

Independent Asylum Commission

CONDUCTING A NATIONWIDE REVIEW OF THE UK ASYLUM SYSTEM

IN ASSOCIATION WITH THE **CITIZEN** ORGANISING FOUNDATION

# deserving dignity

The Independent  
Asylum Commission's  
Third Report of  
Conclusions and  
Recommendations

How to improve the  
way we treat people  
seeking sanctuary

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

# Executive Summary

The Independent Asylum Commission (IAC) is conducting a nationwide citizens' review of the UK asylum system. In its Interim Findings, published on 27th March 2008, it presented evidence gathered from several hundred individuals and organisations, through public hearings, written and video evidence, and research.

Since that publication, the UK Border Agency has issued a comprehensive response to those Interim Findings, and described the Commission's first report of conclusions and recommendations, *Saving Sanctuary*, as "constructive". The Commission has continued to gather evidence on public perceptions of asylum in the UK and the values the British people think should underpin how we respond to those seeking sanctuary. Along with the CITIZENS SPEAK consultation on sanctuary in the UK, we have commissioned an opinion poll and focus group research to gain a better understanding of public attitudes to asylum.

This report, *Deserving Dignity*, is the last of three reports of the Commissioners' conclusions and recommendations, to be published in Summer 2008. The Commissioners aim to make credible and workable recommendations for reform that safeguard the rights of asylum seekers but also command the confidence of the British public.

## Key findings

- ◆ **The Commission concludes that all those who seek sanctuary in the UK deserve to be treated with a dignity over which mere administrative convenience must never prevail; and recommends that urgent action is taken to remedy situations where the dignity of those who seek sanctuary is currently compromised, particularly in the treatment of those who are detained, or women, children, torture survivors, those with health needs, and LGBT asylum seekers.**
- ◆ **The Commission concludes that 'how we treat those seeking sanctuary' should be based on the fourth mainstream consensus British principle identified in the Commission's *'Saving Sanctuary'* report: "People seeking sanctuary should be treated fairly and humanely, have access to essential support and public services, and should make a contribution to the UK if they are able."**
- ◆ **The Commission concludes that the responsibility for the fair and humane treatment of people who seek sanctuary in the UK lies with the UK Border Agency, but also with politicians, the media, and every individual citizen; and recommends that the UKBA must engage swiftly with the 92 recommendations to improve how we treat people seeking sanctuary.**

## Key recommendations

### Review the use of detention, find alternatives, and improve safeguards

- ◆ There should be an independent root and branch review of the detention of asylum seekers, from the starting point that it is appropriate only for those who pose a threat to national security or where there is absolutely no alternative to effect return.
- ◆ An independent analysis of viable long-term alternatives to detention, and of the likelihood and motivation of asylum seekers absconding, should be undertaken. Pilot schemes to test alternatives to detention should be undertaken and rigorously evaluated.
- ◆ The basic safeguards that exist in the criminal system should be applied to detention. Detention should be time-limited, for clearly stated reasons, and subject to judicial oversight.
- ◆ The Detained Fast Track process should be phased out because it is unfair, contrary to the spirit of the Refugee Convention, and can lead to unjust decisions.

### Allow asylum seekers to support themselves

- ◆ Asylum seekers who pass through the New Asylum Model without final resolution of their case within six months should be entitled to work.

### Treat children as children

- ◆ UKBA policy towards children should be based on the principle that the best interests of the child should be paramount.

The government's reservation to the UN Convention on the Rights of the Child must be revoked.

- ◆ There should be an end to the detention of children and age-disputed young people.
- ◆ A form of guardianship for unaccompanied children who claim asylum should be seriously investigated and consideration given to its swift implementation.

### Ensure the dignity of women, torture survivors, those with health needs and LGBT asylum seekers

- ◆ Family-friendly improvements made to Lunar House in recent years, such as the provision of adequate baby-changing facilities, should be provided in all client-facing UKBA offices.
- ◆ There should be appropriate training on a regular basis for UKBA staff to make sure they understand initiatives related to women's rights, and implement them accordingly.
- ◆ Healthcare should be provided on the basis of need, and asylum seekers should be eligible for primary and secondary health care until their case is successful, or they leave the UK; in particular and specifically, that all peri-natal healthcare should be free.
- ◆ That survivors of torture, sexual abuse or other forms of trauma should be clearly identified as 'at risk' during their passage through the asylum system in order to avoid detention and fast-track procedures.
- ◆ Specific guidelines for UKBA case owners on the sensitivities of handling the cases of lesbian, gay, bisexual or transgender asylum seekers should be developed.

# Conclusions and Recommendations

*'Deserving Dignity'* – the Independent Asylum Commission's Third Report of Conclusions and Recommendations: How we treat people seeking sanctuary.

## 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.



**Shamit Saggarr**

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; he holds academic posts at Queen Mary University, UCLA and Yale.



**Ifath Nawaz (Co-Chair)**

President of the Association of Muslim Lawyers, member of the Policing and Security working group in the wake of the bombings of 7 July 2005, a Commissioner on the Lunar House Report.



**Nicholas Sagovsky**

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



**Countess of Mar**

A cross-bench member of the House of Lords, previously sat on the Asylum and Immigration tribunal, for over two decades and resigned when she became disillusioned with the system.



**Katie Ghose**

Director of the British Institute of Human Rights. A public affairs specialist and barrister with a background in human rights law and immigration, Katie has also worked in the voluntary sector.



**Lord David Ramsbotham GCB CBE**

Her Majesty's Chief Inspector of Prisons between December 1995 and August 2001 and a former army general.



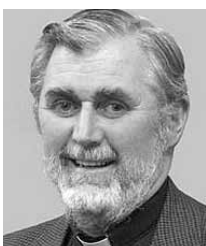
**Zrinka Bralo**

A journalist from Sarajevo who has also worked as a researcher and commentator since her exile to the UK in 1993. She is Executive Director of the Migrant and Refugee Communities Forum in West London.



**Dr Silvia Casale**

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.



**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.



**Earl of Sandwich**

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

**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](http://www.independentasylumcommission.org.uk)



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## Glossary

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| AIT   | Asylum and Immigration Tribunal   |
| API   | Asylum Policy Instruction   |
| ARC   | Application Registration Card   |
| ASU   | Asylum Screening Unit   |
| COI   | Country of Origin Information   |
| ECHR  | European Convention on Human Rights   |
| EU    | European Union  |
| FNP   | Foreign National Prisoner   |
| IRC   | Immigration Removal Centre  |
| LGBT  | Lesbian, Gay, Bisexual and Transgender  |
| LSC   | Legal Services Commission   |
| MSR   | EU Council Directive 2003/9/EC of 27 January 2003 laying down Minimum Standards for the Reception of Asylum Seekers |
| NAM   | New Asylum Model  |
| UKBA  | UK Border Agency (formerly the Border and Immigration Agency)   |
| UNHCR | The Office of the United Nations High Commissioner for Refugees   |

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email [evidence@cof.org.uk](mailto:evidence@cof.org.uk) or call 020 7043 9878.

# Foreword

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

This is our final report. Over the past two years we have been engaged in the most comprehensive review of the UK asylum process ever undertaken. At hearings throughout the country we have listened to numerous personal testimonies. We have read hundreds of submissions of written evidence, and we have received a great number of reports from expert witnesses.

As we complete our review, it is appropriate to thank the Citizen Organising Foundation for their pioneering work in establishing the Independent Asylum Commission. We live in times of mounting disquiet about the concentration of power in central government and the lack of opportunity for democratic participation by ordinary citizens. Therefore the initiative of ordinary citizens who care enough about an issue to recruit and establish an independent commission to look into it on their behalf, to raise all of the money needed to fund such an enterprise, and end up with three reports of recommendations that are making an impact on the national debate, is astonishing and tremendously encouraging for the future of civil society.

Our team of Commissioners, many of them coming to this issue completely fresh, have been struck by the qualities of character in those we have met. Asylum seekers continue to be misunderstood, demonised and scapegoated by many people. Yet those we met, even though many of them may never (despite the often terrible conditions they are trying to escape at home) succeed in achieving formal recognition of their status as refugees, were not scroungers and ne'er-do-wells, but decent people trying to maintain their dignity in difficult circumstances.

We need to add to that our appreciation of the insight we have gained into the problems of those who have to decide the fate of asylum seekers. Our experience of the staff of the UK Border Agency has been of concerned and conscientious people trying to make the right decisions in difficult circumstances. Pilloried in the press, often facing criticism from all sides, it is important that the people who take on the responsibility for deciding who is and who is not able to find sanctuary in the UK should be able to take pride in their work. We have shown a lot of concern for asylum seekers in the course of our review; it is only right that we should express concern for UKBA staff also. The same applies to those working within, and for, the appeal tribunal system.



Sir John Waite



Ifath Nawaz

If public confidence in the asylum system is to be rebuilt, it must become a system that reflects mainstream British values. Our *Saving Sanctuary* report identified five mainstream consensus values that we recommend as the foundation principles for the asylum system in the UK. In considering how we treat people seeking sanctuary in the UK, the fourth principle is particularly relevant:

*“People seeking sanctuary should be treated fairly and humanely, have access to essential support and public services, and should make a contribution to the UK if they are able.”*

In this report we explore further the concerns relating to the detention of asylum seekers, the material support with which they are provided, and the treatment of the most vulnerable of those who seek sanctuary here: women, children, torture survivors, those with health needs and LGBT asylum seekers.

The way we treat the most vulnerable in our midst is a true gauge of our values as a nation and a people. The public rightly expects fair and humane treatment of asylum seekers, befitting of a civilised society. There is considerable distance to travel until the reality of how we treat people seeking sanctuary matches that aspiration. We hope these recommendations help point policy-makers towards a system that treats all those who seek sanctuary on our shores with the dignity they deserve.

## CHAPTER 1

# Introduction

## What is the Citizen Organising Foundation?

The Citizen Organising Foundation supports the development of broad based community or citizen organising across Britain and Ireland. COF's primary affiliate community organization is LONDON CITIZENS: the Capital's largest and most diverse campaigning alliance. 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.

For further information see [www.cof.org.uk](http://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 UK Border Agency (UKBA).

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 commissioned by the Citizen Organising Foundation to undertake this work. It 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. The final conclusions and recommendations will be presented in three reports to the Citizen Organising Foundation and its member organisations later in 2008.



## 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 UK Border 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. The Commission has striven to listen to all perspectives on this debate and to 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 fleeing from persecution.

## How the recommendations are structured

The Independent Asylum Commission's report of Interim Findings, '*Fit for Purpose Yet?*' published on March 27th 2008, had three main sections, looking at three distinct areas of the UK's asylum system:

- How we decide who needs sanctuary;
- What happens when we refuse people sanctuary;
- How we treat people seeking sanctuary.

