House of Commons
Home Affairs Committee

Asylum

Seventh Report of Session 2013–14

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Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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Key Facts

- In 2012, there were 21,955 applications for asylum in the UK.
- As of 19 September 2013, of those 21,955 cases, 18,423 have received an initial decision and 12,632 have been concluded. This means that 3,523 people who applied for asylum in 2012 have yet to receive an initial decision.
- Of the 12, 632 cases that have been concluded 41% (5173) of those cases were granted asylum although 12% (1543) of those 12, 632 cases only received their grant following a successful appeal.[1]
- In comparison, 180,000 immigrants arrived in the UK for formal study in 2012 and 179,000 immigrants arrived in the UK for work related reasons.[2]

1 Home Affairs Committee, *The work of the UK Border Agency (Jan-March 2013)*, HC 616, Letter from Sarah Rapson to the Chair, 19 September 2013

2 http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/august-2013/index.html

1 Past and current criticisms of the asylum system

Introduction

1. Asylum is protection given by a country to someone who is fleeing persecution in their own country. The UK is a signatory to the 1951 United Nations Convention relating to the Status of Refugees which sets out the basis on which someone is considered to be a refugee. The Convention states that a refugee is a person with a fear of persecution because of their race, religion, nationality, political opinion or membership of a particular social group. An individual seeking asylum must therefore show that they have a well-founded fear of persecution due to their race, religion, nationality, political opinion or membership of a particular social group, and that the authorities in their country are unable to provide protection or that the individual is, owing to that fear, unwilling to avail himself of the protection of that country. The definition is forward-looking, so even if a person has been persecuted in the past, they will not be able to successfully claim asylum unless they can demonstrate that they will be persecuted in the future. A person must also be outside their country of origin in order to be recognised as a refugee.

2. If an individual does not qualify for refugee status, they will also be considered for protection or permission to remain in the UK on two other grounds. Firstly, to qualify for humanitarian protection, a person must demonstrate that they would face a real risk of suffering serious harm on return to their country of origin. Serious harm means either the death penalty; torture or inhuman or degrading treatment or punishment; or a serious and individual threat to a person's life or safety in situations of armed conflict. Secondly, an individual can further apply to remain in the UK on the basis that a return home would breach their human rights. Human rights claims can form part of an asylum claim under the Convention but they can also be made separately. The convention contains a number of 'articles' of protected rights. Most human rights claims are based on Article 3 (prohibition on torture and inhuman or degrading treatment) or Article 8 (right to respect for family life and private life).

Time taken to receive a decision

3. The time taken to receive an initial decision to an asylum claim has been increasing in the recent past. As we have previously noted, just over half of asylum claims receive an initial decision within a year but during 2012there was a 63% rise in the of the number of new asylum applicants who have waited more than six months for an initial decision.

4. The human cost of delays in decision-making is significant. As the Migrant and Refugee Communities Forum told us,

> We have seen professionals who have been de-skilled because they were not allowed to work for eight years. We have seen women stuck in abusive marriages, unable to leave their husbands because they were the principal applicants and the women would not have had status or support alone. We have seen victims of torture whose mental health has further deteriorated through years of uncertainty while waiting for

> the outcome of their claim. We have seen families torn apart and those left behind suffering yet more as they are unable to join their loved ones who have no family reunion rights for the years that they are stuck in the asylum application system.[3]

5. John Vine, HM Chief Inspector of Borders and Immigration, spoke of discovering nine cases which had taken 323 days to get an initial decision,[4] and referred to another where the applicant had been waiting fourteen years for a final decision.[5] Another witness told us about meeting someone who had waited sixteen years for a final decision.[6] Natasha Walter highlighted a particular case as an example of the difficulties which applicants face as a result of the length of time which they remain within the system, citing the example of the hardship faced by one woman who had waited for 11 years for a decision and was not entitled to any support for her children.[7]

6. The Scottish Refugee Council found that 49% of women had waited more than two years for their current status, compared to 22% of men. They cited several possible reasons for this difference, including poor quality decision-making, poor credibility assessments and lengthy appeals processes in women's cases.[8] One cause of such delays is possibly the fact that women tend to have more complex cases as they are more likely to be trying to escape family or community persecution as opposed to state persecution. We examine the issue of gender sensitivity in the asylum system in more detail below.

7. **We consider it wholly unacceptable that anyone should have to wait longer than 6 months for an initial decision, let alone the delays of many years for those caught in the legacy backlog. Ministers must not allow people who claim to be fleeing persecution to be left in limbo for so long ever again.**

Backlogs

8. Such a slow decision making process is partly caused by the necessary allocation of staff and resources to clearing the 'Legacy Backlog'. In July 2006, the then Home Secretary published a report on the Immigration and Nationality Directorate (IND). One of the key highlights was the large number of unresolved asylum cases, totalling around 500,000. These were to be dealt within five years or less, and became known as the legacy backlog.[9] The deadline for those cases to have been resolved was the summer of 2011 yet at the end of March 2013 there were still 32,600 asylum cases which had yet to be concluded.[10] Backlogs reduce faith in the capability of the system to effectively identify (and protect) those in need whilst providing a barrier to those who are not eligible under the 1951 Convention. Evidence of this lack of faith can be seen on both the part of the applicants

3 Ev 79

4 Q8

5 Q17

6 Q48

7 Q48

8 Ev 313, Summary

9 The Independent Chief Inspector of Borders and Immigration, *An inspection of the UK Border Agency's handling of legacy asylum and migration cases*, November 2012, p16

10 Home Affairs Committee, *The work of the UK Border Agency (Jan-March 2013)*, HC 616, Letter from Sarah Rapson and Dave Wood to the Chair, 10 July 2013

and also the wider British public. John Vine noted that the system is further undermined by the fact that some of those with applications in backlogs within the asylum system who may not have originally been granted asylum on the basis of their claim will nevertheless be given leave to remain due to the time spent in the country because of "inefficiency and ineffectiveness."[11]

9. In his 2012 report on the UKBA's handling of legacy asylum and migration cases, John Vine found that from April 2011, the UKBA had made 8,000 checks against the Police National Computer and the Warnings Index, which had resulted in roughly 2,000 "hits". However, because results were returned only in hard copy , they were not accessible to case owners working on electronic systems. This resulted in the files remaining within the "controlled archive" of cases where the UKBA was unable to trace the applicant. The British Red Cross highlighted cases where applicants had been regularly signing in with immigration services, as required by the UKBA, only to discover that their cases were in the controlled archive.[12]

10. In 2009, as part of an investigation in to the asylum process, John Vine uncovered a further backlog of 30,000 asylum cases which had been submitted after the introduction of the New Asylum Model in 2007.[13] Alison Harvey, of the Immigration Law Practitioners Association, suggested that the poor quality of decision-making had caused the backlogs:

> There is no reason that I can see why there should be any backlogs when the numbers of persons claiming asylum have fallen so dramatically. There is not a big intake of cases. There is no reason why they cannot be decided. I think we will continue to have backlogs as long as we do not have sustainable decisions. That is not going to help. We are not going to turn the cases around.[14]

Maurice Wren of the Refugee Council believed that the system itself was responsible for the build up of cases. He raised concerns about the Asylum Operating Model which was introduced in April 2013 which he described as a "backlog-generator".[15] We further discuss the concerns about the Asylum Operating Model raised with us below.

11. **The task of staff examining claims for asylum is to judge fairly, not to make it as difficult as possible for asylum claims to be made. While staff should be rigorous in considering the merits of a case, and reject those which are not meritorious, it is not their role to aim to reject cases, and the culture of disbelief that has raised has no place in fair judgements.**

'Culture of disbelief'

12. Another cause of distrust in the effectiveness in the system is what has been termed the 'culture of disbelief', which describes the tendency of those evaluating applications to start from the assumption that the applicant is not telling the truth. The term, first used to

11 Q17

12 Ev 127, para 3.8

13 Q8

14 Q253

15 Q300

describe the asylum system in 2008, has recurred repeatedly throughout our inquiry. It was referred to in almost a quarter of written evidence submissions to this inquiry.[16] One of our witnesses told us that he had left his screening interview feeling intimidated, rejected and as though he had been branded a liar from the outset.[17] He explained the impact that this had on applicants was that they didn't trust the system to make the right decision as they were disbelieved from the outset. He acknowledged the importance of examining each claim but suggested that that was not currently happening... they do not want you even to answer the questions. When they ask you a question, they are trying to get your no to be a yes and your yes to be a no.[18]

13. A number of our witnesses likened such an attitude to the historical attitudes ascribed to the police when dealing with victims of sexual assault.[19] In many cases, the applicant's 'lack of credibility' will be cited as a reason for refusal, with no more specific grounds being offered for rejecting their story. One organisation highlighted the impact which this could have on applicants.

> Frequently the basis for the refusal is that the asylum seeker is not believed. Cogent reasons for this disbelief are often not offered. This is not to say that all asylum seekers tell the truth, but rather that decision-makers are still prone to disbelief without foundation, and to treating the asylum interview and decision-making process as adversarial rather than as an exercise of an international protection obligation. Since the asylum seeker's story invariably involves distressing events, and sometimes deeply traumatic ones, the effect of being disbelieved can be devastating.[20]

We further discuss the issue of credibility below.

Quality of decision making and lack of auditing

14. Two further criticisms raised by those who submitted evidence to this inquiry were around the quality of decision making and the lack of auditing of decisions. This is perhaps unsurprising, considering that 30% of appeals against initial decisions were allowed in 2012.[21] As we have already noted, the rate of allowed appeals is higher for women than men, and it is also higher amongst applicants from certain nationalities. In 2012, 52% of

16 Ev 49 [Asylum Aid]; Ev w6 [Naomi Roberts]; Ev w6 [Mrs Janet King]; Ev w39 [London Destitution Forum]; Ev 64 [Women for Refugee Women, the London Refugee Women's Forum and Women Asylum Seekers Together London]; Ev w45 [Quaker Peace & Social Witness and Quaker Asylum and Refugee Network]; Ev w56 [Refugee Women's Strategy Group]; Ev w77 [Migrant and Refugee Communities Forum]; Ev w82 [Bradford Ecumenical Asylum Concern]; Ev w125 [S Chelvan]; Ev w133 [Churches Refugee Network]; Ev w144 [ASSIST Sheffield]; Ev w160 [Scottish Refugee Policy Forum]; Ev w170 [TRP Solicitors Ltd]; Ev 114 [Survivors Speak Out]; Ev w221 [Justice First]; Ev w242 [Barnado's]; Ev w283 [Why Refugee Women]; Ev w306 [Huddersfield Asylum Advice Service]; Ev w312 [Scottish Refugee Council]; Ev w342 [Refugee Children's Consortium]; Ev 138 [Law Society]

17 Q142

18 Q144

19 Qq49-50

20 Ev w146, para 19 [ASSIST Sheffield]

21 Appeal numbers taken from data supplied by the UKBA to the Committee relating to Q1-4 2012

appeals were allowed for Syrians, 41% for Sri Lankans, 34% for Iranians,22 45% for those form from Eritrea and 43% for those from Sudan.[23]

15. UNHCR has identified a number of specific failings in the quality of the UK's asylum decision-making

- failure by caseworkers to understand the basics of human rights law;
- a lack of understanding by caseworkers of the role of applicants' credibility;
- frequent use of speculative arguments to undermine credibility;
- failure to apply the correct methodology to credibility assessment; and
- lack of consideration of relevant evidence and the placing of unreasonable burdens on applicants to provide supporting evidence.[24]

It is notable that three of these five reasons relate directly to decision-makers' assessment of applicants' credibility.

16. UNHCR has also noted a tendency on the part of decision-makers to apply an inappropriately high burden of proof, meaning that sometimes minor discrepancies resulted in every aspect of an applicant's claim being disbelieved or rejected.[25] This is despite the fact that in 2000, the Court of Appeal ruled that decision-makers should adopt a particular 'approach' to pieces of evidence, which they must take into account. The case owner is required to make a judgement on:

- evidence about which they are certain;
- evidence they think is probably true;
- evidence to which they are willing to attach some credence, even if they could not go so far as to say it is "probably true"; and
- evidence to which they are not willing to attach any credence at all.

The Court noted that decision-makers should accept evidence in the first three categories, that is, that unless the evidence presented by the applicant is demonstrably false, it ought to be accepted.[26] Asylum Aid told us that their research into the issue of the high allowed appeal rate found a mismatch between the standard of proof used by appeal judges, which reflected official guidance, and the higher standard used by case-owners. They suggested that both the criminal standard of "reasonable doubt" and the civil standard of balance of probabilities were both higher than the test set out by the Court of Appeal. They also

22 *A question of credibility*, Amnesty

23 Ev w242, para 10 [North of England Refugee Service]

24 Ev 142, para 30 [Law Society]

25 Ev w189, para 9

26 Ev 57 [Asylum Aid]

suggested that this discrepancy was likely to be more marked in cases involving female applicants because of the type of persecution they are likely to have experienced.[27]

17. We are also concerned about decisions to grant asylum to people who later emerge to be involved with terrorist activity. Those who apply for asylum in the UK should be checked against national and international law enforcement agency and security service databases to ensure that we are not harbouring those who intend us harm. We will revisit the issue of those who use the UK asylum system to escape terror charges in their home countries when we hold an inquiry in to counter-terrorism this autumn.

18. The substandard quality of decision making is being compounded by the inability of case workers to learn from their mistakes. John Vine told us that his recommendation, in 2009, that the UKBA should analyse the reasons why it was losing appeals in order to improve the standard of decision-making, but that the recommendation had not been fully implemented.[28]

19. The lack of auditing is especially worrying as a number of witnesses made the point that there was suitable guidance on many of the areas which will be mentioned within this report – country of origin information, gender sensitivity, credibility – and yet that guidance was not being followed by case workers.[29] Sarah Rapson, interim Director General of UK Visas and Immigration at the Home Office, told us that where administrative errors or incorrect decisions are identified then "steps are taken" to ensure that case owners and their managers are aware.[30] However, a lack of formal auditing process means that when a refusal is overturned at appeal as a result of the caseworker contravening that guidance, there is no way of being able to monitor poor performance by case workers which could then be dealt with by further training or, in cases of persistent poor performance, performance management, including potentially dismissal.

20. **The Committee are concerned that the length of time take to receive an initial decision may severely impact on the health and wellbeing of asylum applicants. Not all successful appeals are the result of poor decision making or administrative failure, but decision-makers should be encouraged to view every successful appeal as a learning opportunity. When an appeal is upheld, the decision-maker should, as a matter of course, have this drawn to their attention and be given an opportunity to discuss the reasons for the appellate decision with a more experienced peer or senior colleague. This process should be integrated into the Home Office's staff development and appraisal system. Where particular decision-makers consistently experience an appeal rate which is significantly higher than average, this should be drawn to the attention of their line management.**

27 Q46

28 Q19

29 Qq52, 54, 175-6

30 SR 05/08

Everyday difficulties when dealing with the UKBA

21. Witnesses have raised numerous concerns about UKBA practices which make life unnecessarily difficult for both applicants and those involved in supporting them through the asylum process.

