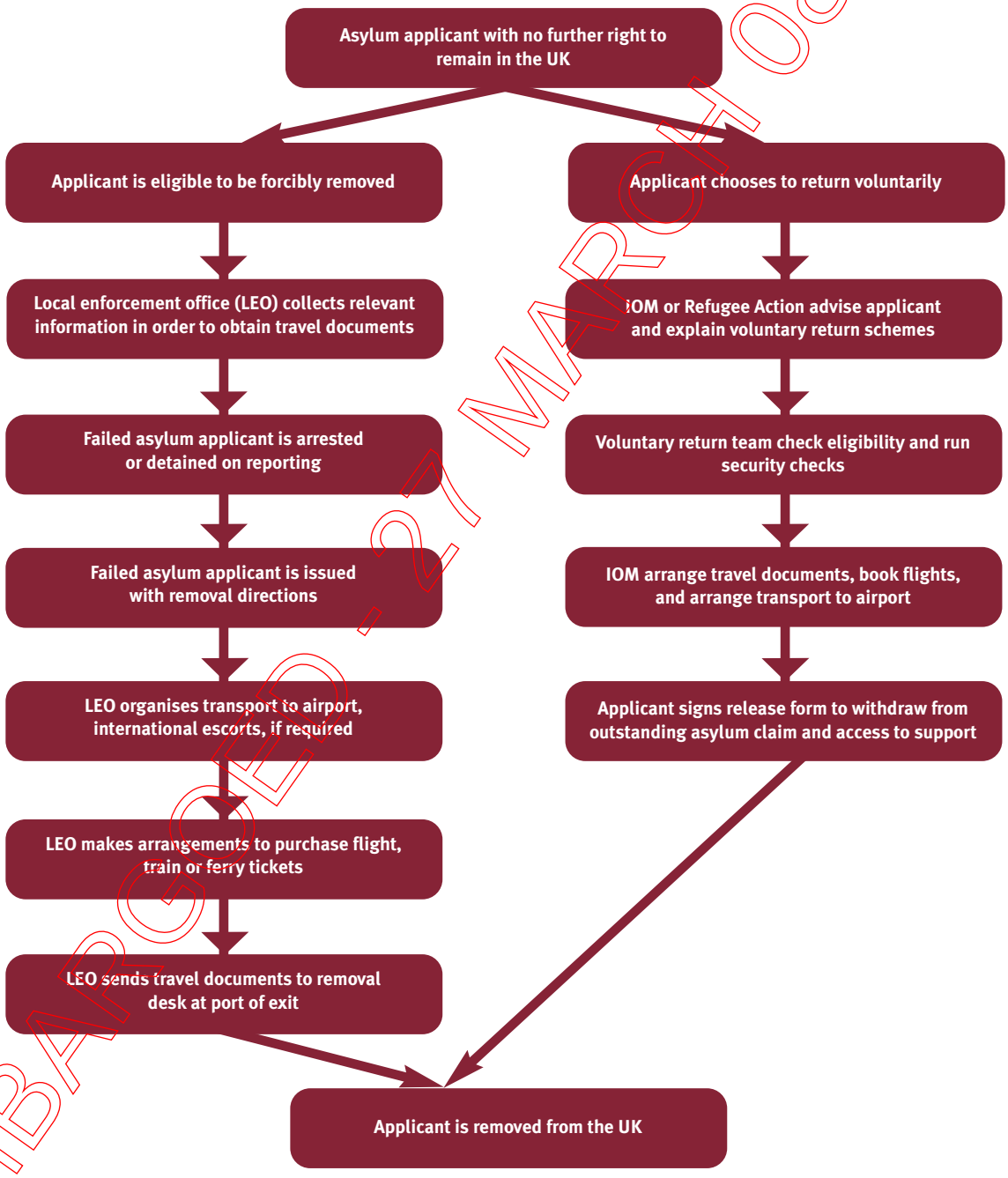
3.1 Practical and institutional barriers

In a number of instances, removal to a particular country is impossible for practical or institutional reasons, irrespective of whether all the actors involved are co-operating and willing to comply with removal instructions.

