

A New Deal for Safe and Sure Returns

In the above recommendations, the Commissioners have offered piecemeal suggestions that are compatible with the current system of dealing with refused asylum seekers. However, even if they were to be implemented, these reforms would not be enough to address the problem that the UKBA now faces in regard to the hundreds of thousands of refused asylum seekers still in the UK, and the growing number of refused asylum seekers who will no doubt join them having been through the New Asylum Model.

And so we believe that having made improvements to the decision-making process through the New Asylum Model, there is now an urgent need to review, in a similar way, what happens when we refuse people sanctuary and seek to improve the effectiveness and fairness of the asylum system at the end, as well as the beginning of the process. In short, refused asylum seekers are not all leaving voluntarily, forced return is expensive and traumatic, and destitution is indefensible both in terms of its failure to encourage refused asylum seekers to leave, and in its inhumanity. We believe that nothing less than a ‘New Deal for Safe and Sure Returns’ is needed.

That New Deal for Safe and Sure Returns should be based on the fifth mainstream, British consensus value on sanctuary that we identified in our ‘*Saving Sanctuary*’ report:

“Once a decision has been made, the UK should act swiftly, effectively and in a controlled way – either to assist integration or to effect a swift, safe and sustainable return for those who have had a fair hearing and have been refused sanctuary.”

The outcome of the ‘New Deal’ must be focused on voluntary, rather than forced return. We believe that the key to successful voluntary return lies in the beginning of the asylum process. More should be done to set out the rights and responsibilities of asylum seekers and the service they can expect within the asylum system. Where that service is delivered efficiently and promptly, we believe that a timely and co-operative response can be expected from asylum seekers. Therefore we recommend the development of a ‘compact’ and the investment of time at an early stage in the process to make sure the asylum seeker understands and is committed to the compact – and also the implications of refusal. We suggest that the majority of well-motivated asylum seekers would respond to such an approach and that a sensitively administered compact could lay the ground for a much more co-operative approach to the asylum process and for a higher rate of voluntary returns.

The second key element of the ‘New Deal’ is ensuring that the quality of the asylum determination process continues to improve and that asylum seekers have had legal representation. We make many recommendations along those lines in ‘*Saving Sanctuary*’, and believe that refused asylum seekers will be more likely to accept refusal and take voluntary return if they feel they have had a fair hearing.

The third key element of the ‘New Deal’ is continuing support while the refused asylum seeker is considering return. If housing and support is cut off at the same time as the refused asylum seeker should be considering a major and difficult decision about voluntary return, it is little wonder that many are focused on survival rather than return.

The fourth element, and the *quid pro quo* for the maintenance of support until return is the need for the UKBA to retain much greater control over the process after the appeal stage, making it difficult for refused asylum seekers to disappear, and making the threat of forced return a serious and likely outcome of non-compliance, rather than a remote threat. A credible sanction of forced return is more likely to lead to greater uptake of voluntary return.

The fifth element is increasing the trust of the refused asylum seeker in the returns process through greater involvement of the voluntary sector in advice, support and preparation for voluntary return. The voluntary sector will need further assurance of the quality and appropriateness of asylum decisions in order to engage more in voluntary return.

The sixth element must be that forced return becomes a credible and realistic sanction, but one that has little need to be used because of the increased rate of voluntary return. To restore trust in forced returns, a system of independent pre-return assessment should be explored, alongside independent monitoring of some returns.

The seventh element is to harness the concern and enthusiasm of the voluntary sector, campaign groups and community organisations who care so deeply for the asylum seekers they support. They should be encouraged to accompany returnees, conduct their own monitoring by maintaining contact with those who have been returned, or make return more sustainable, for example by twinning schemes with the refused asylum seeker's place of origin.

The eighth element is that where individuals cannot after a period (we suggest six months) be redocumented, or where they become effectively stateless, or there is a barrier to return that is beyond the individual's control, and they are complying with the system, they should be given some temporary status in the UK, and if after a further period the situation remains unresolved, they should be given leave to remain.

Therefore, the Commissioners urge UKBA to develop a 'New Deal for Safe and Sure Returns', and make the following recommendations for that process:

- ◆ That legal advice should be 'front loaded' to ensure that asylum seekers receive a fair hearing and that all protection claims have been properly assessed prior to return.
- ◆ That when a claim is made a compact should be signed by the asylum seeker and the UKBA. This compact would set out the expectations and responsibilities of both parties through the asylum process and up to the point of integration or departure.
- ◆ That UKBA should develop a prototype of such a compact in engagement with recognised stakeholders;
- ◆ That refused asylum seekers should not be destitute.
- ◆ That there should be an effective system by which the UKBA retains contact with refused asylum seekers and knowledge of their whereabouts.
- ◆ That forced return should be a real and credible sanction to encourage those without protection needs to take up voluntary return, rather than a remote threat.
- ◆ That the key role of trusted pastoral supporters and the voluntary sector for asylum seekers should be recognised, especially where such supporters may enable them to accept any final, negative decision and may help to prepare them for return to their country of origin.
- ◆ That a swift and independent pre-return assessment should be available to refused asylum seekers to make sure that all protection claims have been properly assessed prior to return, with mechanisms for reassessing protection needs where necessary.
- ◆ That from time to time, and without prior warning, an independent monitor should accompany refused asylum seekers forcibly removed from the UK, to improve the transparency and accountability of the process.
- ◆ That a protocol should be established in consultation with the UKBA, the voluntary sector and contractors to establish greater trust in the returns process system and to ensure the independent monitoring of returns, particularly of returns to countries with poor human rights records.
- ◆ That the energy and concern of the voluntary sector and supporters should be channelled into improving the safety and sustainability of returns, for example by allowing the option of an approved supporter accompanying a refused asylum seeker during the return process.
- ◆ That returnees should be given adequate time and resources to contact any family in the country of return who may make provision for their arrival and so make their return more sustainable.
- ◆ That the measure of successful returns should not be just a matter of numbers, but also of quality and sustainability.
- ◆ That where there is a barrier to return that is beyond the individual's control, and they are complying with the system, they should be given some temporary status in the UK, and if after a further period the situation remains unresolved, they should be given leave to remain.