Asylum Screening

22. At present, all of those who wish to submit an application for asylum must travel to Croydon, to the Asylum Screening Unit, no matter where their point of entry to the UK was. Those who are considered to be particularly vulnerable can be screened in regional offices, but requests for this to happen are not always agreed to. Debora Singer of Asylum Aid described a case where a pregnant asylum seeker based in Scotland was required to travel 440 miles overnight to Croydon for a morning appointment, despite the protestations of the Scottish Refugee Council. She went into labour on the steps of the asylum screening unit.[31]

23. There were also complaints about the length of time it took to get interviews at the Asylum Screening Unit. The Immigration Law Practitioners' Association (ILPA) had received reports of legal representatives being unable to contact the Asylum Screening Unit—one had organised a volunteer rota spanning a fortnight so that they could continually attempt to phone the Unit to arrange appointments but were still unable to get through. Another had made more than 200 phone calls in a month but had been unable to book any appointments.[32] A further criticism of the Asylum Screening Unit in Croydon is that, unlike the regional offices, the unit does not offer childcare, meaning that children are present when parents are making their claim to the screening officer. This can inhibit disclosure as many parents will not discuss acts of sexual violence or torture in front of their children. Despite the fact that childcare is offered at the regional offices, the letters inviting applicants for interview still state that childcare is not available and that they should not bring their children with them. This has been repeatedly raised with the Home Office over the past two years but the standard invitation letter has not been amended.[33]

24. **We recommend that the Home Office amend its guidance to ensure that any applicant who is disabled or is pregnant be offered a screening appointment at a regional centre. In cases where the applicant is the primary carer of a child under the age of 16 child care should be made available to those who need it for their interviews, and this should be made clear in the invitation letters. Where documents can be sent by mail or online this option should always be highlighted to save time and cost for Home Office staff and applicants.**

Interpreters

25. We have been informed that there are often occasions when there are issues with interpreters both during substantive interviews and then again when the case goes to

31 Q58

32 Ev 84, Appendix 1 [ILPA]

33 Q51

Court. A common problem is the use of interpreters who do not speak the applicant's regional dialect. For example, according to the Liverpool Asylum and Refugee Association, 85 languages are spoken in Ethiopia but the UKBA offers interpretation only in Amharic, the official Government language.[34]

26. The impact of mis-translation is that any discrepancies between previous and future accounts could be used to cast doubt on the applicant's credibility. Having an interpreter who cannot speak the applicant's dialect in court will stop the case from being heard. One of our witnesses gave us this example of mis-management in the case of an appeal by an Afghani boy whose age UKBA disputed.

> The first time the Home Office had not read up about the case so it was adjourned. The second and third time an Iranian interpreter was provided, who could not interpret the boy's village language. The fourth time a Dari interpreter was sent to interpret for the boy, it was confirmed by an appropriate adult who understood the boy's dialect that he did understand what was being said, and who then won his case.

The impact in this case is the cost incurred of the court holding four sittings when the case required one sitting and (as they had been wrongly allocated) the fees for the three interpreters that could not do the job. All of this would have paid for from public money. This was despite the fact that it had been made clear, by those supporting the asylum seeker, to UKBA exactly what dialect and language was needed to interpret for their client.[35] The waste of public money in this case is concerning. Unfortunately, several other witnesses have described similar experiences meaning that this is not an isolated incident.[36]

27. **Whereas the provision of the right kind of interpretation can be expensive, it can also be cost-effective, particularly if it saves money being spent on unnecessary appeals. To that extent this should not be an area where the Home Office should be seeking to cut corners.**

Submitting further claims

28. Since October 2009 it has been necessary to make further representations in person at the Liverpool Further Submissions Unit. Given that on the majority of the occasions it is simply a case of submitting documents rather than any sort of substantive contact taking place,[37] many people have complained that it is overly onerous to expect failed asylum seekers who, in many cases, have no recourse to public funds to travel to Liverpool when previously applicants and their representatives were allowed to send submissions via post.[38] Indeed, the High Court has questioned the legality of refusing to accept submissions of applicants who are destitute and therefore cannot travel to Liverpool.[39]

34 Ev w324, para 3.8

35 Ev w168 [Suzanne Fletcher MBE]

36 Ev w133 [Churches Refugee Network]; Ev w144 [ASSIST Sheffield]

37 Ev 76 [ILPA]

38 Ev w40 [London Destitution Forum]

39 Ev w118 [Destitute Asylum Seekers Huddersfield]

29. **We recommend that where applicants are allowed to make further representations the option of doing so by post should be re-instated.**

Family reunion

30. The British Red Cross have raised concerns about the complexity of the Refugee Family Reunion process. The application form for a family reunion visa is supposed to be filled out by the applicant (rather than the sponsor) although this does not necessarily happen as the application has to be filled out online and the refugee who is already based in the UK is more likely to have internet access. The form itself is described by The British Red Cross as confusing and complex and they state that guidance on filling in the form is difficult to find and that many sponsors require professional support to complete the application. The withdrawal of legal aid for family reunion cases has been criticised by both the British Red Cross and the UNHCR. The British Red Cross also pointed out that the application form makes frequent references to maintenance and accommodation testing, although these criteria are not relevant to the Family Reunion process. Such references cause unnecessary confusion and could result in sponsors believing that their family are not eligible to apply.[40]

General ineffectiveness

31. There are also issues with communication across departments in the Home Office. As mentioned previously, the British Red Cross described cases of applicants who regularly 'signed in' with authorities and yet found that their cases were in the controlled archive as they were apparently unable to be traced. Refugee Action raised the issue of refused applicants who were engaging with the Voluntary Assisted Return and Reintegration Programme and yet were forcibly removed.[41] Enforced removals often costs several thousand pounds per person, so it makes no financial sense to remove someone who is about to return home voluntarily. Refugee Action ascribes this to "competing target priorities and internal communication break-downs within the Home Office".[42]

32. There are also indications that the departments cannot effectively communicate with applicants either. We received the following case study from Southampton and Winchester Visitors Group (SWVG):

> On three occasions David received the letters inviting him to his first interview after the date that the actual interview was supposed to have taken place. On each occasion, it took frantic, extremely lengthy calls by SWVG to exonerate him from the charge that he had knowingly failed to appear. When he did finally attend, the case worker didn't appear and the appointment had to be re-arranged.[43]

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40 Ev 133 [British Red Cross]

41 The Voluntary Assisted Return and Reintegration Programme (VARRP) is operated by Refugee Action and is co-financed by the Home Office and the European Refugee Fund. It provides support for those in the asylum system and those with temporary status in the UK who wish to return voluntarily and permanently to their country of origin or to a third country to which they are admissible. This might include help with obtaining travel documents and booking flights, and measures designed to improve participants' employability when they reach their country of return, such as job placements and training.

42 Ev w64, para 30(b)

43 Ev w87, para 2.4

John Vine has previously cited the low priority given to customer service as an issue within the asylum system, commenting that he found it "astonishing that there is such a little focus on the customer for such a large Government Department."[44]

33. We therefore welcome the commitment made by Sarah Rapson to improving the customer service ethos of the UK Visas and Immigration section of the Home Office and endorse her view that "it must be right that the same way that we would treat customers who apply through us through different routes should be applied to asylum seekers. Possibly more so, because they are some of the most vulnerable people that we deal with, who probably do not complain."[45]

34. **Lack of customer focus has been one of the main problems that has bedevilled the asylum system under the UK Border Agency. We welcome the interim Director General of UK Visas and Immigration's commitment to a more customer-focused approach to asylum applications, and her acknowledgement that this approach is all the more important because of asylum seekers' vulnerability. We recommend that the Home Office carry out regular customer satisfaction surveys among asylum applicants and the groups who support them in order to monitor progress in this area.**

Concerns about the Asylum Operating Model

35. In April 2013, the Government introduced the Asylum Operating Model. Applications are triaged at the screening interview stage and allocated to "decision pathways", based on how long the case is likely to take to resolve and how likely the application appears to be granted or refused. Detained fast-track cases and cases where a person will be sent back to a European country through which they passed en route to the UK are expedited. Other cases are allocated to the green, amber or red pathways, where green cases are those that are most likely to be resolved quickly and red cases are the most difficult to resolve. We were told by the Immigration Law Practioners Association that a significant criterion is whether or not the application has a 47% chance of being granted.[46] There is no longer a single case owner who handles the application at all stages. The Immigration Law Practitioners Association (ILPA) have said that the new model

> appears to build on the worst faults of the current system in that it attempts to judge and categorise cases before they have been investigated, at the screening stage. Little is known about a person at screening: their name (which may be in dispute), their nationality (which may be in dispute), their gender, their age (which may be in dispute) and how they arrived in the UK (which may be in dispute). There are limited opportunities for disclosure at screening. The screening interview is not designed, and nor should it be, to investigate the substance of a claim. A person may be distressed and fearful, tired and confused. A relationship of trust and confidence is likely to need to be built before a person will describe torture, rape or other abuse or humiliation; it is unlikely to emerge at this very initial stage.[47]

44 Q7

45 Home Affairs Committee, *The work of the UK Visas and Immigration Section*, HC 232-i, 11 June 2013, Q27

46 http://www.ilpa.org.uk/data/resources/17810/13.05.02-Asylum-Operating-Model-info-sheet.pdf

47 Ev 76, para 4

Asylum Aid, the Refugee Women's Strategy Group, the Scottish Refugee Policy Forum and the UNHCR have all also highlighted concerns about the Asylum Operating Model including the reliance of the process upon information obtained during the screening process, the increase in targets for staff and the reduction in the level of seniority of the case owner.

36. **It is too early to assess the impact of the new Asylum Operating Model which was introduced in April 2013 but it is clearly a cause of concern among those who work with asylum seekers. The risk is that the model becomes too dependent on decisions made at a very early stage in the process which might, as further information becomes available turn out to have been based on mistaken assumptions. It is highly doubtful, in our view, that an initial screening interview will always provide enough reliable evidence to establish the chances of an application being granted. This could lead to the generation of further backlogs if cases are allocated to the wrong decision pathway and it is important to ensure that, where the initial decision as to the appropriate pathway proves to be wrong, the case can be moved to the correct one. We recommend that the Home Office issue clear guidance to case-handlers as to when cases should be transferred between pathways.**

2 Asylum decision

Country of Origin information and Country Policy Bulletins

37. When deciding an asylum claim, country of origin information is considered alongside the information submitted by or on behalf of the applicant. This information is taken from reports prepared by the Home Office's Country of Origin Information Service (COIS), which produces full reports on the top 20 countries of origin for asylum seekers and shorter country profiles for the next 30. Bulletins are occasionally issued on an ad hoc basis for some other countries, depending on demand. Case owners may also use Operational Guidance Notes, which are produced by the Country Specific Litigation Team, not the COIS.

38. In July 2011, John Vine published the results of an inspection in to the use of Country of Origin Information in asylum applications. Two of the issues which he highlighted in his report were repeatedly raised by our witnesses. When he gave evidence to the Committee, John Vine told us that he had been concerned by the selective use of Country of Origin Information. The inspection team had

> found in 13% of the cases that we thought that the caseworkers had been selective in picking out from the COI report the information that would basically help in prosecution. In other words, they were selective in the use of information in order to support the case for refusing asylum.[48]

Caseworkers should always make a fair judgement on the merits of a case. The same point was made by Asylum Aid, Women for Refugee Women, the Refugee Council and the Law Society as an issue.[49] Asylum Aid cited one case in which the case worker quoted independent country of origin information which stated that women in Iraq could gain effective help from a local police station, but omitted the preceding sentence which stated that "women have been sexually assaulted by the police when reporting to a police station."[50]

39. A further concern repeatedly raised by witnesses was the inconsistency between country of origin information, operational guidance notes and sources of information which case owners might identify for themselves. Ministers are currently reviewing where both the country of origin information service and the country specific litigation team ought to sit following the reintegration of the UK Border Agency's functions in to the Home Office. [51]

40. The inspection found that the inclusion of country information in country policy papers could mean that case workers might use information selectively in individual decisions based on an overall policy position and could also use the country policy papers as the primary source of country information rather than referring to the country report or

48 Q29

49 Qq63 & 299; Ev 138

50 Ev 54, para 33

51 SR 05/08

other available sources. Case workers in the focus groups run by the Chief Inspector acknowledged that these policy papers were often the first port of call, if not the only one.[52] The Chief Inspector's report notes that there is no consistent co-ordination between the different publications. An updated country report does not automatically result in an updated country policy bulletin or operational guidance note. Examining the Afghanistan operational guidance note, the Chief Inspector noted that there had been four country reports issues on Afghanistan since the operational guidance note had been produced meaning that it was out of date and did not contain significant information which case workers ought to have been aware of when making decisions on asylum applications.

41. This problem was also highlighted in relation to the country policy bulletins for Sri Lanka and the Democratic Republic of Congo by our witnesses. Freedom from Torture told us that the current bulletin failed to reflect the evidence identifying risks to certain categories of Tamils produced by NGOs and that it did not acknowledge the evidence that in up to 15 cases the Home Office has granted protection to people who were previously refused protection and returned to Sri Lanka, before then coming back to the UK to allege that they were tortured in Sri Lanka after their return there.[53] Catherine Ramos of Justice First told the Committee that the current Country Policy Bulletin for the Democratic Republic of Congo "contains errors and omissions."[54]

42. The sporadic nature of Operational Guidance Notes and Country Policy Bulletins, also means they may not contain the most up to date UNHCR guidelines. In December 2012, the UKBA published an updated Country Policy Bulletin on Sri Lanka just one day before the UNHCR produced updated 'Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka'. In July 2013, when ordering the Home Office to amend its Country Policy Bulletin on Sri Lanka, the Upper Tribunal noted that change in the UNHCR guidelines contributed to their decision[55] and that

> It is unfortunate (and perhaps surprising) that the Country of Origin Unit was unaware of the imminent UNHCR guidelines which emerged the day after the Policy Bulletin and no adjustment has yet been made to accommodate that.[56]

43. **It is disappointing that the Home Office has to be ordered to amend its Country Policy Bulletin on Sri Lanka by the Upper Tribunal when those changes are based on a UNHCR report of which the Home Office must have been aware. We are concerned that that the previous guidance was published just a day before the UNHCR report which implies at the least a lack of effective communication with the UNHCR. We recommend that in future Home Office Operational Guidance Notes, Country Policy Bulletins and Country of Origin Information reports contain reference to the latest UNHCR publications on the relevant country where appropriate and that the Home Office and UNHCR seek to improve liaison in these matters.**

52 *The use of country of origin information in deciding asylum applications: A thematic inspection*, ICIBI, 2011, p25

53 Q98

54 Ev 61

55 GJ & Others, (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC), paras 34-47

56 GJ & Others, (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC), para 237

44. **We recommend improved integration of country of origin information provision and the country specific litigation team within the Home Office. Where possible, a particular individual should review all new guidance relating to the same country before it is issued.**

Gender-related persecution and gender sensitivity within the asylum system

45. The difference in the nature of asylum claims made by men and women is noted by the Home Office in guidance entitled 'Gender Issues in the Asylum Claim':

- Forms of persecution relevant to women are often very different from those experienced by men. They may occur within the family or community as well as at the hands of State actors.
- Discrimination may amount to persecution in countries where serious legal, cultural or social restrictions are placed upon women.
- Customs and traditions which are potentially harmful to women may be contrary to the law in some countries but the State may be unable or unwilling to enforce the law, and recourse to protection may be more difficult for women than for men.
- The availability of internal relocation may be more difficult for women than for men. Great care needs to be taken in assessing its reasonableness on an individual basis.
- An understanding of the country of origin information relating to the position of women is essential to the effective conduct of interviews and to making correct decisions.[57]

46. Despite the existence of this guidance, research shows that women are less likely than men to receive a correct initial decision on their asylum claim. In 2011, Asylum Aid examined the files of forty-five women from three different UKBA regions – based in Cardiff, London and Leeds – who claimed asylum between 2007 and 2010. The research analysed the case files and drew on the decisions outlined in the reasons for refusal letters issued to those applicants refused asylum, and the determinations made by immigration judges in the cases of those applicants who appealed the initial decision. The research found that women were too often refused asylum on grounds that were

> arbitrary, subjective, and demonstrated limited awareness of the UK's legal obligations under the Refugee Convention. Many of the UKBA's decisions proved to be, in the words of an immigration judge examining one of the cases included in this research, "simply unsustainable", and 50% were overturned when subjected to independent scrutiny in the immigration tribunal.[58]

57 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/gender-issue-in-the-asylum.pdf?view=Binary

58 Asylum Aid, *Unsustainable: the quality of initial decision-making in women's asylum claims* (2011), p5

In its sample, judges reversed the UKBA's credibility findings and accepted the applicant's own account in every successful appeal. Some 42% of refusals issued to women were overturned following an appeal, compared with 22% for men.[59]

47. Part of the reason for this may be that women generally seek asylum on a different basis to men. The Refugee Convention defines a refugee as:

> A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[60]

When the Refugee Convention was adopted, its primary objective was to address population displacement in Europe following the Second World War. Refugees became principally conceived as male political activists who were persecuted by the State and women and children were regarded as passive dependents.[61] UK Courts have interpreted "persecution" as the combination of serious harm to the applicant and the failure of state protection.[62]

48. More often than men, women claiming asylum fear persecution by non-state actors such as family or community members in the private sphere. They therefore often have to establish both limbs of the test of persecution—harm plus failure of state protection—independently.[63] Women for Refugee Women who told us that they had found that typically women seeking asylum in UK were "fleeing extremely severe forms of persecution, often gender-related persecution such as rape, sexual violence, forced marriage, forced prostitution and so on."[64]

49. Debora Singer of Asylum Aid told the Committee that the lack of concrete 'proof' of non-state persecution often causes the case owner to question applicant's credibility as they have to rely on giving oral testimony about their experiences.

