

Independent Asylum Commission

CONDUCTING A NATIONWIDE REVIEW OF THE UK ASYLUM SYSTEM

IN ASSOCIATION WITH THE **CITIZEN** ORGANISING FOUNDATION

# saving sanctuary

The Independent Asylum Commission's first  
report of conclusions and recommendations:

How we restore public  
support for sanctuary and  
improve the way we decide  
who needs sanctuary

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Independent Asylum Commission

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

# 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 the first of three responses to those Interim Findings, and the Commission has continued to gather evidence on 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, *Saving Sanctuary*, is the first 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 there is grave misunderstanding in the public mind about the term 'asylum' which if not addressed threatens to undermine support for the UK's proud tradition of providing sanctuary to those fleeing persecution; and recommends that immediate action is taken to win hearts and minds and long term public support for sanctuary.**
- ◆ **Following its public CITIZENS SPEAK consultation, the Commission concludes that there is a mainstream consensus on the five key values that should be foundation principles on which policy relating to those seeking sanctuary should be based; and recommends that current and future government policy be brought into line with those values.**
- ◆ **The Commission concludes that in recent years there have been significant improvements in the way we decide who needs sanctuary, for which we commend the UK Border Agency; and recommends that the UK Border Agency takes steps to address remaining flaws, and engage with the 48 recommendations we make to improve still further the way the UK decides who needs sanctuary.**

## Restoring public support for sanctuary in the UK through effective communication

- ◆ Politicians, government, media and civil society must work together to develop and promote a 'centre ground' for sanctuary in line with mainstream British values.
- ◆ There must be an emphasis on the moral and humanitarian imperative of offering sanctuary, through information and education, in order to secure long-term public support.
- ◆ The concept of sanctuary must be distinguished very clearly from economic migration, through avoiding the term 'asylum' and choosing appropriate and understood terminology.
- ◆ The availability and quality of information for the public on those seeking sanctuary must be improved.
- ◆ Efforts must be made to promote tolerance and neighbourliness towards those seeking sanctuary and assist integration at a local level.

## Restoring public confidence by ensuring that asylum policies are in keeping with mainstream consensus British values on sanctuary

- 1) People fleeing persecution should be able to find sanctuary in safe countries like the UK.
- 2) The UK should have an effective system for controlling our border that lets people seeking sanctuary in, as well as keeping irregular migrants out.
- 3) The UK should have a fair and effective decision-making body that takes pride in giving sanctuary, to those who need it, and denying it to those who do not.

- 4) People seeking sanctuary should be treated fairly and humanely, have access to essential support and public services, and should make a contribution to the UK if they are able.
- 5) Once a decision has been made, the UK should act swiftly, effectively and in a controlled way – either to assist integration or effect a swift, safe and sustainable return for those who have had a fair hearing and have been refused sanctuary.

## Restoring public trust by continuing to improve the way we decide who needs sanctuary

- ◆ The Commissioners make 8 recommendations to improve access to the asylum system for those seeking sanctuary, focusing particularly on the need to differentiate those seeking sanctuary from other migrants and to encourage a 'protection culture' among decision-makers.
- ◆ The Commissioners make 21 recommendations to continue to improve the quality of decision-making by the UK Border Agency, focusing particularly on the training and support of decision-makers and interpreters, the conduct of interviews, the information available to staff, and the fast-track process.
- ◆ The Commissioners make 19 recommendations to ensure that the asylum system is not so adversarial or heavily weighted against the asylum seeker, focusing particularly on early access to legal advice, representation for asylum seekers, the conduct of appeals, the use of expert reports, the fast-track process and improving public understanding of the way decisions are made.

For further information see  
[www.independentasylumcommission.org.uk](http://www.independentasylumcommission.org.uk).

For media enquiries contact Jonathan Cox on 07919 484066.





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

# Conclusions and Recommendations

*‘Saving Sanctuary’* The Independent Asylum Commission’s First Report of Conclusions and Recommendations: How we restore public support for sanctuary and improve the way we decide who needs 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 Saggat**

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 for 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)

## Authors

Chris Hobson  
Jonathan Cox  
Nicholas Sagovsky  
For more information see  
[www.independentasylumcommission.org.uk](http://www.independentasylumcommission.org.uk).

## Contents

### Executive Summary

### Foreword

- Chapter 1:** Introduction  
UK Border Agency: First response to the Independent Asylum Commission  
Interim Findings
- Chapter 2:** How to restore public support for sanctuary
- Chapter 3:** How to improve the way we decide who needs sanctuary

## Glossary

AIT	Asylum and Immigration Tribunal
COI	Country of Origin Information
ECHR	European Convention on Human Rights
LSC	Legal Services Commission
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

# Foreword

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

Our tradition of sanctuary is precious. Just ask those who have fled persecution, oppression and danger in their home countries and found sanctuary in the UK. They know the true value of our oft-cited proud tradition of sanctuary.

Over the centuries Britain has hosted thousands of refugees: Huguenots, Jews and Bosnians, and those from lesser known nationalities. Many of them have returned home when the danger has passed, and many others have decided to stay in the UK and make it their home. To the exiles who stayed we owe a deep enrichment of our cultural and economic life, including classic British institutions: Marks and Spencer, fish and chips, and the Mini. Our tradition of sanctuary, and the refugee communities it has brought to our shores, have helped build the nation and society in which we live.

And yet now our tradition of sanctuary is under threat because public confidence in our asylum system is uncertain. On the one hand it is clear that the British public supports the concept of providing sanctuary to those fleeing persecution – they understand sanctuary, see it as a positive word, and in some cases can relate to it personally.

On the other hand we have an asylum system that purports to provide sanctuary, and yet the public has little understanding of what ‘asylum’ means, associate it – indelibly – with a range of negative and unrelated issues, and have little confidence in the asylum system itself. There is a profound disconnection in the public mind between the sanctuary they want the UK to provide and their perception of the asylum system.

We, and our fellow Commissioners, believe that unless public confidence in our asylum system is restored, the UK’s future as a place of sanctuary is bleak. This is why our first report of conclusions and recommendations focuses on the way we decide who needs sanctuary. Part of the answer to restoring public confidence is to have a fair and effective system in line with the mainstream values of the British people.

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Sir John Waite

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Ifath Nawaz

But fixing the system is not the whole answer. The public have to understand and support sanctuary – and the system that provides it for those fleeing persecution. We call on those in politics and government, the media and civil society, and all people of good will in every class, race, region and nation of the UK, to join together and persevere in a campaign to win hearts and minds – and long term public support – for sanctuary.

For those who have fled persecution, sanctuary is saving – our duty is to save sanctuary for those who will undoubtedly need it in the future.

We commend our first report of conclusions and recommendations to you and hope you will look forward to our second and third reports, due later this summer, with keen interest.



## CHAPTER 1

*The UK provided sanctuary to 10,000 Jewish children as part of the Kindertransport prior to the Second World War. They arrived at Liverpool Street Station, London.”*

# Introduction

## What is the Citizen Organising Foundation?

The Citizen Organising Foundation supports the development of broad based community or citizen organising across Britain and Ireland. COF's primary affiliate community organization is LONDON CITIZENS: the Capital's largest and most diverse campaigning alliance. London Citizens has earned a reputation for taking effective action to pursue change. Members include churches, mosques, trade unions, schools and other civil society organisations.