In accord with this structure, the Commission's recommendations are set out in three separate publications. *Saving Sanctuary*, the first of these publications, detailed the Commissioners' recommendations on 'How we decide who needs sanctuary' and public attitudes to asylum. The second report, *Safe Return*, made recommendations about how to improve what happens when we refuse people sanctuary. This report, *Deserving Dignity*, sets out the Commissioners' conclusions and recommendations on 'How we treat people seeking sanctuary'.

The Commissioners' concerns on each issue, as set out in the Interim Findings, are listed, followed by the response from the UK Border Agency to those concerns. The Commissioners' conclusions and recommendations are then listed at the end of each section.

## 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 Esmée Fairbairn Foundation

The Joseph Rowntree Charitable Trust

The M.B. Reckitt Trust

The City Parochial Foundation

The Sigrid Rausing 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

## Advisers

Lisa Nandy, The Children's Society; Maurice Wren, Asylum Aid; Louise Zanre, Jesuit Refugee Service; Jane Herlihy, PsyRAS; and Bernadette Farrell, South London Citizens.

Photographer: Sarah Booker.

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Thanks also to the Medical Foundation for the Care of Victims of Torture, Louise Zanre, volunteers at the Jesuit Refugee Service, Claudia Covelli, Alike Ngozi, and Mpinane Masupha and the many others who assisted with this report.

Particular thanks to Jonathan Hughes, Justin Russell and Grahame Jupp and other staff at the UK Border Agency who provided the response to our Interim Findings.

## CHAPTER 2

# How we treat people seeking sanctuary:

## Detention and material support

In the Commissioners' Interim Findings, *Fit for Purpose Yet?*, seventy concerns were raised regarding how we treat people seeking sanctuary. These concerns are printed below, with the relevant response from the UK Border Agency, the Commissioners' assessment of that response, and their conclusions and recommendations.

The Commissioners summarised their concerns in the following way:

“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 UK Border Agency to engage stakeholders in working for improvements to the treatment of people seeking sanctuary.
- The decision to review the UK's reservation to Article 22 of the UN Convention on the Rights of the Child.

### UKBA Responded:

*The UK takes very seriously its obligations to provide sanctuary to those who need it. We have implemented in full all EU Directives relating to the treatment of asylum seekers, in particular the Council Directive on Minimum Standards on procedures in Member States for Granting and Withdrawing Refugee Status. Our commitment to upholding these measures is regularly tested through the UK court system, including up to the House of Lords, and through the European Court of Human Rights.*

*While their claim is being determined, those seeking sanctuary are entitled to:*

- *support and accommodation;*
- *access to National Health Service care;*
- *legal representation, including through the appeals stage where an appeal is made; and*
- *access to education for all children.*

*If and when it has been decided that an applicant has no protection needs leading to their claim being rejected, and any appeal dealt with, we expect applicants to return home. Where there is a barrier to removal, we provide hard case support. However, our obligation to the taxpayer means that, like other EU Member States, we cannot provide indefinite support. Through the Assisted Voluntary Returns scheme we also work with the International Organisation for Migration to provide advice and support to those who return voluntarily to their country of origin.*

## Commissioners' Assessment:

We welcome in particular the affirmation that 'the UK takes very seriously its obligations to provide sanctuary to those who need it'.

In addition to the Refugee Convention (1951) and other major human rights instruments, the EU Directives relating to the treatment of asylum seekers provide a vital agreed base-line for UK treatment of asylum seekers to which we also wish to make reference. We note particularly Council Directive 2003/9/EC of 27 January 2003 laying down Minimum Standards for the Reception of Asylum Seekers (hereafter MSR); Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who otherwise need International Protection and the Content of the Protection Granted (hereafter IP); and Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (hereafter GWRS).

In the Commissioners' assessments, certain themes and assumptions are pervasive:

We accept that a target time of six months for a definitive response to an asylum claim is realistic and that policies which, when spread over years are demeaning and destructive, are not so when implemented within this time-frame. Thus, a low rate of benefit and the inability to work are not unreasonable when sustained for a matter of months. When sustained for years they become inhumane.

We believe that a target time of two weeks for a definitive response to an asylum claim on the detained fast track is far too short in almost any circumstances, but especially for asylum seekers with a range of vulnerabilities: women, torture survivors, those with special physical and mental health needs, and others.

In our first report we indicated our warm welcome for the aspirations of the New Asylum Model, and especially for the key role of the individual caseowner. Our assessments and recommendations will show the key role NAM caseowners have, as we understand it, in improving still further the asylum system. They have a key role in initial interviewing, in the provision of appropriate support, in provision of information, in presenting the UKBA case at appeal, and in providing for integration or removal. For the NAM caseowner to be effective in all these aspects of case management must be extremely demanding. We are very concerned that the demanding nature of this work should be reflected in appropriate caseloads.

We believe that in many of the areas covered by these recommendations good policy guidelines exist on paper. Time and again evidence from the experience of individuals suggests that policy guidelines have not been followed. Confidence in the asylum system can only be sustained if the complaints system is seen to be rigorous, fair and effective in providing redress. Our understanding is that the new Inspectorate will have a key role in the effective implementation of the complaints system. Of similar importance in addressing complaints and allegations of failure are the national and regional stakeholder fora.

We are grateful for the time and effort that has been devoted by UKBA to engaging with the Interim Findings of the Independent Asylum Commission. Our hope is that this is indicative of a continuing commitment to engage at the national and regional level with stakeholders in shared commitment to improving the experience of those seeking sanctuary in the UK.

## **Interim Finding 1. The Commissioners expressed concern at the use of administrative detention for asylum seekers**

### **Finding 1.1 – At the cost of detention**

#### **UKBA Response:**

*We do not routinely detain asylum seekers. Most of those whom we detain have been found not to be in need of international protection. We believe the use of detention is at times an unavoidable consequence of operating an effective immigration control. Individuals can often prolong their own detention by refusing to cooperate with the removal process when they have been found, including by the independent courts where they have exercised their right of appeal, to have no reason to need sanctuary.*

*We do briefly detain some asylum seekers if, after screening, it appears to be a claim which may be decided quickly. Each case continues to be decided on its individual merits; and no decision is taken until after the claimant has been interviewed about his or her claim. In fact most individuals spend very little time in detention.*

*Nobody is detained for longer than necessary and we aim to keep detention to the shortest period necessary, which will differ from case to case depending on the particular circumstances of individual cases. We use this “end to end” Detained Fast Track process sparingly.*

*It costs less to detain someone for this short period than to support them during the extended asylum process. The detained fast track processes ensure asylum seekers have their claims settled quickly and accurately – usually within 10-14 days of the date of entry into one of the fast track processes but often quicker than that for those cases that are suitable for the process that provides an accelerated in-country right of appeal.*

*Detention plays an important role in maintaining an effective immigration control, including helping to ensure the removal of those without any right to remain here and who refuse to leave the UK voluntarily. We are clear that detention is a measure of last resort and alternatives must be considered before a person is detained. Such detention is not, therefore, a matter of routine. At any time only a very small part of the total population of asylum seekers and failed asylum seekers is detained.*

### Commissioners' assessment:

The Commissioners welcome the fact that detention is viewed within UKBA as a measure of last resort. The deprivation of liberty of a person is a serious issue, and one that the public believes should not be used for those who do not pose a threat to society. In our opinion poll, 70% of respondents thought that people should not be detained unless they have committed a crime or are a risk to society.<sup>1</sup> However, the evidence we have received suggests that 'nobody is detained for longer than necessary' is far from the current situation and we believe that much more effective safeguards should be developed to ensure that this aspiration is realised. We believe that 'effective immigration control' can much more frequently (and cheaply) be achieved without detention than is currently the case and make our recommendations with this in mind. Our questioning of the extent to which detention is used, of the affirmation that it is 'a measure of last resort' and as to whether it represents good value economically is only intensified by the recent announcement of the Government's intention to increase detention capacity.<sup>2</sup> The stated aspiration to have dealt with the 'legacy' of unresolved cases by 2011 should mean that the number of detention places needed drops significantly in about three years from now (2008).

70%

*of the public think people should not be detained unless they have committed a crime or are a risk to society.'*

**Finding 1.2 – That insufficient reasons for detention are given, that individual circumstances are rarely stated and the decision to detain is not transparent and accountable**

### UKBA response:

*Detention is subject to regular review and, under the terms of Rule 9 of the Detention Centre Rules 2001 (No. 238), every detained person must be provided with written reasons for his/her detention at the time of the initial detention, and thereafter monthly.*

*It is not the case that there is no 'systematic' process for reviewing the decision to detain. The decision to detain is authorised at specified levels, depending on the nature of the case concerned, and is kept under review on a regular basis at successively higher levels within the Agency to ensure that persons only remain in detention where this continues to be justified. Immigration detention is not time limited but it is a well-established principle that it must not last for longer than is reasonable in all the circumstances of the case.*

### Commissioners' assessment:

The Commissioners welcome the fact that the decision to detain is regularly reviewed and that every detained person is provided with written reasons for his/her detention. However, we remain concerned that this is in practice largely a paper exercise which does not always demonstrate how the specifics of the applicant's situation fulfil detention criteria. We are also concerned that

1 efeedback Research conduct opinion research using an online panel of more than 190,000 UK residents. A sub-sample representative of the UK population is drawn from the panel for each poll. The results of this opinion poll are based on 1,024 completes gathered online from respondents based across the UK. Data was weighted to the profile of all UK residents, not just those with access to the internet, over the age of 17. Data was weighted by age, gender, occupation and region. Fieldwork began on 2/5/2008 and concluded on 12/5/2008

2 Liam Byrne MP, Written Ministerial Statement on UK Border Agency Detention Estate, 19th May 2008.



*Our visitors – local volunteers who befriend detainees – see the profound hopelessness, despair and suicidal urges caused by the experience of detention."*

**Helen Ireland,  
Association of Visitors to  
Immigration Detainees.**

detainees do not have adequate access to scrutiny of the decision to detain them, whether that scrutiny be at bail hearings or by judicial review. We welcome the confirmation that detention must not last for longer than is reasonable. What is needed to ensure the 'reasonableness' of such detention, and that it is not an abuse of human rights, is effective judicial oversight. Since the deprivation of liberty is such a serious action for the state to take, the Commissioners believe it should in principle be subject to close judicial scrutiny and also time-limited.