> What we know about women who have suffered these types of human rights abuses is that the trauma affects their memory, they can't remember everything, there are inconsistencies in their memory, and we know that the shame makes it very difficult to disclose issues; they either do not disclose them or they disclose them late.[65]

Natasha Walter of Women for Refugee Women stated that the issue of credibility wasn't the sole barrier to protection but that in many cases, case owners were guilty of "the

59 Ev 51, para 13

60 1951 Refugee Convention

61 Siddiqui N. et al, *Safe to Return? Pakistani women, domestic violence and access to refugee protection – A report of a transnational research project conducted in the UK and Pakistan* (Manchester: South Manchester Law Centre, 2008), p. 45

62 Hathaway J., *Law of Refugee Status* (Toronto: Butterworths Law, 1991), p. 125.

63 *Unsustainable*, p11

64 Q48

65 Q49

trivialisation of gender-related persecution" which had been overturned on appeal because judges seemed "to have more understanding of the nature and impact of gender-related persecution and are less likely to trivialise it in that way and more likely to look again at those risks on return."[66]

50. We earlier drew attention to the concern that guidance issued by the Home Office was not being used by case owners when determining claims (Para 19). This appears to be the crux of the issue here. Case owners are required to follow Home Office guidelines[67] and if they do not, that can be used as the basis for an allowed appeal.[68] Debora Singer told us that training and guidance has been developed over the years and regularly updated with input from stakeholders. She emphasised that the training and guidance is of a reasonable standard but that it is "not the lack of guidance or training or its content; the problem is that it is not implemented."[69]

51. **Gender is not, in itself, one of the grounds upon which an applicant may claim asylum under the refugee convention, yet it is clear that there are many countries in the world where women do not have access to the same freedoms and opportunities enjoyed by their male counterparts. While this should not automatically qualify someone for asylum, case owners (and the Home Office in general) must improve the treatment of women who have suffered at the hands of members of their families or communities and not been able to access protection from the state. By its very nature, persecution by non-state actors is likely to be far more difficult to prove than persecution by the state and to apply the same probative criteria is both unfair and inappropriate. At a time when the criminal justice system is finally waking up to the needs of victims of domestic and sexual violence, the asylum system should be doing the same.**

Credibility

52. The decision to refuse asylum claims on the basis of credibility of the applicant has been the basis of criticism of the UK asylum process for almost a decade. Amnesty International and Still Human, Still Here recently published a report entitled 'A question of credibility' which examined the refusal letters and appeal determinations of 50 cases from Syria, Sri Lanka, Iran and Zimbabwe, all countries which have had higher than average appeal overturn rates of initial decisions to refuse asylum in the last two years. The research showed that in 84 per cent of a random sample of cases, a flawed credibility assessment is the primary reason why the UK Border Agency's initial decision to refuse an asylum claim was found to be incorrect by Immigration Judges.[70] Still Human, Still Here cited the poor decision making on the credibility of applicants as the "last big hurdle in improving the

66 Q65

67 Q59

68 Q60

69 Q52

70 Ev 90, para 5

quality of decision making," noting that it would require improved guidance and training to correct the current situation.[71]

53. UNHCR cited a tendency on the part of decision-makers to apply

> an inappropriately high burden of proof, resulting in every aspect of an applicant's claim being disbelieved or rejected. Some claims were rejected in their entirety on the basis of only one or two negative credibility findings, without giving in-depth scrutiny to or engaging with each of the material facts of the application.[72]

This was also found to be the case in their January 2011 report 'Unsustainable: the quality of initial decision making in Women's asylum claims.[73] The UK is not alone in this; in a May 2013 report, UNHCR noted that the rejection of asylum claims on the basis of credibility was a common trend across the EU.[74] The report emphasised that the case owner shared the responsibility (with the applicant) of ensuring that all relevant facts were examined before a decision on the asylum claim could be made.[75] The report cited a case which had been reported in the British media in October 2012:

> Reportedly, the determining authority rejected an application for protection by an Afghan applicant who claimed that he had formerly worked for the British armed forces as an interpreter in Afghanistan. He also asserted he had been injured in a Taliban attack that had killed a British serviceman and had been threatened with death if he returned to Afghanistan. The application was rejected on the grounds that his asserted identity and employment were not considered credible. The applicant had extensive bodily scarring, which, he asserted, was caused by shrapnel wounds. He had also submitted documentary evidence including photographs of his treatment in a field hospital in Afghanistan, his British Army identity cards as well as references from British army officers. The determining authority concluded that there was no evidence to indicate the cause of the scarring on the applicant's body, that the documentary evidence submitted could have been forged and that the asserted facts were not credible on account of discrepancies in the ID cards. However, a journalist was able to find, within 20 minutes, two independent and reliable sources that were able to confirm the applicant's account. It was reported that the determining authority could have easily verified the asserted material facts and authenticity of documents with the Ministry of Defence and other witnesses (formerly) from the military in the UK.[76]

54. The research by Amnesty International and Still Human, Still Here found that this was consistent with accounts that they had received from victims of torture. In eight of the cases examined, documentary evidence was submitted to corroborate the claim of torture or to show the after effects of torture prior to the initial decision. This documentary

71 Q168

72 Ev w189, para 9

73 Q46

74 *Beyond Proof: Credibility assessment in the EU asylum systems*, UNHCR, May 2013, p29

75 *Beyond Proof: Credibility assessment in the EU asylum systems*, UNHCR, May 2013, p35

76 *Beyond Proof: Credibility assessment in the EU asylum systems*, UNHCR, May 2013, pp132-3

evidence included photographs of injuries or scarring, NHS assessment cards and doctors' letters. In six cases, applicants submitted photographs of their scars to substantiate their claims of torture prior to the initial decision, but these photographs were not accepted as evidence in a single case.[77] Freedom from Torture also stated that the assessment of credibility in asylum claims involving allegations of torture continues to be a significant problem, with too little attention given to the impact of trauma on memory and disclosure, and inadequate weight given to medico-legal evidence documenting torture and addressing these issues.

55. Freedom from Torture prepares medico-legal reports, commissioned from specialist clinicians. They are based on the standards set out in the UN *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (known as the Istanbul Protocol). Each report is subject to a detailed clinical and legal review process. Freedom from Torture assessed how these reports were treated by UKBA case owners and Immigration Judges in research conducted in 2011 and found that the rate of allowed appeals in cases where UKBA refused asylum claims in which an medico-legal report had been submitted prior to the decision was 69%, compared with the average appeal allowed rate at that time of 28%.[78] This suggests that these reports are simply disregarded by case owners, leading to incorrect decisions being made. This view was supported by Medical Justice, who also produce medico-legal reports for victims of torture.[79]

56. Incorrect decisions can result in applicants being returned to their country of origin. The Home Office told us that

> The Home Office does not remove anyone to a country where there is a real risk that the individual will be tortured, or face other inhumane or degrading treatment.[80]

Despite this, in 2012, twenty-seven people were recognised as refugees or given humanitarian protection by the UK following a previously unsuccessful claim and forcible removal from the UK.[81] On 6 February 2013, UKBA responded to a Freedom of Information request by Freedom from Torture requesting details of Sri Lankan nationals granted protection by the UKBA or Tribunal after previously being refused and removed from the UK.[82] According to the response, there was a total of 15 such cases in the period between May 2009 and September 2012. The Treasury Solicitor's Department has since clarified that the precise number of these cases is 13, two of whom were returned to a third country under the Dublin Convention and two of whom were voluntary returns.[83]

77 Ev 91, para 14

78 Ev 99, para 5.3

79 Ev w265, para 1

80 Ev 45, para 11

81 Numbers taken from data supplied by the UKBA to the Committee relating to Q1-4 2012

82 The FOI response and Freedom from Torture's statement in response to this are available at http://www.freedomfromtorture.org/news-blogs/7104.

83 Letter from the Treasury Solicitor's Department to the Administrative Court Office at the Royal Courts of Justice regarding 'Enforced returns to Sri Lanka by charter flight on Thursday 28 February 2013' (22 February 2013).

57. In May 2013, the UN Committee against Torture agreed its concluding observations on the fifth periodic report of the United Kingdom. One of its recommendations related to the allegations of torture of Sri Lankan returnees.

> The Committee notes that, in view of the allegations and evidences that some Sri Lankans Tamils have been victims of torture and ill-treatment following their forced or voluntary removal from the State party [i.e. the UK], the High Court ordered on 28 February 2013 the suspension on the removal of Tamil failed asylum seekers to Sri Lanka. The Committee is nevertheless concerned that the State party has not yet reflected this evidence in its asylum policy (art. 3).
>
> The Committee recommends that the State party observes the safeguards ensuring respect for the principle of non-refoulement, including consideration of whether there are substantial grounds indicating that the asylum-seeker might be in danger of torture or ill-treatment upon deportation. The Committee calls upon the State party to submit situations covered by article 3 of the Convention to a thorough risk assessment, notably by taking into consideration evidence from Sri Lankans whose post removal torture claim were found credible, and revise its country guidance accordingly.[84]

58. Another area where credibility assessments are judged to be particularly poor is in the cases of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) asylum applicants. The Law Society told us that there now exist "extraordinary obstacles" to establishing credibility in this area, a statement supported by ILPA.[85] In July 2010, in HJ (Iran) and HT (Cameroon), the Supreme Court unanimously held that the underlying rationale of the Refugee Convention was to enable a person to 'live freely and openly' without fear of persecution. In its ruling the Court set out a four stage test for determining these claims:

> (i) Is the individual gay, or will he be perceived to be?
>
> (ii) Do openly gay people in the country of origin face a well-founded fear of persecution?
>
> (iii) Will the individual be open on return? If so then he is a refugee.
>
> (iv) If the individual is voluntarily discrete, only because of family or societal pressure, then the individual is not a refugee.[86]

59. This judgement, in effect overturned the Border Agency's previous emphasis on 'voluntary discretion' to conceal their sexuality as an option for claimants to avoid persecution. However it is alleged that the decision has in practice resulted in caseworkers seeking to undermine claims to personal identification as lesbian or gay. A leading barrister in this area, S. Chelvan, described the recent change in approach towards LGBTI asylum applicants.

84 http://www2.ohchr.org/english/bodies/cat/cats50.htm

85 Ev 142, para 33 & Q268

86 Ev w126, para 5

> Up until July 2010 the UK Border Agency refused claims on the basis of 'voluntary' discretion, and had no concerns about establishing the sexual identity of the gay applicant. Suddenly, since July 2010, supposedly due to a fear of false claims, the shift has been from discretion to disbelief. The battleground is now firmly centred in 'proving' that they are gay.[87]

In turn, this has led to claimants going to extreme lengths to try and meet the new demands of credibility assessment in this area, including the submission of photographic and video evidence of highly personal sexual activity to caseworkers, presenting officers and the judiciary.[88]

60. As with claims based on gender, there is an inherent complexity to LGBTI claims as persecution will come from family or community actors as well as state actors. This can raise a number of difficulties in states which are nominally 'safe' but have high levels of prejudice against LGBTI persons. For instance, on the 19th June 2013 the Court of Appeal found that Jamaica is not a safe country for LGBTI persons, yet many countries including Jamaica are designated as safe under section 94 (4) of the Nationality, Immigration and Asylum Act and the applicant therefore loses the right for an in-country appeal to a decision.[89]

61. UNHCR notes updated guidance on these issues which was published in July 2012 is not being applied by decision-makers and that, without proper training in the standards and legal principles that the guidance outlines, its impact "will remain minimal and there will continue to be a disparity between policy and practice." UNHCR is currently developing training in cooperation with UKBA to ensure decision-makers correctly apply the relevant legal standards in relation to credibility assessment.[90]

62. **We were concerned to hear that the decision making process for LGBTI applicants relies so heavily on anecdotal evidence and 'proving that they are gay'. As the court determined (point i above) the test should be whether people are gay or perceived to be so. In cases such as that of Brenda Namigadde, it is not appropriate to force people to prove their sexuality if there is a perception that they are gay. The assessment of credibility is an area of weakness within the British asylum system. Furthermore, the fact that credibility issues disproportionately affect the most vulnerable applicants—victims of domestic and sexual violence, victims of torture and persecution because of their sexuality—makes improvement all the more necessary.**

63. **The impact of the credibility assessment for LGBTI applicants from countries designated as safe under section 94 (4) of the Nationality, Immigration and Asylum Act may be significant and the Committee recommends that the Government review the status of other countries on this list to protects the rights of LGBTI asylum seekers.**

87 Ev w126, para 7

88 Ev 143, para 33 [Law Society]

89 The Queen (on the application of JB) (Jamaica) v the Secretary of State for the Home Department (C5/2012/1662)

90 Ev w189, para 8

Detained Fast Track

64. The Detained Fast Track (DFT) is used where, following the screening interview, it appears that the individual circumstances of a claim for asylum have been identified as uncomplicated and a decision to grant or refuse asylum can be made quickly. Asylum Aid have questioned whether the screening process is an appropriate method of establishing the credibility of an applicant.[91] Both the UNHCR and Freedom From Torture have raised concerns that victims of torture can be inadvertently routed in to the Detained Fast Track despite the Government's commitment that

> DFT processes do not under any circumstances apply to children. Further defined exclusion factors apply, acknowledging that particularly vulnerable people should not ordinarily be detained. Such groups include trafficking victims, those with independent evidence of torture, heavily pregnant women, and those with medical conditions that cannot be satisfactorily managed in a detained environment.[92]