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

## History of the Independent Asylum Commission

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

They published their report, *A Humane Service for Global Citizens*, in 2005, and it was well-received by IND, who have since implemented a number of its recommendations and continue to liaise with a monitoring group from South London CITIZENS. The report's final recommendation was that there should be an independent citizens' enquiry into the implementation of national policies on asylum.

The Independent Asylum Commission was commissioned by the Citizen Organising Foundation to undertake this work. It was launched in 2006 in the House of Commons, and has since been collecting evidence from a wide range of witnesses across the UK – from asylum seekers and refugees to those citizens who feel the system is being abused. The final conclusions and recommendations will be presented in three reports to the Citizen Organising Foundation and its member organisations later in the summer of 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.

## Methodology

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

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

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

On March 27th 2008 the Independent Asylum Commission launched its Interim Findings<sup>1</sup> in the Grand Committee Chamber, House of Commons. That report set out the Commissioners' provisional assessment of the asylum system based upon evidence gathered from across the UK. The Commissioners' conclusions and recommendations should be read alongside the evidence presented in those Interim Findings.

Over an 18 month period the Commission held seven themed public hearings across the country; held a special hearing in Belfast; held seven closed evidence sessions at Westminster Abbey; commissioned the Information Centre about Asylum and Refugees to produce comprehensive

thematic briefings on all aspects of the UK asylum system; received over 180 submissions to the call for evidence; received over a hundred video submissions; held key stakeholder interviews on public attitudes to asylum in eight locations across the UK; held focus groups in eight locations across the UK; held the CITIZENS SPEAK consultation asking for the public's views on sanctuary in the UK; held over 50 People's Commissions across the UK to recommend the values and principles that should underpin UK asylum policy.

Since the launch of the Interim Findings the Commission has continued to gather evidence on public perceptions of asylum and the values the British people think should underpin how we respond to those seeking sanctuary. Along with the CITIZENS SPEAK consultation, we have also commissioned an opinion poll and focus group research in order to gain a better understanding of public attitudes to asylum.

The Interim Findings expressed the Commissioners' concerns based on the evidence gathered and affirmed positive aspects of the UK's asylum system. Since its launch, the UK Border Agency has responded in writing to the Commissioners' concerns and affirmations. We thank them for their co-operation, and willingness to engage with us.

These conclusions and recommendations are based on:

- The concerns and affirmations expressed in the Independent Asylum Commission's Interim Findings;
- The written response to the Independent Asylum Commission's Interim Findings received from the UK Border Agency;
- The results of the CITIZENS SPEAK consultation, public attitudes focus groups, key stakeholder interviews and opinion polling.

## How the recommendations are structured

The Independent Asylum Commission's Interim Findings were set out in three main sections, looking at three distinct areas of the UK's asylum system:

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

In accord with this structure, the Commission's recommendations are set out in three separate publications. This, the first of these publications, details the Commissioners' recommendations on 'How we decide who needs sanctuary' and how we restore public support for sanctuary.

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

## Funders

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

The Diana, Princess of Wales,  
Memorial Fund



The Society of Jesus  
The Esmée Fairbairn Foundation



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



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

## Staff and Volunteers

The Independent Asylum  
Commission has been supported by  
three staff members:  
Jonathan Cox  
Commission Co-ordinator  
Chris Hobson  
Commission Associate Organiser  
Anna Collins  
Commission Communications Officer

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

The Commission has been guided by  
a steering committee:

Michael Bartlet  
Religious Society of Friends  
(Quakers)  
Neil Jameson  
Executive Director, Citizen Organising  
Foundation  
Maurice Wren  
Chair of the Asylum Rights Campaign  
(ARC) and Co-ordinator, Asylum Aid  
Louise Zandre  
Director of the Jesuit Refugee Service  
UK  
Nicholas Sagovsky  
Commissioner

The Commission has received  
invaluable support and assistance  
from volunteers.

Public Attitudes Research Project  
Researchers: Elizabeth Cheyne,  
Malcolm Corrigan, Theresa Tschol,  
Anne Marie O'Reilly, Kieran Zucker,  
Onyeka Igwe, Madhulika Sahoo,  
Oonagh Skrine, Hana Hamaz,  
Fionnuala Somerville, Anna Isaacs,  
Joanna Derwin, Alexa Kellow, Paul  
Chalmers, Mhairi Guild, Rowan  
Boase, and Tim Cox.

Focus group facilitators:

Anna Collins, Carina Crawford,  
Hannah Ward, Jonathan Cox, Tim Cox  
and Tim Woodall.

Research consultant on the Public  
Attitudes Research Project (PARP):  
Naomi Newman, Institute for Public  
Policy Research (ippr).

Steering group for PARP: Jan Shaw  
(Amnesty International), Esme Peach  
(Refugee Action), Neil Jameson  
(London CITIZENS).

Public Attitudes Research Project  
Assistant: Tim Cox.

Polling conducted by Ian Nockolds,  
Cognisant Research.

Focus groups recruited by Leftfield.

With thanks to Jack Adams and all  
the volunteers at Human Rights TV  
([www.humanrightstv.com](http://www.humanrightstv.com)) who have  
recorded and archived every public  
hearing.

David Braine at Friction.tv

People's Commission Toolkit:  
Dr Julian Baggini, Anna Collins and  
Jonathan Cox.

Advisers: Nick Oakeshott (Refugee  
Legal Centre), Dr Jane Herlihy (Centre  
for the study of Emotion and Law), and  
the UNHCR Quality Initiative Team.

Photographer: Sarah Booker.

Public affairs support: Hratche  
Koundarjian, Principle

Thanks also to Marie Lyse  
Numuhoza, Caroline and Ohannes  
Koundarjian, Jo Purkis, Dermot  
Bryers, Claudia Covelli, Alike Ngozi  
and Mpinane Masupha and the many  
others who assisted with this report.

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



## UK Border Agency response to the Independent Asylum Commission's Interim Findings <sup>2</sup>

While we welcome the Commission's acknowledgment that the UK asylum system is 'improved and improving' we would strongly refute the Commission's allegations that our asylum system:

- ◆ 'is not yet fit for purpose'
- ◆ 'denies sanctuary to some who genuinely need it and ought to be entitled to it'
- ◆ 'is not firm enough in returning those whose claims are refused' and
- ◆ 'is marred by inhumanity in its treatment of the vulnerable'.

We are committed to upholding the UK's proud tradition of offering protection to those who need it and fully honouring our international obligations under the UN Refugee Convention and the European Convention on Human Rights.

- ◆ We give refugee status or other forms of protection to thousands of people each year.  
In 2007 5,750 applicants were granted some form of protection at first instance decision.
- ◆ Working with the United Nations High Commissioner for Refugees (UNHCR) our Gateway programme is resettling 500 refugees a year from refugee camps to the UK.
- ◆ We involve UNHCR in quality checking our decision process and provide 55 days of training before each case-owner starts work.
- ◆ The UK is recognised as one of the world leaders in the provision of high quality briefing for case owners on individual countries through our Country of Origin Information Service. And that unlike most other countries all of this information is unclassified and publicly available for independent scrutiny.
- ◆ We are committed to rolling out a new national Refugee Integration and Employment Service from

October 2008 to provide support, advice and mentoring to all new refugees granted status in the UK.

- ◆ We spend millions of pounds a year (£24.7M in 2007/08) funding a wide range of NGOs including the Refugee Council, Refugee Action and Migrant Helpline to provide one stop services to support and provide independent advice to asylum seekers and refugees while they go through the system.
- ◆ We spend £500m a year supporting asylum seekers while their claim is processed.