**Finding 1.3 – That the levels of suicide and self-harm in detention centres are unacceptably high**

**UKBA response:**

*We do not agree that the levels of suicide and self-harm in IRCs are significantly higher than other custodial establishments. There has not been a death in detention since January 2006. We continue to take the issue of suicide and self-harm extremely seriously. Staff at all centres are trained to help identify and prevent suicide and self-harm and notices in various languages are displayed setting out that, where there is a concern about a fellow detainee, this should be brought to the attention of a member of staff.*

**Commissioners' assessment:**

The Commissioners are grateful to be informed that there has been no suicide in an IRC since January 2006, but remain concerned that work being done to protect against self-harm may still be weak, as indicated by Anne Owers' November 2006 report into conditions at Harmondsworth IRC.

**Finding 1.4 – That detention is unacceptably open-ended and administrative with some individuals 'parked' in detention for substantial periods**

**UKBA response:**

*The Detained Fast Track Process results in 10% -15% of new asylum seekers being detained for an average of around two months. The vast majority of asylum seekers are detained for very short periods, often just before removal. The Courts have held that detention in such circumstances is lawful and we consider it proper to continue to detain those who seek to frustrate the removal process.*

*In fact most individuals spend very little time in detention. Of the 7,390 asylum and non asylum detainees who left detention during the second quarter of 2006, 50% had spent 7 days or less in detention, 75% less than a month and 90% less than 2 months. Often the main determinant of an individual's length of time in detention is the extent to which they seek to frustrate the removal process.*

**Commissioners' assessment:**

The Commissioners remain extremely concerned about the 10% of detainees (approximately 739) who left IRCs in the second quarter of 2006 after more than 2 months (60 days) detention.

**Finding 1.5 – 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**

**UKBA response:**

*Foreign National Prisoners (FNPs) are only eligible for detention in the immigration detention estate following completion of their criminal sentence. Such persons would be released into the community if they were not foreign nationals. Ex-FNPs are risk-assessed at the end of their sentence and only those assessed as suitable for the immigration detention estate are transferred from prisons.*

**Commissioners' assessment:**

The presence of foreign national ex-prisoners in IRCs has, we have frequently been informed, made IRCs more difficult to manage and made detention still more difficult for asylum seekers. The mixing of these two groups has increased the sense of criminalisation amongst asylum seekers. We have had no opportunity to explore what kind of risk assessment is made before FNPs are sent to IRCs, but wish to stress that such a risk assessment should not concentrate merely on the risk of physical harm to other detainees. It is not satisfactory regularly to detain in the same facilities two groups of people whose needs are likely to be so different. Having said that, we believe that amongst those listed as convicted FNPs are some who should not have been criminalised as their actions (eg. passport fraud) may have been a legitimate response to their need to seek sanctuary in the UK. Measures that keep refused asylum seekers and convicted FNPs separate and that speed up the removal of convicted FNPs who have served their sentence – where such removal is appropriate – are vital for the wellbeing of detained asylum seekers.

**Finding 1.6 – That there is poor and inadequate access to legal advice and representation for detainees**

**Finding 1.7 – That detainees face extreme difficulties in communicating with the legal representatives advising them on their asylum claim**

**UKBA response:**

*Asylum claimants within the detained fast track process have access to legal advice. The Legal Services Commission provides accredited suppliers to operate a duty solicitor scheme to give advice and representation during the process. Alternatively, claimants are free to appoint their own legal representatives if they wish to do so. On arrival in fast track detention, claimants are*



*seen by a member of the detained fast track team in an induction interview, where the detained fast track process is explained to them in their own language. At the induction interview, they are asked whether they have a legal representative of their own already, or whether they require a duty solicitor under the LSC scheme. If a duty solicitor is required, detained fast track staff arrange for a duty representative from the LSC approved list to attend the detained fast track centre before the substantive interview, in order to allow the applicant to instruct the representative.*

*All detainees arriving at an immigration removal centre must be advised of their right to legal representation and how they can obtain such representation, within 24 hours of their arrival at the centre. A copy of the Bail for Immigration Detainees (BID) notebook must also be available in the centre library for detainees' use. The Legal Services Commission has recently successfully trialled the provision of regular in-house immigration advice. The service improves a detained individual's access to prompt quality legal advice.*

*Onsite legal advice is available through regular advice surgeries, open to all individuals who are detained in immigration removal centres in England and Wales. The purpose of the surgeries is to ensure that those in detention and who have not yet received legal advice or who no longer have a legal adviser and who require advice will be able to access advice through this scheme.*

*There are no restrictions on detainees' communication with their legal representatives. All detainees are allowed to keep their mobile phone (subject to certain security conditions) or are provided with access to a mobile. Detainees also have access to payphones in all our centres. In addition, internet access is provided in five of our centres and will be provided in a further two in the near future.*

### Commissioners' assessment:

The Commissioners remain concerned about the short time available for legal practitioners to assemble the relevant facts for cases in the Detained Fast Track process, especially where the case involves complex issues such as claims of torture, concerns of mental illness or other incapacitating factors. This is especially problematic in instances where appropriate interpreters have to be employed, and as we are not convinced that those who have been tortured or traumatised are always taken out of the fast-track process. We believe that this is an area that needs careful monitoring, as does the availability of cheap mobile phone, landline and internet communication.

**Finding 1.8 – 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**

**Finding 1.9 – 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**

**Finding 1.10 – That no presumption is applied in favour of bail and that detainees face difficulties accessing information about bail**

**Finding 1.11 – 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**

**UKBA response:**

*The bail system for asylum detainees is designed so as to ensure that those who it is considered appropriate to detain, but who can provide reliable assurances that they will not seek to frustrate removal through absconding, are able to apply for release from detention.*

*Legal aid funding is available for advice and representation in relation to bail applications. Such funding is subject to both a means and merits assessment to ensure fair and just access to justice is given in line with the requirements of international law. Fast Track contract provisions remind advisers that they are required to consider making a bail application on behalf of a client. We are satisfied that the current bail provisions provide adequate opportunity for all in detention to lodge applications for bail to the Asylum and Immigration Tribunal (AIT).*

*The AIT prioritises the listing of bail applications from those in detention, aiming to list them for hearing three days from receipt. Given these short timescales it would be impractical to attempt to further prioritise bail applications for family cases.*

**Commissioners’ assessment:**

The evidence we have received leads us to challenge the assertion that current bail provisions provide adequate opportunity for all in detention to lodge applications for bail. We believe it is not easy for a substantial number of detainees credibly to apply for bail: they need sureties who can present themselves at the AIT on a particular date, with time to wait for as long as it takes until a bail application is heard, and the ability to provide instant financial guarantees of unpredictable and sometimes sizeable amounts. For many detainees this is simply impossible. We believe that the longer the detainee has been held, the more urgent the need to review their detention in the light of a presumption towards bail. This would apply particularly in the case of families, for whom anything other than short-term absconding is likely to be virtually impossible.

**Finding 1.12 – That access to medication and psychiatric care is at present inadequate and should be improved**

**Finding 1.13 – That health care is not provided to detainees by the National Health Service**

**Finding 1.14 – That staff are not adequately trained to ensure the health and welfare of detainees**

**UKBA response:**

*The UK Border Agency takes seriously its duty of care to those who are detained in immigration removal centres. All detainees must have available to them the same range and quality of services as the general public receives from the National Health Service. This includes provision of primary health care services to detainees, including those with mental health needs and, where required, access to secondary and tertiary care services. Individuals who have a diagnosis of HIV and who have begun a course of treatment should be able to continue this treatment whilst detained. Individuals who have not begun treatment but who do have a prior diagnosis would normally be referred for confirmatory testing and follow-up action by the local specialist provider. The UK Border Agency has developed operating standards for removal centres and amongst these is one relating to healthcare. Details of this standard and all other standards are available on the UK Border Agency website.*

*The Detention Centre Rules 2001 (Rule 35) require the medical practitioner to report to the removal centre manager the case of any detained person who he is concerned may have been the victim of torture and the procedures for dealing with such reports have been improved recently.*

**Commissioners' assessment:**

We warmly welcome the UKBA response to our concerns about healthcare, particularly the statement that 'All detainees must have available to them *the same range and quality of services* [our emphasis] as the general public receives from the National Health Service'. We remain convinced that the best way to achieve this provision is to provide health care through the NHS or under NHS supervision. Particular concerns remain about confiscation and interruption of medication on detention and lack of prophylaxis before removal, e.g. to malarial areas. We regard it as very important that healthcare operating standards for removal centres are rigorously inspected by appropriately qualified inspectors. This would give assurance, for instance, that mental health concerns were being appropriately addressed. We are pleased to learn of Rule 35 of The Detention Centre Rules 2001. However, we question whether Her Majesty's Inspectorate of Prisons and the Independent Monitoring Boards will find this rule to be rigorously observed. We also believe it is important that the caseowner is informed of any concerns on the part of the medical practitioner. These concerns should be extended from a focus on whether a person may have been a victim of torture to include whether a person's mental or physical health is likely to be injuriously affected by detention.

**Finding 1.15 – 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**

**UKBA response:**

*We have a small number of residential short-term holding facilities, where detainees can spend a maximum of 5 days. In the majority of cases, detainees spend just one or two nights in these facilities before they are either removed from the UK or transferred to an immigration removal centre. All immigration removal centres are able to cater for both short and longer-term stays, and the facilities provided reflect their different needs.*

*The UK Border Agency teams operating in removal centres monitor the issue of individual case progression carefully. They ensure that detainees are provided with information on a regular basis in relation to their individual cases, as well as the monthly detention review provided by the case worker. Detainees may raise issues or queries in the interim which are answered by the UKBA teams.*

**Commissioners' assessment:**

The Commissioners believe that, as HM Chief Inspector of Prisons has emphasised, one of the greatest sources of anxiety and of complaints about feeling unsafe in IRCs is the lack of information about the progress of their cases and the indeterminate length of time that detainees spend in detention. We note the assertion that 'detainees are provided with information on a regular basis in relation to their individual cases, as well as the monthly detention review provided by the case worker. Detainees may raise issues or queries in the interim which are answered by the UKBA teams.' We believe the existence of NAM caseowners should improve the situation – provided the caseowner provides information and responds to queries. Once more, careful monitoring of what actually happens is essential.

