

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.