As we have already noted, fear of state officials and feelings of shame regarding their torture may lead to victims of torture not disclosing the full details of their claim during the screening process. Furthermore, the requirement that victims of torture provide independent evidence of their torture in order to be excluded from the Detained Fast Track is overly onerous as many applicants won't have taken legal advice prior to the screening interview and so won't be aware that they need such evidence.[93]

65. John Vine has also criticised the method of allocating cases to the Detained Fast Track, highlighting that a third of the cases which he looked at during an inspection of it were wrongly allocated and the detainees were subsequently released.[94] UNHCR noted that the short time frame that case owners in the Detained Fast Track worked to meant that applicants very often did not have sufficient time to gather evidence of their claim. UNHCR have also raised concerns about the quality of decision making within the Detained Fast Track, including the fact that decision makers had a lack of clear understanding of the criteria under which a person can be classified as a refugee.[95] Freedom From Torture have suggested that people should not be routed in to the Detained Fast Track until they have had an opportunity to seek legal advice and have fully understood what is required of them.[96]

66. **We are concerned about the operation of the Detained Fast Track. It appears that a third of those allocated to the detained fast track are wrongly allocated and that many of those wrongly allocated are victims of torture. Such a high number of incorrect allocations should be addressed and we recommend that the Home Office implement a service standard which reflects a substantial reduction in the number of incorrect allocations per year and that annual audits be carried out and published.**

91 Ev 51, para 20

92 Ev 46, para 19

93 Ev 93, para 1.3 [Freedom from Torture]

94 Q32

95 Ev w188, para 5

96 Q103

Legal representation

67. ILPA have suggested that the earliest possible access to legal advice would speed up the asylum process,[97] a view supported by many of those who submitted evidence to the inquiry.[98] The Home Office have trialled an Early Legal Advice Project which provided free legal advice and representation to asylum seekers in a pilot region which examined such a proposal. The evaluation of the project, published in May 2013, found that the costs of providing early legal advice exceeded the savings that were made from the reduced number of appeals.[99] However, the evaluation also found that the project improved decision making in complex cases and that case owners, applicants, and legal representatives reported that the process had increased confidence levels in initial decisions. [100] The evaluation also noted that for the project to be effective, evidence should have been provided prior to the substantive asylum interview (known as "front-loading") yet this happened in only 20% of cases[101] and the only evidence required to be submitted prior to the substantive interview, the witness statement, was received after the deadline required by the project guidelines (3 days prior to the interview) in 57% of cases.[102]

68. **We commend the Home Office for running such a detailed and lengthy pilot. We note that there are many positive aspects which emerge from the Early Legal Advice Project and we recommend that the Government invest in identifying how to improve the early identification of complex cases which would benefit from early legal advice, the front-loading of evidence, and the timely submission of witness statements.**

Legal Aid

69. The Government's proposed reforms to the legal aid system were raised as an issue of concern by many of those who submitted evidence to the inquiry. Alison Harvey of ILPA cited concerns about the residency test which means that an applicant qualifies for legal aid whilst going through the asylum system, once they have been recognised as a refugee they will have to wait for twelve months before being eligible for legal aid. She noted that this was contrary to Article 16 of the Refugee Convention, which requires that refugees have legal aid on the same terms as nationals. She also noted that failed asylum seekers would not be eligible for legal aid if they wished to challenge decisions made around support.[103] This is particularly concerning considering recent research by the Asylum Support Appeals Project found that 80% of appeals against decisions to refuse support to destitute asylum seekers were allowed.[104] There is also a degree of confusion as to whether asylum seekers

97 Q266

98 Ev w1 [Oldham Unity Destitution Food Project]; Ev w39 [London Destitution Forum]; Ev w40 [Destitution Concern Bradford]; Ev w56 [Refugee Women's Strategy Group]; Ev w71 [Lewes Group in Support of Refugees and Asylum Seekers]; Ev w77 [Migrant and Refugee Communities Forum]; Ev w86 [Southampton and Winchester Visitors Group]; Ev w101 [Bristol Refugee Rights]; Ev w107 [Susan Gairdner]; Ev w129 [Mission and Public Affairs Council of the Archbishops' Council of the Church of England]; Ev w141 [Refugee Survival Trust]; Ev w144 [ASSIST Sheffield]; Ev 92 [Freedom from Torture]; Ev w299 [LGBT Unity Scotland]

99 *Evaluation of the Early Legal Advice Project Final Report*, Home Office, May 2013, p7

100 Ibid. p18

101 Ibid. p35

102 Ibid. p44

103 Q265

104 Ev w202, para 6

who are making a fresh claim will be entitled to legal aid to make that claim or whether they will have to submit the evidence for the claim prior to becoming eligible.[105] If the latter is the case then the likelihood is that the fresh claim will be made, and further evidence submitted toward the end of the process once the applicant has retained legal representation. The submission of further evidence at a late stage would cause delays within the asylum process and could lead to a negative decision being overturned at appeal. If the applicant was able to access legal representation at the start of the process, the likelihood is that all the evidence would be available at the point of making the claim and therefore speed up the process.

Quality of legal advice

70. The quality of legal advice available to asylum applicants was also raised as an issue of concern by both MPs and witnesses alike. The existence of unscrupulous and poor practitioners is compounded by fixed-fee funding which results in a set fee for work done, no matter how many hours have been spent on a case[106] and a limit on the number of case starts, which means that practitioners with good reputations are oversubscribed whilst their less well-thought-of counterparts are then the only option for applicants who need to access legal aid funding.[107] Such a system shows no appreciation for the quality or difficulty of work being performed. The Coalition's programme for government stated that it would "explore new ways to improve the current asylum system to speed up the processing of applications."[108] This could be assisted by ensuring the provision of high-quality legal advice.

71. The Mission and Public Affairs Council of the Church of England noted that asylum seekers, especially those who are detained, often complain informally about the quality of service from legal practitioners, but are rarely willing to make a formal complaint. They suggested that it would be helpful if third sector organisations were able to raise concerns about legal representatives, based on clear evidence, to either the Legal Ombudsman or the Solicitors' Regulation Authority.[109] The Legal Services Ombudsman will currently accept complaints only directly from the affected client.

72. **We are not persuaded of the benefits of imposing a residency test for refugees and recommend that the Government ensure that its legal aid proposals are compliant with the relevant provisions of the Refugee Convention. We also recommend that it introduce a system of monitoring quality within its allocation of legal aid so that the public purse is not funding (and therefore propagating the existence of) bad legal advice. We suggest that if the Government wishes to reduce the amount of money spent on legal aid within the asylum system then it ought to focus on improving the quality of decision making in both the area of asylum claims and asylum.**

105 Q265

106 Ev w33 [Churches Refugee Network]; Ev 92 [Freedom from Torture]

107 Q264

108 www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

109 Ev w132, para 9

73. **We invite the Office of the Immigration Services Commissioner, the Solicitors Regulatory Authority and the Legal Ombudsman to work together to produce guidance on complaining about solicitors who work on asylum applications and the possible outcomes of such a complaint. We recommend that such guidance is produced in 'plain English' to ensure that it is accessible to asylum applicants as well as third sector workers.**

3 Asylum support

74. Before 1999, asylum applicants were supported by mainstream benefits which were set at 90% of the rates that were available to those who got mainstream benefits. The Immigration and Asylum Act 1999 created an entirely separate support system under the auspices of the Home Office and reduced that rate to 70% of income support, which was considered to be sufficient to meet 'essential living needs' for the anticipated six-month duration of the asylum claim. This is known as Section 95 support. The Act also introduced a further, reduced support system for asylum seekers who had had their claim refused but were unable to return to their country of origin through reasons that were no fault of theirs. This is known as Section 4 support.

75. The reasoning for this decision was that the then Government believed that access to generous, mainstream benefits was attracting asylum applicants who did not have a genuine claim.[110] This view is disputed by the Still Human, Still Here coalition:

> Research commissioned by the Home Office has found that asylum seekers have limited control over where they apply for asylum and little knowledge of entitlements to benefits in the UK. This was confirmed by a review of the 19 main recipient countries for asylum applications in the OECD in 2011 which concluded that policies which relate to the welfare of asylum seekers (e.g. support levels, permission to work and access to healthcare) did not impact on the number of applications made in destination countries.[111]

They pointed out that asylum applications in the UK rose following the introduction of the new support system in 1999, as they had following an earlier restriction on benefit claims in 1996, and claimed that countries with more generous welfare arrangements than the UK, such as the Netherlands, did not receive more asylum applications.

Section 95 support and the right to work

76. Until 2008, asylum support rates were linked to income support. However, since then, the levels have been set annually each year in accordance with what has been felt to be appropriate.[112] The current rates of section 95 support are:

- Qualifying couple (married or in a civil partnership): £72.52
- Lone parent aged 18 or over: £43.94
- Single person aged 18 or over, excluding lone parent: £36.62
- Person aged at least 16, but under 18 (except a member of a qualifying couple): £39.80

110 *The Poverty Barrier: The Right to Rehabilitation for Survivors of Torture in the UK*, Freedom From Torture, July 2013, p25

111 Ev 74, para 6.1

112 HL Deb, 23 May 2012, Column 785

- Person aged under 16: £52.96.[113]

An asylum seeker who is a single person over the age of 18 receives 65% of income support paid to those under 25 and 51% of the levels paid to those who are over 25. The Scottish Refugee Council stated that the

> level of income most widely used as a signifier of living in poverty is below 60% of male median income. Asylum support stands at less than 31% of that level. The UKBA arguments about costs such as utility bills and housing being met and that these make up the shortfall is a disingenuous one. A 35%-49% shortfall is not made up by asylum seekers not having to meet these costs.[114]

77. In April, the Government told us that it was reviewing aspects of support policy, including the weekly allowances provided to asylum seekers and failed asylum seekers[115] but by June, the Minister for Immigration had announced his decision to maintain support at current levels.[116] In surveys of those on section 95 support, it has been reported that 50% had experienced hunger as a result of the low levels of support; 70% were unable to buy essential toiletries; and 94% were unable to buy clothing[117]. This relative poverty is compounded by the fact that the vast majority of asylum applicants have not legally been allowed to work since 2002.

78. Asylum applicants who have been waiting for a decision for over 12 months can apply for a Work Permit. However, the employment opportunities are restricted and include recognised areas where workers are in 'short supply' and posts are generally restricted to those requiring a degree level qualification.[118] By contrast, in Austria, Greece, Portugal, Finland and Sweden asylum seekers are permitted to work after four months while Italy, Spain, Netherlands, and Cyprus allow them a work permit after six months. Denmark has also recently announced that it will also allow asylum seekers to work after six months.[119] Many of our witnesses highlighted the benefits of allowing asylum applicants to access the job market. Maurice Wren of the Refugee Council told us that allowing asylum seekers to work would reduce the public expenditure of support and accommodation for them as well as all those with skills and talents to be of benefit to the economy. Both he and Tom Hamilton-Shaw of the Red Cross pointed out that due to the low levels of asylum support, some asylum applicants would work illegally which was to the detriment of the Treasury who would not be receiving tax as a result.[120] Jan Shaw of Amnesty International highlighted that the length of time it took to receive a final decision on an asylum application led to the de-skilling of asylum applicants who were highly trained.[121]

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113 Ev w186, para 6.6 [Manchester Refugee Support Network]

114 Ev w318, para 5.2

115 Ev 48, para 33

116 *The Poverty Barrier: The Right to Rehabilitation for Survivors of Torture in the UK*, Freedom From Torture, July 2013, p26

117 Ev 71, para 1.6 [Still Human Still Here coalition]

118 Ev w326, para 5.7 [Liverpool Asylum and Refugee Association]

119 Ev 72, para 3.4 [Still Human Still Here coalition]

120 Q304

121 Q179

79. A third of witnesses to the inquiry told us that they thought asylum seekers ought to be given the right to work,[122] a position which is supported by the Church of England General Synod which in 2009 passed a motion by 242 votes to 1 in favour of allowing asylum seekers be given the right to work.[123] Furthermore, the Immigration Act 1971 (Amendment) Bill, a private Peer's Bill which was introduced on 10 June, would allow asylum applicants the right to work after six months if their claim has not received an initial decision.[124] The Bill has yet to receive a date for second reading but we encourage the Government to ensure that adequate time is made available for the second reading debate. Given that current access to the job market for asylum seekers is both restrictive and confusing, we therefore understand why not even the Home Secretary was fully aware of the conditions when she gave evidence to us. She told us that she agrees with the current policy which is that access to the job market "is not available to somebody until they have been here for 12 months."[125]

Section 4 support

80. Section 4 support is significantly more restricted than section 95 support, both in terms of the amount of the support and in the way that it is distributed. It is only available to refused asylum seekers who are unable to return to their country of origin through, for instance, health issues or the refusal of those countries to recognise them as a citizen. Under section 4, a single adult receives £35.39 per week, loaded on to a pre-paid 'Azure' card which can only be used in designated shops. This 'cashless' system is justified by the Government on the basis that it meets essential living needs and will only need to be provided for a short time.[126] In fact, over half of section 4 support recipients have been receiving it for more than two years.[127] The balance of the Azure card has to be used within the week, with only £5 being carried over to the following week, meaning that it is impossible to save for items such as clothes and shoes. The card can also only be used to purchase essential items and, although according to Home Office guidance the only restricted items are fuel and gift cards, witnesses to the inquiry reported that supermarket staff had refused to allow cardholders to purchase socks, toiletries, orange juice, children's clothing and a lavatory brush.[128] This is further compounded by reports of technical faults

122 Supported by Ev w1 [Oldham Unity Destitution Food Project]; Ev w6 [Mrs Janet King]; Ev w37 [Wakefield District City of Sanctuary]; Ev 64 [Women for Refugee Women, the London Refugee Women's Forum and Women Asylum Seekers Together London]; Ev 70 [Still Human Still Here coalition]; Ev w45 [Quaker Peace & Social Witness and Quaker Asylum and Refugee Network]; Ev w50 [National AIDS Trust]; Ev w51 [St Augustine's Centre]; Ev w55 [Bristol City Council]; Ev w61 [Refugee Action]; Ev w77 [Migrant and Refugee Communities Forum]; Ev w82 [Bradford Ecumenical Asylum Concern]; Ev w101 [Bristol Refugee Rights]; Ev w118 [Destitute Asylum Seekers Huddersfield]; Ev w123 [Leeds Asylum Seekers' Support Network]; Ev w129 [Mission and Public Affairs Council of the Archbishops' Council of the Church of England]; Ev w141 [Refugee Survival Trust]; Ev w144 [ASSIST Sheffield]; Ev 114 [Survivors Speak Out]; Ev w193 [No Recourse to Public Funds Network]; Ev 125 [British Red Cross]; Ev w242 [Barnado's]; Ev w246 [Positive Action In Housing]; Ev w249 [Oxfam Cymru]; Ev w274 [Glasgow North West Framework for Dialogue Group]; Ev w301 [Dover Detainee Visitor Group's Ex-Detainee Project]; Ev w322 [West Yorkshire Destitute Asylum Network]; Ev w323 [Liverpool Asylum and Refugee Association]

123 Ev w129, para 2 [Mission and Public Affairs Council of the Archbishops' Council of the Church of England]

124 HL Bill 31, 2013–14

125 Q46

126 *The Poverty Barrier*, p25

127 Ev w341, para 25 [The Children's Society]

128 Ev w16, para 7.9 [Leicester City of Sanctuary] & Ev w62, para 10 [Refugee Action]

with the cards which mean that the cardholder is unable to make any purchases.[129] By restricting their access to cash, section 4 recipients are unable to for instance, pay for shoe repair, travel via public transport, or purchase food in markets. Refugee Action found that 82% of section 4 recipients were unable to buy fresh fruit and vegetables and more than 90% regularly missed a meal.[130]

81. Mike Kaye of the Still Human, Still Here Coalition highlighted the extra cost of running section 4 support.

> Under section 4 you have to give up accommodation with friends and family and go into Government-paid accommodation, so you are actually getting the taxpayer to pay for accommodation that is not necessary. You are running a parallel support system that costs £350,000 just to run for less than 3,000 people. You have to administer that system, which is incredibly complex. It is dozens of pages of an application that have to be faxed to the Home Office and a case owner has to go through that. There is lots of additional cost with section 4 that totals, in my calculation, between £2 million and £4 million that will be saved by abolishing section 4 and retaining those people under section 95.[131]

As previously mentioned, the Asylum Support Appeals Project also noted the high number of number of allowed appeals against decisions not to grant section 4 support. Their research found that 82% of appeals were allowed which highlighted the unnecessary costs of the poor decision making regarding the allocation of section 4 support.[132] Given that resources are constrained across Government at this time, the allocation of funding and staff to running a parallel support system seems excessive.

