

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

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

UKBA response:

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

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

Commissioners’ Assessment:

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

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





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

William, asylum seeker from Uganda.

UKBA response:

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

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

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

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

Commissioners' Assessment:

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

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

UKBA response:

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

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

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

**Commissioners' assessment:**

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

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

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

UKBA response:

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

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

Commissioners' Assessment:

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

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

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

UKBA response:

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

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

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

Commissioners’ assessment:

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

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

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

Hamed, refused asylum seeker from Darfur.



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

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

UKBA response:

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

Commissioners’ Assessment:

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

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

UKBA response:

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

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

² efeedback Research conduct opinion research using an online panel of more than 190,000 UK residents. A sub-sample representative of the UK population is drawn from the panel for each poll. The results of this opinion poll are based on 1,024 completes gathered online from respondents based across the UK. Data was weighted to the profile of all UK residents, not just those with access to the internet, over the age of 17. Data was weighted by age, gender, occupation and region. Fieldwork began on 2/5/2008 and concluded on 12/5/2008.

Commissioners' Assessment:

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

Recommendations 2.9: The Commissioners therefore recommend:

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

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