- *Lack of travel documents and identification* – Many asylum seekers arrive in the UK without any (or adequate) travel or identity documents. The realities of global asylum-migration often necessitate clandestine movement to the country of asylum without documents or can mean that documents expire during protracted determination procedures. Some asylum seekers deliberately destroy their documents.[27] Without identification, government authorities find it difficult to ascertain how an individual arrived in the UK or where he or she should be returned. Additionally, without suitable or adequate documents, carriers, transit countries and countries of origin are unlikely to agree to play their part in the removal process.[28]

22 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
23 **Refugee Action** (February 2005) *Choices – voluntary return conference report*
24 http://www.ind.homeoffice.gov.uk/lawandpolicy/voluntaryreturn/varrpquestionsandanswers
25 **IOM** (June 2007) *Enhanced package – press release*
26 **Gibney and Hansen** (2003) *Deportation and the Liberal State*
27 **House of Commons Home Affairs Committee** (July 2003) *Asylum removals: Fourth report of session 2002-03*
28 **House of Commons Home Affairs Committee** (July 2003) *Asylum removals: Fourth report of session 2002-03*

Diagram of the asylum removal process [29]



29 Diagram adapted from: **National Audit Office** (July 2005) *Returning failed asylum applicants*

"It seems clear to me that the failure to deal effectively with a small number of genuinely bogus asylum seekers is causing problems for genuine asylum seekers."

Dr Douglas Murray, Centre for Social Cohesion
Hearing: South London.
For full testimony visit humanrightstv.com

- *Lack of institutional co-ordination* – Enforced removal can involve a number of different agencies. Evidence submitted to the House of Commons Home Affairs Select Committee by Neil Gerrard MP suggested that there is a bureaucratic gap between decision making and enforcement.[30] The National Audit Office also found that a lack of co-ordination between application, support and enforcement processes affected the efficiency of removal procedures.[31]
- *Lack of international airport, safe route or carrier* – Removal can be physically impossible to countries that do not have an international airport or a safe port of entry.[32] This can be frequently the case in times of conflict. Furthermore, carriers may refuse to operate certain routes due to safety concerns.
- *Country of origin conditions* – There are notable cases where the uncertainty and insecurity of the conditions on the ground in an asylum seekers' country of origin simply do not permit someone to be returned. To do so, it is argued, contravenes Article 3 of the European Convention of Human Rights.[33] It may be a cause of confusion to some that someone who cannot be returned is not eligible for any form of leave to remain in the UK. The criteria that prohibit return are wider than those of the Refugee Convention which are the precondition for leave to remain. While leave to remain primarily requires the threat or evidence of individual persecution, the prohibition of return can be on more general grounds of safety and security.

