



Independent Asylum Commission

CONDUCTING A NATIONWIDE REVIEW OF THE UK ASYLUM SYSTEM

IN ASSOCIATION WITH THE **citizen** ORGANISING FOUNDATION

safe return

**The Independent Asylum Commission's Second
Report of Conclusions and Recommendations**

**How to improve what
happens when we refuse
people sanctuary**

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 the public perception 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, *Safe Return*, is the second 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 the UK Border Agency has inherited a system for dealing with the 283,500 refused asylum seekers still in the UK that has serious weaknesses and despite some commendable recent reforms, does not yet pass the key tests of practicality and effectiveness, public confidence, and humanity; and recommends that the new Agency should develop a 'New Deal for Safe and Sure Returns' for the future.
- ◆ The Commission concludes that 'what happens when we refuse people sanctuary' should be based on the fifth mainstream, consensus British principle identified in the Commission's *'Saving Sanctuary'* report: *"Once a decision has been made, the UK should act swiftly, effectively and in a controlled way – either to assist integration or to effect a swift, safe and sustainable return for those who have had a fair hearing and have been refused sanctuary."*
- ◆ The Commission concludes that the UK Border Agency is aware of the challenge it faces in dealing with refused asylum seekers and is focusing resources on tackling those issues; and recommends that while it develops the 'New Deal for Safe and Sure Returns' the UKBA must engage swiftly with the 32 recommendations to improve what happens when we refuse people sanctuary in the short term.

Key recommendations

Improve the rate of voluntary return

- ◆ There needs to be independent research into why refused asylum seekers do not return home voluntarily, and a subsequent pilot project to increase take-up of voluntary return.
- ◆ Better access to legal advice should be available after refusal of an asylum seeker's claim.
- ◆ Greater involvement of voluntary sector organisations is needed in preparing refused asylum seekers for voluntary return where return is a viable option.

Make returns procedures more humane and transparent

- ◆ Ensure that wherever possible, 'dawn raids' are avoided by preventative measures.
- ◆ The results of UKBA investigations into allegations of use of improper force by contracted staff should be made public.

End the destitution of refused asylum seekers

- ◆ The use of destitution as a lever to compel refused asylum seekers to accept return is indefensible, is opposed by 61% of the public, and should end.
- ◆ That refused asylum seekers who cannot be returned to their country of origin after six months, through no fault of their own, should be eligible for a time-limited, revocable, permit to work in the UK.
- ◆ That the use of vouchers for Section 4 (hard case) support should be discontinued.

A 'New Deal for Safe and Sure Returns' for the future

The scale and complexity of what happens when we refuse people sanctuary requires a wholesale review of current practice and a new approach that mirrors what the New Asylum Model achieved in improving the asylum determination process. This should be based on the following:

- ◆ Most returns should be voluntary, not forced;
- ◆ Better initial asylum decisions are essential to rebuilding trust in returns;
- ◆ Support to the refused asylum seeker must not be cut off at the point where they are considering return;
- ◆ UKBA must have much closer control of the process of managing refused asylum seekers after their appeal has been refused, and forced return must be a credible sanction;
- ◆ Greater involvement of the voluntary sector is crucial to increasing the uptake of voluntary return;
- ◆ Independent pre-return assessment and monitoring of those facing forced return would encourage further confidence in the returns process;
- ◆ The energy and concern of voluntary and community groups could help make forced returns more transparent, accountable and sustainable.
- ◆ Where there is a barrier to return that is beyond the individual's control, they should be given some temporary status in the UK, and if after a further period the situation remains unresolved, they should be given leave to remain.

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

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Conclusions and Recommendations

‘Safe Return’ – the Independent Asylum Commission’s Second Report of Conclusions and Recommendations: How to improve what happens when we refuse someone 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 Saggar

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



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A ‘New Deal for Safe and Sure Return’

Glossary

AIT	Asylum and Immigration Tribunal
AVR	Assisted Voluntary Return
COI	Country of Origin Information
ECHR	European Convention on Human Rights
FCO	Foreign and Commonwealth Office
HMIP	Her Majesty’s Inspectorate of Prisons
IMB	Independent Monitoring Boards
IOM	International Organisation for Migration
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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Foreword

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

The way we deal with asylum seekers whose claims have been refused is a serious structural weakness in the UK asylum process. The UK Border Agency has inherited an enormous backlog of legacy cases to process and it has inherited inadequate systems and resources to deal with those who do not return voluntarily by its own admission. At least 283,500 refused asylum seekers remain in the UK.

The UKBA should be applauded for its sensible approach to case resolution, piecemeal reforms to improve the returns process, and for its commitment to voluntary return. But these reforms are just that – piecemeal – and cannot disguise the fact that what happens when we refuse people sanctuary fails to pass the key tests of practicality and effectiveness, public confidence, and not least, basic dignity and humanity.

We lose public confidence in the integrity of the asylum system because of our failure to remove refused asylum seekers swiftly and sustainably. We lose control over the movements of the asylum seeker at exactly the point – after refusal – that the incentive for the asylum seeker to maintain contact disappears. And we lose moral authority by using destitution to ‘encourage’ refused asylum seekers to return home ‘voluntarily’.

In our first report of conclusions and recommendations, *Saving Sanctuary*, we identified five mainstream, consensus British principles to underpin UK asylum policy. These consensus principles were the result of extensive consultation with diverse groups – Young Farmers in Herefordshire to a book group in Balham, trainee cabin crew in South Wales to elderly residents in a Somerset home – and were tested in the crucible of 50 ‘People’s Commissions’ in every region of Great Britain and 16 focus groups across the UK.

Principle 5 is highly relevant to what happens when we refuse people sanctuary:

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

In this report, *Safe Return*, we have made recommendations that not only safeguard the dignity of asylum seekers, but also are in keeping with the values of the British public. In short, return of refused asylum seekers who have had a fair hearing should be swift, humane, and sustainable. Voluntary return must be the favoured option, but there will always be the need



Sir John Waite



Ifath Nawaz

to use forced return for those who refuse to comply. Forced return should be used only sparingly, but the prospect of swift return must be a real sanction, rather than a remote threat, in order to encourage greater take-up of voluntary return. Importantly, the public must be confident that the government has the situation under control.

