

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

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

UKBA response

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

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

The design of the new system builds in quality:

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

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

Commissioners' assessment:

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

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

UKBA response:

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

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

Commissioners' assessment:

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

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

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

UKBA response:

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

Commissioners' assessment:

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

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

UKBA response:

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

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

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

Commissioners' assessment:

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





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

Recommendations 4.5: The Commissioners therefore recommend:

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

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