82. **We are not convinced that a separate support system for failed asylum seekers, whom the Government recognise as being unable to return to their country of origin, is necessary. The increasing period of time which asylum seekers have to wait for an initial decision suggests that staff resources could be better used by being allocated to asylum applications. Section 4 is not the solution for people who have been refused but cannot be returned and we call on the Government to find a better way forward.**

83. **We note that the Independent Chief Inspector is due to undertake an inspection of asylum support and would ask him to include the matter of allowed appeals as part of his inspection. Whilst this system is ongoing, we are also concerned by the levels of allowed appeals against decisions not to grant asylum support and will in future require the UK Visas and Immigration Section to provide us with details with the number of allowed appeals against decisions made regarding asylum support. We recommend that his recommendations are implemented fully as a matter of priority as this is obviously an area where improvement is required.**

129 Ev w54, para 3.4.8 [St Augustine's Centre]

130 Ev w62, para 8

131 Q185

132 Ev w202, para 5

Destitution

84. People in all stages of the asylum system experience destitution:

- those awaiting a decision if they are unable to access support;
- those whose appeal rights are currently exhausted but fail to return to their country of origin, who lose all support and are evicted from accommodation 21 days after a final refusal; and
- those who have been granted leave to remain and therefore have 28 days to leave accommodation, but are unable to access mainstream support because National Insurance numbers, benefits and housing applications are not processed within this time frame.[133]

It is estimated that many destitute refused asylum seekers come from countries where there is ongoing conflict or political instability. Many will come from Somalia, Iraq, Iran, Eritrea, Malawi, Zimbabwe and the Democratic Republic of Congo, all of which are countries where it is difficult to facilitate a return.[134] This can be because governments are unco-operative, it is not possible to obtain travel documents, there may be practical difficulties such as trying to return people to countries where airports are not in operation, or of course individuals who simply refuse to co-operate.

85. Destitute asylum seekers survive through the support of social networks, voluntary sector organisations, and churches and other faith-based organisations. Many will stay with friends though there is evidence of destitute asylum seekers providing services in the form of childcare, cooking, housework, gardening and in some cases even sex in exchange for meals, small amounts of cash, shelter, or other daily necessities.[135] Some will visit voluntary sector organisations such as the British Red Cross, who told the Committee that they assisted around 6,000 destitute clients a year. They noted that over half of these clients were destitute due to administrative failings or delays within the asylum system.[136] A 2011 report by Oxfam noted that of all institutions cited by refused asylum seekers, churches appeared to have done most to respond to their needs. The support provided by churches included not only cash and food, but also English language classes, clothes and social events.[137]

86. From anecdotal evidence presented by the London Refugee Women's Forum and Women Asylum Seekers Together London it is clear that some women engage in commercial or transactional sex work in order to avoid homelessness. There were also examples of both men and women entering into relationships merely to ensure that they had somewhere to stay.[138] Most worrying were the accounts of women remaining in abusive relationships as it was seen as preferable to sleeping on the streets. Research by the

133 Ev w104, para 4.1 [Bristol Refugee Rights]

134 Ev w43 [Dorothy Ismail, Arthur Carr and Jane Nikolorakis]; *Coping with destitution*, Oxfam GB, February 2011, p17

135 *Coping with destitution*, Oxfam GB, February 2011, p42

136 Ev 127, para 2.4

137 *Coping with destitution*, Oxfam GB, February 2011, p32

138 *Coping with destitution*, Oxfam GB, February 2011, pp39-41

London Refugee Women's Forum and Women Asylum Seekers Together London found that 13% of destitute female asylum seekers had experienced sexual violence.[139]

87. The destitution of those with leave to remain is especially concerning. Being recognised as a refugee and therefore in need of protection ought to be a time of relief yet many witnesses highlighted that in actual fact it took six to eight weeks (rather than the 28 days allowed by the Home Office) for mainstream benefits to be processed. In some cases, the period where the refugee was unable to access these benefits was as long as four months.[140] The Home Office accepted that this was an issue, telling us that

> Since December 2012, we have been working closely with DWP on reviewing a small sample of cases to identify process improvements to be implemented individually and between both Departments to resolve issues, taking account of relevant evidence provided by key external partners. We continue to work on this, in order to improve the transition from asylum benefits for recognised refugees, with the support of targeted external partners.[141]

One witness noted that for many refugees there was a difficulty in navigating the telephone and internet-based systems which are associated with these benefits because of their lack of fluency in English.[142] The reduction in availability of English language classes for asylum seekers was a cause for concern for a number of witnesses who felt it limited their ability to engage with both members of the local community and professionals.[143] Given that a lack of fluency in English will hamper their chances of being able to find work and come off benefits, we are concerned that English language classes are being provided by a small number of volunteers who cannot possibly fulfil the need of the of all of those within the asylum system.[144]

88. **It is unacceptable that someone who is recognised as refugee should be reduced to a state of destitution due to the inefficiency of governmental bureaucracy. We recommend that asylum support should not be discontinued until the Department for Work and Pensions has confirmed that the recipient is receiving mainstream benefits.**

89. **We recommend that the Government reinstate the previous level of availability of English language classes for those who have been granted asylum by the state to encourage them to be able to contribute more to Britain and the UK economy.**

Accommodation and support provided as part of the COMPASS contract

90. The COMPASS contract (Commercial and Operational Managers Procuring Asylum Support Services) provides accommodation, associated services and transportation to

139 Ev 68, para 20

140 Ev 98, para 4.7 [Freedom from Torture]

141 Ev 48, para 35

142 Ev w45 para 12 [Dorothy Ismail, Arthur Carr and Jane Nikolorakis]

143 Ev w43 [Dorothy Ismail, Arthur Carr and Jane Nikolorakis]; Ev w51 [St Augustine's Centre]; Ev w101 [Bristol Refugee Rights]

144 Q294

eligible destitute asylum applicants and their families in the UK. The six contracts under COMPASS replaced over 30 UKBA contracts for accommodation and transport previously called 'Target' and 'Transport Plus.' Contracts were awarded exclusively to large companies, with SERCO, G4S and Clearel each gaining two contracts (four in England plus one each in Wales and Scotland/Northern Ireland).

91. At the transfer of the contract last year, G4S were unable to house some asylum applicants. In November 2012 The Independent newspaper reported that hundreds of asylum-seekers in Yorkshire were left in council housing when G4S failed to meet a deadline to re-house them in private sector accommodation.[145] Many asylum applicants complained that the houses they were moved in to were inadequate, which we discuss further below. Despite this delay in moving tenants at the start of the contract, it is understood that the UKBA did not institute any financial penalties against G4S and G4S, although recognising that their subcontracting housing companies were in breach of contractual guidelines (particularly in the pre-inspection of contracted properties prior to allocation),[146] the company has not instituted financial or other penalties on their subcontractors.

92. The reports that we have received on the quality of the accommodation are extremely worrying. Concerns were raised by the Joseph Rowntree Foundation, the Housing and Migration Network and the Local Government Association about the standards of property provided to asylum applicants.[147] Problems cited in evidence include pest infestations, lack of heating or hot water, windows and doors that could not be locked,[148] lack of basic amenities including a cooker, a shower, a washing machine and a sink and a general lack of cleanliness.[149] Furthermore, many of those who submitted evidence cited difficulties in contacting housing providers and the slow resolution of problems.[150] G4S told the Committee that they recognised there had been problems.

> We transferred nearly 3,000 properties across the Midlands, East of England, North-East Yorkshire and Humberside from the previous contract and most of the issues—so of the property complaints we have had, the vast majority, over 65% of those—relate to the properties that were transferred over. We have a programme of working through those, investing in them, so I do recognise there are issues with property but we have a programme to work through those.[151]

145 The Independent Asylum-seekers left in housing limbo after G4S fails to deliver - again; Councils forced to cover lucrative contract as families complain about 'dirty' conditions, November 20, 2012, Pg. 4

146 http://www.symaag.org.uk/2013/02/22/wide-support-for-inquiry-into-g4s-asylum-contracts/.

147 Ev w209, para 6.7 [Joseph Rowntree Foundation and the Housing and Migration Network]; Ev w308 [Local Government Association et al]

148 Ev 103, para 7.14 [Freedom from Torture]; Ev w245, para 4.2 [Barnado's]

149 Ev w209, para 6.7 [Joseph Rowntree Foundation and the Housing and Migration Network]; Ev w303, para 3.6 [Dover Detainee Visitor Group's Ex-Detainee Project]

150 Ev w86 [Southampton and Winchester Visitors Group]; Ev 92 [Freedom from Torture]; Ev w301 [Dover Detainee Visitor Group's Ex-Detainee Project]

151 Q238

It was also acknowledged that the COMPASS contract specified a response time where there were issues with a property.[152] In order to ensure that standards were maintained both G4S and the Home Office carry out random inspections of properties.[153]

93. **We were very concerned by the description of the sub-standard level of housing provided to asylum applicants. Furthermore, the length of time that witnesses report it taking to get problems resolved is unacceptable. We recommend that the Home Office publish the results of its random inspections of properties so that the public may monitor the effectiveness of the housing providers—SERCO, G4S and Clearel—receiving hundreds of millions of pounds in public money. The companies awarded the COMPASS contract must prove that they are able to deliver a satisfactory level of service.**

94. Sarah Teather MP, chair of an informal Parliamentary inquiry into asylum support for children and young people, drew our attention to the issue of privacy. She has also raised it on the floor of the House, telling MPs that

> As chair of the Parliamentary Inquiry into Asylum Support for Children and Young People I heard numerous examples of individuals working on behalf of housing providers entering properties unannounced having provided no notice, frightening parents and their young children.[154]

When we raised this with both G4S and Serco, they denied that it was a common occurrence although they admitted that they allowed their representatives to enter properties if no one was home as they had duties to perform under the COMPASS contract. Both stressed that entry without admittance by the resident was a last resort.[155] Both Serco and G4S emphasised that there were complaint procedures in place. G4S told us that instructions on making a complaint were included within induction packs produced in a wide range of languages.[156] Unfortunately, at least two organisations who submitted evidence to the inquiry complained that these packs were either inadequate or not provided by sub-contractors to residents.[157]

95. **We are unimpressed by the assurances given to us by G4S and Serco that their representatives do not routinely enter properties without first knocking. Entering a room or a house where someone is resident without knocking is rude and intimidating and such behaviour is not appropriate. All the COMPASS contractors must provide their staff with unambiguous guidance on the very limited circumstances in which it will be appropriate for them to let themselves into somebody else's home unbidden. We also recommend that when the COMPASS contract is renewed that provisions be introduced to require that, except in emergencies, the housing provider leave a calling card the first time that they need entry with the date of another appointment on it.**

152 Q237

153 G4S briefing to the Committee.

154 Ev w234, para 3.5

155 Qq234; 239

156 Q237

157 Ev w52, para 3.1.1 [St Augustine's Centre]; Ev w166, para 7 [Thrive and DASUK]

Then, and only then, should it be appropriate for a housing provider to gain entry without admittance by the residents.

96. Evidence submitted to this inquiry highlighted a lack of support following an asylum decision on the part of housing providers. The South Yorkshire Migration and Asylum Action Group provided a case study showing the stress that can result from a grant of leave to remain, something that ought to be a relief for asylum seekers.

> On 8 August a heavily pregnant asylum seeker resident in Target Housing Association accommodation in Rotherham was granted leave to remain in the UK. As a refugee the woman had to leave the property, her landlords, subcontractors of G4S, would not be paid by the UK Border Agency if she lingered there. Her eviction notice was for the same day as the local hospital had insisted that she should go and have the birth induced. Target management made her pack, and suggested that she find her own way with her bags, first to emergency homeless accommodation, and then on to the hospital, pointing out that her destinations were on bus routes. It was only the intervention of a sympathetic member of the Target staff who insisted on using her own car to get the woman to housing and the hospital which made the journeys possible.[158]

The Manchester Refugee Support Network noted that before Serco took over the accommodation contract people living in privately run accommodation had experiences of landlords being flexible and letting people stay on after they had been made destitute or given positive status. The note that this practice has not continued under Serco because housing is so heavily booked that there is no flexibility. The network cites the case of one refugee who told them that when he had received a positive decision, he had had a five week gap without access to funds. However, because he had a positive relationship with his landlord, he was not evicted and when he was able to access mainstream benefits, he paid his landlord back in full.[159] This lack of pastoral care for new refugees is despite the fact the UKBA had stated that part of the role of the COMPASS contract providers would "have to liaise with local authorities and housing providers about move-on accommodation for those receiving positive decisions."[160]

97. We note that the National Audit Office is currently carrying out an investigation in to the COMPASS contracts. As part of their written evidence the Joseph Rowntree Foundation and the Housing and Migration Network have recommended that the Government "undertake an urgent, published review of the performance of the current contractors in relation to the contract specifications, especially in accommodation standards and support for transition after asylum applications have been decided."[161] The NAO's investigation has the following terms of reference:

- The transition to the six new COMPASS contracts and the first six months of operation;

158 http://www.symaag.org.uk/2013/02/22/wide-support-for-inquiry-into-g4s-asylum-contracts/

159 Ev w187, para 7.4

160 Ev w208, para 6.5 [Joseph Rowntree Foundation and the Housing and Migration Network]

161 Ev w206, para 2.1.1.1

- The performance of all three suppliers and their subcontractors, including their compliance with the terms of the contract;
- Quality of provision and arrangements for assuring accommodation meets the standards contractors are required to provide: and
- The experience of end users (asylum seekers) during the transition period and the first six months of operation.

We expect that such an investigation will address all of the points of concern regarding the COMPASS contracts raised within this report. The results of the investigation are scheduled to be published in late 2013.