For applicants whose claim is refused we continue to offer support to families with children under 18 until they are removed from the country and to other applicants who are seriously ill or for whom there is no viable route of return home.

We believe our system strikes a fair balance between dealing properly with those needing international protection and deterring those who seek to abuse the process for their own benefit. We are disappointed that the interim report did not paint a true picture of the asylum system as it is now. In several areas, out-of-date or subjective testimony has been presented as unchallenged fact and presented in unjustified, excessively emotive language or imagery. The report appeared to contain little if any testimony from those who had received a positive first instance decision to put the process in proper perspective. It is still difficult to identify from the report what has driven the Commission's conclusion that we deny sanctuary to some who genuinely need it and ought to be entitled to it, and it is disappointing that the report fails to address the very real problems caused by those who consciously attempt to abuse our asylum process (for example by lying about their nationality or identity or deliberately destroy their documents).<sup>3</sup>

<sup>2</sup> The Independent Asylum Commission published its Interim Findings on 27th March 2008. You can download a copy at [www.independentasylumcommission.org.uk](http://www.independentasylumcommission.org.uk).

<sup>3</sup> This is the opening statement to the first of UKBA's three responses to the Interim Findings. The detailed responses on 'how we decide who needs sanctuary' are printed in text below.





# How to restore

## CHAPTER 2

*We are grateful to the British people for providing us with sanctuary in the UK. In 1976 the life of my husband was directly threatened during the civil war in Lebanon and the Home Office helped us to settle down in England. Our parents also had to flee their homes in the 1920s, and so we appreciate how important it is to be given sanctuary in another country.”*

Caroline and Ohannes Koundarjian,  
from Lebanon

# public support for sanctuary

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The Commission's Interim Findings focused on the asylum system and the experiences of those who had been through it in the UK. This report reflects more recent input from the Commission's CITIZENS SPEAK consultation – which was a deliberate effort to give ordinary people a say on sanctuary in the UK.

The Commissioners wanted to know what people thought about the concept of sanctuary, what they thought about the asylum system in the UK, and what values they thought should underpin the UK's asylum system.

## RESEARCH: CITIZENS SPEAK – giving ordinary people a say on sanctuary in the UK

The CITIZENS SPEAK consultation was launched on 25th January 2008. The news of the consultation was sent to CITIZENS groups, the major media outlets, and to one thousand of the Commission's supporters.

- A CITIZENS SPEAK website was launched ([www.citizensspeak.org.uk](http://www.citizensspeak.org.uk)), with details of the consultation and how people could respond online, by email or by letter.
- A partnership with Friction.tv achieved much greater exposure to the general public via internet videos.
- Citizens were encouraged to host or attend People's Commissions to debate and discuss the values that they thought were important in relation to sanctuary.



*When immigrants get here, one wonders why they didn't stop in a safe country on the way? Perhaps it's because they see a better life here so does that make them an asylum seeker or an economic refugee posing as an asylum seeker?"*

**Response to CITIZENS SPEAK on [www.friction.tv](http://www.friction.tv)**

The CITIZENS SPEAK consultation resulted in:

- 44 emails from the general public, 14 letters from Daily Express readers, 6 letters from Independent readers;
- 19,187 hits and 225 responses to four videos posted on [www.friction.tv](http://www.friction.tv);
- 520 citizens – as diverse as Young Farmers in Herefordshire, students at Magdalen College, Oxford, elderly people in rural Somerset, and trainee air hostesses in the South Wales valleys – taking part in over 50 'People's Commissions' across every Government Office region in Great Britain.

The majority of those who responded and did not work for a refugee organisation were critical of the asylum system and felt aggrieved by asylum seekers and the government:

- There are too many asylum seekers, and too many of them are 'bogus';
- Asylum seekers tell lies to stay in the country;
- Britain is a 'soft touch' and takes more than its fair share of asylum seekers;
- Asylum seekers are here to steal jobs and scrounge on welfare;
- Asylum seekers get preferential treatment in the allocation of housing and public services;
- Asylum seekers do not leave once their claim is refused, and the government is not effective in removing them;
- Asylum seekers are prioritised over the indigenous population, and are a threat to British culture;
- There was clear confusion between economic migrants, asylum seekers, refugees and illegal immigrants.

Those alleging abuses of the system by asylum seekers were encouraged to substantiate the claim and explain how they knew about the abuse. In none of the cases did the respondent have direct experience or knowledge of the abuse; the sources commonly cited included media and 'word of mouth'.

## Public Attitudes Research Project

The Commissioners decided to commission some research into public attitudes on asylum to help them understand the response to the CITIZENS SPEAK consultation. Building on the most advanced research in this area,<sup>4</sup> they sought better to understand what influenced public attitudes.

- Over 40 interviews with key stakeholders in eight locations across the UK, asked local community representatives, media and authorities what affected attitudes to asylum in their area.
- 16 focus groups in eight locations across the UK, found out about attitudes to asylum and sanctuary from a diverse range of local people split by age and social class.
- An opinion poll tested attitudes to sanctuary and asylum nationally.

# Findings

## Results of the research into public attitudes

The Public Attitudes Research Project set out to test how the British public really feel about the concept of sanctuary, the asylum system, and the principles that they think should underpin an asylum system.

### The concept of sanctuary

The Public Attitudes Research Project made the following consensus findings relating to the term ‘sanctuary’:

- People share a common understanding of the term ‘sanctuary’ as a safe, secure place in which someone can take refuge;
- People view sanctuary as an overwhelmingly positive word and can relate the concept to their own lives positively, many even citing their home, bedroom, the countryside, or a spiritual retreat as examples of their own personal sanctuary;
- People also understand and accept that sanctuary can refer to a place of safety for those from abroad who are fleeing persecution;
- People believe strongly that it is a good thing that the UK provides sanctuary to those fleeing persecution.

*For me, sanctuary means a safe place – a safe haven for those who need it.”*

**Birmingham focus group, 18-35, C2DE**

### Attitudes to the term ‘asylum’

From the Public Attitudes Research Project, consensus emerged in the following areas relating to the term ‘asylum’:

- People do not share a common understanding of the term ‘asylum’ or ‘asylum seeker’, and do not strongly associate it with people fleeing persecution;
- People view ‘asylum’ as an overwhelmingly negative term with associations including mental illness, oppressive and disordered institutions, criminality, terrorism, benefit fraud and ‘bogus’ foreigners. They cannot relate the term ‘asylum’ to their own lives, except in a few cases negatively, citing places of stress and oppression as ‘my asylum’;
- People are not able to distinguish accurately between the different meanings of the term ‘asylum’ or ‘asylum seeker’ and ‘economic migrant’, ‘refugee’, and ‘irregular or illegal immigrant’;
- People have a strong perception that ‘asylum’ is bad, and has a negative impact on their local area.