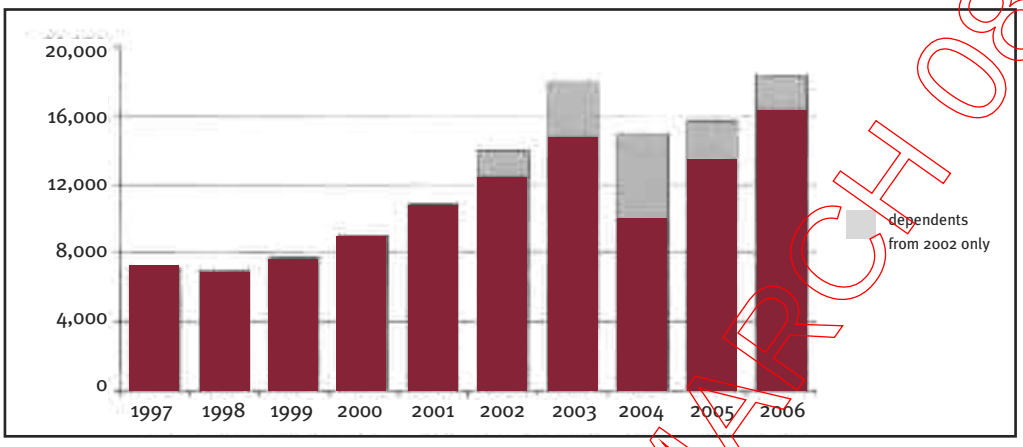
3.2 Competence of enforcement agencies

The host government needs removal to provide credibility for the asylum system, to act as a disincentive for those not in need of protection hoping to gain entry to the UK through the asylum system and to reassure public opinion that such 'abuse' is not taking place.[34] The state, however, has an indifferent record on removal in terms of the numbers, with removal remaining at best a 'residual immigration control device'.[35] Despite the fact that an individual has been deemed not to be in need of protection, an additional decision has to be made over the feasibility and morality of returning this individual to his or her country of origin. In these cases, the powers of the government are overridden by the powers of judiciary and the body of human rights law from which it takes it cue. This often takes the form of a judicial review, something NGOs and refugee activists argue must be made available to asylum seekers facing removal directions.

In addition to the political costs of removal or non-removal, removal entails considerable economic costs to the state. The practice is particularly inefficient when removal requires enforcement, as is often the case. If an asylum seeker issued with a removal direction does not wish to be removed, the individual can be difficult for the authorities to find. We are in the situation where successful enforcement now requires the employment of specialist security-related companies to work with BIA.[36] A National Audit Office report on the costs of removing refused asylum seekers in the UK calculated that the Home Office spent £285 million on removals and further concluded that the

30 **National Audit Office** (2005) *Returning failed asylum applicants*
31 **ECRE** (2005) *The Way Forward: The Return of Asylum Seekers whose Applications have been Rejected in Europe*
32 **Amnesty International et al** (2005) *Common principles on removal of irregular migrants and rejected asylum seekers*
33 **Gibney and Hansen** (2003) *Deportation and the Liberal State*, p15
34 **Gibney and Hansen** (2003) *Deportation and the Liberal State*, p10
35 **Gibney and Hansen** (2003) *Deportation and the Liberal State*, p11
36 **National Audit Office** (2005) *Returning failed asylum applicants*

Graph E: Asylum applications and asylum removals



Home Office could release up to £28 million per year if its procedures were more efficient.[37] To mitigate the costs of locating people, the government has increasingly detained asylum seekers who are to be removed, a policy that has its own political and economic costs as well as generating concerns over the health and well-being of those detained. Dr Douglas Murray of the Centre for Social Cohesion told the Commission that negative attitudes towards asylum seekers resulted from the Home Office's failure to deport Islamist extremists who had claimed asylum:

"Some Islamist extremists like Abu Hamza and Abu Qatada were not fleeing persecution – they were seeking somewhere to plot terrorist activities and preach hate... These people give the public the impression that it is easy to abuse the system to stay in the UK."

Hearing: South London. For full testimony visit humanrightstv.com

3.3 Compliance of individual asylum seekers

The fact that in most cases removal is enforced, suggests that many asylum seekers that are required to leave the UK do not comply with the removal directions they receive. There are a number of reasons for this.

- Many asylum seekers, irrespective of the merits of their asylum claims, have risked and sacrificed a great deal of their personal wealth and security in order to seek asylum in the UK.[37] For these individuals it can very difficult to accept a negative decision and contemplate the prospect of returning to where they began their journey. In addition to fears about their safety as a result of attempting to seek asylum *from* the actions of their state, many may feel shame or the fear of resentment on returning to their local communities.[38] The asylum seeker may assess the risks and judge that there is more to be gained from absconding, attempting to stay within their existing ethnic or national community within the UK, or they may attempt

37 **Noll** (1999) *Rejected asylum seekers: the problem of return*
38 **Blitz et al** (2005) 'Non-voluntary return? The politics of return to Afghanistan'

"Solyman Rashed was an Iraqi asylum seeker who took voluntary return after being detained. He did not wish to return as he knew that the situation in Iraq is dangerous, but he could not face the prospect of indefinite detention. He was killed by a roadside bomb in Kirkuk on 6 September 2007, just two weeks after arriving back in Iraq."