This brings us to destitution of those refused sanctuary. The UK Border Agency claims that it does not operate a policy of destitution. Whatever they may say, we have heard testimony from many refused asylum seekers who are destitute in the UK because housing, access to employment, and benefits are withdrawn from the vast majority of refused asylum seekers. We can quibble over whether this amounts to a policy of destitution or not, but it is simply indefensible for people to be destitute in one of the richest nations of the world because of the lack of an effective system of return for refused asylum seekers. The public are also quite clear in their disapproval of destitution: in our opinion poll, 61% asserted that “no-one in the UK should be destitute, regardless of race or immigration status”.

We hope that in this report, we can point towards a better way of dealing with those whom we refuse sanctuary. We praised the UK Border Agency for introducing the New Asylum Model to improve the quality of decision-making. Now we need the same careful approach to design a new way of handling those at the end of the process – for the future, nothing less than a ‘New Deal for Safe and Sure Returns’ is needed.

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.

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*' was published on May 20th 2008 and set out recommendations to restore public confidence in sanctuary in the UK, and how to improve the way we decide who needs sanctuary. This report, '*Safe Return*', is the second report and sets out the Commissioners' conclusions and recommendations on 'what happens when we refuse people 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
 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

The Commission has received invaluable support and assistance from advisers, professionals, and volunteers.

Polling conducted by Ian Nockolds, Cognisant Research.

Focus groups recruited by Leftfield.

Advisers: Jan Shaw, Amnesty International; Maurice Wren, Asylum Aid; Louise Zanre, Jesuit Refugee Service; Dr Matt Merefield; Dave Garrett, Refugee Action.

Photographer: Sarah Booker.

Public affairs support: Hratche Koundarjian, Principle

Thanks also to 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

What happens when we refuse someone sanctuary?

In their Interim Findings, *'Fit for Purpose Yet?'*, the Commissioners raised thirty concerns relating to what happens when we refuse someone sanctuary. Concerns were expressed over: failures in the system for dealing with those who are refused sanctuary; avoidable inhumanity in the treatment of refused asylum seekers; the social and economic consequences of destitution; the lack of trust in the system at the end of the process among asylum seekers, refugee charities and the public; and at policies and practices that appear not to have been clearly thought through. Those concerns are reprinted below, with the relevant response from the UK Border Agency, the Commissioners' assessment of that response, and their conclusions and recommendations.

Interim finding 1. The Commissioners expressed concern at failures in the system for dealing with those who are refused sanctuary

- Finding 1.1 – That the current returns system is ineffective and needs to be improved to enhance the credibility of the whole asylum system
- Finding 1.2 – That the policy of making refused asylum seekers destitute is punishing refused asylum seekers, some of whom would be entitled to sanctuary but who received poor asylum decisions
- Finding 1.3 – That the ill health of people undergoing enforced return is frequently not taken into consideration
- Finding 1.4 – That the pastoral visits prior to so-called ‘dawn raids’ are not effective in addressing pastoral concerns
- Finding 1.5 – That escorts for those being returned are not selected, trained or paid to safeguard the returnee; they are unaccountable and accusations of assault are not appropriately addressed
- Finding 1.6 – That those who choose voluntary return are not always fully aware of the current situation in the country to which they return

UKBA general response:

The UK has always provided a haven to those who need it and will continue to do so. However, there will always be those, who do not need such protection but who seek to come and live in the UK illegally, whether for economic or other reasons. We provide an asylum system which delivers fair and objective decisions quickly, and an appeals system which is independent and which ensures these decisions are of the highest quality. This ensures that those who need sanctuary are treated differently from those who are here illegally.

Where it has been decided, including through the independent appeals process where applicable, that a person does not have legitimate grounds for sanctuary in the UK, the Government expects them to leave the country voluntarily. To this end we will, working with the International Organisation for Migration, provide advice and financial support to enable return and reintegration into the person’s home country. While engaging with this process, a failed asylum seeker is supported and has access to emergency medical care.

Outside of this process, when an asylum seeker has been found not to need protection it is our policy to discontinue providing support. We do not consider that it is right to ask the UK taxpayer to continue to fund those who choose to remain here when they have no grounds to stay and it is open to them to return to a home country that has been found safe for them to

live in. A change to this policy would create a disincentive to departure for unsuccessful asylum seekers and a “pull” factor for those who want to come to the UK for economic reasons, compromising the integrity of our asylum system and slowing down the asylum application process for others.

Commissioners’ Assessment:

Voluntary return is always to be preferred over forced return. Voluntary return deserves maximum encouragement by every positive means. In many cases it is difficult to achieve, and can only come about through careful preparation. We have a number of key recommendations which are intended to increase the take up of voluntary return. Nevertheless, the consequences of delay at the end of the asylum process are too grave to justify postponement in the hope that a reluctant returnee will have a change of mind and agree to voluntary return.

The Commissioners recognise that forced return must be one of the most difficult of all tasks confronting the UKBA. They acknowledge the attraction to administrators of return at short notice as a means of reducing the risk of absconding and of avoiding organised protest by neighbours or sympathisers. Nevertheless, they see ‘dawn raids’ and detention without notice as a strategy of last resort to be avoided wherever possible. Where refused asylum seekers, especially children, who must eventually face return, are left to establish bonds in schools and communities the breaking of those bonds becomes ever more traumatic with the passage of time. When the point has been reached (a highly distressing one for most asylum seekers) where, after having been through a fair and comprehensive asylum determination procedure, a claim has been refused, there can be no advantage to either side – the UKBA or the applicants – in allowing years of delay before return, though there must be a space seriously to work towards a negotiated return that will not in itself be traumatic for an individual or a family.

We address questions of detention elsewhere. In this report our focus is on what happens when we refuse people sanctuary. Her Majesty’s Chief Inspector of Prisons has reported on a number of short-term immigration holding facilities. We note with concern the first monitoring report of the Independent Monitoring Board on the short-term immigration holding facilities at Heathrow Airport, which raises serious concerns about the treatment of returnees and physical conditions.¹ It is clearly a matter of urgency that these be improved and scrutinized regularly. We welcome the inspection of short-term holding facilities by Independent Monitoring Boards and look to UKBA, as the purchaser of these services, for a mechanism of swift and appropriate response to such reports.

¹ http://www.imb.gov.uk/annual-reports/o8-annual-reports/Heathrow_2007-2008.pdf

Recommendations 1.7:

The Commissioners therefore recommend:

Significantly increase the rate of voluntary return for New Asylum Model cases

- 1.7.1 – That voluntary return should be the standard procedure of return for refused asylum seekers, and that enforced return should be a certainty for those who do not comply, but also a last resort.
- 1.7.2 – That robust independent research should be undertaken into the reasons why different categories of refused asylum seekers do not return home voluntarily, and that the results should inform a pilot project to increase take-up of voluntary return.
- 1.7.3 – That serious consideration should be given to the greater involvement of voluntary sector organisations in preparing refused asylum seekers for voluntary return where return is a viable option.
- 1.7.4 – That refused asylum seekers should be provided with reintegration advice and support prior to leaving the UK.