*To most people the term asylum seeker just means anybody coming to live off our state system.”*

**Cardiff focus group, 35+, ABC1**

*Asylum seekers, immigrants, whatever you want to call them, go to a car auction and get free housing, mobile phone, phone credit to search for jobs, and vouchers for a free car. I find that absolutely amazing.”*

Sheffield focus group,  
18-35, ABC1

*I find out about asylum issues in my area through the local paper – and Chinese whispers in the community too.”*

Sheffield focus group,  
18-35, ABC1

## Attitudes to the asylum system

From the Public Attitudes Research Project, consensus emerged in the following areas relating to the asylum system:

- People are unclear about the process that asylum seekers have to go through when they arrive in the UK, but perceive that on the whole they are treated better than they would like;
- People have little trust in the asylum system, believing it to be out of control, too generous to asylum seekers, and ineffective at removing refused asylum seekers;
- People have no knowledge of the government's reforms of the asylum system. Not one participant was able accurately to describe a recent government policy on asylum;
- People do not trust what the government says about this and similar issues, citing spin and faith lost because of the frequency of major mistakes by the Home Office as reasons;
- Some people are keen to play a more active role in how those seeking sanctuary are placed and integrated into their local communities.

## Sources of information on asylum

The Public Attitudes Research Project made the following consensus findings relating to the sources of information on asylum:

- Very few people have had personal contact with an asylum seeker. Where people have engaged in a relationship, perceptions are more positive. Where people have had casual, indirect or no encounter with asylum seekers, perceptions are more negative;
- People's primary source of information about asylum is the national media, followed by local media, and word of mouth;
- People are aware of the potential for bias in media, particularly national newspapers, but this did not lead them to question reporting of asylum;
- People feel that they do not have enough information, or the correct information to make an informed decision about asylum;
- Many people are keen to be provided with more information on asylum at national and particularly local level in asylum dispersal areas. Information desired includes what asylum seekers are, where they come from, how many there are, why they came to the UK, and what entitlements they have to housing and welfare;
- People would like balanced and accurate information, presented in a variety of formats, provided by an impartial agency;
- People would respond more positively to information relating to those fleeing persecution if it used terms such as 'sanctuary' rather than 'asylum'.



# Public Attitudes Recommendations

## Restoring public support for sanctuary in the UK

There is marked contrast between the public's support for the concept of sanctuary for those fleeing persecution, and their overwhelmingly negative perception of the asylum system. There is an urgent need to restore public understanding, support and confidence in the way that sanctuary is offered in the UK in order to safeguard long-term support for sanctuary and to preserve the UK's centuries-long tradition.

### Politicians, government, media and civil society must work together to develop and promote a 'centre ground' for sanctuary in line with mainstream British values

- ◆ There should be a 'sanctuary summit' in which key figures from politics, media and civil society meet and co-operate on a realistic strategic approach to communicating sanctuary to the public, focusing on the moral and humanitarian imperative of offering sanctuary to those fleeing persecution; distinguishing sanctuary very clearly from economic migration; restoring public confidence in the asylum system; improving the availability and quality of information on sanctuary for the public; and promoting tolerance and neighbourliness towards those seeking sanctuary.
- ◆ A small team of communications specialists should be created to co-ordinate delivery of projects to further the outcome of the 'sanctuary summit' and to be a resource for government, media and civil society on public attitudes to sanctuary.
- ◆ The development and expansion of the 'City of Sanctuary' movement<sup>5</sup> is expressly to be encouraged as one way of forming a centre ground for sanctuary at a local level.

### There must be an emphasis on the moral and humanitarian imperative of offering sanctuary through information and education in order to secure long-term public support

- ◆ No child should leave school without being aware of the UK's past and present role as a safe haven for those seeking sanctuary.
- ◆ A permanent museum charting the history and contribution of those who have sought sanctuary in the UK should be supported and promoted to schools, and a complementary mobile exhibition created for use in communities across the UK.
- ◆ Britain's first museum charting the history and continuing contribution of those who have sought sanctuary – at 19 Princelet Street in London should be granted national status and be supported and resourced by both national and London government and by charitable trusts.

*I feel proud that we offer sanctuary to those who need it – it is one of the things that make you proud to be British.”*

Plymouth focus group, 35+, C2DE

*We had a genuine asylum seeker coming to talk to the children at school. It was just really interesting – my daughter is all for asylum seekers now and she is only 11 years old! Information is a good thing. Perhaps we would accept them more.”*

Glasgow focus group, 35+, C2DE

*I don't understand the terminology – asylum seeker, refugee, economic migrant, illegal immigrant. All I know is that they are all 'bloody foreigners'."*

**Plymouth focus group, C2DE, 35+**

- ◆ Editors, journalists and broadcasters should be commended for regularly stating their support for the concept of sanctuary, but should be aware of the impact of continually negative stories on public attitudes to those seeking sanctuary, and ensure that positive stories are also highlighted on occasion. Refugee Week is one example of a possible 'hook' for positive stories.
- ◆ Support should be made available to develop and expand or adapt successful mechanisms for improving public understanding of sanctuary, such as Refugee Week, refugee talks teams that visit schools, and the City of Sanctuary movement.

**The concept of sanctuary must be distinguished very clearly from economic migration, through avoiding the term 'asylum' and choosing appropriate and understood terminology**

- ◆ Those wishing to communicate effectively with the public should avoid using the term 'asylum' or 'asylum seeker' if they wish to convey messages about people seeking sanctuary from persecution.
- ◆ Politicians, journalists and those engaging in public debate on this issue should understand the general confusion of terms such as 'asylum seeker', 'economic migrant' and 'irregular migrant', and, before making a contribution, understand how their words are likely to be received and interpreted by the public. Great care must be taken to be precise in the language used.

*I would think differently about asylum seekers if there were more positive stories in the papers and if we had more opportunity to mix with them."*

**Barking and Dagenham, 35+, ABC1.**

**The availability and quality of information for the public on those seeking sanctuary must be improved**

- ◆ Local authorities, UKBA and the voluntary sector should co-operate to devise effective strategies to communicate with the settled communities in asylum dispersal areas.
- ◆ Resources should be invested in balanced information from an impartial source that helps local people understand who the newcomers are, where they have come from, why they are here, what their entitlements are, and what distinguishes them from economic migrants. Such information should be provided with the aim of enabling the public to engage in informed debate about the concept of sanctuary and the asylum system.

**Efforts must be made to promote tolerance and neighbourliness towards those seeking sanctuary and assist integration at a local level**

- ◆ Local authorities, voluntary, faith and CITIZEN groups should work together to form sanctuary welcoming groups to bridge the divide between those seeking sanctuary and the local population. The promotion of positive encounters between communities and the involvement of local people at an early stage is specifically to be encouraged.

# Principles for rebuilding public confidence in the asylum system

To rebuild public confidence in the asylum system, it must reflect mainstream British values. The Commission's extensive CITIZENS SPEAK consultation, its Public Attitudes Research Project, and People's Commissions, have revealed the following core values in relation to sanctuary:

## **1) People fleeing persecution should be able to find sanctuary in safe countries like the UK.**

This principle must be the foundation of asylum policy. This was considered the most important value by over 85% of People's Commissions. There was consensus in all 16 focus groups that the UK should provide sanctuary to those fleeing persecution. No private or public witness to the Commission questioned this fundamental commitment. Even pressure groups who believe the asylum system is too generous agree with this principle.

Importantly though, there is a strong value of fairness related to this principle: the UK should take its fair share of those who are in greatest need of sanctuary, but it must be in the context of transparent international rules and other countries taking their fair share too.

## **2) The UK should have an effective system for controlling our border that lets those seeking sanctuary in, as well as keeping irregular migrants out.**

Securing the UK's border was seen as a high priority by some and as an important principle by almost all People's Commissions. However, most accepted the principle that letting some people who do not require sanctuary into the country was a price worth paying for allowing those who needed sanctuary to reach the UK. There was also a strong consensus in the Public Attitudes Research Project that the government needed to demonstrate effective control over borders.