98. **We recommend that the National Audit Office's inspection in to the COMPASS contracts address the issues raised with us regarding accommodation standards and support for transition following asylum decisions. Following the publication of the results of this investigation we will revisit this matter with both the Home Office and the contract providers. We also take this opportunity to recommend that the Government ensure that any irregularities unearthed during that investigation be resolved swiftly.**

Conclusions and recommendations

Time taken to receive a decision

1. We consider it wholly unacceptable that anyone should have to wait longer than 6 months for an initial decision, let alone the delays of many years for those caught in the legacy backlog. Ministers must not allow people who claim to be fleeing persecution to be left in limbo for so long ever again. (Paragraph 7)

Quality of decision making and lack of auditing

2. The task of staff examining claims for asylum is to judge fairly, not to make it as difficult as possible for asylum claims to be made. While staff should be rigorous in considering the merits of a case, and reject those which are not meritorious, it is not their role to aim to reject cases, and the culture of disbelief that has raised has no place in fair judgements. (Paragraph 11)

3. The Committee are concerned that the length of time take to receive an initial decision may severely impact on the health and wellbeing of asylum applicants. Not all successful appeals are the result of poor decision making or administrative failure, but decision-makers should be encouraged to view every successful appeal as a learning opportunity. When an appeal is upheld, the decision-maker should, as a matter of course, have this drawn to their attention and be given an opportunity to discuss the reasons for the appellate decision with a more experienced peer or senior colleague. This process should be integrated into the Home Office's staff development and appraisal system. Where particular decision-makers consistently experience an appeal rate which is significantly higher than average, this should be drawn to the attention of their line management. (Paragraph 20)

Everyday difficulties when dealing with the UKBA

4. We recommend that the Home Office amend its guidance to ensure that any applicant who is disabled or is pregnant be offered a screening appointment at a regional centre. In cases where the applicant is the primary carer of a child under the age of 16 child care should be made available to those who need it for their interviews, and this should be made clear in the invitation letters. Where documents can be sent by mail or online this option should always be highlighted to save time and cost for Home Office staff and applicants. (Paragraph 24)

5. Whereas the provision of the right kind of interpretation can be expensive, it can also be cost-effective, particularly if it saves money being spent on unnecessary appeals. To that extent this should not be an area where the Home Office should be seeking to cut corners. (Paragraph 27)

6. We recommend that where applicants are allowed to make further representations the option of doing so by post should be re-instated. (Paragraph 29)

7. Lack of customer focus has been one of the main problems that has bedevilled the asylum system under the UK Border Agency. We welcome the interim Director General of UK Visas and Immigration's commitment to a more customer-focused approach to asylum applications, and her acknowledgement that this approach is all the more important because of asylum seekers' vulnerability. We recommend that the Home Office carry out regular customer satisfaction surveys among asylum applicants and the groups who support them in order to monitor progress in this area. (Paragraph 34)

Concerns about the Asylum Operating Model

8. It is too early to assess the impact of the new Asylum Operating Model which was introduced in April 2013 but it is clearly a cause of concern among those who work with asylum seekers. The risk is that the model becomes too dependent on decisions made at a very early stage in the process which might, as further information becomes available turn out to have been based on mistaken assumptions. It is highly doubtful, in our view, that an initial screening interview will always provide enough reliable evidence to establish the chances of an application being granted. This could lead to the generation of further backlogs if cases are allocated to the wrong decision pathway and it is important to ensure that, where the initial decision as to the appropriate pathway proves to be wrong, the case can be moved to the correct one. We recommend that the Home Office issue clear guidance to case-handlers as to when cases should be transferred between pathways. (Paragraph 36)

Country of Origin information and Country Policy Bulletins

9. It is disappointing that the Home Office has to be ordered to amend its Country Policy Bulletin on Sri Lanka by the Upper Tribunal when those changes are based on a UNHCR report of which the Home Office must have been aware. We are concerned that that the previous guidance was published just a day before the UNHCR report which implies at the least a lack of effective communication with the UNHCR. We recommend that in future Home Office Operational Guidance Notes, Country Policy Bulletins and Country of Origin Information reports contain reference to the latest UNHCR publications on the relevant country where appropriate and that the Home Office and UNHCR seek to improve liaison in these matters. (Paragraph 43)

10. We recommend improved integration of country of origin information provision and the country specific litigation team within the Home Office. Where possible, a particular individual should review all new guidance relating to the same country before it is issued. (Paragraph 44)

Gender-related persecution and gender sensitivity within the asylum system

11. Gender is not, in itself, one of the grounds upon which an applicant may claim asylum under the refugee convention, yet it is clear that there are many countries in the world where women do not have access to the same freedoms and opportunities

enjoyed by their male counterparts. While this should not automatically qualify someone for asylum, case owners (and the Home Office in general) must improve the treatment of women who have suffered at the hands of members of their families or communities and not been able to access protection from the state. By its very nature, persecution by non-state actors is likely to be far more difficult to prove than persecution by the state and to apply the same probative criteria is both unfair and inappropriate. At a time when the criminal justice system is finally waking up to the needs of victims of domestic and sexual violence, the asylum system should be doing the same. (Paragraph 51)

Credibility

12. We were concerned to hear that the decision making process for LGBTI applicants relies so heavily on anecdotal evidence and 'proving that they are gay'. As the court determined (point i above) the test should be whether people are gay or perceived to be so. In cases such as that of Brenda Namigadde, it is not appropriate to force people to prove their sexuality if there is a perception that they are gay. The assessment of credibility is an area of weakness within the British asylum system. Furthermore, the fact that credibility issues disproportionately affect the most vulnerable applicants—victims of domestic and sexual violence, victims of torture and persecution because of their sexuality—makes improvement all the more necessary. (Paragraph 62)

13. The impact of the credibility assessment for LGBTI applicants from countries designated as safe under section 94 (4) of the Nationality, Immigration and Asylum Act may be significant and the Committee recommends that the Government review the status of other countries on this list to protects the rights of LGBTI asylum seekers. (Paragraph 63)

Detained Fast Track

14. We are concerned about the operation of the Detained Fast Track. It appears that a third of those allocated to the detained fast track are wrongly allocated and that many of those wrongly allocated are victims of torture. Such a high number of incorrect allocations should be addressed and we recommend that the Home Office implement a service standard which reflects a substantial reduction in the number of incorrect allocations per year and that annual audits be carried out and published. (Paragraph 66)

Legal representation

15. We commend the Home Office for running such a detailed and lengthy pilot. We note that there are many positive aspects which emerge from the Early Legal Advice Project and we recommend that the Government invest in identifying how to improve the early identification of complex cases which would benefit from early legal advice, the front-loading of evidence, and the timely submission of witness statements. (Paragraph 68)

Quality of legal advice

16. We are not persuaded of the benefits of imposing a residency test for refugees and recommend that the Government ensure that its legal aid proposals are compliant with the relevant provisions of the Refugee Convention. We also recommend that it introduce a system of monitoring quality within its allocation of legal aid so that the public purse is not funding (and therefore propagating the existence of) bad legal advice. We suggest that if the Government wishes to reduce the amount of money spent on legal aid within the asylum system then it ought to focus on improving the quality of decision making in both the area of asylum claims and asylum. (Paragraph 72)

17. We invite the Office of the Immigration Services Commissioner, the Solicitors Regulatory Authority and the Legal Ombudsman to work together to produce guidance on complaining about solicitors who work on asylum applications and the possible outcomes of such a complaint. We recommend that such guidance is produced in 'plain English' to ensure that it is accessible to asylum applicants as well as third sector workers. (Paragraph 73)

Section 4 support

18. We are not convinced that a separate support system for failed asylum seekers, whom the Government recognise as being unable to return to their country of origin, is necessary. The increasing period of time which asylum seekers have to wait for an initial decision suggests that staff resources could be better used by being allocated to asylum applications. Section 4 is not the solution for people who have been refused but cannot be returned and we call on the Government to find a better way forward. (Paragraph 82)

19. We note that the Independent Chief Inspector is due to undertake an inspection of asylum support and would ask him to include the matter of allowed appeals as part of his inspection. Whilst this system is ongoing, we are also concerned by the levels of allowed appeals against decisions not to grant asylum support and will in future require the UK Visas and Immigration Section to provide us with details with the number of allowed appeals against decisions made regarding asylum support. We recommend that his recommendations are implemented fully as a matter of priority as this is obviously an area where improvement is required. (Paragraph 83)

Destitution

20. It is unacceptable that someone who is recognised as refugee should be reduced to a state of destitution due to the inefficiency of governmental bureaucracy. We recommend that asylum support should not be discontinued until the Department for Work and Pensions has confirmed that the recipient is receiving mainstream benefits. (Paragraph 88)

21. We recommend that the Government reinstate the previous level of availability of English language classes for those who have been granted asylum by the state to

encourage them to be able to contribute more to Britain and the UK economy. (Paragraph 89)

Accommodation and support provided as part of the COMPASS contract

22. We were very concerned by the description of the sub-standard level of housing provided to asylum applicants. Furthermore, the length of time that witnesses report it taking to get problems resolved is unacceptable. We recommend that the Home Office publish the results of its random inspections of properties so that the public may monitor the effectiveness of the housing providers—SERCO, G4S and Clearel—receiving hundreds of millions of pounds in public money. The companies awarded the COMPASS contract must prove that they are able to deliver a satisfactory level of service. (Paragraph 93)

23. We are unimpressed by the assurances given to us by G4S and Serco that their representatives do not routinely enter properties without first knocking. Entering a room or a house where someone is resident without knocking is rude and intimidating and such behaviour is not appropriate. All the COMPASS contractors must provide their staff with unambiguous guidance on the very limited circumstances in which it will be appropriate for them to let themselves into somebody else's home unbidden. We also recommend that when the COMPASS contract is renewed that provisions be introduced to require that, except in emergencies, the housing provider leave a calling card the first time that they need entry with the date of another appointment on it. Then, and only then, should it be appropriate for a housing provider to gain entry without admittance by the residents. (Paragraph 95)

24. We recommend that the National Audit Office's inspection in to the COMPASS contracts address the issues raised with us regarding accommodation standards and support for transition following asylum decisions. Following the publication of the results of this investigation we will revisit this matter with both the Home Office and the contract providers. We also take this opportunity to recommend that the Government ensure that any irregularities unearthed during that investigation be resolved swiftly. (Paragraph 98)

Formal Minutes

Tuesday 8 October 2013

Members present:

Keith Vaz, in the Chair

Dr Julian Huppert	Steve McCabe
Steve McCabe	Mark Reckless

Draft Report (*Asylum*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 79 read and agreed to.

Paragraph 80 read, as follows

> We were alarmed to discover that, in surveys of those in receipt of section 95 support, 50% had experienced hunger as a result of the low levels of support. We recommend that the link between income support and asylum support be reinstated so that asylum support will be uprated in line with other out-of-work benefits. We also recommend that asylum seekers who have been waiting over 12 months for a decision be allowed unrestricted access to the labour market, removing their dependency on the taxpayer. We further recommend that the Government ensure that adequate time be made available in the House of Lords for the consideration of the Immigration Act 1971 (Amendment) Bill.

Amendment proposed, in line 4, leave out '12' and insert 'six'—(*Dr Julian Huppert.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1	Noes, 3
Dr Julian Huppert	Steve McCabe
	Mr Mark Reckless
	Chris Ruane

Amendment accordingly negatived.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Ayes, 1	Noes, 3
Dr Julian Huppert	Steve McCabe
	Mr Mark Reckless
	Chris Ruane

Question accordingly negatived.

Paragraphs 81 (now paragraph 80) to 99 (now paragraph 98) agreed to.

Summary agreed to.

Resolved, That the Report, as amended, be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (in addition to that ordered to be reported for publishing on 18 April, 14 May, 25 June, 9 July, and 3 September 2013).

[Adjourned till Tuesday 15 October at 2.30 pm

Witnesses

Tuesday 16 April 2013

Page

John Vine, Chief Inspector of Border and Immigration — Ev 1

Tuesday 11 June 2013

Natasha Walter, Women for Refugee Women, and **Debora Singer MBE**, Asylum Aid — Ev 7

Sonya Sceats, Freedom from Torture, and **Catherine Ramos**, Justice First — Ev 14

Tuesday 25 June 2013

Serge, Survivors Speak Out, and **Saron**, Women for Refugee Women [Held in Private] — Ev 20

Jan Shaw, Amnesty International, and **Mike Kaye**, Still Human, Still Here — Ev 25

Stephen Small, Managing Director, Immigration & Borders, G4S, and **Jeremy Stafford**, Chief Executive, Serco UK & Europe — Ev 29

Tuesday 2 July 2013

Alison Harvey, Immigration Lawyers Practitioners Association — Ev 36

Tom Hamilton-Shaw, British Red Cross, and **Maurice Wren**, Refugee Council — Ev 41

List of printed written evidence

1	Home Office	Ev 45
2	Asylum Aid	Ev 49:Ev 57
3	Catherine Ramos	Ev 60
4	Women for Refugee Women, the London Refugee Women's Forum and Women Asylum Seekers Together London	Ev 64
5	Still Human Still Here	Ev 70
6	Immigration Law Practitioners' Association	Ev 76: Ev 85
7	Amnesty International and the Still Human Still Here coalition	Ev 89
8	Freedom from Torture	Ev 92
9	Survivors Speak Out	Ev 114
10	Refugee Council	Ev 119
11	British Red Cross	Ev 125: Ev 133
12	Serco	Ev 144
13	Refugee Action, Freedom from Torture, Amnesty International UK, Asylum Aid, Women for Refugee Women and the Scottish Refugee Council	Ev 144

List of additional written evidence

(published in Volume II on the Committee's website www.parliament.uk/homeaffairscom)

1	Oldham Unity Destitution Food Project	Ev w1
2	Dr Vik Nair	Ev w3
3	John Catley	Ev w5
4	Naomi Roberts	Ev w6
5	Janet King	Ev w6
6	Tiffy Allen	Ev w7
7	Leicester City of Sanctuary	Ev w12
8	Wyon Stansfeld	Ev w19
9	Wakefield District City of Sanctuary	Ev w37
10	London Destitution Forum	Ev w39
11	Destitution Concern Bradford	Ev w40
12	Dorothy Ismail, Arthur Carr, Jane Nikolorakis	Ev w43
13	Quaker Peace and Social Witness and Quaker Asylum and Refugee Network	Ev w45
14	National AIDS Trust	Ev w50
15	St Augustine's Centre	Ev w51
16	Bristol City Council	Ev w55
17	Refugee Women's Strategy Group	Ev w56
18	Refugee Action	Ev w61
19	Manchester Immigration Detainee Support Team	Ev w67
20	Lewes Group in Support of Refugees and Asylum Seekers	Ev w71