Remove barriers to return and improve transparency in forced returns

- 1.7.4 – That the UKBA should not attempt to remove a refused asylum seeker until all barriers to return, such as lack of documentation or instability in the country of origin, have been removed.
- 1.7.5 – That publicly funded legal advice should be available after refusal of an asylum seeker's claim.
- 1.7.6 – That refused asylum cases should be subject to quality assurance.
- 1.7.7 – That all possible steps should be taken to ensure that 'dawn raids' are avoided by preventative measures.
- 1.7.8 – That alongside the inspection work done by Her Majesty's Inspectorate of Prisons all short-term holding facilities should be open to Independent Monitoring Boards; and that UKBA should respond to both HMIP and IMB reports with action plans for improvements.
- 1.7.9 – That each case owner under the New Asylum Model should undertake a periodic review to investigate 'limbo' situations, where asylum applicants have had their case refused yet have not left the UK.

Interim Finding 2. The Commissioners expressed concern at avoidable inhumanity in the treatment of refused asylum seekers

Finding 2.1 – That returns targets such as the “tipping point” can lead to inhumane return decisions and actions

UKBA response:

Stretching and publicly accountable targets represent the Agency’s agreement with the tax payer to deliver a high quality and efficient asylum system which makes accurate decisions on an individual’s protection needs as quickly as possible. It is important, not least to ensure public confidence in the asylum system, that the Agency is held to account for the way in which it performs its functions in spending taxpayer’s money.

All cases are assessed individually according to the law and our obligations under the Refugee Convention, and all decisions and actions are made in this context. Any decision to return an individual to their country of origin will only be made where it has been decided that they have no protection needs and where this has been upheld (where applicable) by the independent appeals process. Targets around the number of returns should not and do not affect the way in which an individual application is decided.

Commissioners’ Assessment:

After our prolonged investigation of the UK asylum system, the Commissioners find it incredible that ‘targets around the number of returns ... do not affect the way in which an individual application is decided’ and find it a noble but unrealistic aspiration that they ‘should not’. We acknowledge that targets can be a valuable means of improving performance and of public accountability – but only if they are appropriate. The target that there should be more returns in any year than unfounded claims has contributed to a culture in which every application for asylum is viewed as a potential refusal, and to a focus on return rather than on what we see as the central aim of the UK asylum system: providing sanctuary for those who need it in accord with our obligations under international law. Decisions about returns should involve assessment of a range of legal and international obligations (not only the Refugee Convention but also obligations under the Human Rights Act – in particular Article 3 of the ECHR which provides an absolute right to be protected from torture or inhuman or degrading treatment or punishment) and it would be only right and proper for this range of obligations to be explicitly and consistently acknowledged alongside the Refugee Convention obligations.

Finding 2.2 – That unnecessary violence and carelessness has been used in the conduct of enforced returns, with vulnerable mothers and children targeted, loss of belongings and a lack of accountability on the part of those charged with enforced return





When they tried to return me, the handcuffs were too tight – it was incredibly painful. A flight attendant came to my rescue and asked the guards to take me off the plane when she saw the blood oozing from my wrists onto the floor.”

William, asylum seeker from Uganda.

UKBA response:

The restraint of adults and children during an enforced removal is always a last resort and limited to circumstances where it is necessary for an officer to use physical intervention to prevent harm to an individual or child present. It is certainly not the case that any individuals, including vulnerable mothers and children, are targeted in any way during the removals process.

Officers in charge of family detention visits are held accountable for the manner in which such visits are conducted. They keep a full audit trail of the planning of each visit on the Family Welfare Form and nominate an officer to keep a written account of the visit on the Premises Search Book 101 which is signed off on completion of the visit by a Chief Immigration Officer. Officers are trained to use conflict resolution techniques, to effect the arrest and detention of those whose removal is to be enforced. Staff should not use force unless it is absolutely essential to effect arrest and, in the case of families, should be mindful of the effect on children.

Any use of force must be reported on the Use of Force Form, a copy of which accompanies the Health and Safety (HSF) 1 form, which staff have to complete where there has been an incident. The line manager conducts an investigation and notes the HSF1 which then goes to the Health and Safety Liaison Officer. A copy of the form also goes to the National Arrest Team Co-ordinator who monitors the incidences of use of force.

Each member of the family is encouraged to pack the commercial baggage allowance, including sufficient clothes and toys for the children together with any valuables. These belongings travel with the family to the removal centre. The premises are secured on leaving the property and the 101 book is noted if any damage has inadvertently been caused.

Commissioners' Assessment:

In the light of the testimonies we have received about 'dawn raids', especially those involving women and children, we find this an impossibly rosy picture. We note the evidence given by BIA in March 2007 and quoted in our Interim Findings (p. 106) that there are problems in ensuring that those facing return are given time to put their affairs in order and be reunited with their possessions. This evidence accords with the evidence we received, particularly at our Glasgow Hearing. We received evidence that those detained in 'dawn raids' are often given time to pack neither the commercial baggage allowance nor sufficient clothes and toys for children, and that those detained are often not reunited with such possessions as they have been able to pack.

Finding 2.3 – That improper force is used by escorts in the return of some refused asylum seekers

UKBA response:

Use of force, including handcuffing, is only ever a last resort. All Detainee Custody Officers are required to be appropriately trained in Control & Restraint to the standards used by the prison service, including the application of restraints, and only Control & Restraint techniques approved by the Home Office may be used.

In all cases where a detainee alleges assault by the escorts, the UK Border Agency will first refer the matter to the police as the appropriate investigating authority. Such allegations must be properly recorded and reports submitted to the Contract Monitor to examine. All such allegations are viewed very seriously and the UK Border Agency will always co-operate fully with any police enquiries.

In parallel with the police enquiry, the Contract Monitor will also conduct an investigation into the allegation under the Immigration Service's internal complaints procedures. The Contract Monitor will also consider whether the allegation is such that it is appropriate to suspend the certification of the escorting officer(s) involved.