## **3) The UK should have a fair and effective decision-making body that takes pride in giving sanctuary to those who need it and denies it to those who do not.**

Ensuring that there is an asylum system that is demonstrably fair, effective, under control, and one that makes sound decisions, is important for rebuilding public confidence in the asylum system. The Public Attitudes Research Project identified concern among the public about the consistency of decisions; some are interpreted as too soft and others as unduly harsh.

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

There was consensus that people seeking sanctuary should have access to essential support and services until their claim has been resolved – all of the focus groups and all but one of the People's Commissions recommended this as a key principle. However, there were strong concerns expressed in the CITIZENS SPEAK consultation about perceived preferential treatment for asylum seekers in the allocation of housing, goods and public services. There was a strong consensus

*We should offer sanctuary but other countries should do their bit as well. Every country and every area has got to share the burden."*

**Hackney focus group, ABC1, 18-35**

in the Public Attitudes Research Project that no-one, regardless of status, should get ‘something for nothing’. Those seeking sanctuary should be expected to make some contribution through work if they are able.

**5) 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.**

One of the strongest messages to emerge from the CITIZENS SPEAK consultation was that hospitality is being abused by those who do not require sanctuary. The Public Attitudes Project found that the public are concerned that people ‘disappear’ if they are denied sanctuary, and cannot believe that the government does not have an effective system which ensures that refused asylum seekers leave the UK. Many participants in the focus groups were alarmed that the government should cut off support and give up control of asylum seekers by failing to ensure swift return or to monitor their presence in the UK.

The People’s Commissions broadly favoured the principle that if the person seeking sanctuary has had a fair hearing, there should be an effective and humane mechanism for ensuring that a person leaves the UK – but that up to that point their essential needs should be met.





## CHAPTER 3

*I came to the UK seven years ago as a young refugee from Rwanda. As the years passed, I came to think of the UK as home, people in my local community as friends. I felt confident enough to think that I was no longer a refugee but a citizen of a country that needed my skills and would welcome my contributions. My goal is to share what I have learnt from my experiences to empower those that are still in need.”*

Marie Lyse, refugee from Rwanda.

# How to improve how we decide who needs sanctuary

In the Commissioners’ Interim Findings, *Fit for Purpose Yet?*, a number of concerns were raised regarding the asylum decision-making and appeals system. 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 the difficulty of accessing the asylum system for people who need sanctuary**

**Finding 1.1:** That the lives and welfare of people in need of sanctuary are put at risk as a consequence of policies designed to prevent irregular immigration to the UK and Europe

**UKBA response:** In line with all of our European partners we are committed to improving the security of our borders and consider it right to do so. In general we would expect those seeking sanctuary to do so close to their country of origin and we fully support EU proposals for regional protection schemes. We also operate our Gateway Protection programme which resettles 500 people each year direct from refugee camps to the UK who have been recognised by the UNHCR as having a protection need.

**Commissioners' Assessment:** While it is appreciated that the UK and its European partners need robust policies to prevent irregular immigration and abuse of asylum systems, it is evident that the Common European Asylum System is not yet fully operational, with standards of protection varying across Europe. Similarly, whilst the UK's Gateway Protection Programme for resettled refugees is laudable, it needs rapid expansion. As neither of these avenues to protection are yet sufficiently functioning to guarantee sanctuary to those who are unable to find it close to their country of origin, the 1951 Refugee Convention must continue to be recognised as the key international instrument safeguarding the right to seek asylum in the UK and Europe.

**Finding 1.2:** That some new arrivals have extreme difficulty claiming asylum in-country due to the limited number of Asylum Screening Units (ASU) and the inadequacy of their opening hours

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

**Commissioners' Assessment:** We accept that there is not a significant problem in claiming asylum for the majority of asylum seekers. However, if a person who wishes to make an in-country claim at an ASU is destitute there must be mechanisms for ensuring they can access basic support for the brief period until the ASU reopens.

**Finding 1.3:** That some asylum seekers are penalised when they arrive in Britain with a forged passport or without any passport having done so for understandable and non-criminal reasons

***UKBA response:** The UKBA accepts that those fleeing persecution may not necessarily have legal travel documents but we do expect asylum seekers to explain how they fled their country. Section 2 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 does expressly permit the defence of a reasonable excuse for not being in possession of a valid document. Having said that, the concealing of true identity and nationality is an important issue. Biometric visas and independent language analysis has shown significant levels of "switching" by applicants claiming in a false identity or nationality and it is important we combat such abuse.*

**Commissioners' assessment:** Whilst recognising the defences provided under Section 2 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004, there must be no premium on the wilful destruction or wilful loss of travel documents such as a passport and we affirm the need to ensure an asylum system where abuse is tackled effectively to act as a deterrent. However, there remains a critical need to understand the motivation or circumstances of an asylum seeker using a false passport and the difficulties in communicating this motivation effectively to UKBA staff upon arrival. UKBA should remain conscious at all times of the provisions of Article 31 of the Refugee Convention; that contracting states shall not impose penalties, on account of their illegal entry or presence, on refugees who have come directly from a territory where their life or freedom was threatened provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

#### **Recommendations 1.4: The Commissioners therefore recommend:**

##### **Establishing a 'protection culture'**

- 1.4.1 - That asylum seekers should always be treated as a distinctive group, not to be subsumed within other areas of Home Office responsibility, such as control of borders and migration in general.
- 1.4.2 - That a 'protection culture' needs to be promoted actively amongst UKBA case owners and those with responsibility for asylum decision-making.

##### **Better access, screening and support**

- 1.4.3 - That independent publicly funded legal advice should be provided at the point of screening to provide initial legal advice and support to asylum applicants.
- 1.4.4 - That there should be more Asylum Screening Units with user-friendly hours, and short-term accommodation should be made available to those unable to access ASUs.
- 1.4.5 - That further robust research should be conducted by UKBA into the reasons why the majority of asylum seekers do not make their application at the port of entry.
- 1.4.6 - That survivors of torture, sexual abuse or other forms of trauma should be clearly identified as 'at risk' during their passage through the asylum system in order to avoid detention and fast-track procedures.
- 1.4.7 - That the means of determining from the earliest possible stage whether a person seeking asylum is a survivor of torture, sexual abuse or other forms of trauma should be reviewed.
- 1.4.8 - That further guidance should be produced on procedures to establish whether those who arrive with false or irregular documents, but claim another nationality, may indeed be of that nationality.

