



Interim Finding 4. The Commissioners expressed concern at the treatment of women in the asylum system

- Finding 4.1** – That a woman’s claim may often, to her detriment, be made together with that of her husband or partner, instead of being given independent consideration
- Finding 4.2** – At the lack of understanding and recognition that women may have particular problems in accessing help and support
- Finding 4.3** – That the Government’s own gender guidelines are inconsistently observed
- Finding 4.4** – That women are being wrongly selected for detained fast track against the guidelines in the Asylum Policy Instructions
- Finding 4.5** – That the detention of pregnant women has a negative impact on their health and well-being

UKBA response:

Our stated policy and published guidance make clear that pregnant women should not normally be detained. The exception to this general rule is where there is a clear prospect of early removal and medical advice does not suggest confinement before then. In addition, pregnant women of 24 weeks and above are excluded from detention as part of the fast-track asylum process.

The authority of an Assistant Director is obtained before a pregnant woman is detained but the onus is on the individual to provide evidence of the pregnancy and of any complications. Pregnant women who are detained have access to the normal range of healthcare services, including visiting midwives and health visitors.

Commissioners’ assessment:

The Commissioners welcome the assurance that pregnant women should not normally be detained, but believe the Enforcement Instructions and Guidance should be amended to prevent pregnant women being detained at all. They also stress the importance of this being extended to breastfeeding mothers and of enforcement staff and staff at IRCs being made fully aware of the importance of breastfeeding mothers not being separated from their children.

- Finding 4.6** – That women’s cases based on sexual violence are not properly presented under the fast-track system
- Finding 4.7** – That gender-specific claims for asylum such as Female Genital Mutilation and trafficking are not adequately addressed by the asylum system

UKBA response:

The United Kingdom signed the Council of Europe Convention on Action against Trafficking in Human Beings on 23rd March 2007. On 14th January the Home Secretary announced that the Government intends to make the necessary legislative and procedural changes to implement the trafficking convention before the end of this year. A dedicated project team within the UK Border Agency has been set up to lead implementation of the Convention and is reporting to

a cross government official project board and Ministerial Group. The Convention builds on our strategy to combat human trafficking by providing minimum standards of protection and support for victims of all forms of trafficking.

In addition, issues such as female genital mutilation, where this is a likely possibility in relation to a specific country of origin, will be referred to in the operational guidance notes which provide guidance to case owners in making a determination on an applicant's claim.

Where a victim of trafficking claims asylum we will carefully and sensitively consider this application on its individual merits and in the context of the country concerned. We accept that trafficking, depending on the circumstances, may be a form of harm which is serious enough to constitute a form of persecution and this is specifically acknowledged in the Gender Issues in the Asylum Claim asylum policy instruction.

Where an individual is recognised as having been trafficked, she or he will be referred to appropriate organisations for assistance, such as the POPPY Project (a scheme that provides shelter and support to women who have been trafficked for sexual exploitation). Women accepted on to the POPPY Scheme have removal action held in abeyance for 4 weeks whilst they consider their options. Longer term support is offered in return for co-operation with the authorities and removal action is deferred where appropriate.

We have already undertaken some innovative awareness raising and training on trafficking with the POPPY project for some asylum caseworkers. This has proved extremely positive and we hope to do more in the future. We will be issuing specific guidance for asylum caseworkers in this area. We are currently considering comments received from stakeholders following consultation with them.

Commissioners' assessment:

The Commissioners agree with the UKBA about the importance of the *Gender Issues in the Asylum Claim* asylum policy instruction and wish to emphasise the need for caseowners and caseworkers to be fully familiar and to act in accord with its contents. The evidence we have received suggests that improvement is needed in this area, and that structures must be put in place to ensure that gender guidelines are rigorously implemented. These structures should include monitoring the implementation of the Gender API and adding it as a core competency and a key criterion in the accreditation of Case Owners.

The Commissioners commend to UKBA the Charter on the Rights of Women Seeking Asylum initiated by Asylum Aid, recognition of which they believe could be a valuable instrument for ensuring that the *Gender Issues in the Asylum Claim* policy instruction is fully implemented.