Submission: London Detainee Support Group

to find work in the black economy.[39]

- The asylum determination procedure can take several years. In this time asylum seekers may feel they have integrated into the British society or feel that they now have a stake in their local communities.[40] This is epitomised in the case of asylum seeking families whose children may attend the local school and have received the majority or all their education in the UK.[41] In this instance, asylum seekers may not feel that their family is equipped to return to their country of origin and will subsequently resist attempts to remove them there.
- There is some evidence to suggest that continued welfare support for asylum seekers whose claim has been refused acts as a disincentive to voluntary return.[42] Such evidence was behind the UK government's decision in 2004 to remove welfare support for those unwilling to comply with removal directions under Section 9 of the Nationality, Immigration & Asylum Act (Treatment of Claimants, etc.) 2004. This policy was intended to increase the take-up of voluntary return. It has been heavily criticised for leaving asylum seeking families destitute.[43]

3.4. Co-operation of receiving country

The final condition required to ensure the removal of asylum seekers is the co-operation of the country to which asylum seekers are being returned. This can be the country of origin or a safe country through which the asylum seeker has travelled if the country of origin is deemed unsafe. However, just as the host country wishes to exercise its sovereign right to remove those with no legal right to remain, receiving countries also have a stake in deciding who enters their territory. The following are some of the considerations that may apply when a receiving country refuses entry.

- A receiving country may have a social or economic interest in limiting or controlling their population. In times of conflict, there may be reluctance to re-admit supporters of resistance groups. Other countries may be unwilling to re-admit large numbers of people for fears that they may not be able to be absorbed economically or they may compromise fragile security situations.[44]
- Receiving countries may also be unable to provide assurances about the protection and treatment of those that are returned as required by the returning state.[45] This is a crucial part of Readmission Agreements that are negotiated between the host country and countries of origin. These agreements attempt to enforce the contents of the Chicago Convention, which requires countries of embarkation (unless transit countries) to accept back individuals refused entry elsewhere.[46] There is concern that these readmission agreements are subject to the political climate and that they do not provide a secure basis for an individual to be returned and reintegrated safely.[47]

39 **Black et al** (2006) *Return of forced migrants*
40 See evidence given by Nicola Rogers of the Immigration Law Practitioners Association to the **House of Commons Home Affairs Committee** (July 2003) *Asylum removals: Fourth report of session 2002-03*
41 See evidence given to the **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
42 **See Black et al** (2006) *Return of forced migrants*
43 **ICAR** (2006) *Briefing: Destitution amongst refugees and asylum seekers in the UK*
44 **Noll** (1999) *Rejected asylum seekers: the problem of return*
45 **House of Commons Home Affairs Committee** (July 2003) *Asylum removals: Fourth report of session 2002-03*
46 **House of Commons Home Affairs Committee** (July 2003) *Asylum removals: Fourth report of session 2002-03*
47 **ECRE** (2005) *The Way Forward: The Return of Asylum Seekers whose Applications have been Rejected in Europe*

- If, for one of the reasons mentioned above, an individual is unable to be returned to their country of origin, then the host government will look for an alternative country to which individuals can be returned. These 'third countries' tend to be a safe country through which the asylum seeker has passed.