Commissioners' assessment:

The Commissioners acknowledge that this is a difficult and highly charged area – the 'sharp end' of enforced return. This makes it all the more important that where such arrests do take place the process is open to proper scrutiny and accountability. We are concerned that the use of contracted out services has resulted in incidents of unacceptable restraint being used in instances that do not constitute 'the last resort'. The evidence we have received includes cases where individuals with severe health problems have been handcuffed when this is clearly not appropriate. UKBA's response details procedures for reporting the use of force. We believe that further measures are required to ensure that unwarranted force is not used in the first place and that the UKBA's strict requirement to adhere to this principle should be clearly conveyed to all relevant stakeholders.

Allegations of improper force in enforced returns do much to destroy confidence in the asylum system among asylum seekers and the voluntary agencies. The speed with which returns may occur after an arrest, movement from detention centre to detention centre and the lack of independent witnesses make allegations of improper force difficult for the police to investigate. There is, then, a particular onus on UKBA to have a robust, speedy and impartial means of investigating such allegations. The new complaints system is in its infancy, but the assessment of the performance of Contract Monitors as outlined in the UKBA response is one key area where the mettle of the new Chief Inspector will be tried.

Finding 2.4 – That many refused asylum seekers cannot return home for periods of time because of problems of documentation, yet still face harsh treatment in the UK

UKBA response:

In order to facilitate the removal from the United Kingdom of individuals who have no legal right to remain and for whatever reason have no valid passport or travel document, the UK Border Agency (UKBA) will submit applications to the individual's Embassy, High Commission or Consulate in the United Kingdom in order to obtain Emergency Travel Documents. In cases where there is insufficient evidence to support the nationality and/or identity of the individual, it may be necessary for them to be interviewed by their Embassy/High Commission and UKBA will make every effort to facilitate and expedite this process.

Any failed asylum seeker who is fully engaging with the process of return to their country of origin, but for whom there is a delay which is not their fault due to problems with documentation, will be supported through section 4 support. Each Embassy or High Commission will have their own practices and procedures for verifying an individual's identity and nationality. This may include utilising detailed application forms which they provide or, where there is insufficient evidence to support the individual's claimed nationality, interviewing applicants to establish this. The Home Office complies with the procedures which are in place and then only once identity/nationality is confirmed will an Emergency Travel Document (ETD) be issued and removal pursued.

Commissioners' Assessment:

The Commissioners acknowledge the difficulty for UKBA of achieving the highest standards of practice in this area. Many refused asylum seekers do not want the authorities of their countries to know that they are in this situation. Conversely, the authorities of some countries refuse to acknowledge responsibility for their nationals, or deny their nationality. We believe it is vital that the *minimum* information be divulged for the purposes of repatriation in order to sustain confidence in the confidentiality of the whole UK asylum system. Those who, in applying for asylum, have co-operated with the UKBA requirement to make full disclosure of information which they believe has caused them to have a 'well-founded fear of persecution' in their own country find themselves, at the point of repatriation, in a position of acute vulnerability. The obligation of protection for those who need it includes an obligation to protect data revealed in the process of application. Where individuals cannot after a period (we suggest six months) be redocumented, or where they become effectively stateless, and they are complying with the system, we believe they should be given some temporary status in the UK, and if after a further period the situation remains unresolved, they should be given leave to remain.

Finding 2.5 – That there are high levels of destitution among asylum seekers despite the existence of an asylum support system

Finding 2.6 – That destitution is being used as an instrument of policy to force refused asylum seekers to leave the UK and dissuade others from entering

UKBA response:

The Government does not use destitution as an instrument of policy. Asylum seekers who need support to avoid destitution are given it from the time they arrive in the UK until their claim is fully determined (i.e. their appeal rights are exhausted). Support takes the form of accommodation or subsistence or both. Those who are unsuccessful in their asylum support application will have had their case considered by trained case owners and will have an opportunity to appeal their case to the independent Asylum Support Tribunal if required.

When an asylum seeker has been found not to need protection it is our policy to discontinue providing support. We do not consider that it is right to ask the UK taxpayer to continue to fund those who choose to remain here when they have no grounds to stay and it is open to them to return to a home country that has been found safe for them to live in. A change to this policy would create a disincentive to departure for unsuccessful asylum seekers and a “pull” factor for those who want to come to the UK for economic reasons, compromising the integrity of our asylum system and slowing down the asylum application process for others.

Our asylum support policy incorporates safeguards for the most vulnerable. Families with dependent children under the age of 18 years receive support until they leave the UK and children and vulnerable adults qualify for local authority care provision. People who are temporarily prevented from leaving the UK through no fault of their own (for example because of ill health or the lack of any viable route home) are provided with accommodation and vouchers if they would otherwise be destitute.

Commissioners’ assessment:

The Commissioners acknowledge that for those who have confidence in the UK asylum system, and for those who are unafraid to return home, there is provision for avoiding destitution. In our Interim Findings (p.82) we have, however, expressed our concerns at the inadequacies of support for asylum seekers, especially those who find themselves destitute through maladministration and administrative delays. We have also expressed our concern at the lack of legal aid for asylum support tribunal hearings. The support which asylum seekers need is far too often denied them through the failures of the system.

This erodes confidence in Section 4 provision. So, too, does the provision of vouchers and the poor quality of some accommodation. For those who cannot be removed to their country of origin, Section 4 provision is ‘asylum on the cheap’ and for those with a continuing fear of persecution on return it is a starkly unattractive option. From the evidence we have received, these people, who include families with children, will not be starved into compliance. Other, and more humane, means have to be found to resolve their situation.

One day some people came to my house and said the Home Office have said you have to leave. I told them how I was very sick, and it is cold and raining outside. The man took my legs from the bed and the women held me under my armpits and put me outside on the street with my bag of medication, locked the door and left. Today I survive on the food parcel the Red Cross gives me every week and £3.70 to travel.”

Hamed, refused asylum seeker from Darfur.



Destitution has far-reaching social costs that are difficult to quantify, and though it is proper for the UKBA to seek the support of the taxpayer for its policies, the public are also quite clear in their disapproval of destitution: in our opinion poll, 61% asserted that “no-one in the UK should be destitute, regardless of race or immigration status”.²

Finding 2.7 – That destitute refused asylum seekers include very vulnerable people including heavily pregnant women, torture survivors, the mentally and physically ill, and older people

UKBA response:

The criteria that a refused asylum seeker or the dependant of a refused asylum seeker must meet to be eligible to receive support under section 4 of the Immigration and Asylum Act 1999 are set out in regulation 3 of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005. Regulation 3(2)(b) allows us to support those failed asylum seekers who are unable to leave the UK by reason of a physical impediment to travel or for some other medical reason, which may include heavily pregnant women, torture survivors, the mentally and physically ill, and older people.