## Interim Finding 2. The Commissioners expressed concern at the unacceptably poor standard of some initial asylum decisions

**Finding 2.1:** That there is inadequate understanding among decision-makers of the different circumstances faced by asylum seekers who are seeking sanctuary from persecution

**Finding 2.2:** That there is a lack of consistency in the quality of first-instance decision-making and that the workloads of New Asylum case owners may be too high

***UKBA response:** We have invested significantly in improving the quality of initial decision making. Decisions are made at a higher level than previously (Higher Executive Officer “Case Owners” compared to Executive Officers), and these case owners undertake a rigorous 55 day Foundation Training Programme, incorporating in-depth guidance on decision making and comprehensive operational instructions.*

*Case owners are expected to successfully complete an accreditation process which we are developing in consultation with the Law Society – this will be pitched at the same standard as accreditation for publicly funded legal representatives in asylum appeals.*

*20% of asylum decisions each month are assessed by a Quality Audit Team, who are independent of the Regional Asylum teams. They look to ensure that the decision taken is correct, using criteria developed and agreed in conjunction with UNHCR. UNHCR will soon be conducting random peer reviews of those assessments, in addition to their own assessment of the quality of a proportion of asylum interviews and decisions. There is no indication from these assessments that there is any culture of refusal.*

*UNHCR has noted that “although its contact with new NAM recruits has so far been limited, UNHCR has been impressed by the level of enthusiasm for and interest in the role (and in asylum issues generally)”, and that they were “confident that NAM’s high calibre and motivated decision makers will have the capacity to deliver the improvements in quality envisaged under the (New Asylum) Model.” (Quality Initiative 4th report to Ministers January 2007).*

**Commissioners’ assessment:** We acknowledge the difficulty inherent in making sound asylum decisions. We recognise that some of the evidence presented to the Commission was based on interviews conducted a number of years ago and in recent times a great deal of work has been done to improve initial decision-making, such as improving the qualifications, pay, initial and in-service training of New Asylum Model decision makers. We also recognise that it is extremely challenging to achieve consistency in decision-making both at the initial decision-making stage and at appeal. However, the Commission notes the continued delay in ensuring case owners are accredited to an approved standard and recommends that this take place as a matter of priority.



The Commission was not able to hear first-hand evidence from initial interviewers about selection, initial training, the practice of questioning, case-loads or supervision of caseworkers and case owners.<sup>6</sup> The Commissioners have, however, benefited from the presence throughout our deliberations of a United Nations High Commissioner for Refugees (UNHCR) observer who has briefed us on the Quality Initiative Project, which we commend wholeheartedly. We are confident that improvements will continue to be made in the quality of initial decision making through the implementation of the recommendations of the UNHCR Quality Initiative. We note the extent to which UKBA has responded positively to the UNHCR's recommendations in its third report. We also note that certain concerns, such as those around gender-sensitive interviewing, are reiterated from report to report. We look forward to the publication of the fifth report and to the assessment, promised in the fourth report (3:5), by the UNHCR of the impact of its recommendations on the quality of initial decision making.

However, we have received significant evidence suggesting that some asylum seekers continue to 'fall through the net' and receive a poor quality service in relation to their initial decision. Asylum seekers' representatives continue to highlight improvement of the initial decision-making process as the main way to secure a system which is fair and efficient.

The evidence we have received about new initiatives, such as the Solihull Early Access to Legal Advice Project, together with other aspects of the New Asylum Model, indicates that the New Asylum Model requires further improvement. We strongly encourage UKBA to take the opportunity to pursue a continuing agenda of development and improvement of standards.

**Finding 2.3:** That the high rate of cases won on appeal indicates a high rate of poor initial decisions

**Finding 2.4:** That the appeal stage is becoming part of the first-instance decision-making process rather than a process of independent review, meaning that UK Border Agency decision-makers do not always conduct a proper analysis of the individual protection claim

***UKBA response:** Around three quarters of initial decisions that are appealed are upheld at appeal (73% appeals dismissed for Q3 2007). Those which are allowed reflect a range of factors which might include the quality of the initial decision but frequently reflect genuine changes in country or individual circumstances.*

**Commissioners' Assessment:** We recognise that it is difficult to achieve consistency in decision-making, and understand that a range of factors may affect the success of an appeal. However, consistency in quality decision making can be achieved and should be a priority for UKBA. We are pleased that UKBA recognizes that poor quality in the initial decision can be a factor in refusals that are subsequently overturned. Representation by an accredited and high quality legal representative is likely to play a significant part in the number of cases won on appeal. This highlights the harmful consequences of the absence for many asylum seekers of any legal support

or representation at the initial stage. We remain concerned at the continuing evidence that in some cases, especially those fast-tracked, claims are not properly explored by the case owner, particularly at the asylum interview, before the first instance decision.

**Finding 2.5:** That the style and content of substantive interviews by UK Border Agency decision-makers often falls short of appropriate standards. The Commission received evidence of the inappropriate use of leading questions at interview; non-implementation of gender-guidelines when engaging with traumatised women; inappropriateness of interpreters with regards to ethnic and religious sensitivities; inappropriate questions to assess religious conversion; and errors in transcription

***UKBA response:** There is extensive guidance on the care which is needed when interviewing particularly vulnerable applicants and the application of these standards are reviewed on a regular basis. We are satisfied that the problems set out in the Medical Foundation report covering interviews in 2001 and 2002 have been addressed. We are aware of the current concern of some religious organisations about the quality of interviews and decision-making in claims of religious conversion and have been engaging with them to develop improved guidance.*

**Commissioners' assessment:** We are glad that UKBA has engaged with concerns expressed by those working with asylum seekers. We hope that the other issues raised in our Interim Findings will be engaged with in a similarly positive fashion and that any new guidance issued by UKBA will be properly applied in individual cases.

**Finding 2.6:** That UK Border Agency decision-makers may not always have access to up-to-date and relevant Country of Origin Information (COI), nor apply it appropriately to each case to help them make good decisions

***UKBA response:** The Country of Origin material produced by COI Service is compiled from a wide range of reliable external sources including United Nations High Commission for Refugees (UNHCR) reports, human rights organisations, inter-governmental organisations, NGOs, news media and the Foreign and Commonwealth Office. COI reports are updated frequently and significant changes in country conditions are communicated to decision makers as required. These reports are also scrutinised by the Independent Advisory Panel on Country Information (APCI) and their findings can be found at [www.apci.org.uk](http://www.apci.org.uk). UKBA officials also have access to an information request service, which provides rapid responses to specific country-based enquiries. The UK is regarded as being at the forefront of COI among EU partner states. COI Service produces COI material on a broader range of countries and in greater depth*

*than any of our EU partners. Unlike most other countries, all COI material used by UKBA in its decision making is unclassified and publicly available. No other country has an independent monitoring body comparable to the APCI.*

**Commissioners' assessment:** We recognise that a great deal of work has been done to improve the quality of Country of Origin Information, especially through the bi-monthly updates of COI on the top twenty asylum seeker producing countries. However, concerns have been expressed as to how COI is being interpreted and applied by some case owners in their decisions. We welcome the existence of the APCI and encourage it to develop its work. We hope that in the development of the Common European Asylum System high standards of Country of Origin Information are maintained and that COI produced by member states or European agencies will also be unclassified and publicly available.

## **Recommendations 2.7: The Commissioners therefore recommend:**

### **Decision-makers**

- 2.7.1 - That the significance of sound decision-making should be reflected in the continued appointment of graduate officers of suitably high grade.
- 2.7.2 - That every decision-maker should have their case-load adjusted to allow time for thorough preparation and investigation of each case before coming to an initial decision.
- 2.7.3 - That decision-makers should be trained to detect issues such as difficulty in communication and psychological difficulties which might prevent applicants from doing justice to their case, and should receive facilitated, in-depth training on the correct approach to assessing credibility in asylum claims.
- 2.7.4 - That the training of decision-makers should include face-to-face meetings with people already granted refugee status.
- 2.7.5 - That the regular training and development of all those who make decisions on claims and appeals should incorporate high quality empirical research on the effects of trauma.
- 2.7.6 - That the accreditation of case owners should be carried out without delay and consideration should be given to developing a path which gives credit for prior learning from Asylum Casework Directorate or Legacy training towards a foundation degree or BA in human rights or refugee studies.
- 2.7.7 - That consideration should be given to developing a similar route from the Asylum Foundation Course to an MA in human rights or refugee studies.
- 2.7.8 - That an evaluation of the case owner role under the New Asylum Model ought to be undertaken to consider feedback on case-owners' responsibility for determining applications, assessing eligibility for asylum support and their role as advocate at Asylum and Immigration Tribunal appeal hearings.