4. Treatment of asylum seekers during return

4.1 Excessive use of force

Research by the Medical Foundation into the treatment of asylum seekers during removal highlighted several key issues: inappropriate and unsafe methods of force were used by private contractors; force was used after the removal attempt had been terminated; the use of force was continued after an asylum seeker had been restrained; and there was improper use of handcuffs, causing avoidable wrist and nerve injuries. The Medical Foundation recommends that automatic medical examinations should take place for any individual who is subject to a failed removal attempt and that perpetrators should be properly investigated and prosecuted.[48] Criticisms exist concerning the excessive use of force, with organisations claiming it is difficult to believe that proper risk assessments are always fully carried out.[49] A recent report by HM Chief Inspector of Prisons highlighted the continued and excessive use of handcuffing, including during public ferry crossings across the Irish Sea to Dungavel IRC in Scotland.[50]

"The handcuffs were too tight. I tried to explain but the Home Office staff would not listen. It was incredibly painful. A flight attendant came to my rescue and asked the guards to take me off the plane when she saw the blood oozing from my wrists onto the floor"

William. Hearing: West London. For full testimony visit www.humanrightstv.com

4.2. 'Dawn raids'

The removal of asylum seekers from their homes in the early hours of the morning is a regular method used by the BIA to ensure a higher rate of successful removals. So-called 'dawn raids' have caused a great deal of controversy. Pressure has been brought to bear on the BIA to end the practice.[51] It is argued that asylum seekers, particularly families with children, can become extremely distressed by the unannounced arrival of immigration officials to their homes whilst they are sleeping. Furthermore, early morning or weekend arrests can make it particularly difficult for asylum seekers to contact legal representatives.[52]

In evidence provided to the Joint Committee on Human Right's (JCHR) recent enquiry into the treatment of asylum seekers, HM Chief Inspector of Prisons stated that the removal process should be managed with greater dignity and safety, by ensuring that asylum seekers are fully informed about what is happening to them at all times in the process.[53]

48 **Granville-Chapman, C., Smith, E. and Moloney, N.** (2004) *Harm on removal: Excessive forced used against refused asylum seekers*, The Medical Foundation for the Care of Victims of Torture
49 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
50 **HM Inspectorate of Prisons** (December 2006) *Report on an announced inspection of Dungavel House* Immigration Removal Centre
51 **Scottish Refugee Council** (February 2007) *Response to letter in Sunday Herald re dawn raids*
52 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
53 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

BIA guidance stipulates that 'pastoral visits' should take place before the removal of families, so that procedures can be properly explained and to allow time for families to fully prepare themselves.[54] The Scottish Refugee Council claim that this does not happen in practice and where pastoral visits do take place they are carried out primarily as intelligence gathering visits to determine the most suitable time to carry out the removal, rather than to ensure children's needs are fully met.[55] Kathleen Marshall, Scotland's Commissioner for Children and Young People, told the Comission that, although asylum was not a devolved issue, she felt a deep concern for the impact of dawn raids on children:

> *"You can reserve powers in Westminster, but you cannot reserve the welfare of children...I have spent time meeting the children of asylum seekers, and their peers in communities and schools, and I am very concerned at the impact that removals have on the welfare of children."*

Hearing: Glasgow. For full testimony visit humanrightstv.com

4.3 Personal property

There are reports that the impromptu way in which asylum seekers can be taken to Immigration Removal Centres prior to removal does not allow sufficient time for them to gather their personal belongings, including medication and childcare equipment, or sort out paperwork and personal affairs.[56] The BIA, in evidence given to the Joint Committee on Human Rights (JCHR), has recognised that there are problems in ensuring that those facing removal are given time to put their affairs in order and be reunited with their possessions.[57] This could be attributed to the fact that there are no BIA guidelines stipulating that asylum seekers must be given enough time to wind up their affairs before being removed.[58]

4.4 Access to legal advice

Access to legal advice and representation becomes particularly acute for asylum seekers facing imminent removal, particularly if they are arrested at times when legal representatives are less likely to be contactable. Bail for Immigration Detainees maintains that in some asylum cases notice of removal is not given to legal representatives. The Law Society called for a duty on all immigration officers to inform an asylum seeker facing removal about the availability of legal advice and their rights of appeal on human rights grounds.[59] Furthermore, in evidence submitted to the JCHR enquiry on the treatment of asylum seekers, the Immigration Law Practitioners' Association (ILPA) stated that the Home Office had acted unlawfully in the past by failing to allow detainees enough time to mount challenges to prevent removal.[60]