**Finding 1.16 – 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**

**UKBA response:**

*Detained Fast Track began in 2000 and has evolved from being operated in one centre to three and, from one process to two, but the essential principle on which detention is based remains unchanged in both processes. An asylum claim from any country may be fast tracked if, after screening, it appears to be one which may be decided quickly.*

*We have 3 units involved in this work. Those accepted into the Detained Fast Track processes at either Harmondsworth (males) or Yarl's Wood (females), as subject to the "Fast Track Procedure Rules [2005]" will have an in-country right of appeal in the event of any negative decision. Those accepted into the Detained Non-Suspensive Appeal (NSA) process, may, if they receive a negative decision, have their cases certified as clearly unfounded in which case they cannot appeal until they have been removed from the UK.*

*I am concerned about the prison-like regime. Whenever people have temporary power over others – as detention centre staff have over detainees – there is the temptation to abuse it. So it is essential to have more outside monitors to prevent abuse.'*

**Rev Larry Wright, former IRC chaplain.**

*We use the “end to end” Detained Fast Track process sparingly. It results in 10% -15% of new asylum seekers being detained for an average of around two months. Experience has shown that some countries are more likely than others to give rise to claims which are capable of being decided quickly but potentially any claim from a claimant of any nationality which is capable of being decided quickly, and where there are reasonable prospects of removal, may be deemed suitable for the Fast Track processes. Each case is decided on its individual merits and no decision is taken until after the claimant has been interviewed about his or her claim. If at the interview it becomes clear that the case is complex and not suitable for the fast track process, the claimant is released from detention. About 10% of those taken into the detained fast track process that provides an accelerated in-country right of appeal are released from detention before a decision is made on their claim.*

*Similar safeguards are built into the accelerated appeals process where the timetable is laid down in statute. Immigration Judges can take a case out of the fast track process if they are satisfied that there are exceptional circumstances that mean that the appeal cannot be justly determined. A further 10% of those taken into the detained fast-track process are released at this stage and their appeals proceed on a slower track. However, those released at this stage have had the benefit of a quick decision on their claim.*

*Each claim is considered on its individual merits and there is no presumption of refusal. Although it is true that a high proportion of initial decisions are refusals, very few appeals have been upheld, roughly 1.5% of fast-track appeals determined in the statistics for the year 2007 /08, demonstrating that the quality of decision-making is withstanding independent review by the Asylum & Immigration Tribunal. The process is fair and flexible. It has been challenged by way of Judicial Review which found it to be fair and lawful. The Court of Appeal upheld that judgment.*

### **Commissioners’ assessment:**

The Commissioners are grateful to UKBA for their detailed explanation of the use of Detained Fast Track. However, we refer back to our Interim Findings based on the evidence gathered from those directly involved, which suggests that mistakes are still being made. We remain very concerned about the operation of Detained Fast Track procedures. We accept that there are certain cases which can be decided relatively quickly, but, given the seriousness of the consequences for individuals if mistakes are made, reiterate the importance of Quality Control in this area, and look to the UNHCR Quality Initiative to provide reassurance on this issue. Although it may be the aspiration that ‘each claim is considered on its individual merits and there is no presumption of refusal’, the time-scale and the correlation between countries and fast track decisions makes this hard to accept.

### **Finding 1.17 – That there is inadequate access to internet, phones and phone chargers for detainees**

**UKBA response:**

*Internet access is provided in five of our removal centres and will be provided in a further two in the near future. We continue to work closely with operators with a view to rolling the facility out further.*

*All detainees are allowed to keep their own personal mobile telephone (subject to certain security conditions) or are provided with access to a mobile telephone in order that they can communicate as necessary with legal representatives. All telephones come with phone chargers.*

**Commissioners' assessment:**

We welcome the availability of mobile telephones and the provision of Internet access. As well as ensuring that this service is provided uniformly in all removal centres, access to these services needs to be simplified.

**Finding 1.18 – That there is inadequate access to interpreters for detainees****UKBA response:**

*Both UK Border Agency and contractor staff have access to a 24 hour telephone interpreting service for use where language presents an issue.*

**Commissioners' assessment:**

The Commissioners welcome the fact that a 24 hour telephone interpreting service is available for staff. However, in light of the evidence uncovered by our review we remain concerned that this remote access may not adequately meet the needs of an individual being held in a Removal Centre.

**Finding 1.19 – That the Independent Monitoring Boards are not taking a more proactive role in monitoring the detention estate****Finding 1.20 – That recommendations made by reports from the Chief Inspector of Prisons into detention centres are frequently not implemented****UKBA response:**

*The UK Border Agency considers all recommendations made by the Chief Inspector very carefully. The overwhelming majority of recommendations are accepted and the Agency provides an action plan to the Inspectorate showing how and when individual recommendations will be implemented.*





**Commissioners' assessment:**

In view of the number of recommendations we make that echo recommendations made by the Chief Inspector of Prisons, we note UKBA's response to these findings and believe that this regime must continue with the introduction of the new UKBA Inspectorate and that monitoring the implementation of recommendations from HMIP and the consistency of operating standards must remain central to the work of the new Chief Inspector of UKBA. A further issue on which the Chief Inspector could usefully report in detail is the rigour and adequacy of initial and in-service training of staff in IRCs.

**Finding 1.21 – That there is an inconsistency of operating standards across the detention estate**

**UKBA response:**

*All the Immigration Removal Centres are subject to the provisions of the Detention Centre Rules 2001 and the same set of operating standards developed by the UK Border Agency*

**Commissioners' assessment:**

Evidence received through our review would suggest that continued efforts are required to ensure adherence to the Detention Centre Rules 2001 and to UKBA's operating standards.

**Finding 1.22 – 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**

**UKBA response:**

*Custody staff are either trained by the prison service or from private contractors to prison service standards. The issue of training for Detainee Custody Officers is kept under review and, where issues are identified, training and development opportunities are provided. All removal centres have trained mental health nurses, a manager of religious affairs and race relations liaison officers to deal with the particular issues highlighted.*

**Commissioners' assessment:**

We commend the continuous review of training for Detainee Custody Officers and hope that the issues identified through our work will lead to the provision of training and developing opportunities.

**Finding 1.23 – That complaints are not soundly and independently investigated**

**UKBA response:**

*Complaints are treated seriously and are investigated accordingly. The complaints procedure for detainees is based on principles established by the Prison and Probation Ombudsman, with outcomes subject to audit by the Complaints Audit Commission. Whilst some complaints will by their very nature require an independent investigation, it will be more appropriate for others (e.g. service delivery complaints) to be investigated – and be resolved – at a local level, including by the removal centre operator.*

**Commissioners' assessment:**

The UKBA response does not mention the introduction of a new system for dealing with complaints, which we understand to have been recently introduced after serious criticism of the handling of complaints by the Complaints Audit Committee (CAC). We welcome the frankness with which the CAC has spoken and the stated determination of UKBA to address their concerns. We look forward to the development of a new regime of accountability in the investigation of and response to complaints – especially to remedy the situation where complaints against staff in IRCs and against escorts are investigated from within the IRC. We believe that far more robust means of reassurance to asylum seekers that complaints will not be held against them, and that they will not be victimised for making complaints, need to be in place. The relative powerlessness of detainees generates a corresponding responsibility for those who detain them that they be treated in accord with the highest standards of humanity and human rights.

**Finding 1.24 – 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**

**UKBA response:**

*We believe that contracting out the operation of immigration removal centres provides value for money without reducing transparency or accountability. There is internal oversight by UKBA staff on site as well as through central detention management. At a local level, each removal centre has an independent monitoring board, with access to all parts of the centre. Also, at a national level, all removal centres are subject to inspection by Her Majesty's Inspector of Prisons.*

*We take the issue of religious observance seriously, and the manager of religious affairs in each removal centre is responsible for ensuring the religious needs are catered for, including arranging for visiting ministers where necessary.*

*I was detained for eight months and that cost the taxpayer £50,000 just for me. That money could be better spent.*

*And why is it that a suspected terrorist can be detained for a maximum of only 28 days, and yet an asylum seeker, who has committed no crime but seeks protection, can be locked up indefinitely?*

George, ex-detainee,  
West London Hearing.

#### Commissioners' assessment:

The Commission welcomes UKBA's acknowledgment that religious observance is of great importance for many individuals – especially during times of increased stress and uncertainty. As was stated earlier, we remain concerned that our evidence suggests that standards are not uniform across the detention estate and believe that a lack of transparency contributes to this.

**Finding 1.25 – That the role of chaplains in offering pastoral care is often not understood or is frustrated by Managers of Religious Affairs**

#### UKBA response:

*We believe that the role of the manager of religious affairs is valuable in ensuring that the pastoral and spiritual needs of all detainees, whatever their beliefs, are catered for. The UK Border Agency meets regularly with the managers of religious affairs from all removal centres, which provides them with an opportunity to discuss ideas and develop their roles further. Chaplains provide a very important and useful source of support for those who are detained, along with religious representatives from other faiths, and we support their role fully.*

#### Commissioners' assessment:

We are encouraged at the support for the role of chaplains. However, we have encountered considerable confusion around the roles of Managers of Religious Affairs and chaplains and their interaction. We believe that understandings of these roles, and of their relation to welfare, legal and health provision, vary in different IRCs and that greater understanding of and respect for the historic role of chaplaincy (for instance, in hospitals, prisons and the armed forces) would be beneficial.

**Finding 1.26 – 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**

#### UKBA response:

*We try to keep inter-centre transfers to a minimum, but there are occasions when they are necessary for operational and other control reasons.*

#### Commissioners' assessment:

We acknowledge that there may on occasion be valid reasons for inter-centre transfers to occur. However, we have heard several examples of this happening to individuals with great frequency. Whether this is due to a genuine need for transfer or a combination of inadequate procedures and poor communication, the confusion and stress this inflicts on an individual needs to be recognized, the operational need should be explained clearly to the detainee, and all attempts made to ensure movement is kept to an absolute minimum.

**Finding 1.27 – 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**

UKBA response: *No response.*

Commissioners' assessment:

We stress our support for the exploration of alternatives to detention that do not offer a risk to human dignity.