The Commissioners warmly welcome the involvement of stakeholders such as the POPPY project in training caseowners and in caring for women who have been trafficked. They are aware that new research by the Poppy Project and Asylum Aid demonstrates a welcome improvement in

procedural aspects but the finding that the majority of initial refusals are overturned on appeal suggests a lack of quality of decision making.

The Commissioners note that the UKBA response does not mention the finding that women's cases based on sexual violence are not properly presented under the fast-track system. Yet their own research found that "The referral mechanism to the detained fast-track was not sufficiently robust to identify potential gender-related claims which are not suitable for fast-track." (Yarlswood Detained Fast-track compliance with the Gender API: a report by the NAM Quality Team, Home Office, August 2006).

Recommendations 4.8: The Commissioners therefore recommend:

- 4.8.1 – That UKBA ensures that all aspects of its work are compliant with the Gender Equality Duty under the Equality Act 2006.
- 4.8.2 – That UKBA implements the EU directives on procedures and qualification in a gender sensitive way, based on the UNHCR's Gender Guidelines.
- 4.8.3 – That there should be a women's champion in the UKBA Senior Management Team.
- 4.8.4 – That the remit of the new UKBA inspectorate should include the monitoring of gender issues.
- 4.8.5 – That current policies and procedures should be reviewed with respect to their gender impact and to address discriminatory or negative impacts on women.
- 4.8.6 – That there should be appropriate training on a regular basis for staff to make sure they understand initiatives related to women's rights and implement them accordingly.
- 4.8.7 – That there should be childcare available for women during asylum interviews.
- 4.8.8 – That family-friendly improvements made to Lunar House in recent years, such as the provision of adequate baby-changing facilities, should be provided in all client-facing UKBA offices.
- 4.8.9 – That girls and young women (including those where there is an age dispute) should always be placed in women-only accommodation.
- 4.8.10 – That reporting requirements should be suspended for women who are pregnant, or have babies, or young children.
- 4.8.11 – That women provided with vouchers under Section 4 (a practice we believe should end) should be enabled to purchase necessary items for feminine hygiene, for their own health in pregnancy and, where they have children, necessary items for childcare.

- 4.8.12 – That women who have suffered from gender-based harm should not be detained.
- 4.8.13 – That women who are pregnant, breastfeeding, or have the care of children should not be detained.
- 4.8.14 – That a pre-removal risk-assessment process which is sensitive to the needs of women should be established.
- 4.8.15 – That there should be an appropriate gender balance at all times amongst UKBA and IRC staff who have the care of women.
- 4.8.16 – That female doctors should always be available to women who need medical attention in IRCs.
- 4.8.17 – That the UKBA gender guidelines should be rigorously implemented.

Interim Finding 5. The Commissioners expressed concern at the treatment of those with health needs in the asylum system

- Finding 5.1 – That there is confusion and inconsistency over entitlement to health services
- Finding 5.2 – That charging for secondary care is having a detrimental effect on the health and well-being of refused asylum seekers and may pose a health risk to the wider population
- Finding 5.3 – That asylum seekers with health needs dispersed across the UK may suffer a break in continuity of care through dispersal
- Finding 5.4 – That HIV/Aids treatment is denied to refused asylum seekers who cannot pay for treatment and the implications for this in terms of public health
- Finding 5.5 – That there is a high level of mental illness among asylum seekers and that the asylum system fails to recognise this and in some cases exacerbates or causes stress
- Finding 5.6 – That disabled asylum seekers are not entitled to disability-related benefits
- Finding 5.7 – That the accommodation provided for disabled asylum seekers is sometimes unsuitable
- Finding 5.8 – That vulnerable groups such as older and disabled detainees are not adequately protected in detention

UKBA response:

In line with our obligations under the Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers, and with other EU Member States, applicants have full access to the NHS while their claim is being considered. Once their claim has been rejected, and any appeal right has been exhausted, they will have access to emergency care until they have returned home.