54 **Home Office** (March 2006) *Family removals policy*
55 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
56 **House of Commons Home Affairs** Committee (July 2003) *Asylum removals, Fourth report of session 2002-03*
57 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
58 **House of Commons Home Affairs Committee** (July 2003) *Government response to the committee's fourth report: Asylum removals, Second special report of session 2002–03*
59 **House of Commons Home Affairs Committee** (July 2003) *Government response to the committee's fourth report: Asylum removals, Second special report of session 2002–03*
60 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

4.5 Community cohesion

The public attitudes of local communities towards asylum seekers facing removal can be both positive and negative in nature. Euan Girvan, a teacher at Drumchapel High School, explained to the Commission that the removal of a child had a much wider effect on the community and the child's peers:

"When a child is removed and does not turn up to school one day it is like a ripple in a pond – it affects all the people around them. Some pupils in Glasgow are now receiving counselling to help them overcome the trauma of losing a fellow pupil. It is an emotion very similar to bereavement."

Hearing: Glasgow. For full testimony visit humanrightstv.com

© Sandy Booker

Commissioner Sir John Waite

Campaigns to keep families or individuals in the UK have often gained significant local press coverage and sometimes national press coverage, especially when political pressure is exerted in the form of an MP's support.[61]

Whilst localised support is prevalent, in a memorandum to the European Council's proposals for a common EU returns policy, the Commission for Racial Equality stated its concerns that the current removal process may negatively impact on race equality and community relations, and may perpetuate or encourage stereotypes of ethnic minority persons as criminals. For example, the anti-social times that removals are carried out may criminalise asylum seekers, especially in cases where families are hurriedly removed in the middle of the night and with no notice to collect their personal belongings.[62]

4.6 Monitoring returned asylum seekers

It is noted by a number of organisations that there is no systematic monitoring by government agencies of individuals that are removed from the UK. Once people are removed, the government considers them no longer their responsibility and does not attempt to monitor their safety and security. At the European level, the EU Expulsions Agency has no mandate to monitor returns in terms of compliance with EU human rights obligations.[63] However, without monitoring the safety and security of those that are removed it is difficult to evaluate whether the process of removal is humane and sustainable. Furthermore, it can be dangerous for campaigning groups to attempt to fill this monitoring gap because of the security situation or restrictions on civil society groups in some countries of origin. There is also concern over the sustainability of voluntary return. IOM has no mechanisms to evaluate whether decisions to return are made voluntarily, under duress or under circumstances that are indirectly or directly coercive, or to assess that conditions in certain countries are safe for people to be returned.[64]

61 See for example: **BBC news** (4 November 2006) *Campaign to support asylum family*
62 **House of Lords** (May 2006) *European Union Committee, 32nd report of session 2005-6, Illegal Migrants: proposals for a common EU returns policy,* HL Paper 166
63 **Fekete, L.** (2005) *The deportation machine: Europe, asylum and human rights*, Institute of Race Relations
64 **Fekete, L.** (2005) *The deportation machine: Europe, asylum and human rights*, Institute of Race Relations

Commissioners' Interim Findings – What happens when we refuse people sanctuary?

A hallmark of any successful asylum system is that it should deal – fairly, effectively, and at minimum cost to public funds – with those whose asylum claims have been refused. That objective is breached whenever a refused asylum seeker is put at risk of persecution, having been coerced by unfair means or pressure into making a voluntary departure. It is also breached when an enforced removal is accompanied by insensitive or inhumane treatment.

The Commissioners are deeply concerned that breaches are occurring in both of these circumstances. Some voluntary returns are procured through the threat of destitution and some enforced returns are effected through the use of procedures that are inhumane and degrading. The result is a shameful blemish on the United Kingdom's proud history of fair treatment for those who come here in search of sanctuary.