### Recommendations 1.28: The Commissioners therefore recommend:

#### Root and branch review of the policy of detention

**1.28.1 – That there should be an independent root and branch review of the detention of asylum seekers, from the starting point that it is appropriate only for those who pose a threat to national security or where there is absolutely no alternative to effect return. This review should look at the value for money provided by detention places (as against alternatives to detention) and review critically the anticipated need for such places after 2012.**

#### Better safeguards and more accountability

**1.28.2 – That the basic safeguards that exist in the criminal system should be applied to the detention estate. Length of detention should be limited, clearly defined, documented and justified and subject to judicial oversight. Full written reasons for detention should be given, demonstrating how the applicant's individual circumstances fulfil the detention criteria.**

**1.28.3 – That there should be a maximum time limit for detention, except for those who pose a threat to national security.**

**1.28.4 – That an independent analysis of viable long-term alternatives to detention, and of the likelihood and motivation of asylum seekers absconding, should be undertaken. Pilot schemes to test alternatives to detention should be undertaken and rigorously evaluated.**

**1.28.5 – That, where asylum seekers are detained, this should be in accord with explicit, published criteria which should be articulated clearly to the asylum seeker at the time of detention.**

**1.28.6 – That there should be no detention of children, age disputed young people, pregnant women, those with psychiatric disorders and torture survivors and that families should not be split up by one member being detained.**

**1.28.7 – That fuller information about bail should be given to all detainees and there should be a presumption in favour of bail.**

**1.28.8 – That after a strictly limited period of administrative detention, bail hearings should be automatic.**

**1.28.9 – That independent civic inspection of detention centres, conditions and contractors should be carried out twice a year through random unannounced visits and their findings made public.**

## Recommendations 1.28: The Commissioners therefore recommend:

### Improvements in the practice of detention

- 1.28.10 – That detention centres should not be run like prisons and that foreign national prisoners should be separated from refused asylum seekers.
- 1.28.11 – That there should be greater monitoring of escort arrangements on journeys between detention centres, and from removal centres onward.
- 1.28.12 – That HIV positive asylum seekers should not be detained as this puts them at risk of separation from their medical notes and complicates issues of medication.
- 1.28.13 – That healthcare for asylum seekers in detention should be provided by or under the supervision of the NHS.
- 1.28.14 – That the roles and duties of Managers of Religious Affairs and Chaplains should be clarified and that there should be consistency of understanding about their interrelation throughout the detention estate.
- 1.28.15 – That the Human Rights Act should apply to private contractors involved in the detention estate in the same way as it does for the private care sector.
- 1.28.16 – That staff working in removal centres should receive accredited initial and in-service training to be able to recognise when an individual is in distress and be able to refer that individual to receive specialist attention.
- 1.28.17 – That inter-centre transfers should be kept to an absolute minimum, only occurring when there is a genuine need for transfer.
- 1.28.18 – That the recommendations made for interpreters in Saving Sanctuary (2.7.13-15) should also be employed for those working with detainees.
- 1.28.19 – That there should be greater investment in facilities at any removal centre which hold detainees long-term, with extra money being used to develop life skill classes.

### Phasing out the Detained Fast Track

- 1.28.20 – That the Detained Fast Track process should be phased out because it is unfair, contrary to the spirit of the Refugee Convention, and can lead to unjust decisions.
- 1.28.21 – That while the Detained Fast Track continues, there should be a robust screening mechanism to prevent unsuitable cases being detained, including clearly set out parameters of those cases considered suitable for detention and clear guidance as to those cases which are not suitable. The application of the screening mechanisms should be minuted and transparent.
- 1.28.22 – That while the Detained Fast Track continues, asylum seekers should automatically be provided with adequate publicly funded legal representation for their claim and any subsequent appeal.

## Interim Finding 2. The Commissioners expressed concern at the inadequacies of support for asylum seekers

**Finding 2.1** – At the service provided by BIA [now UKBA]

**Finding 2.2** – 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

**Finding 2.3** – 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

### UKBA response:

*Reporting allows case owners to stay in regular contact with individuals throughout the application process and allows us efficiently to progress applications. It allows us to update the Application Registration Card (ARC) allowing any financial support to be paid through the Post Office. Regular reporting also enables us to deal with any barriers there may be to removing an individual from the UK and to advise and encourage alternative options other than an enforced removal. The published ‘intelligent reporting policy & procedure’ guidance gives advice on how an individual’s reporting requirement should be varied to meet their needs where there is evidence of compassionate circumstances requiring reasonable adjustment.*

*Where applicants are required to report regularly as part of their conditions of temporary admission / release, we will provide the cost of their travel. Assistance is available to Asylum Seekers who are reporting at a UK Border Agency Reporting Centre, live outside of a 3 mile radius from the reporting centre and are in receipt of asylum support under s.95 or s.4. Where a subject does not have automatic entitlement to travel expenses a claim for exceptional need can be made.*

### Commissioners’ assessment:

The Commissioners do not accept that the use of reporting is as positive as is portrayed in the UKBA response. Reporting is often bureaucratised and intimidating. We accept that regular contact with a NAM caseworker is important and we believe this provides the opportunity for improved, personalised reporting procedures.

We believe that ready access to accurate information about the progress of individual cases is vital for reducing the disproportionate time spent by some MPs on the needs of asylum seekers. Crucial to improvement in this area is the availability of information from a named NAM caseowner at every stage of the asylum process. As a first step towards better liaison between interested parties, we believe there is a need for careful consultation about these problems.



**Finding 2.4 – That asylum seekers face destitution at the beginning of their claim because of lack of access to Asylum Screening Units**

**Finding 2.5 – That some asylum seekers experience destitution (homeless and lacking money for basic food or other necessities) due to maladministration**

**Finding 2.6 – That there are administrative delays in receiving support, for example catching up with changed addresses**

**Finding 2.7 – That there is no legal aid for asylum support hearings**

#### UKBA response:

*We expect people arriving in this country intending to seek protection to make a claim at the earliest opportunity. There are signs at all major ports in a number of languages advising arriving passengers that if they wish to claim asylum then they must do so on arrival in the UK. For those who choose not to, or cannot claim on arrival, our Asylum Screening units are open from 8 a.m., 5 days a week. In the last quarter of 2007 5,885 people were able to claim asylum in-country.*

#### **Initial Support**

*Where the applicant provides all the necessary information, we aim to make the decision within 2 days. The consideration of applications for support under section 95 of the Immigration and Asylum Act 1999 is part of the end to end management of new asylum applications. As a result of the New Asylum Model we have introduced, case owners now have closer contact and control over their cases and this has improved the efficiency with which applications for asylum support are made and considered.*

#### **Support once a person is Appeal Rights Exhausted**

*The Government accepts that in the past, and particularly during 2005 and the first part of 2006, unacceptable delays occurred in the provision of support under section 4 of the Immigration and Asylum Act 1999.*

*Since then, the number of staff considering initial applications in the central section 4 team has more than doubled, and we have improved how we record and process applications. A prioritisation system exists which enables applications from those who are street homeless or who have medical conditions to be considered first. In addition, there are enquiry telephone lines which enable representatives to check on the progress of particular applications if necessary. Significant improvements in turnaround times have been made.*

*Since 1 May 2007, regional asylum teams have considered all applications for section 4 support from applicants whose asylum claims they handled. This has increased further the number of staff trained to consider such applications and has led to further improvements in turnaround times.*

*Although legal aid is not available through the UK Border Agency for asylum support hearings, the Asylum Support Appeals Project provides free legal advice for those who have an asylum support appeal hearing.*

*When applicants are relocated, their support payments are re-allocated to their new address. Any gap in the restart of regular payments will be covered by an Emergency Support Token (EST).*

### Commissioners' assessment:

We are pleased to acknowledge the work of UKBA in improving access to support, particularly Section 4 support. We also acknowledge the work done by the Asylum Support Tribunal, presented to us by its President, Mrs Sehba Storey, and observed by one of our members at her invitation. We were particularly impressed by the efforts made to respond promptly to appeals and the understanding shown for those who were potentially destitute. With UKBA, we recognise the work done by the Asylum Support Appeals Project. Impressive though it is, it cannot be a substitute for publicly funded legal representation which would aid both the appellants in presenting their situation and the work of the Tribunal in making an appropriate determination. One difficulty, it would seem, which hampers the work of the Tribunal is that of not knowing the precise personal and legal circumstances of the appellant. We believe it would be possible to ensure that judges of the Tribunal have better and fuller information to hand when they make decisions which are vital for the wellbeing of appellants and their dependents. We remain concerned at the number of people who claim asylum in-country, but who do not have easy access to ASUs, and we believe more can be done to address this situation.

### **Finding 2.8 – That there is no support available while waiting for a decision on support**

#### UKBA response:

*Applicants wishing to apply for asylum support who appear to be destitute are initially supported under section 98 of the Immigration and Asylum Act 1999 until the support application is resolved. Section 98 support is provided by Voluntary Sector Providers and includes the following:*

- *Provision of Initial Accommodation and essential living needs of asylum applicants.*
- *Providing information briefings on applicants' rights and responsibilities whilst in the United Kingdom.*
- *Providing briefings on the asylum process and dispersal locations.*
- *Carrying out (where facilities are available) health assessments for new claimants.*
- *Assistance with completing the asylum support application form.*
- *Supporting the applicant's move to longer-term section 95 accommodation where they may stay whilst they remain eligible for asylum support.*



**51%**

*of the public believe that asylum seekers should be able to work while their claim is being processed.'*

#### Commissioners' assessment:

We are disappointed that the UKBA response does little to acknowledge the current destitution amongst asylum seekers or to analyse the reasons for it. We believe our shared starting point with UKBA is the utter unacceptability of destitution (cf. MSR Article 15) and the need accurately to identify the reasons for it. The importance of access to work for asylum seekers whose claims drag on beyond six months is clear – not only to prevent them from becoming deskilled, but also so that they can make a contribution to the UK. Our opinion poll found that 51% of the public believe that asylum seekers should be able to work while their claim is being processed.<sup>3</sup>

#### Recommendations 2.9: The Commissioners therefore recommend:

##### Better methods of contact and communication

- 2.9.1 – That there should be a working group of UKBA, MPs, MPs' caseworkers, legal representatives and other advocates to explore better ways of communication and especially of providing updates on individual cases. The 'users' group' currently set up as part of the Solihull Pilot provides a model in this regard.
- 2.9.2 – In order to lay a foundation for successful integration and fair treatment of asylum seekers, levels of support and entitlements should be subject to the same standard and the same scrutiny of Equality and Human Rights legislation as it is for all other residents.
- 2.9.3 – That the training and caseloads of NAM caseowners should be carefully monitored to allow them to fulfil the considerable duties they have in maintaining contact with asylum seekers, ensuring adequate support for them, and in responding promptly to queries about the progress of cases.
- 2.9.4 – That asylum seekers who are required to report to UKBA on a regular basis (especially those supported by vouchers) should be provided with cash or a travel card to pay for public transport.
- 2.9.5 – That reporting procedures should be varied to meet individual circumstances, should be the minimum necessary to maintain positive contact and progress on individual cases, and should be under the direct supervision of the NAM caseowner.
- 2.9.6 – That where an individual requires a person to support them, for example on mental health grounds, this person should be allowed to accompany them throughout the reporting procedure.
- 2.9.7 – That the work of reporting centres should be open to independent monitoring.