## Conduct of interviews

- 2.7.9 - That the routine audio-recording of the substantive interview be implemented as a matter of urgency and a transcribed version of this made available as a matter of course to asylum seekers and their legal representatives.
- 2.7.10 - That an asylum seeker with a claim based on sexual violence should be asked whether they wish the hearing to be conducted specifically by a woman or a man and that this request should normally be accommodated.
- 2.7.11 - That all caseowners should receive specific facilitated training in how to conduct asylum interviews and assess claims for asylum in accordance with the UKBA gender Asylum Instruction.’
- 2.7.12 - That an Asylum Instruction be developed, in partnership with stakeholder groups, on religious issues in asylum claims. This would provide guidelines for case owners on the conduct of interviews, including the use of interpreters, where questions of religious conversion or practice are involved.

## Interpreters

- 2.7.13 - That those employed as interpreters by UKBA should be recruited, trained and paid to a standard that recognises the importance of their work.
- 2.7.14 - That case owners should be fully aware of the interpreter code of conduct and the mechanisms for reporting breaches of this code.
- 2.7.15 - That in view of the traumatic nature of the issues discussed in certain types of cases by which some interpreters may repeatedly be faced, psychological support should be made available to them.

## Country of Origin Information

- 2.7.16 - That Country of Origin Information should be comprehensive, updated and accurate and, in cases where an officer or appeal tribunal is proposing to reject an application on the ground of apparent variance between the applicant’s story and statements in the COI, the applicant and/or his representative should be made aware of it and given full opportunity (including if necessary an adjournment) for explanation of that variance or elaboration of the COI.
- 2.7.17 - That the function of the Independent Advisory Panel on Country Information be widened to allow for Operational Guidance Notes (on which country-specific decision-making may in practice be based) to be subject to scrutiny by the APCI in the same way as the more substantial Country of Origin Information.



## Fast-track

- 2.7.18 - That relevant Detained Fast Track procedures should be strengthened and rigorously implemented in order to ensure that in cases where there is evidence of torture, sexual violence or other forms of trauma which make it difficult for an individual to present their case coherently, that that person's vulnerability is quickly identified and they are removed from the Detained Fast Track process.
- 2.7.19 - That there should be a review of Harmondsworth and Yarl's Wood detained fast-track initial decisions and appeals to make sure that claims of torture or other traumatic ill-treatment are always put before the decision-maker and that gender guidelines have been rigorously followed in interviewing.

## Refusal

- 2.7.20 - That random examples of the Reasons for Refusal should continue to be periodically reviewed by an independent body to ensure that they are consistent with reliable Country of Origin Information.
- 2.7.21 - That UKBA should be careful not to present asylum-seekers whose appeals are refused as necessarily 'bogus', given that there are different reasons for refusal and that a decision in law that a person does not qualify for sanctuary does not necessarily signify that they are of bad intent.

**Interim Finding 3.** The Commissioners expressed concern that the adversarial asylum system is heavily weighted against the asylum seeker

**Finding 3.1:** That some asylum seekers who have their initial decisions 'fast-tracked' have less chance of receiving a fair hearing

***UKBA response:** Our Detained Fast Track has been tested at the highest level through the courts and found to be lawful. In R (Saadi) v Secretary of State for the Home Department [2002] 1 WLR 3131 the House of Lords considered the lawfulness of detaining asylum claimants pursuant to the fast-track process at Oakington, for the sole purpose of deciding their claims quickly. Their Lordships concluded that detention for the purpose of claims being decided quickly was lawful both within the Immigration Act 1971 and under Article 5 of the European Convention on Human Rights. This has now been confirmed by the Grand Chamber of the European Court of Human Rights.*

**Commissioners' assessment:** We recognise that some asylum seekers do have a weak case which can be dealt with relatively speedily. However, there is a difference between a process being lawful and it being appropriate. The Court of Appeal noted in *R (Refugee Legal Centre) v Secretary of State for the Home Department* [2004] EWCH 684 (Admin) that the fast track process had to operate flexibly in accordance with a written published policy in order for it not to be *inherently* unfair and unlawful. At present, the basis of the policy used to decide whether an asylum seeker should be subjected to the detained fast track process is not whether the case is weak, but whether it is capable of being decided speedily, with some nationalities deemed particularly suitable and some exceptions set out. We conclude that many claims are capable of being decided speedily without the asylum seeker being detained. We also conclude that the combination of the fact of detention and the speed of the fast track process imperils the high standards of fairness that should be used in deciding issues, where, if the decision is incorrect, the applicant's life may be at risk. If the fast track process is to be maintained, it is essential that the screening of applicants being assigned to the fast track process is effective and thorough.

**Finding 3.2: That segmentation of fast-track appeals and the tight time-frame for preparing a case for detained fast-track leads to too many people appearing without proper legal or other representation**

***UKBA response:** To ensure that clients in the fast track process have early access to quality legal advice and representation, the LSC runs duty representative schemes at Harmondsworth, Oakington and Yarl's Wood removal centres. Fast track advice is provided through 'Exclusive Contract Schedules'. We recognise that it is important that prompt legal advice is available to assist appellants with their case and the LSC has sponsored the Immigration Law Practitioners Association (ILPA) to develop a best practice guide for fast track cases. The guide is now in its final draft and being progressed for publication.*

**Commissioners' assessment:** We commend the efforts to improve access to legal advice in detention. We also commend the publication of the Immigration Law Practitioners' Association's Best Practice Guide on the Detained Fast Track in January 2008. We are concerned that, though positive, these steps do not ensure that the necessary legal advice and representation will be available to all who need it, particularly in the case of legal representation at appeals that are heard within the detained fast track process.

**Finding 3.3:** That the right to appeal is curtailed if an asylum seeker comes from a supposedly safe third country

**UKBA response:** *Asylum decisions attract a right of appeal. However a person being returned to a safe third country (usually one of our EU partners) is not being removed to the country in which they fear persecution. We consider in those circumstances that an out of country right of appeal is justified as it does not place the applicant at risk and discourages abusive asylum shopping. We may also certify some applications from a limited list of countries as clearly unfounded and these also do not attract a right of appeal in the UK. We do not assert that these countries are entirely safe for everyone. What we say is that in general there is no serious risk of persecution and that removal would not breach our obligations under the European Convention on Human Rights (ECHR). The protection needs of individual claimants continue to be assessed on a case-by-case basis regardless of the designation and we do not certify all claims from those designated countries. We are not aware of any successful appeal since 2005 against a clearly unfounded claim.*

**Commissioners' assessment:** We recognise that appeals with little merit may on occasion be used as a means of prolonging an applicant's stay in Britain. However, given that unmeritorious asylum claims can be decided quickly, even allowing for an in-country appeal right, the policy objective of discouraging 'abusive asylum shopping' can be met without maintaining a non-suspensive appeals regime. Furthermore, in respect of removals to third countries, significant concerns have been expressed about the quality of refugee status determination processes operated by some EU member states. For example, UNHCR has recently called for all EU member states to suspend third country returns to Greece for that reason. Additionally, the Administrative Court has found in *Nasseri v Secretary of State for the Home Department* [2007] EWHC 1548 (*Admin*) that the provisions around third country returns to EU member states are incompatible with the European Convention on Human Rights (although, we recognise that this decision has been appealed by the Secretary of State to the Court of Appeal).