Key findings:

- **That the current arrangements for returning people who have been refused sanctuary are not effective and sap credibility and public confidence from the entire asylum system**
- **That the conduct of some enforced returns is tainted with inhumanity and causes unnecessary distress to the individuals and communities concerned**
- **That the policy of using destitution as a lever to encourage voluntary return of refused asylum seekers risks forcing some extremely vulnerable people – who might have qualified for sanctuary had their cases been well handled – to face persecution in their country of origin**

The Commissioners affirm:

The Border and Immigration Agency's preference for voluntary return over enforced return of refused asylum seekers

The Government's responsibility for removing people who are found not to need sanctuary

The Commissioners express concern:

At failures in the system for dealing with those who are refused sanctuary

- That the current returns system is ineffective and needs to be improved to enhance the credibility of the whole asylum system
- That the policy of making refused asylum seekers destitute is punishing refused asylum seekers, some of whom would be entitled to sanctuary but who received poor asylum decisions
- That the ill health of people undergoing enforced return is frequently not taken into consideration
- That the pastoral visits prior to so-called 'dawn raids' are not effective in addressing pastoral concerns
- That escorts for those being returned are not selected, trained or paid to safeguard the returnee; they are unaccountable and accusations of assault are not appropriately addressed
- That those who choose voluntary return are not always fully aware of the current situation in the country to which they are to return

At avoidable inhumanity in the treatment of refused asylum seekers

- That returns targets such as the "tipping point" can lead to inhumane return decisions and actions
- That unnecessary violence and carelessness has been used in the conduct of enforced returns, with vulnerable mothers and children targeted, loss of belongings and a lack of accountability on the part of those charged with enforcing the return
- That improper force is used by escorts in the removal of some refused asylum seekers
- That many refused asylum seekers cannot return home for periods of time because of problems of documentation, yet still face harsh treatment in the UK
- That there are high levels of destitution among asylum seekers despite the existence of an asylum support system
- That destitution is being used as an instrument of policy to force refused asylum seekers to leave the UK and dissuade others from entering
- That destitute refused asylum seekers include very vulnerable people including heavily pregnant women, torture survivors, the mentally and physically ill, and older people
- That many refused asylum seekers cannot access health services

At the social and economic consequences of destitution

- That destitution has far-reaching social consequences, including vulnerability to sexual exploitation, cessation of education and additional individual trauma
- That through destitution the Government is stigmatising refused asylum seekers and increasing negative public perceptions of already vulnerable people
- That the prohibition on work for those who cannot be returned is a waste of potential and revenue
- That refused asylum seekers are vulnerable to illegal working, exploitation, and criminal activity and becoming victims of crime

At the lack of trust in the system at the end of the process among asylum seekers, refugee charities and the public

- That until fair and just decision-making becomes the norm throughout the asylum process, there will be little support for tough treatment of refused asylum-seekers
- That too few refused asylum seekers take voluntary return
- That there is often inadequate time for a refused asylum seeker to contact their lawyer before being subjected to an enforced return and that BIA staff play a 'cat and mouse' game by arranging removals at times when it is difficult for lawyers, social workers or other potential helpers to be contacted
- That there is no monitoring of what happens to those returned once they have left the UK

At policies and practices that appear not to have been clearly thought through

- That families with children are detained prior to return of refused asylum seekers
- That refused asylum seekers are detained with foreign national prisoners awaiting return
- That children with stable backgrounds and who have lived as part of local communities for many years are being returned suddenly and without consideration for the emotional and psychological impact
- That Section 4 hard case support is only available to a small proportion of refused asylum seekers, there is sometimes a delay before support starts, and the quality of some accommodation is extremely poor
- That vouchers provided for hard case support are ineffective, costly and stigmatising
- That hard case support provided for short-term use is being used to support people for long periods
- That there is inadequate legal representation for those at the end of the process who may still have protection needs
- That charter flights are used to return refused asylum seekers to countries or areas of countries that may be unsafe such as Iraq, the Democratic Republic of Congo and Afghanistan