<sup>3</sup> eedback Research conduct opinion research using an online panel of more than 190,000 UK residents. A sub-sample representative of the UK population is drawn from the panel for each poll. The results of this opinion poll are based on 1,024 completes gathered online from respondents based across the UK. Data was weighted to the profile of all UK residents, not just those with access to the internet, over the age of 17. Data was weighted by age, gender, occupation and region. Fieldwork began on 2/5/2008 and concluded on 12/5/2008

## Improve systems of support

- 2.9.8 – That systems for provision of support and accommodation should adopt best practice from mainstream benefit provision to ensure that asylum seekers do not become destitute due to maladministration.
- 2.9.9 – That the use of vouchers to provide support should end.
- 2.9.10 – That section 55 of the Nationality, Immigration and Asylum Act (2002), under which asylum seekers who are adjudged not to have applied for asylum as soon as reasonably practical on arrival in the UK may be denied support, should be repealed.
- 2.9.11 – That transition of support arrangements should be conducted sensitively, and asylum seekers in government-supported accommodation should be given reasonable time to make arrangements to move once they are granted status allowing them to remain in the UK.
- 2.9.12 – That UKBA New Asylum Model decision-makers who are responsible for the welfare needs of the asylum seekers in their care should be provided with training, resources and support to ensure that proper care is in place, especially for groups with special needs.
- 2.9.13 – That there should be more Asylum Screening Units (ASUs) with user-friendly hours, and short-term accommodation should be made available in Liverpool and Croydon to those unable to access ASUs. In the absence of more ASUs, we suggest that regional UKBA offices could provide initial packs, with details of an asylum hotline on which ASU appointments could be made, emergency cash for travel and subsistence authorised, and information about travel and emergency accommodation provided.
- 2.9.14 – That local authorities, voluntary, faith and CITIZEN groups should work together with UKBA to form sanctuary welcoming groups and befriending and mentoring schemes to help asylum seekers with orientation and integration, and to bridge the divide between those seeking sanctuary and the local population.

**Recommendations 2.9:**  
**The Commissioners therefore recommend:**

**Better access to support and work**

- 2.9.15 – That measures should be taken to ensure easier access to the Asylum Support Tribunal, both for appellants and (whenever possible) legal representatives.**
- 2.9.16 – That financial support and legal aid should be accessible for those challenging a decision to deny support at the Asylum Support Tribunal.**
- 2.9.17 – That there should be an obligation on UKBA to furnish the Asylum Support Tribunal and the appellant with the current state of an appellant’s claim and the reasons for refusal of support – failing which, emergency support should be granted until the case can be reheard with these details to hand.**
- 2.9.18 – That consideration should be given to granting a right of appeal on a point of law to asylum seekers whose appeals are rejected by the Asylum Support Tribunal.**
- 2.9.19 – That the quality of housing provided under section 95 and section 4 support should be more carefully monitored and subject to spot checks by UKBA.**
- 2.9.20 – That asylum seekers who pass through the New Asylum Model without final resolution of their case within six months should be entitled to work.**
- 2.9.21 – That asylum seekers who pass through the New Asylum Model and wait more than a year for their claim to be resolved should be eligible for mainstream benefits.**
- 2.9.22 – That the requirement for the UKBA to reduce overall expenditure on support costs must not lead to any diminution of the quality of support provided, or of the administrative and other systems necessary for delivering that support in a timely and appropriate manner.**

## CHAPTER 3

# How we treat people with additional vulnerabilities

### **Interim Finding: 3. The Commissioners expressed concern at the treatment of children in the asylum system**

#### **Finding 3.1 – That children continue to be detained**

#### **UKBA response:**

*Children are only ever detained in one of two limited circumstances: (a) as part of family groups whose detention is considered necessary, most often to effect removal and usually just for a few days and (b) where, very exceptionally, it is necessary to detain an unaccompanied minor whilst alternative care arrangements are made and normally then just overnight.*

51%

of the public  
think that  
children should  
not be detained.<sup>4</sup>

*Although families with children may be detained under the same criteria as individuals – i.e. whilst their identity and basis of claim are established, because of the risk of absconding, as part of a fast-track asylum process or to effect removal – in practice most are detained for just a few days prior to their removal. In those circumstances where detention of families with children is prolonged it is usually as a consequence of the parents seeking to frustrate the removal process.*

*We recognise that detention of families with children is an emotive issue and there are mechanisms in place to ensure rigorous review of such detention, including Ministerial authorisation for those exceptional cases where detention lasts for 28 days or more.*

*We are currently piloting an alternative to detention for families with children who have reached the removal stage, based at an accommodation centre in Ashford, Kent (pilot due to last until October 2008).*

#### Commissioners' assessment:

We remain concerned that decisions are not always taken with the best interests of the child in mind, and note the prominence given to this criterion in the EU directives, the force of which is accepted by UKBA. We believe that detention, other than for the briefest of periods to avoid absolute destitution, can never be in the best interests of the child. The public support this view, with 53% of people in our opinion poll saying that children should never be detained just because their parents are asylum seekers, and only 30% disagreeing.<sup>4</sup>

**Finding 3.2 – 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**

**Finding 3.3 – That vital decisions on unaccompanied asylum seeking children are taken without the presence of someone who represents the rights of the child**

**Finding 3.4 – At the lack of access to legal representation for unaccompanied asylum seeking children**

<sup>4</sup> efeedback Research conduct opinion research using an online panel of more than 190,000 UK residents. A sub-sample representative of the UK population is drawn from the panel for each poll. The results of this opinion poll are based on 1,024 completes gathered online from respondents based across the UK. Data was weighted to the profile of all UK residents, not just those with access to the internet, over the age of 17. Data was weighted by age, gender, occupation and region. Fieldwork began on 2/5/2008 and concluded on 12/5/2008.

**UKBA response:**

*The United Kingdom Border Agency is fully committed to the safeguarding of children and we do not accept that the UK's reservation on Article 22 of the UN Convention on the Rights of the Child means there is a lower level of protection for children seeking asylum. There is a dedicated process for children seeking asylum which is designed to take into account the vulnerability of children. All key events, including the substantive interview, first reporting event and the decision serving event, are always conducted in the presence of a responsible adult and the child is never alone. Furthermore, the Legal Services Commission funds legal representatives to attend all substantive interviews with unaccompanied asylum seeking children. The Agency also funds the Refugee Council Children's Panel to provide a number of services to unaccompanied asylum seeking children, one of which is to make sure the young people are provided with a solicitor to represent them in their asylum claims if they do not have one already. All unaccompanied children are referred to the Panel within 24 hours of registering their asylum claim.*

**Commissioners' assessment:**

Our comments are based on the stated intention of the Government to review its reservation on Article 22 of the UN Convention on the Rights of the Child; on the EU Council Directive laying down Minimum Standards for the Reception of Asylum Seekers, which prescribes that 'The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors' (MSR, Article 18); on the EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who otherwise need International Protection and the Content of the Protection Granted, which prescribes that 'The "best interests of the child" should be a primary consideration of Member States when implementing this Directive' (IP (12)) and on the EU Council Directive on Minimum Standards on Procedures in Member States for granting and withdrawing Refugee Status, which prescribes that 'The best interests of the child shall be a primary consideration when implementing this Article' (GWRS, Article 17, 6).

We believe that a corporate body such as the Refugee Council Children's Panel cannot perform the function of guardianship in the way that can and should be done by a named individual. Just as named individuals have the responsibility of safeguarding the best interests of a UK child who would otherwise be without such support, we believe the same should apply for unaccompanied asylum seeking minors.

**Finding 3.5 – That support arrangements provided for unaccompanied children by local authorities are not fully reimbursed by central government**

**Finding 3.6 – At the culture of disbelief and related practice of age-disputing unaccompanied children who seek asylum**



**Finding 3.7 – 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**

**Finding 3.8 – That children and young people face exclusions from normal activities in which other children participate, such as travel or opportunities for tertiary education**

#### UKBA response:

*Unaccompanied asylum seeking children are supported by local authorities under the same legislative arrangements in place for UK resident children that are need of care. The services provided to the children depend on the authority's assessment of their needs. UKBA funds local authorities for the costs of this support on the basis of annually set cash rates. Authorities that are unable to maintain expenditure within these limits may submit "special circumstances" claims, which are considered on a case by case basis.*

*We do not accept that there is a "culture of disbelief" that affects the handling of age dispute cases. Such cases are referred to local authorities to be assessed by social workers with the appropriate experience and expertise in this field. Our policy is to accept the assessment of the local authority unless there are very strong reasons not to. We have taken steps to streamline these processes by providing special funding for social worker teams at our main ports and screening units. An Age Assessment Working Group has also been set up, with representatives from the voluntary sector and with the Children's Commissioner, to discuss what is the best way to ensure accurate assessments are made of a child's age.*

*When planning the timing of the detention and removal of a family, each family's personal circumstances are fully considered and removal would not normally be planned to take place in the three months prior to a child sitting examinations.*

#### Commissioners' assessment:

The Commissioners welcome the setting up of an Age Assessment Working Group, with representatives from the voluntary sector and with the Children's Commissioner, to discuss the best way to ensure accurate assessments are made of a child's age. We believe this could provide a model of positive working between the statutory agencies and the voluntary sector for the common good. It is to be hoped that training and monitoring will form part of the package of measures that is eventually agreed and that the work will be approached with due urgency.

The Commissioners also welcome the affirmation that, when planning the timing of the detention and removal of a family, each family's personal circumstances are fully considered. If the avoidance of removal in the months leading up to a child's exams or at other crucial junctures is being achieved, we note this as a significant improvement in practice.

The Commissioners welcome the pilot scheme exploring an alternative to detention for families with children who have reached the removal stage, based at an accommodation centre in Ashford, Kent and look forward to its evaluation. We applaud the exploration and evaluation of measures intended to avoid detention of children and to achieve voluntary return of families whose asylum claim has, after due process, been refused. We hope the evaluation will consider fully the experiences of children in the pilot, compared with the experiences of children in detention, and that where the pilot has not resulted in increased voluntary return, the reasons for this are fully explored.

**Finding 3.9 – That the threat to deny support to families of refused asylum seekers and to take their children into care remains part of Government policy**

UKBA response:

*Most families do get cash support until the children turn 18 or the family leave the UK. A more limited support regime endorses the message that the asylum seeker has exhausted his or her appeal rights and should take steps to leave the UK once the barrier to leaving has been resolved. The legislation does not allow cash to be provided under section 4 and it is not the Government's intention to change this.*

*Section 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 provides for the termination of support in cases where the assessment is that the family is not co-operating or placing themselves in a position where they can leave. We introduced the provision because it is not right that families who have had their asylum claims carefully considered — including by the independent appellate authorities — should expect to remain in the United Kingdom indefinitely, even after it has been decided that they are not in need of international protection. It is preferable for all concerned if families agree to make a voluntary return home. This is a more dignified approach and one which allows access to the reintegration assistance provided through the International Organisation for Migration. However the Border and Immigration Agency must be able to enforce return where a family refuses to make a voluntary return — including in cases where the co-operation of the family is required to obtain necessary passports or other travel documents.*

*Through the introduction of the New Asylum Model (NAM) for case owners, our approach to dealing with asylum applications has undergone a significant transformation. Specialist case owners are now responsible for managing the claimants and their cases through the whole system to either removal or integration as a refugee. Faster and higher quality processes are leading to a better deal for the well founded claimant. This is supported by a strong focus on ensuring that early steps are taken so that those whose claims are not successful leave the United Kingdom in a timely manner.*

*When one of your friends is deported and disappears it is very sad. But it also makes you think, will I be next?"*

Young asylum seeker from Iran.