Commissioners’ Assessment:

We acknowledge that Section 4 support is available for those within the system who are unable to leave the UK for the reasons outlined in the UKBA response. We remain concerned both at the operation of the ‘Section 4’ system, where it does not meet the needs of pregnant women or women with babies, and of other vulnerable persons with particular needs. We have, for instance, expressed our concern at the use of vouchers, which we find, ‘ineffective, costly and stigmatising’. Shops at which they can be exchanged may not stock or refuse access to items needed by vulnerable people. Their very vulnerability (and the terms on which Section 4 support is offered) may be the reason why vulnerable persons, such as those who are mentally ill, will not present themselves for such support as it is currently provided.

Finding 2.8 – That many refused asylum seekers cannot access health services

UKBA response:

All refused asylum seekers have access to treatment in Accident and Emergency departments and for certain infectious diseases including tuberculosis. Other treatment needed to save life or to prevent a condition from becoming life-threatening, including maternity care, will be given regardless of ability to pay.

The rules relating to healthcare for foreign nationals in England are currently being reviewed jointly by the UK Border Agency and the Department of Health. The review has looked at both primary (GP) and secondary (hospital) care and has considered a range of issues regarding immigration and asylum, particularly the eligibility of failed asylum seekers and their children.

² 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.

Commissioners' Assessment:

The wording of this response suggests that the review of healthcare for foreign nationals in England by UKBA and the Department of Health is near to completion. In reading this review, we shall be judging its recommendations against standards such as that set by the EU Council Directive (2009/9/EC) of 27 January 2003 laying down Minimum Standards for the reception of asylum seekers, which directs that 'Member states shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness' and 'Member States shall provide necessary medical or other assistance to applicants who have special needs' (Article 15). We shall also be bearing in mind the public health implications of refusing treatment to those with communicable diseases like HIV/Aids, together with the increased pressure on Accident and Emergency Departments caused by the refusal of primary care to most refused asylum seekers. In this context we are mindful of the Hippocratic Oath, which has been a moral inspiration to doctors for many hundreds of years: 'I will use my power to help the sick to the best of my ability and judgement.'

Recommendations 2.9:

The Commissioners therefore recommend:

More humane returns procedures and practice, and the end of destitution

- 2.9.1 – That political targets such as the 'tipping point' should not override common sense and decency in the selection and conduct of forced returns.
- 2.9.2 – That the forced return process should be carried out, wherever possible, with reasonable notice, and with as little restraint or physical coercion as possible.
- 2.9.3 – That those who are removed by force must be able to exercise their rights over their property and money.
- 2.9.4 – That the results of UKBA investigations into allegations of use of improper force by contracted staff should be made public.
- 2.9.5 – That the minimum information necessary to achieve redocumentation should be revealed to embassies and high commissions of countries of origin.
- 2.9.6 – That refused asylum seekers who cannot return home due to issues such as lack of documentation should not be made destitute.
- 2.9.7 – That destitution should not be used as a lever to compel refused asylum seekers to accept return: the policy of removing all support for asylum seekers who do not avail themselves of Section 4 provision must be ended immediately.
- 2.9.8 – That refused asylum seekers should have full access to primary and secondary healthcare until the point of return.

The only problem is that I am not able to work. I have never taken a penny of benefits before. I can't go back to Zimbabwe yet, so all I ask is to be able to work and support myself by own sweat."

Lynn, refused asylum seeker from Zimbabwe.

Interim Finding 3. The Commissioners expressed concern at the social and economic consequences of destitution

- Finding 3.1 – That destitution has far-reaching social consequences, including vulnerability to sexual exploitation, cessation of education and additional individual trauma
- Finding 3.2 – That through destitution the government is stigmatising refused asylum seekers and increasing negative public perceptions of already vulnerable people
- Finding 3.3 – That the prohibition on work for those who cannot be returned is a waste of potential and revenue
- Finding 3.4 – That refused asylum seekers are vulnerable to illegal working, exploitation, and criminal activity and becoming victims of crime

UKBA response

As noted above, the Government does not have a policy of destitution and works to ensure that all necessary support for those who apply for asylum and those in the process of leaving the country is in place. We expect those who have been found not to have protection needs to return to their country of origin and support them in doing this.

Giving asylum seekers or failed asylum seekers permission to work would be likely to encourage asylum applications from those without a well-founded fear of persecution, seeking to circumvent the managed migration route, hence slowing down the processing of applications made by genuine refugees and undermining the integrity of the managed migration system.

The Government believes that managed migration is a valuable source of skills and labour to the British economy and there are recognised routes into the UK for those seeking to work. Entering the country for economic reasons is not the same as seeking asylum, and it is important to maintain the distinction between the two. It is also important that those who apply for asylum in the UK have their applications processed as quickly as possible and that is why we have set a target to conclude (grant or remove) 90% of asylum applications within 6 months by December 2011.

Asylum seekers are therefore not allowed to work, although they may apply for permission to work in the unlikely circumstance that they do not receive an initial decision on their asylum claim within 12 months provided the delay has not resulted from their own actions – in line with our obligations under the relevant EC Directive.

Commissioners' assessment:

The Commissioners understand UKBA's concern that the indiscriminate right to work for asylum seekers might encourage abuse and jeopardize the system for genuine refugees. They also acknowledge that denial of permission to work to those whose cases are concluded in six months is not unreasonable. However, we remain concerned about those whose cases remain unresolved after six months. We consider that denial of permission to work is a very serious deprivation. We have not found evidence that the granting of conditional permission to work to refused asylum seekers who cannot be returned would subvert the managed migration system. This is also a position that could be communicated effectively to a receptive public – our Public Attitudes Research Project found strong public support for the idea that asylum seekers should be able to make a contribution to the UK economy and our polling found that 48% of respondents either agreed or strongly agreed that 'if an asylum seeker has their claim refused but cannot return home through no fault of their own, they should be allowed to work on a temporary basis', against 38% who disagreed.³ Given the positive public attitudes towards permission to work for those who cannot be removed, this kind of limited approach would help rather than hinder trust in the system. The Commissioners believe that a carefully monitored licensing system would minimise the risk of abuse.