21	Positive Action for Refugees and Asylum Seekers	Ev w73
22	Migrant and Refugee Communities Forum	Ev w77
23	Bradford Ecumenical Asylum Concern	Ev w82
24	Southampton and Winchester Visitors Group	Ev w86
25	Dr Frank Arnold	Ev w95
26	Dr Charmian Goldwyn	Ev w96
27	Central England Area Quaker Asylum Group	Ev w97
28	Bristol Refugee Rights	Ev w101
29	Susan Gairdner	Ev w107
30	Campaign to Close Campsfield, Bail Observation Project	Ev w109
31	Dave Smith	Ev w111
32	Dr Margaret Hooper	Ev w115
33	Destitute Asylum Seekers Huddersfield	Ev w118
34	Leeds Asylum Seekers' Support Network	Ev w123
35	S Chelvan	Ev w125
36	Mission and Public Affairs Council of the Church of England	Ev w129
37	Churches Refugee Network	Ev w133
38	Refugee Survival Trust	Ev w141
39	ASSIST Sheffield	Ev w144
40	Lucy Fairley	Ev w149
41	Yarl's Wood Befrienders	Ev w153
42	Centrepoint	Ev w157
43	Scottish Refugee Policy Forum	Ev w160
44	Liberal Democrats for Seekers of Sanctuary	Ev w163
45	Thrive and DASUK	Ev w164
46	Suzanne Fletcher MBE	Ev w167: Ev w168: Ev w169
47	TRP Solicitors Ltd	Ev w170
48	Manchester Refugee Support Network	Ev w184
49	United Nations High Commissioner for Refugees	Ev w187
50	Stonewall	Ev w191
51	No Recourse to Public Funds Network	Ev w193
52	North West Regional Strategic Migration Partnership	Ev w199
53	Asylum Support Appeal's Project	Ev w201
54	Joseph Rowntree Foundation and the Housing and Migration Network	Ev w205
55	Agencies and Individuals from Blackburn with Darwen	Ev w213
56	Asylum Support and Immigration Resource Team	Ev w219
57	Justice First	Ev w221
58	Sahir House	Ev w222
59	The Detention Forum	Ev w224
60	Sarah Teather MP	Ev w232
61	Bristol Signing Support	Ev w235
62	Lesbian Immigration Support Group	Ev w237
63	North of England Refugee Service	Ev w237
64	Barnardo's	Ev w242
65	Positive Action In Housing	Ev w246

66	Oxfam Cymru	Ev w249
67	Notre Dame Refugee Centre	Ev w250
68	Fahamu Refugee Programme	Ev w253
69	Detention Action	Ev w257
70	Association of Visitors to Immigration Detainees	Ev w261
71	Medical Justice	Ev w265
72	Glasgow North West Framework for Dialogue Group	Ev w274
73	Why Refugee Women	Ev w283
74	Tamils Against Genocide	Ev w295
75	LGBT Unity Scotland	Ev w299
76	Dover Detainee Visitors Group's Ex-Detainee Project	Ev w301
77	Huddersfield Asylum Advice Service	Ev w306
78	Local Government Association, the Welsh Local Government Association, the Convention of Scottish Local Authorities, the Association of Directors of Children's Service, the No Recourse to Public Funds Network	Ev w308
79	Scottish Refugee Council	Ev w312
80	West Yorkshire Destitution Asylum Network	Ev w322
81	Liverpool Asylum and Refugee Association	Ev w323
82	Movement for Justice By Any Means Necessary	Ev w327
83	Maternity Action	Ev w333
84	Blackburn with Darwen Borough Council	Ev w335
85	The Children's Society	Ev w336
86	Refugee Children's Consortium	Ev w342
87	Jackie Fearnley	Ev w346
88	City of Bradford Metropolitan District Council - Climate, Housing, Employment and Skills Service	Ev w348
89	Kazuri	Ev w349
90	John Grayson	Ev w356

List of Reports from the Committee during the current Parliament

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First Report	Police and Crime Commissioners: Register of Interests	HC 69
Second Report	Child sexual exploitation and the response to localised grooming	HC 68
Third Report	Leadership and standards in the police	HC 67
Fourth Report	The work of the UK Border Agency (Oct–Dec 2012)	HC 486
Fifth Report	E-crime	HC 70
Sixth Report	Police and Crime Commissioners: power to remove Chief Constables	HC 487

Session 2012–13

First Report	Effectiveness of the Committee in 2010–12	HC 144
Second Report	Work of the Permanent Secretary (April–Dec 2011)	HC 145
Third Report	Pre-appointment Hearing for Her Majesty's Chief Inspector of Constabulary	HC 183
Fourth Report	Private Investigators	HC 100
Fifth Report	The work of the UK Border Agency (Dec 2011–Mar 2012)	HC 71
Sixth Report	The work of the Border Force	HC 523
Seventh Report	Olympics Security	HC 531
Eighth Report	The work of the UK Border Agency (April–June 2012)	HC 603
Ninth Report	Drugs: Breaking the Cycle	HC 184-I
Tenth Report	Powers to investigate the Hillsborough disaster: interim Report on the Independent Police Complaints Commission	HC 793
Eleventh Report	Independent Police Complaints Commission	HC 494
Twelfth Report	The draft Anti-social Behaviour Bill: pre-legislative scrutiny	HC 836
Thirteenth Report	Undercover Policing: Interim Report	HC 837
Fourteenth Report	The work of the UK Border Agency (July-Sept 2012)	HC 792

Session 2010–12

First Report	Immigration Cap	HC 361
Second Report	Policing: Police and Crime Commissioners	HC 511
Third Report	Firearms Control	HC 447
Fourth Report	The work of the UK Border Agency	HC 587
Fifth Report	Police use of Tasers	HC 646
Sixth Report	Police Finances	HC 695
Seventh Report	Student Visas	HC 773
Eighth Report	Forced marriage	HC 880

Ninth Report	The work of the UK Border Agency (November 2010-March 2011)	HC 929
Tenth Report	Implications for the Justice and Home Affairs area of the accession of Turkey to the European Union	HC 789
Eleventh Report	Student Visas – follow up	HC 1445
Twelfth Report	Home Office – Work of the Permanent Secretary	HC 928
Thirteenth Report	Unauthorised tapping into or hacking of mobile communications	HC 907
Fourteenth Report	New Landscape of Policing	HC 939
Fifteenth Report	The work of the UK Border Agency (April-July 2011)	HC 1497
Sixteenth Report	Policing large scale disorder	HC 1456
Seventeenth Report	UK Border Controls	HC 1647
Eighteenth Report	Rules governing enforced removals from the UK	HC 563
Nineteenth Report	Roots of violent radicalisation	HC 1446
Twentieth Report	Extradition	HC 644
Twenty-first Report	Work of the UK Border Agency (August-Dec 2011)	HC 1722

Oral evidence

Taken before the Home Affairs Committee

on Tuesday 16 April 2013

Members present:

Keith Vaz (Chair)

Mr James Clappison
Michael Ellis
Dr Julian Huppert
Steve McCabe
Mark Reckless
Chris Ruane
Mr David Winnick

Examination of Witness

Witness: **John Vine**, Chief Inspector of Borders and Immigration, gave evidence.

Q1 Chair: Could we welcome John Vine, the independent Chief Inspector of Borders and Immigration, to our inquiry into asylum, which we are officially starting today. Mr Vine, you are launching us into the unknown.
John Vine: It is a pleasure to be here.

Q2 Chair: We meet following the announcement by the Home Secretary that the UK Border Agency is "closed, secretive and defensive"—words that I am sure you will find pretty astonishing, as we did. Now that it has gone from being a separate agency into the mother ship of the Home Office, are you surprised at all this?
John Vine: No, Chair, I am not entirely surprised. In my reports over the last four years, I have commented on the lack of transparency at times of the agency. I have commented on backlogs and a culture in the agency that I thought was dysfunctional. I think it is a reasonable decision in the circumstances. If it allows grip to be found for the various constituent parts of immigration, I think it will be a good thing. However, of itself, I do not think it is going to be a panacea. There are issues that need to be addressed.

Q3 Chair: Did you see the Channel 4 *Dispatches* programme last night?
John Vine: yes, I did.

Q4 Chair: What are your views about the kinds of things that immigration officers were saying about the backlog?
John Vine: I was not entirely surprised. They are the same things that I have been reporting on now for a number of years, and I think it reflected many of the comments I have just made in answer to your first question.

Q5 Chair: How does this affect your role? You are Chief Inspector of Borders and Immigration, which was once an independent agency and now part of the Home Office. Will you be continuing to do your work? What has the Home Secretary said about your role?
John Vine: The Home Secretary has written to me and said that it will not affect my statutory role. As is laid down in the Borders Act, I inspect the functions of immigration and they will now have to be corralled in different ways. That should continue. We have a full programme of inspection, and I am just about to publish an inspection plan for this year. I have just hesitated in publishing it so that I can look through the wording and make sure that we do not refer to "the Agency", for example. I do not see that it will affect inspection. I think thorough, independent inspection is absolutely critical to ensure that the sorts of things that we witnessed on television last night are remedied.

Q6 Chair: Obviously now the whole operation will be chaired by the permanent secretary and people will be answerable to him and he to Ministers. However, it seems to me so far—perhaps with one exception—that most of the people who ran the UKBA have retained their positions in the new arrangement. Is that what you have seen, or do you know anything different?
John Vine: The deployment of the senior people is clearly a matter for the Home Secretary and for senior managers in the Home Office. As far as I am concerned, what I want to see as a result of this change is improvement to the service delivered by constituent parts of the immigration service. I would like to see an end to backlogs. I want to see an improvement in customer service, particularly with a focus on seeing the humanity. There are people's lives that are behind these case files. I would like to see an improvement in complaints handling and correspondence handling. If this change brings about that, or is more likely to bring that about, that is the key.
Remember that I have inspected a department of the Home Office—Border Force—for the last year. In so far as that has been a separate part of the business, I have seen improvements on the front line in terms of security at the border. If that can be replicated in other ways, I think this will be a positive move.

Q7 Chair: I have been dealing with a case today to try to find a senior officer to speak to, having handed over a letter last week, and the letter having been sent all the way to Solihull. It seems to be that the customer service is still there—the culture is still there of just not being able to get through to the right person

who can make the decision. One of the things that the Committee has suggested, especially as far as the entry clearance operation is concerned, is that there is someone here in the UK who you can go to to make representations, rather than a very elongated system that starts with an account officer, ends up in Delhi, comes all the way back again and gives you the same information you had at the beginning. It just seems such a long process—such a job-creation exercise—for something that is relatively very simple.
John Vine: I agree with you, Chair. I just do not think there is a sufficiently high priority given to providing a good-quality customer service. I have constantly been advising, in my recommendations in reports, that staff have much more of a focus on the individuals who are affected by these cases. Really there is very little. I find it astonishing that there is such a little focus on the customer for such a large Government Department.

Q8 Chair: Let us go to asylum now, which is the subject of our inquiry. Thank you for those comments and, as usual, thank you for all your effort and work in your reports.
Are the Government getting to grips with the asylum problem? Do you find that the backlog is gearing down? We are constantly told by Ministers under successive Governments that it is quite difficult to claim asylum in the UK, but that when people do claim asylum, it is dealt with very quickly. Is that the reality?
John Vine: I have to say that in many of my inspections I have found that that is not the reality. In a recent inspection that I published in February this year, looking at the offences that were detected at the border, we discovered nine cases where the individuals who had claimed asylum had not had their case initially decided in much less than a year—I think it was 323 days. I have made 60 recommendations in relation to asylum out of a total of over 400 in the existence of the inspectorate. I think it is fair to say that while in some areas there has been good progress, in others there has not been.
When I looked at the Hampshire and Isle of Wight local immigration team, it was dealing with asylum very promptly and way ahead of its targets. When I look at other parts of the Border Agency, I commented in my initial report on asylum in 2009 that there was a backlog in new asylum cases of 30,000. There were out-of-service standard teams hurriedly being put together by the agency to try to bring the decision making on initial asylum claims to within six months, so there was a backlog there of 30,000. In my report last year, when I looked at how the Border Agency was dealing with the legacy at that time, again there was not the performance in dealing with asylum cases that you would wish.
As a result of that report, I think we have now had 25,500 cases taken from the archive and put back in the live cohort. At the moment, I think the cohort stands at about 41,500 cases. So there is still a lot to do with asylum, and I cannot really say to the Committee that I am satisfied with the performance of the Home Office, as it is now, in relation to asylum cases.

Q9 Chair: What about enforcement? Do you think they have come to grips with the area where people are refused and therefore have to leave? In your previous reports, you were quite critical of the fact. You said that the then agency: "Ought to be more proactive and have a more proactive approach to enforcing removals".
John Vine: Yes. When I looked at the use of intelligence to inform enforcement visits, I was critical of the agency at the time for not being able to tell me, for example, what happened to the 100,000 pieces of information that are provided by the public a year in relation to overstayers. Enforcement will be much improved if the use of intelligence by, now, the Home Office is improved. Perhaps the creation of a part of the immigration system concentrating on enforcement, which I believe is what is going to happen, will bring that focus.
However, I am concerned that when, for example, I revealed the migration refusal pool last year, and reported it to this Committee, there was still a substantial number of people—I think the figure now reaches nearly 180,000—who were overstayers, and there has been very little attempt to try to trace them. The second half of the programme last night commented on the following up of overstayers. Part of the programme was an officer saying that because they don't have a current address, there is nowhere to trace them. I think that is not the case. Clearly, if you have a name and you have a date of birth, there are lots of ways in which you can trace individuals: by credit references agencies; and by looking at other Government databases, like that of the Department for Work and Pensions. So there are many ways in which you can follow up these cases and then take effective enforcement action. I think the picture there is that more certainly can be done.
Chair: May I just say to colleagues that a vote is expected at 4.55 pm and that, because we do not want to interrupt Mr Vine's evidence, we will try to conclude by then?

Q10 Mr Winnick: You are Chief Inspector, Borders and Immigration. That is your official title, Mr Vine, if I remember correctly.
John Vine: That was correct, yes.

Q11 Mr Winnick: If I remember correctly, the Committee made a recommendation about your title to make it perfectly clear that you were independent. I am sure you recollect that.
John Vine: I am always grateful to the Committee for that suggestion. I adopted it and, yes, I have been known as such ever since.

Q12 Mr Winnick: Mr Vine, I want to bring you up to the present and pursue some of the matters that the Chair has mentioned. With the abolition of UKBA and the fact that to a large extent—if not entirely—it goes back to the Home Office, it is a Home Office matter. How about your own position as Chief Inspector? How would you be able to retain a position as Chief Inspector, independent of the organisation itself?
John Vine: I intend to carry on very much as I am, publishing the reports that we try to ensure are very

thorough, evidence-based and factual. As far as I can ascertain, the statutory position is that I inspect the functions of immigration. That is what I think is contained in the Act. The way those functions are corralled and organised I think is somewhat immaterial. At long as those functions exist, I have a statutory role to inspect them. As far as I can tell, certainly, from the letter I received from the Home Secretary, she seems to think so as well.

Q13 Mr Winnick: Since her announcement to the House—obviously that came first—have you received a letter from the Home Secretary?
John Vine: Yes, I received a letter from her dated the—

Q14 Mr Winnick: Is it confidential? Can it be circulated to the Committee?
John Vine: I do not see any reason why it cannot be. I do not think it is confidential.

Q15 Mr Winnick: If the Chair is willing, perhaps a copy could be sent to us—unless you have it here.
John Vine: I don't have it here, but I would be quite happy to send it to the Chair of the Committee. It was dated 27 March.

Q16 Mr Winnick: Obviously after her announcement, it would be expected.
John Vine: Yes.
Mr Winnick: It clarifies that your position as Chief Inspector will continue?
John Vine: What it says is that there should be no change to my statutory position as a result of the changes that she has announced to Parliament.

