

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.⁶ 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. 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.⁷
- 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.