

# Commissioners' Interim Findings— How we treat people seeking sanctuary

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

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

## Key findings:

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

## The Commissioners affirm:

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

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

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

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

## The Commissioners express concern:

### At the use of administrative detention for asylum seekers

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

do bail hearings because the ‘merits test’ means they can only represent those who have a 50% chance of success

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

### At the inadequacies of support for asylum seekers

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

### At the treatment of children in the asylum system

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

### At the treatment of women in the asylum system

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

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

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

### At the treatment of torture survivors in the asylum system

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

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

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