Recommendations 3.5: The Commissioners therefore recommend:

Temporary work and appropriate support for those who cannot return

- 3.5.1 – That refused asylum seekers who cannot be returned to their country of origin through no fault of their own should be eligible for a time-limited, revocable, permit to work in the UK.**
- 3.5.2 – That such work permits would be conditional upon the recipient complying with reporting or other conditions designed to enable him or her to be contacted on reasonable notice if return to country of origin became possible and would be liable to forfeit if such conditions were breached.**
- 3.5.3 – That Section 4 (hard case) support should be provided to refused asylum seekers for six months after which those who cannot be returned through no fault of their own should revert to mainstream asylum support and be eligible for a temporary work permit, under the conditions laid out in recommendation 3.5.1 and 3.5.2.**

3 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.

Interim finding 4. The Commissioners expressed concern at the lack of trust in the system at the end of the process among asylum seekers, refugee charities and the public

Finding 4.1 – That until fair and just decision-making becomes the norm throughout the asylum process, there will be little support for tough treatment of refused asylum seekers

UKBA response

Each application for asylum is considered on its individual merits and those who are eligible for protection from the United Kingdom will receive it. The fairness of individual decisions is routinely tested through the independent appeals process and the Agency is committed to building on the significant achievement of implementing the New Asylum Model (NAM) and improving the system wherever possible.

Delivering the NAM process reflected our commitment to making faster and better decisions – granting leave to those who qualify to stay on refugee or human rights grounds and removing those who do not. Faster decisions enable faster integration for those applicants with well founded claims. However, we take our obligations under the 1951 United Nations Convention Relating to the Status of Refugees extremely seriously and we are taking great care to ensure that increasing the speed of processing does not have a negative impact on the quality of decisions.

The design of the new system builds in quality:

- *asylum decisions are made at a more senior level than under old system, by individual graduate level case owners;*
- *these Case Owners undertake a 55 day Foundation Training Programme which incorporates in depth guidance on decision making and are provided with comprehensive operational instructions;*
- *Case Owners will be expected successfully to complete an accreditation process which we are developing in consultation with the Law Society – this will put them on the same footing as standards for publicly funded legal representatives in asylum appeals;*
- *end-to-end case management of asylum applications by a Case Owner means that applicants have a single, direct point of contact with someone who is wholly familiar with all of the issues involved in their particular application;*
- *each team has a highly experienced Senior Caseworker to provide support to Case Owners locally; and*
- *central support is provided by experts on policy and processes.*

Up to 20 per cent of all Case Owner decisions will be independently assessed as part of a strong central focus on quality and consistency. There is a team of quality assessors, independent of the asylum teams whose role it is now to assess decisions and interviews across all asylum teams – including Detained Fast Track. Assessment is against an objective quality form designed in consultation with UNHCR and on this basis feedback is provided to asylum teams, senior caseworkers, senior managers and training and policy teams.

Commissioners' assessment:

In previous reports the Commissioners have praised the improvements being made to the UK asylum system under New Asylum Model. In particular, we have welcomed the efforts that have been made to improve the quality of initial decision making as we believe that sound, well-argued decision-making is key to retaining trust at the end of process. We welcome the independent assessment of a significant percentage of Case Owner decisions. We believe that the best way to ensure fair and just decision-making throughout the asylum process, so far as UKBA is concerned, is for UKBA to continue to work in partnership with agencies such as the UNHCR, and with stakeholders, to identify those areas where targeted efforts for improvement are required. We welcome UKBA's positive approach to making changes in some areas where they have been identified as needed. We believe this is already contributing to rebuilding trust in the system.

Finding 4.2 – That too few refused asylum seekers take voluntary return

UKBA response:

All those who come to the UK seeking asylum will have their claims individually assessed and, if refused, they will have the opportunity to avail themselves of the independent appeals process. If, at the end of this process, it is assessed that they have no protection needs, the Government expects those people to leave the country. Ideally this will be as part of a voluntary process and, in co-operation with the International Organization for Migration, we operate the Assisted Voluntary Return (AVR) schemes to help them to do so.

AVR schemes provide a means of return that is both dignified and sustainable. Both the National Audit Office and Public Accounts Committee have encouraged us to make more use of the assisted voluntary return process for failed asylum seekers. In the 1st Quarter of 2008, the UK Border Agency delivered 3,025 asylum-based removals (including principal asylum applicants and dependants of principal asylum applicants). 650 of these asylum based returns were achieved through the AVR programme. This equates to approximately 1 in every 5 asylum-based removals in Q1 2008 being achieved through the AVR programme.

Commissioners' assessment:

The Commissioners' warmly welcome the use of Assisted Voluntary Return schemes and believe that more needs to be done raise awareness among refused asylum seekers of such schemes. AVR schemes need to be monitored carefully to ensure that the assistance they offer is appropriate and that their voluntary nature is not compromised. There is a difficult balance to be struck. AVR schemes should be realistic in helping refused asylum seekers see that the alternative to voluntary return is forced return. However, the aim of AVR schemes must always be to assist genuinely voluntary return.

There is also a concern about cost. Assisted voluntary return is far cheaper than the £11,000 it costs to return forcibly a refused asylum seeker. Given the numbers of refused asylum seekers still in the UK, the cost and length of time needed to undertake a forced return, voluntary return represents better value to the taxpayer.

Finding 4.3 – That there is often inadequate time for a refused asylum seeker to contact their lawyer before being subjected to an enforced return and that UKBA staff play a 'cat and mouse' game by arranging returns at times when it is difficult for lawyers, social workers or other potential helpers to be contacted.

UKBA response:

The timing of flights is dependant on commercial flight times and seat availability which is outside the control of the Agency. Individuals and families being detained are given 72 hours notice of removal directions of which the last 24 hours must include a working day to allow them to be able to seek legal advice or apply for Judicial Review. An exception to the minimum 72 hour notification may be made, with Deputy Director authority, where prompt removal is in the best interests of the person concerned. Detainees have access to telephones and a fax machine at removal centres.

Commissioners' assessment:

The Commissioners believe that, while the timing of flights and seat availability may well be out of UKBA's control, the decision by UKBA to use a certain flight is within the Agency's control and therefore more can be done to ensure that the return times chosen do not impinge on an asylum seeker's ability to seek advice, aid or comfort from lawyers, social workers and other potential helpers. We would argue for greater flexibility in the timing of removals so that adults are not removed near the end of courses or children close to exams. We believe that greater flexibility by UKBA on the timing of removals, attending to individual commitments and needs, would encourage greater openness to negotiated, voluntary return.

Finding 4.4 – That there is no monitoring of what happens to those returned once they have left the UK.