**Finding 3.4:** That there is a lack of legal advice for asylum seekers during their initial interview leading to unjust decisions

**Finding 3.5:** That there is a shortage of solicitors to represent appellants and that asylum seekers are denied justice if their solicitors do not appeal in time or do not have the relevant information

**Finding 3.6:** That cuts in the legal aid budget have led to an increase in appellants appearing unrepresented

**Finding 3.7:** That there is insufficient opportunity for redress if an asylum seeker's appeal is not heard, if they are not properly represented, or if they are failed through maladministration or other human error

***UKBA response:** Unlike many EU Member States the UK provides free legal advice and representation out of public funds at both initial and appeal stages. Funding for legal aid in England and Wales is available for anyone who passes the statutory means and merits tests that are set out in the Commission's Funding Code and approved by Parliament in 2000, when legal aid was expanded to cover representations at immigration and asylum appeals. Legal advice and representation is provided by a range of quality assured providers including private solicitors and NGOs. In addition to legal aid funding provided to private solicitors the LSC provides the vast majority of income for both the Refugee Legal Centre and Immigration Advisory Service. LSC funding accounted for £12.3M of the Refugee Legal Centre's total income of £12.7M (RLC annual report 2006, and £13M of the Immigration Advisory Service's 2006/07 funding (Report of Trustees and financial statements year ended 31st March 2007). An Early Access to Legal Advice Pilot began in Solihull in November 2006 and is currently at the evaluation stage. The pilot tests the idea of involving legal representatives in the pre-decision stage of an asylum case to make the process one of increased interaction between case owner, legal representative and applicant, to ensure all facts are raised and considered as part of the decision-making process.*

**Commissioners' assessment:** We recognise that there must be a limit to the legal aid budget and that the constraints on the legal aid budget, which concern the Commissioners greatly, are a matter for the Ministry of Justice. It is of great concern when an asylum seeker is not able to consult a legal representative before their substantive interview. It is equally a matter of concern that asylum seekers are not guaranteed a legal representative at their substantive interview as a matter of course. Taking into account the limit to the legal aid budget, quality legal representation can facilitate quicker, more accurate and more efficient status determination. These are the reasons why the work being done as part of the Solihull Early Legal Advice Pilot project, where all asylum claimants have the benefit of legal support from the pre-decision stage, is of such great importance and we commend UKBA for an initiative that addresses our concerns about adequate, timely legal support.



**Finding 3.8:** That good medical expert reports to support an appellant's case are hard to obtain, expensive and are not always given due consideration

***UKBA response:** Those requiring a medical report to support their claim can apply to the Medical Foundation or the Helen Bamber Foundation. Both these organisations are registered charities. Around 2,400 cases were referred to the Medical Foundation in 2006 (10% of our asylum intake) and they produced around 750 reports (3% of our intake or 30% of those referred). Although the Medical Foundation can charge between £450 and £700 for such reports this cost can be met by legal aid.*

**Commissioners' assessment:** We acknowledge that due to the burden of work and shortage of resources, obtaining a medical report can sometimes slow down the asylum procedure considerably. However, such reports can be crucial to ensuring that the claims of asylum seekers are appropriately considered.

**Recommendations 3.9:** The Commissioners therefore recommend:

**Early access to legal representation**

- 3.9.1 - That no asylum claimant should ever, for want of affordable representation, appear before a tribunal unrepresented.
- 3.9.2 - That research should be undertaken to understand why asylum seekers are unable to secure legal representation, particularly before the initial interview. This research should consider level of supply and legal aid funding, the effect of asylum seekers' dispersal, the speed of the decision making process and other relevant factors.
- 3.9.3 - That, whilst that research is undertaken, the current restrictions on legal aid funding should be relaxed to encourage an increase in the number of quality legal representatives serving the needs of asylum seekers.
- 3.9.4 - That if an asylum seeker has, through no fault of their own, been unable to secure legal advice before their asylum interview, then the interview should be postponed to facilitate access.
- 3.9.5 - That the disincentive under the new legal aid regime for legal representatives to represent asylum seekers whose claims are difficult, complex and time-consuming should be removed.

- 3.9.6 - That the principle of ‘front loading’ legal advice should be actively pursued, and that the Solihull Pilot, suitably modified after careful audit and following the training of case owners and legal representatives, should be implemented nationwide as the standard way in which initial decisions on asylum claims are made.
- 3.9.7 - That careful consideration should be made of measures which can be introduced to ensure that legal aid funded lawyers are not discouraged from representing appellants at hearings in the detained fast track process.

### Engagement with applicants

- 3.9.8 - That there should be further consideration of issues of credibility. The current guidelines on credibility place the burden of proof on the applicant, but recognise that the applicant may not be able to produce evidence to substantiate the claim. In cases where evidence provides grounds for prima facie disbelief, the officer or tribunal concerned should take steps to ensure that such grounds have been explained to and understood by the applicant, and that the applicant has been allowed sufficient opportunity to offer an explanation, including the opportunity to submit further evidence.
- 3.9.9 - That there should be a means of recognition and redress within the asylum system in instances where the system itself has failed the asylum seeker, such as when a notice of appeal hearing has not been received due to human error, a solicitor has not completed papers within due time, or a representative has, without reasonable explanation, at the last minute withdrawn from a case.

### Appeal rights

- 3.9.10 - That careful consideration should be made in respect of the UK law relating to third country removals to EU member states. In particular, consideration should be given to additional remedies, such as an in-country appeal right, and applicants should be able to challenge the assertion that they do not face being returned to their country of origin from a third country in breach of the Refugee Convention or European Convention on Human Rights.
- 3.9.11 - That UKBA reviews non-suspensive appeals provisions having regard to whether they are still necessary to meet the purpose for which they were introduced.

### Fast-track process

- 3.9.12 - That the impact of fast-track procedures on the quality of decision making should be examined and the results of this research used to inform future policy around fast-track procedures.

### Conduct of appeals

- 3.9.13 - That there should be a preliminary exploration of tribunal practice - especially where appellants are unrepresented – which is less adversarial and more investigative.
- 3.9.14 - That a panel of user representatives should be established for the Asylum and Immigration Tribunal and the Asylum Support Tribunal respectively, to complement existing stakeholder arrangements by auditing and advising upon the development of the service. These panels should include asylum seekers whose appeals have been heard by either Tribunal.
- 3.9.15 - That, if qualified legal representation is not available to an asylum seeker who has to appear before a Tribunal, appropriate lay support should be encouraged through the involvement of CITIZENS, the voluntary sector, and a wider recognition of the role of 'McKenzie Friends'.

### Expert reports

- 3.9.16 - That legal representatives and decision makers should be trained in the commissioning and use of medical expert reports and witnesses.
- 3.9.17 - That criteria should be developed specifying when expert opinion should be obtained, for example, in the cases of psychologically vulnerable persons where credibility issues or issues of the timing of disclosure are deemed relevant.

### Public understanding of decision making

- 3.9.18 - That there should be a pilot initiative to improve public understanding of the way initial decision making in asylum applications works and, the challenges and the criteria that asylum seekers have to meet to have their claims accepted.
- 3.9.19 - That UKBA should host an experimental day conference at which UKBA practitioners engage with members of the public, including those in the voluntary sector, about the ways in which they work.



