

- 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.

Healthcare staff in removal centres are required to screen detainees medically within two hours of admission to the centre. This is aimed at identifying any immediate and significant health needs. Following this initial assessment, the healthcare team is required to make care plans to manage the needs of detainees, where necessary. It is already the case that diagnostic testing for HIV, together with associated counselling, is free to all irrespective of residency status. HIV treatment begun during the period when an applicant's claim is being considered would be free. Any course of treatment begun while the patient was eligible to receive it free of charge must remain free of charge even if the patient's chargeable status changes, meaning that an asylum seeker already receiving HIV treatment at the point their asylum claim is finally rejected, must continue to receive that treatment free of charge until such time as they leave the UK. Only where the patient does not seek treatment until after their asylum claim has been finally rejected would they be expected to pay for it.

It can be a breach of Article 3 of the ECHR to remove someone from the UK if to do so would amount to inhuman or degrading treatment on account of the suffering caused as a result of their medical condition. However, the House of Lords case of N clearly establishes that states are under no obligation to allow those otherwise liable to removal to remain in their territories for the purpose of receiving medical treatment.

Commissioners' assessment:

The Commissioners agree with UKBA and the European Union Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers, which prescribes that 'Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness' (MSR Article 15.1). The Commissioners believe it is essential to establish at an early stage what are the health needs of asylum seekers, including 'necessary health care' and 'essential treatment' before waiting until 'emergency care' becomes necessary. We believe that ensuring the provision of necessary healthcare precludes attempting to charge people who are on asylum support or manifestly destitute for healthcare.

The Commissioners are concerned at the difficulties asylum seekers experience in signing on with a GP and the pressures this is likely to generate on Accident and Emergency Departments of Hospitals. We are also concerned about lack of liaison between GPs and healthcare staff in IRC health centres, and interruption of treatment at the point of detention.

The Commissioners note with concern the UKBA response that 'Only where the patient does not seek treatment until after their asylum claim has been finally rejected would they be expected to pay for it' as for some HIV positive refused asylum seekers there can be no prospect of imminent removal. The risks to their own health and to public health are manifest.

Recommendations 5.9: The Commissioners therefore recommend:

- 5.9.1 – That there should be pre-screening health assessments for asylum seekers to identify health needs, including mental health needs, at the earliest possible stage.
- 5.9.2 – That asylum seekers with chronic physical or mental health needs should be supported by special teams tasked with planning for their needs and ensuring continuity of care after dispersal, on the model of NHS complex discharge planning.
- 5.9.3 – That healthcare should be provided on the basis of need, and that asylum seekers should be eligible for primary and secondary health care until their case is successful, or they leave the UK; in particular and specifically that all peri-natal healthcare should be free.
- 5.9.4 – That asylum seekers' health entitlements should be more clearly communicated to asylum seekers, support organisations and health professionals.
- 5.9.5 – That any measures to curb 'health tourism' that affect asylum seekers be evidence-based and take into consideration the risk of abuse, public health impact and the long-term health and financial costs of not providing early treatment, specifically for asylum seekers.
- 5.9.6 – That disabled asylum seekers should be able to access suitable accommodation and support, and be properly protected in detention.
- 5.9.7 – That, where asylum seekers have GPs or other healthcare providers, healthcare workers in IRCs should be proactive in contacting them to ensure continuity of care.