UKBA response:

There is no post-return monitoring or sustainability programme for those persons who choose not to return as part of an assisted voluntary return package and whose subsequent removal from the UK is enforced. However, removal will only be carried out where it is considered both appropriate and safe to do so, and only after an assessment of each case has been thoroughly conducted. In reaching such a decision, consideration will be given to our domestic and international obligations and the unique circumstances of each case. No individual will be removed whilst any asylum claim is pending.

We do not actively or routinely monitor individual returnees following removal: we believe that the best way to avoid ill-treatment is to make sure that we do not return those who are at real risk, not by monitoring them after they have returned. It would be inappropriate and impractical for the UK actively to monitor individual citizens of another country once they return there. However, the Foreign and Commonwealth Office will investigate any reports of ill-treatment and follows the human rights situation in countries through its network of posts around the world. They will pass on to the Home Office any allegations that returnees have been mistreated, and where appropriate may be asked to make discreet enquiries, often through NGOs or other third parties. Such information will always be taken fully into account as a factor in the formulation of asylum policies and hence in the decision whether it is safe to return an individual.

Every asylum seeker or failed asylum seeker (and their dependants) who successfully apply to IOM's AVR programme becomes eligible to claim a package of reintegration assistance under the Voluntary Assisted Return and Reintegration Programme (VARRP). Those who apply to receive this support are closely monitored by IOM for at least a year. IOM will control closely the nature and pace of the assistance given, in close coordination with the individuals concerned. This hands-on approach has not only proved most effective in ensuring the sustainability of return, but also, by requiring close consultation between returnees and IOM reintegration experts in the country of origin, permits the best possible accounting for the assistance.

Commissioners' assessment:

We acknowledge that it would be impractical for UK authorities to monitor all returned asylum seekers. However, there is no reason why a random sample or a sample based on certain criteria should not be monitored, building on the liaison that UKBA says already exists with the FCO. Using the good offices of the UNHCR, the Red Cross, or other reputable agencies, it would be possible, if the will were there, to commission independent research. The use of such research as a resource for still better initial decision-making could make a significant contribution to building confidence in the system. The Commissioners believe that every encouragement should be given to developing a system which enables some record to be maintained of the subsequent history of





refused asylum-seekers after return to their country of origin. Where refused asylum seekers have reintegrated successfully, this would be a positive encouragement to the decision-maker who refused their claim. Where there has been persecution on return, knowledge of such persecution would contribute towards better decision-making for the future. It could also contribute to ensuring that country of origin information is kept as up-to-date as possible.

Recommendations 4.5: The Commissioners therefore recommend:

Better decisions and renewed focus on increasing the rate of voluntary return

- 4.5.1 – That the standard of initial decision-making should continue to be improved by implementing the recommendations in the Commissioners' *'Saving Sanctuary'* report.
- 4.5.2 – That more should be done to inform refused asylum seekers of the existence of assisted voluntary return reintegration funding.
- 4.5.3 – That there should be greater openness to negotiate a time of return that is sensitive to the needs of asylum seekers, for example to finish courses or, in the case of children, to complete exams.
- 4.5.4 – That assisted voluntary return reintegration packages on offer should not fluctuate unnecessarily but be stabilised at a level that is appropriate to reintegration.

Interim Finding 5. The Commissioners expressed concern at policies and practices that appear not to have been clearly thought through

Finding 5.1 – That families with children are detained prior to return of refused asylum seekers

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.

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, until October 2008, an alternative to detention for families with children who have reached the removal stage, based at an accommodation centre in Ashford, Kent.



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.

We are pleased to learn of the pilot scheme exploring an alternative to detention for families with children who have reached the return stage. We hope it has been sensitively handled. In evaluating the pilot, we suggest it will be very important to demonstrate that the families did not enter the scheme with a sense of grievance that their claim had not been explored fully and fairly, and that the obvious incentives to return to the UK communities from which they had come were addressed.

Finding 5.2 – That refused asylum seekers are detained with foreign national prisoners awaiting return

UKBA response:

Foreign National Prisoners (FNPs) are only eligible for detention in the immigration detention estate following completion of their criminal sentence. 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 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 return of convicted FNPs who have served their sentence – where such return is appropriate – are vital for the wellbeing of detained asylum seekers.

Finding 5.3 – That children with stable backgrounds and who have lived as part of local communities for many years are being returned suddenly and without consideration for the emotional and psychological impact

UKBA response:

The immigration rules require a number of factors to be considered before a person is removed from the United Kingdom, including length of residence and compassionate circumstances. Any enforced return is, of course, likely to be distressing to the individuals concerned, especially if there are children involved, but we believe that the best place for a child will usually be with their parents. This will sometimes necessitate the removal of a child as part of a family group.

Commissioners' assessment:

Our concern here is not only for the children who are faced with return but for other children (especially those with similar immigration status) who are disturbed by the loss of their friends. The fundamental problem is the amount of time that has elapsed since refusal of asylum: children have become part of communities who mourn their loss. Undoubtedly, the best place for a child is likely to be with their parents, but the best interests of a child faced with return will be served by careful preparation for voluntary return, by the avoidance of detention for families, and, where detention is absolutely unavoidable, detention is for the minimum period possible.

Finding 5.4 – That Section 4 hard case support is only available to a small proportion of refused asylum seekers, there is sometimes a delay before support starts, and the quality of some accommodation is extremely poor

UKBA response:

Support under section 4 is available to those failed asylum seekers who are destitute and unable to leave the UK for one of 5 specified criteria. One criterion is that the failed asylum seeker is taking reasonable steps to leave the UK or to place himself in a position in which he is able to do so, for example by registering for an Assisted Voluntary Return. Thus section 4 support is available to all failed asylum seekers who would otherwise be destitute whilst they are taking positive steps to leave the UK. If a voluntary return were not possible for reasons beyond the applicant's control, then it is likely that the failed asylum seeker would meet the criterion that the provision of accommodation would be necessary for the purpose of avoiding a breach of his Convention rights (within the meaning of the Human Rights Act 1998).

Once an individual has been accepted as eligible for section 4 support, he will be accommodated as quickly as possible. The Agency works with its grant funded voluntary agencies to understand any problems which might cause delays in the application process – a dedicated workshop was held in April 2008 addressing such issues.

We accept that some of the accommodation previously supplied by a number of accommodation providers did not always meet the necessary standards. To counteract this we have over the past year or so transferred more than 7000 persons supported under section 4 to 'Target Contract' providers who offer improved standards of accommodation and are well regulated with a better responsiveness to local issues.