*We therefore believe that section 9 provision should be available to case owners dealing with cases under NAM. While it will not be suitable on a blanket-basis, it is important that we retain an ability to withdraw support from families who are wilfully not co-operating in the process. Going forward it should be for case owners to take a view, based on an established relationship with the family and an intimate knowledge of the asylum claim which has not been successful, of which approach to encouraging departure is most likely to be effective.*

#### Commissioners' assessment:

The Commissioners understand the purpose of the deterrent in the Government's general policy but they strongly emphasise that this policy should never be used against individuals or families in breach of their humanitarian commitments under the UN and European Conventions. We do not believe it is ever an acceptable consequence of public policy that children should become destitute.

#### Recommendations 3.10: The Commissioners therefore recommend:

##### Make the best interests of the child paramount

- 3.10.1 – That UKBA policy towards children should be based on the principle that the best interests of the child should be paramount. The government's reservation to the UN Convention on the Rights of the Child must be revoked.
- 3.10.2 – That Section 11 of the Children Act 2004 should apply in its entirety to the UKBA and its contractors.
- 3.10.3 – That the legislation and policy allowing for the threat to deny support to families of refused asylum seekers and to take their children into care should be repealed.

##### End detention of children

- 3.10.4 – That children and age-disputed young people should not be detained, and families should not be split by detention of one member.
- 3.10.5 – That families who are detained should have the right to an automatic bail hearing after 7 days.

##### Improve treatment of unaccompanied asylum seeking children

- 3.10.6 – That a review of the quality of decision making on children should be undertaken and should inform future policy and practice development in UKBA. UNHCR has begun such an audit and UKBA's Quality Audit Team should give special attention to the quality of children's claims and collaborate with UNHCR in this regard.

### Recommendations 3.10: The Commissioners therefore recommend:

- 3.10.7 – That age assessments should be conducted using an appropriate model, such as that of independent regional age assessment centres as recommended by the Immigration Law Practitioners' Association's research report 'When is a child not a child?'. To ensure transparency, written reasons addressing how an age-dispute was resolved should be provided to the applicant, regardless of the outcome.
- 3.10.8 – That the number of young people put through the age assessment process should be reduced by giving the benefit of the doubt in borderline cases.
- 3.10.9 – That X-rays should not be used to determine age.
- 3.10.10 – That a form of guardianship for unaccompanied children who claim asylum should be seriously investigated and consideration given to its swift implementation.
- 3.10.11 – That there should be adequate legal representation for unaccompanied children who claim asylum and that these representatives should be adequately trained and accredited and have a thorough understanding of child welfare law, in addition to immigration law.
- 3.10.12 – That the Dublin Regulation should only be applied in children's cases where a removal would be in the child's best interests, as allowed by the regulation and practised by several EU member states.
- 3.10.13 – That where removal of a child is to take place under the Dublin Regulation contact between the departments responsible for care of the child within the member state should be mandatory and facilitated by the department responsible for implementing the regulation.
- 3.10.14 – That funding of local authorities should reflect the reality of the cost of the care provided for unaccompanied children, regardless of age.



## Interim Finding 4. The Commissioners expressed concern at the treatment of women in the asylum system

- Finding 4.1** – 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
- Finding 4.2** – At the lack of understanding and recognition that women may have particular problems in accessing help and support
- Finding 4.3** – That the Government’s own gender guidelines are inconsistently observed
- Finding 4.4** – That women are being wrongly selected for detained fast track against the guidelines in the Asylum Policy Instructions
- Finding 4.5** – That the detention of pregnant women has a negative impact on their health and well-being

### UKBA response:

*Our stated policy and published guidance make clear that pregnant women should not normally be detained. The exception to this general rule is where there is a clear prospect of early removal and medical advice does not suggest confinement before then. In addition, pregnant women of 24 weeks and above are excluded from detention as part of the fast-track asylum process.*

*The authority of an Assistant Director is obtained before a pregnant woman is detained but the onus is on the individual to provide evidence of the pregnancy and of any complications. Pregnant women who are detained have access to the normal range of healthcare services, including visiting midwives and health visitors.*

### Commissioners’ assessment:

The Commissioners welcome the assurance that pregnant women should not normally be detained, but believe the Enforcement Instructions and Guidance should be amended to prevent pregnant women being detained at all. They also stress the importance of this being extended to breastfeeding mothers and of enforcement staff and staff at IRCs being made fully aware of the importance of breastfeeding mothers not being separated from their children.

- Finding 4.6** – That women’s cases based on sexual violence are not properly presented under the fast-track system
- Finding 4.7** – That gender-specific claims for asylum such as Female Genital Mutilation and trafficking are not adequately addressed by the asylum system

### UKBA response:

*The United Kingdom signed the Council of Europe Convention on Action against Trafficking in Human Beings on 23rd March 2007. On 14th January the Home Secretary announced that the Government intends to make the necessary legislative and procedural changes to implement the trafficking convention before the end of this year. A dedicated project team within the UK Border Agency has been set up to lead implementation of the Convention and is reporting to*

*a cross government official project board and Ministerial Group. The Convention builds on our strategy to combat human trafficking by providing minimum standards of protection and support for victims of all forms of trafficking.*

*In addition, issues such as female genital mutilation, where this is a likely possibility in relation to a specific country of origin, will be referred to in the operational guidance notes which provide guidance to case owners in making a determination on an applicant's claim.*

*Where a victim of trafficking claims asylum we will carefully and sensitively consider this application on its individual merits and in the context of the country concerned. We accept that trafficking, depending on the circumstances, may be a form of harm which is serious enough to constitute a form of persecution and this is specifically acknowledged in the Gender Issues in the Asylum Claim asylum policy instruction.*

*Where an individual is recognised as having been trafficked, she or he will be referred to appropriate organisations for assistance, such as the POPPY Project (a scheme that provides shelter and support to women who have been trafficked for sexual exploitation). Women accepted on to the POPPY Scheme have removal action held in abeyance for 4 weeks whilst they consider their options. Longer term support is offered in return for co-operation with the authorities and removal action is deferred where appropriate.*

*We have already undertaken some innovative awareness raising and training on trafficking with the POPPY project for some asylum caseworkers. This has proved extremely positive and we hope to do more in the future. We will be issuing specific guidance for asylum caseworkers in this area. We are currently considering comments received from stakeholders following consultation with them.*

## Commissioners' assessment:

The Commissioners agree with the UKBA about the importance of the *Gender Issues in the Asylum Claim* asylum policy instruction and wish to emphasise the need for caseowners and caseworkers to be fully familiar and to act in accord with its contents. The evidence we have received suggests that improvement is needed in this area, and that structures must be put in place to ensure that gender guidelines are rigorously implemented. These structures should include monitoring the implementation of the Gender API and adding it as a core competency and a key criterion in the accreditation of Case Owners.

The Commissioners commend to UKBA the Charter on the Rights of Women Seeking Asylum initiated by Asylum Aid, recognition of which they believe could be a valuable instrument for ensuring that the *Gender Issues in the Asylum Claim* policy instruction is fully implemented.

The Commissioners warmly welcome the involvement of stakeholders such as the POPPY project in training caseowners and in caring for women who have been trafficked. They are aware that new research by the Poppy Project and Asylum Aid demonstrates a welcome improvement in

procedural aspects but the finding that the majority of initial refusals are overturned on appeal suggests a lack of quality of decision making.

The Commissioners note that the UKBA response does not mention the finding that women's cases based on sexual violence are not properly presented under the fast-track system. Yet their own research found that "The referral mechanism to the detained fast-track was not sufficiently robust to identify potential gender-related claims which are not suitable for fast-track." (Yarlswood Detained Fast-track compliance with the Gender API: a report by the NAM Quality Team, Home Office, August 2006).

#### Recommendations 4.8: The Commissioners therefore recommend:

- 4.8.1 – That UKBA ensures that all aspects of its work are compliant with the Gender Equality Duty under the Equality Act 2006.
- 4.8.2 – That UKBA implements the EU directives on procedures and qualification in a gender sensitive way, based on the UNHCR's Gender Guidelines.
- 4.8.3 – That there should be a women's champion in the UKBA Senior Management Team.
- 4.8.4 – That the remit of the new UKBA inspectorate should include the monitoring of gender issues.
- 4.8.5 – That current policies and procedures should be reviewed with respect to their gender impact and to address discriminatory or negative impacts on women.
- 4.8.6 – That there should be appropriate training on a regular basis for staff to make sure they understand initiatives related to women's rights and implement them accordingly.
- 4.8.7 – That there should be childcare available for women during asylum interviews.
- 4.8.8 – That family-friendly improvements made to Lunar House in recent years, such as the provision of adequate baby-changing facilities, should be provided in all client-facing UKBA offices.
- 4.8.9 – That girls and young women (including those where there is an age dispute) should always be placed in women-only accommodation.
- 4.8.10 – That reporting requirements should be suspended for women who are pregnant, or have babies, or young children.
- 4.8.11 – That women provided with vouchers under Section 4 (a practice we believe should end) should be enabled to purchase necessary items for feminine hygiene, for their own health in pregnancy and, where they have children, necessary items for childcare.

- 4.8.12 – That women who have suffered from gender-based harm should not be detained.
- 4.8.13 – That women who are pregnant, breastfeeding, or have the care of children should not be detained.
- 4.8.14 – That a pre-removal risk-assessment process which is sensitive to the needs of women should be established.
- 4.8.15 – That there should be an appropriate gender balance at all times amongst UKBA and IRC staff who have the care of women.
- 4.8.16 – That female doctors should always be available to women who need medical attention in IRCs.
- 4.8.17 – That the UKBA gender guidelines should be rigorously implemented.