Commissioners' assessment:

We welcome the assurance that delays in the application process for Section 4 are being addressed. We repeat our concern that there is often a significant gap between application for support and provision of accommodation and vouchers. Also that only 9,365 refused asylum seekers are on Section 4 support, when there are an estimated 283,500 refused asylum seekers remaining in the UK. We are pleased to hear that the quality of accommodation is being improved. We are also pleased to note that in a letter of December 2007 sent to Restore of Birmingham, circulated nationally, BIA acknowledged the importance of local networks of friends and local access to services. It is to be hoped that in the future access to Section 4 accommodation will not entail relocation to another region.

Finding 5.5 – That vouchers provided for hard case support are ineffective, costly and stigmatising





UKBA response:

The Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 allow for the Government to provide accommodation to failed asylum seekers. There is no provision in law for UKBA to provide cash to failed asylum seekers. The vouchers issued are primarily luncheon vouchers, supermarket payment cards or supermarket vouchers which are widely used by non-asylum seekers. The vouchers used are those that would be used by any member of the public and because of this they do not identify persons using them as refused asylum seekers.

Commissioners' assessment:

We acknowledge that UKBA is following current provisions in law by providing vouchers rather than cash to refused asylum seekers. However, members of the public make relatively infrequent use of vouchers. Although in theory anyone can present a voucher, this does not in practice mean that stigmatization of asylum seekers is avoided.

Such is the need that asylum seekers have for cash, sometimes to get to reporting centres, that vouchers are often sold for less than face value. All asylum seekers need a certain amount of cash. The expense of running a demeaning, inflexible and inefficient system could be entirely avoided by providing support in cash.

Finding 5.6 – That hard case support provided for short-term use is being used to support people for long periods

UKBA response:

Support under section 4 of the Immigration and Asylum Act 1999 is available to those failed asylum seekers who are destitute for the period of time in which they are unable to leave the UK. Government policy is clear that once a failed asylum seeker is no longer prevented from leaving the UK, they should no longer be provided with support under section 4 unless failing to provide such support would breach the European Convention on Human Rights.

Commissioners' assessment:

Our concern here is for those on Section 4 support who cannot be returned to their country of origin and who are supported for long periods at a level that is designed for the short term. We have called this 'asylum on the cheap' and have recommended that Section 4 (hard case) support should be provided for six months after which refused asylum seekers who cannot be returned through no fault of their own should revert to mainstream asylum support and be eligible for a temporary work permit, under the conditions laid out in recommendation 3.5.1.

Finding 5.7 – That there is inadequate legal representation for those at the end of the process who may still have protection needs

UKBA response:

There are no barriers to individuals accessing Legal Aid funding for those who are at the end of the asylum process and continue to require legal advice – providing that the relevant means and merits tests are met and specialist legal advice is required.

If individuals require help in locating an adviser they can contact Community Legal Advice (CLA). This is a free and confidential service paid for by legal aid. CLA can refer individuals to a local solicitor or organisation who may advise them further.

Special arrangements to access advice are in place for those who are detained in Immigration Removal Centres (IRCs). Many of those in detention will have exhausted their appeal rights and may be facing removal. Legal Advice Surgeries are organised by the Legal Services Commission in each IRC on a twice-weekly basis to allow the opportunity for detainees to seek legal advice on any outstanding or possible immigration issues they may have.

Commissioners' assessment:

In practice, such legal advice and representation is extremely likely to be unavailable, as means will be exhausted and merits tests will be failed. There is an urgent need, as we have frequently stated, to enlarge the provision of legal aid. Our concern here is for those who have been ill-served by the system, and who need legal help to ensure that aspects of their case which have not hitherto been addressed are addressed before a final decision to effect return.

Finding 5.8 – That charter flights are used to return refused asylum seekers to countries or areas that may be unsafe such as Iraq, the Democratic Republic of Congo and Afghanistan

UKBA response:

We recognise that the conditions in certain countries are such that some individuals are able to demonstrate a need for international protection. We do not, however, accept that we should make the presumption that each and every asylum seeker who presents themselves as being of a particular nationality regardless of their particular circumstances, should automatically be afforded the protection of being allowed to remain in the UK. We believe the right approach is to consider the protection needs of individuals on an individual basis.

Each and every asylum (and human rights) claim is considered carefully on its individual merits. Those that are found to be in need of protection are granted it. Those found not to be in need of protection have a right of appeal to the independent appellate authorities. In this way we ensure that we provide protection to those asylum seekers who need it.

We do not return anyone back to countries where they will be at risk of persecution, torture or death. We only enforce the return of individuals if satisfied that they are not in need of protection and we do not seek to enforce returns to any country unless we and the independent courts are satisfied that it is safe to do so.



Commissioners' assessment:

We welcome UKBA's assertion that each and every asylum and human rights claim is considered on its merits and that it does not return anyone back to countries where they will be at risk of persecution, torture or death. As the Government prepares to publish its consultation on a British Bill of Rights, we will be looking for a cast-iron guarantee that the right to be protected from torture or inhuman or degrading treatment or punishment (Article 3 of the European Convention on Human Rights, incorporated into British law by the Human Rights Act) and an essential protection for many asylum-seekers, will remain an absolute right on which no limitation or restriction is permissible.

Recommendations 5.8:

The Commissioners therefore recommend:

- 5.8.1 – That asylum seekers – particularly women and children – should never be detained alongside foreign national prisoners.
- 5.8.2 – That all Immigration Removal Centres should have welfare officers to assist individuals to sort out their affairs in the process of return.
- 5.8.3 – That prior to the return of any child – forced or voluntary – a full independent assessment should take place to ensure the child will be adequately protected upon return.
- 5.8.4 – That more care should be taken to ensure that families are not divided and parents are not separated from children at the time of return, and that staff should be aware and follow professional guidelines on the effects of return on children.
- 5.8.5 – That all UK agreements with other governments on the readmission of their nationals should be transparent and open to scrutiny.
- 5.8.6 – That the UK government should never return refused asylum seekers if they believe torture will be used against the individuals concerned.
- 5.8.7 – That Section 4 accommodation should be provided within the region, and wherever possible in the locality, in which a refused asylum seeker resides.
- 5.8.8 – That the use of vouchers for Section 4 (hard case) support should be discontinued.

A New Deal for Safe and Sure Returns

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Independent Asylum Commission

CONDUCTING A NATIONWIDE REVIEW OF THE UK ASYLUM SYSTEM

IN ASSOCIATION WITH THE **citizen** ORGANISING FOUNDATION

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