## Interim Finding 5. The Commissioners expressed concern at the treatment of those with health needs in the asylum system

- Finding 5.1 – That there is confusion and inconsistency over entitlement to health services
- Finding 5.2 – 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
- Finding 5.3 – That asylum seekers with health needs dispersed across the UK may suffer a break in continuity of care through dispersal
- Finding 5.4 – 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
- Finding 5.5 – 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
- Finding 5.6 – That disabled asylum seekers are not entitled to disability-related benefits
- Finding 5.7 – That the accommodation provided for disabled asylum seekers is sometimes unsuitable
- Finding 5.8 – That vulnerable groups such as older and disabled detainees are not adequately protected in detention

### UKBA response:

*In line with our obligations under the Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers, and with other EU Member States, applicants have full access to the NHS while their claim is being considered. Once their claim has been rejected, and any appeal right has been exhausted, they will have access to emergency care until they have returned home.*

*Healthcare staff in removal centres are required to screen detainees medically within two hours of admission to the centre. This is aimed at identifying any immediate and significant health needs. Following this initial assessment, the healthcare team is required to make care plans to manage the needs of detainees, where necessary. It is already the case that diagnostic testing for HIV, together with associated counselling, is free to all irrespective of residency status. HIV treatment begun during the period when an applicant's claim is being considered would be free. Any course of treatment begun while the patient was eligible to receive it free of charge must remain free of charge even if the patient's chargeable status changes, meaning that an asylum seeker already receiving HIV treatment at the point their asylum claim is finally rejected, must continue to receive that treatment free of charge until such time as they leave the UK. Only where the patient does not seek treatment until after their asylum claim has been finally rejected would they be expected to pay for it.*

*It can be a breach of Article 3 of the ECHR to remove someone from the UK if to do so would amount to inhuman or degrading treatment on account of the suffering caused as a result of their medical condition. However, the House of Lords case of N clearly establishes that states are under no obligation to allow those otherwise liable to removal to remain in their territories for the purpose of receiving medical treatment.*

### Commissioners' assessment:

The Commissioners agree with UKBA and the European Union Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers, which prescribes that 'Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness' (MSR Article 15.1). The Commissioners believe it is essential to establish at an early stage what are the health needs of asylum seekers, including 'necessary health care' and 'essential treatment' before waiting until 'emergency care' becomes necessary. We believe that ensuring the provision of necessary healthcare precludes attempting to charge people who are on asylum support or manifestly destitute for healthcare.

The Commissioners are concerned at the difficulties asylum seekers experience in signing on with a GP and the pressures this is likely to generate on Accident and Emergency Departments of Hospitals. We are also concerned about lack of liaison between GPs and healthcare staff in IRC health centres, and interruption of treatment at the point of detention.

The Commissioners note with concern the UKBA response that 'Only where the patient does not seek treatment until after their asylum claim has been finally rejected would they be expected to pay for it' as for some HIV positive refused asylum seekers there can be no prospect of imminent removal. The risks to their own health and to public health are manifest.

## Recommendations 5.9: The Commissioners therefore recommend:

- 5.9.1 – That there should be pre-screening health assessments for asylum seekers to identify health needs, including mental health needs, at the earliest possible stage.
- 5.9.2 – That asylum seekers with chronic physical or mental health needs should be supported by special teams tasked with planning for their needs and ensuring continuity of care after dispersal, on the model of NHS complex discharge planning.
- 5.9.3 – That healthcare should be provided on the basis of need, and that asylum seekers should be eligible for primary and secondary health care until their case is successful, or they leave the UK; in particular and specifically that all peri-natal healthcare should be free.
- 5.9.4 – That asylum seekers' health entitlements should be more clearly communicated to asylum seekers, support organisations and health professionals.
- 5.9.5 – That any measures to curb 'health tourism' that affect asylum seekers be evidence-based and take into consideration the risk of abuse, public health impact and the long-term health and financial costs of not providing early treatment, specifically for asylum seekers.
- 5.9.6 – That disabled asylum seekers should be able to access suitable accommodation and support, and be properly protected in detention.
- 5.9.7 – That, where asylum seekers have GPs or other healthcare providers, healthcare workers in IRCs should be proactive in contacting them to ensure continuity of care.



*My family helped me flee the DRC after I was tortured. I came here and am very grateful for the support of charities like the Welsh Refugee Council and the Medical Foundation for the Care of Victims of Torture. I still have flashbacks when I see the army recruiting in Cardiff, but things are getting better.”*

**Jose, torture survivor, Cardiff hearing.**

## **Interim Finding 6. At the treatment of torture survivors in the asylum system**

**Finding 6.1** – That torture survivors are often not identified by the system

**Finding 6.2** – That torture survivors are being detained despite UKBA published guidance to the contrary

**Finding 6.3** – That torture survivors are being fast-tracked against UKBA guidelines

**Finding 6.4** – 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

**Finding 6.5** – That there is a lack of understanding among UKBA decision-makers of the reasons why a torture survivor might fail to disclose their experiences

**Finding 6.6** – At the lack of recognition and understanding that expert medical reports may be slow to arrive, or be altogether absent

### **UKBA response:**

*Decision-makers are trained to be fully aware of the sensitivities of dealing with these groups of vulnerable applicants. There is, for example, guidance on the consideration of gender-based claims and detailed guidance on the interviewing of torture survivors and other vulnerable groups. This guidance is published on our website. Interviews and decisions are extensively sampled by our own internal Quality Audit team and by the UNHCR.*

*A history of torture is one of the factors that must be taken into account in deciding whether to detain a person and would normally render the person concerned unsuitable for detention other than in exceptional circumstances. Independent evidence of torture will weigh heavily against detaining an individual.*

*Those requiring a medical report to support their claim can apply to the Medical Foundation or the Helen Bamber Foundation. Both these organisations are registered charities. Around 2,400 cases were referred to the Medical Foundation in 2006 (10% of our asylum intake) and they produced around 750 reports (3% of our intake or 30% of those referred).*

*In addition, we are looking at ways to identify better vulnerable applicants earlier in the asylum process, including looking at how we might incorporate UNHCR’s Heightened Risk Identification Tool into the screening process, and holding a workshop on vulnerable applicants with our key external stakeholders later this year.*

### Commissioners' assessment:

The Commissioners welcome the UKBA reiteration of the safeguards that are in place to protect torture survivors. However, we repeat our concerns that torture survivors are not always picked up by UKBA staff and that there remains a lack of understanding of the long-term effects of trauma. We have emphasised this issue because of the evidence we have received that torture survivors continue to be fast-tracked, to be interviewed inappropriately, and to be disbelieved. We welcome the guidance on the interviewing of torture survivors and other vulnerable groups and we welcome the work of the Quality Audit team and the UNHCR Quality Initiative to maintain high standards in this area.

We are not persuaded that the impact of a decision to detain on a torture survivor is fully appreciated, and that the use of detention for such vulnerable people is kept to an absolute minimum.

The figures quoted by UKBA (that reports were produced by the Medical Foundation on 30% of those referred) suggest the limited capacity of the Medical Foundation and the Helen Bamber Foundation to provide the necessary medical information for decision-makers. In the absence of such expert reports, we stress the need to proceed with extreme caution and sensitivity.



### Recommendations 6.7: The Commissioners therefore recommend:

- 6.7.1 – That survivors of torture, sexual abuse or other forms of trauma should be clearly identified as ‘at risk’ during their passage through the asylum system in order to avoid detention and fast-track procedures. This should happen as early as possible in the process and mechanisms should be in place to ensure that these vulnerable applicants are able to put forward their claims as necessary.
- 6.7.2 – That the means of determining from the earliest possible stage whether a person seeking asylum is a survivor of torture, sexual abuse or other forms of trauma should be reviewed to ensure adequate systems and resources are available.
- 6.7.3 – That relevant Detained Fast Track procedures should be strengthened and rigorously implemented in order to ensure that in cases where there is evidence of torture, sexual violence or other forms of trauma, that that person’s vulnerability is quickly identified and they are removed from the Detained Fast Track process.
- 6.7.4 – That there should be a review of Harmondsworth and Yarl’s Wood Detained Fast Track initial decisions and appeals to make sure that claims of torture or other traumatic ill-treatment are always put before the decision-maker and that gender guidelines have been rigorously followed in interviewing.

### Recommendations 6.7: The Commissioners therefore recommend:

- 6.7.5 – That legal representatives and decision makers should be trained in the commissioning and use of medical expert reports and witnesses.
- 6.7.6 – That criteria should be developed specifying when expert opinion should be obtained, for example, in the cases of psychologically vulnerable persons where credibility issues or issues of the timing of disclosure are deemed relevant.
- 6.7.7 – That survivors of torture who are dispersed should have access to appropriate support, such as through the Medical Foundation for the Care of Victims of Torture.
- 6.7.8 – That UKBA decision-makers should receive training on the impact of torture, sexual violence or other forms of trauma on an asylum seeker's credibility, and ability to disclose details that support their case.

## Interim Finding 7. At the treatment of lesbian, gay, bisexual and transgender asylum seekers in the asylum system

- Finding 7.1 – At the treatment of LGBT asylum seekers in the asylum system
- Finding 7.2 – That some 'white-list' countries, such as Jamaica, recognised as 'safe' may not be so for LGBT asylum seekers
- Finding 7.3 – That LGBT asylum-seekers may be slow to 'come out' and so have difficulty providing evidence to substantiate their claim
- Finding 7.4 – That LGBT detainees are not adequately protected in detention

### UKBA response:

*All detained individuals are risk-assessed for any special factors or risk and issues such as the treatment of lesbian, gay, bisexual and transgender individuals will be contained in the country specific operational guidance notes. An individual's sexual orientation and gender identity are naturally a private matter for them. Nevertheless, all detainees regardless of sexual orientation/gender identity are subject to the same degree of safety and security whilst detained in our removal centres. There are systems in place to ensure this is the case, including anti-bullying strategies and Assessment Care in Detention and Teamwork (ACDT).*

*Countries are designated under Section 94 of the Nationality Immigration and Asylum Act 2002 where they are in general free from persecution and are safe for most people. There is no assumption that all claims from people entitled to reside in the listed countries will be refused and certified. Each claim is considered on its individual merits and will only be certified as clearly unfounded if it is found to be so after careful consideration of all the relevant evidence by specially trained caseworkers. The High Court found (in the case of **Husan**), that the approach taken by UKBA in deciding whether a claim was clearly unfounded was not materially different depending on whether or not the claimant was from a designated state*

#### Commissioners' assessment:

The concern of the Commissioners is that certain countries may be considered safe for most returnees, but that particular groups, such as lesbian, gay, bisexual and transgender people may be at particular risk. Where such risk exists, whether acknowledged or not, information about a detainee's sexuality could be used by others, including other returned asylum seekers, to pressurise them in detention or to harm them on their return. UKBA and IRC staff need to be alert to such fears and dangers and rigorously to respect confidentiality and privacy.

#### Recommendations 7.5: The Commissioners therefore recommend:

- 7.5.1 – That specific guidelines for UKBA case owners on the sensitivities of handling the cases of lesbian, gay, bisexual or transgender asylum seekers should be developed.
- 7.5.2 – That Country of Origin Information should be improved accurately to assess the situation of lesbian, gay, bisexual and transgender asylum seekers from countries such as Iran, and otherwise safe countries such as Jamaica.
- 7.5.3 – That there should be an assessment of the risks to lesbian, gay, bisexual and transgender asylum seekers in detention.



Independent Asylum Commission

CONDUCTING A NATIONWIDE REVIEW OF THE UK ASYLUM SYSTEM

IN ASSOCIATION WITH THE **citizen** ORGANISING FOUNDATION

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