Q17 Mr Winnick: If I can take you up on the question of asylum, why should the public have any confidence that this matter of asylum cases is being dealt with? There are now tens of thousands of cases that are in abeyance, in one form or another, under all these various terms that you are very familiar with and which you mention: case assurance and audit unit; controlled archives; and so on. That is pretty meaningless to some of us, let alone to the public. Should there be any reason to feel confident that the vast number of cases regarding asylum are being dealt with, with a conclusion reached in the near future?
John Vine: It depends which part of those cases you are addressing your comments to. Remember in 2007 there was a line drawn in the sand when the new asylum model was brought out. The new asylum model that was brought out in March 2007 was designed to allocate a caseworker specifically to a particular case, and for that caseworker to work on the application for asylum until asylum was either granted or a person was removed from the UK. That included, if necessary, representing the case at an immigration tribunal.
I believe that there are proposals under way, by the now defunct Border Agency, to change that system and to return to something of the status quo before the new asylum model was brought in. I would want to be satisfied that those changes ensure that there is a quality of decision making built into that process, because the NAM—and I think this Committee at the time took evidence around the NAM—was considered to be the new way forward, particularly in relation to providing a quality decision within a reasonable time. The time was six months—that was the time scale the Border Agency were working within. What I found was that there was a growing backlog under the new asylum model, and I expressed concern about that.
If you are talking about the legacy cases, what needs to happen with the legacy cases—as I indicated yet again in my report last year—is there needs to be absolute transparency around how many there are. They need to be worked on thoroughly to ensure that people are traced and, if necessary, removed from the UK, if they have no right to be here, or granted asylum quickly.
The problem is that because of inefficiency and ineffectiveness in the system, we have people in the UK who have gathered rights, which they would not otherwise have gathered if their cases had been dealt with efficiently and effectively from the start, because they have been here for far too long. We also have people who should have been granted asylum much quicker and are in some form of limbo as a result. I think that particularly affects young people, for example, who might want to register at a university or go and find employment, but who find themselves without status.
Referring back to last night's documentary, there was a part in it where somebody held up a case that had been in the system for 14 years. The application had been made in 1999. That is completely unacceptable.

Q18 Mr Winnick: Mr Vine, if someone said to you that the asylum issue and the number of asylum cases was a mess, could you strongly disagree with that?
John Vine: No, I probably could not strongly disagree with it.
Mr Winnick: Thank you very much.

Q19 Dr Huppert: It is a great pleasure to have you here, Mr Vine. This is a very important inquiry for this Committee to understand what is happening. Certainly you have done a huge amount of work to expose the failings of the asylum system so far. You have highlighted things about prompt decision making, for example. I think it was our last session, Chair, when the Border Agency accepted that there were now even more people waiting more than six months for an initial decision. Presumably you would agree that the public would be shocked to discover that people wait more than six months even to have an initial answer, yes or no.
You have made a whole series of recommendations, almost all of which have been accepted by the Government. How many of the ones that have been accepted do you think have been acted on and changed? For example, you have made recommendations about making sure that decisions are made within six months and they have not been. Do you have a sense of how many they have managed to do?
John Vine: Yes, the way that it has worked is that every six months I have asked for a report from the agency, as was, to update me on the progress being

made against the recommendations the agency has accepted, and on Border Force. We have also had an ongoing process of checking that those recommendations have been progressed when we have done other inspections. Bearing in mind that we are small inspectorate and we have a very full programme, I expect the agency—certainly an agency of this size and importance—when it says, "Yes, we accept your recommendations," to get on and deliver them.

When we have done further inspections, we have tried to look at whether we can see progress. We have seen a lot of progress in a number of areas, but there are bound to be some areas in which recommendations have been implemented slower than in others. For example, I am disappointed that only five of the 19 recommendations I made in my first asylum report in 2009 have been fully implemented, because among those recommendations that were accepted by the agency were things like having caseworkers meet asylum seekers so they can understand who these people are, and having caseworkers understand what information needs to be put on the case information database and what needs to be put on the paper file. That has been an issue that has bedevilled the whole question of asylum up until now. That is why the case information database is an unreliable tool, because there is some information on one system and some information on another.

It also contained a recommendation about ongoing training for caseworkers. One of the problems is that some of the caseworkers are not sufficiently in possession of the skills they need to provide a quality decision. I also made a recommendation in that report in 2009 that the Border Agency should analyse the reasons why it was losing appeals because, if it put some effort into understanding why immigration judges are overturning appeals, it might be able to improve its initial decision making. It really is important that there is action on those recommendations.

Q20 Dr Huppert: To be clear, you made 19 recommendations—I have a list of them here—and they were all accepted. You say only five of them have been implemented.

John Vine: No, fully completed.

Q21 Dr Huppert: Are the ones you just gave examples of—the basics of having some training, putting information in the right places, meeting the people you are talking about—the ones that have been fully implemented?

John Vine: Those are ongoing. I think the response from the agency is that the fulfilment of those recommendations is ongoing.

Q22 Dr Huppert: Basic training has been ongoing since 2009.

John Vine: Yes. I expressed in a previous annual report that I wanted the agency to show more enthusiasm in accepting recommendations and getting on and implementing them, so this year I have implemented spot-check visits, which I have just started—I have just done my third—where by going out to areas of the Home Office, as it is now, I want to see for myself that change is happening on the ground. For example, recently I went to the screening unit at Croydon to have a look to see whether the recommendations I made following my inspection in 2010 had been implemented. I recently went to see the Command and Control Centre up in Manchester, again to see for myself whether things are happening on the ground.

Q23 Chair: What would you put the current backlog figure at, in terms of asylum cases?

John Vine: In terms of the asylum cases in the live cohort, it is around 41,000.

Q24 Chair: Is that up from your last figure?

John Vine: What I said when I published my report last year—

Q25 Chair: Because we have 39,000.

John Vine: This was at the time last year. It will be less than that now. In addition, of course, there is a figure of active reviews. The active reviews are the discretionary leave cases. I am trying to pin down the figure on that.

Q26 Chair: However, at the moment, the asylum backlog is 41,000.

John Vine: At the time I did the inspection it was 41,000 and 25,500 have been put back into the cohort as a result of my report, which said that the checks had to be done properly.

Q27 Chair: This will sit in the immigration and visa section of the Home Office?

John Vine: Yes. Remember, Chair, that at the moment I am conducting an investigation, on behalf of the Home Secretary, into whether the recommendations that were accepted by the agency from my report last year are being implemented. That report will be with the Home Secretary by the end of April.

Q28 Steve McCabe: Mr Vine, I want to ask you about country of origin information. However, before that, you said in an answer to the Chair that the defence was often used in terms of removals that we do not know the person's address. You suggested that it might be easier to uncover that. Did you identify any examples of people being targeted for removal when MPs had particularly given the address and details to the agency and so things had been made very easy for it?

John Vine: I have not come across those examples, no. By the way, I am not suggesting that it is going to be easy to trace them, but I think it is possible to use ways to trace people.

Q29 Steve McCabe: I ask only because I have always wondered why it never seems to act on that information when it is given to them.

Let me ask about country of origin information. This was something you highlighted as needing improvement. Has it improved since your last report?

John Vine: Yes, there has been significant improvement, I think, in COI information. The

inspectorate has an ongoing remit to oversee the production of COI information by the agency. There is a small unit within what was the agency that produces reports on countries. It is very important information, for example for immigration judges to decide whether a claim for asylum is warranted. In fact, there is a meeting of the independent advisory group on country information this afternoon in my conference room. It meets under my auspices, and I have a panel of academic experts who scrutinise the reports that are produced by the COI team in the agency. They suggest changes to make sure that it is absolutely accurate.
I think it is a good example of part of the agency and the inspectorate working together, in so far as we are independent of the Agency, to ensure that the information that is relied on in asylum cases is bang up to date and of a good standard, and I am confident it is something that is a model that is regarded elsewhere. So it has improved.
The only particular issue I have is that when we looked at a sample of cases where COI information had been used in my inspection, we found in 13% of the cases that we thought that the caseworkers had been selective in picking out from the COI report the information that would basically help in prosecution. In other words, they were selective in the use of information in order to support the case for refusing asylum. I said that was not fair.

Q30 Steve McCabe: Can I ask you one last thing on that? I think you said that the absence of country reports in some of the non-suspensive appeals or detained fast track was a problem. Has that been addressed?
John Vine: Yes, the COI service produces regular reports for the 20 countries where most asylum claims are from. There are another 10 countries, the next tier down, for which it produces reports as well. It is when an asylum claim comes in from a country where there was no prepared report, and then a particular caseworker has to investigate the background in that country in order to defend the case at the tribunal, on which I have made recommendations for improvement, because that was a little bit hit and miss. It was selective, and I thought it could be improved, so I made that recommendation.

Q31 Steve McCabe: That has happened, has it?
John Vine: I am led to believe that has happened, yes.

Q32 Chris Ruane: Stakeholders have long criticised the detained fast track as being unfair, yet the low percentage of allowed appeals appears to suggest otherwise. In your opinion, is the DFT fair and is it effective.
John Vine: When I inspected it, I found that about a third of the intake for DFT was very quickly released from detained fast track because in fact they were the wrong people to be selected. In that sense, for quite a high percentage of the cases we looked at, those individuals should not have been in DFT. For example, there was evidence that some people who were included in DFT were victims of torture, but that had not come out in the screening interview. There is controversy around the screening interview. Very often it is argued that people who are the victims of torture at first interview will not reveal a great deal of what has happened to them, not surprisingly, because they have gone through a very traumatic process. What the agency has to do is to ensure that there is privacy, the right circumstances and well-trained caseworkers in order to assess whether they are eligible for DFT. In the sense that in our file sample a third of the people who were in DFT were then removed from it, there is a danger that the wrong people are being included in it. The agency accepted the recommendations on that.
However, when I looked at the quality of decision-making of DFT cases, we found that in 93% of cases the decision made by the caseworkers on DFT cases was upheld by the immigration tribunal, which, on the face of it, is an indication that at least the quality of decision-making was on the right lines.
Remember this was a process that was brought in about a decade ago when there was a massive influx of asylum cases. What I did in the report was to question whether this now needs to be looked at as a process. On the face of it, with improvements—and it is a matter of policy and it is not for me to say whether it should exist or not—it was operating effectively, certainly in removing people from the UK who it was deemed had no right to claim asylum here. There are safeguards that need to be put in place. What I did say is that the Agency should report on the DFT on an annual basis in order to make public information about its operations.

Q33 Chair: Just a couple of practical points. The reports that people seeking asylum on grounds of homosexual persecution have been required to testify to such things as having read Oscar Wilde and attended a gay pride march, or watched gay pornography. Have you come across any of this?
John Vine: I haven't. However, what we have done, as part of the COI oversight, is we have commissioned particular pieces of work on gay, lesbian and transgender issues, and also on gender issues, in terms of COI reports, to ensure that as far as possible COI material has the proper information in it so that caseworkers can be guided by that.
Mr Winnick: Is there a test for heterosexuals?

Q34 Chair: If there is one I am sure that Mr Vine will find out.
Do you have any concerns about the Compass housing contract, the asylum contract that was originally given to a number of contractors and then given to G4S?
John Vine: I have not looked at this yet, but you will know that I have power to look at contractors that operate on the Border Agency's behalf. You will be pleased to know that I have started the inspection of asylum support and I will be looking at that issue as part of that inspection. That is already being scoped at the moment.

Q35 Chair: Because one of the sub-contractors has already resigned from doing this project.
John Vine: I was not aware of that, Chair.
Chair: I think it is called Mantel.

Q36 Dr Huppert: Three very, very quick questions, if I may. First on that, when will you conclude the asylum support report and will we be able to have a look at it?
John Vine: Because asylum support is such a big issue I think what I need to do is think about whether we produce something big or whether we break it into constituent parts, but I am hoping that we can complete that this year. Looking at section 4, section 95 and issues around contractors is going to be quite a task. I am hoping it will probably be when Parliament reconvenes in the autumn.

Q37 Dr Huppert: Secondly, when the Home Secretary announced that the Border Agency was going to be brought back into the Home Office, she said it was a three-month discussion process. How often were you consulted during the three months before that about that change?
John Vine: I think I was consulted once about my thoughts, which of course have been documented in my reports which, of course, anybody can read them.

Q38 Dr Huppert: When was that in those three months?
John Vine: I was contacted by the Home Secretary in advance of the announcement. She informed me what she intended to do.

Q39 Dr Huppert: How much in advance?
John Vine: On the day of the announcement, but certainly before that. I do have opportunities to speak to her, not on a regular basis, but I would say once every six months.

Q40 Dr Huppert: My last question. Canada has a separate asylum administration system, so asylum is dealt with separately from other border processes. Do you think that is something that we ought to be looking at, or do you think it is not the way to go?
John Vine: I do know that that particular arm of the Canadian immigration system has a considerable backlog of cases. Obviously I have not inspected it, although I am quite happy to do so—on invitation, of course; it is a warm time of the year—but I do know it has a backlog of cases.
I think what needs to happen is that we need to provide a good, basic service consistently where good-quality decisions are made. It needs strong leadership and we need to be absolutely transparent about the work that is in hand.

Q41 Chair: At the moment this is not happening.
John Vine: I have reported to this Committee before and I have published reports that have said that. My last report on asylum criticised the case assurance and audit unit. I think I said to this Committee that that did not say what it was, so I am pleased to see that it has been renamed the older live cases unit.

Q42 Chair: In honour of Mr Winnick, because he was one of those who suggested the change of name.
Mr Winnick: I try to keep up with all of this.
John Vine: While it does not trip off the tongue very easily, at least it describes what it does.

Q43 Chair: One final point. Did you see the interview with the Border Force ex-DG, Tony Smith, who said we just do not know who is here and who is not here? Do you think that applies to the asylum system as well? There is no clarity at the moment as to who is in the system and who is not.
John Vine: I think what would help enormously is if we had some counting out of people. That would enable the agency and/or its successor bodies to answer that question effectively.
Chair: Mr Vine, as usual, we are indebted to you. Thank you very much.

Tuesday 11 June 2013

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Michael Ellis
Dr Julian Huppert
Bridget Phillipson
Mark Reckless
Chris Ruane
Mr David Winnick

Examination of Witnesses

Witnesses: **Natasha Walter**, Women for Refugee Women, and **Debora Singer MBE**, Asylum Aid, gave evidence.

Q44 Chair: This the Committee's inquiry into asylum, and could I ask all Members to declare any additional interests that they have over and above what is in the Register of Members' Financial Interests; could I declare that my wife is a solicitor and sole practitioner.

Can I welcome our two witnesses, Debora Singer and Natasha Walter. You are the first witnesses in our inquiry on asylum, which the Committee has been keen to have for some time. Could I ask a general question and get a relatively brief answer—we will explore the answer with other questions—starting with you, Debora Singer: how would you describe the asylum system in Britain at the moment? Is it going well, is it in crisis, is it stable—

Debora Singer: I would not describe it as going well. Unfortunately, in my experience—I have been at Asylum Aid for nine years now—it has never gone well. There is report after report that shows the difficulties, particularly in relation to a culture of disbelief, and for all the changes that there have been—there have been some improvements and some of them to do with women's issues—there are still a lot of problems, particularly in terms of the quality of decision making in the asylum system.

Q45 Chair: We will explore them as we go on the session. Natasha Walter, if you were giving a description of the system at the moment, how would you describe it?

Natasha Walter: I would describe the system as very problematic. I think it is often a very chaotic system. I think it can be an inhumane system as well. Obviously, I am also speaking very much from the perspective of what happens to women in the asylum process. I worked as a journalist, as a writer, and I was drawn to focus my energy on women in the asylum process to set up this organisation, Women for Refugee Women, because I was so concerned by the stories that I was hearing from women who had sought asylum in the UK and were being seriously let down by the asylum process. I think that is still the case. Although, as Debora said, there have been some changes on paper, I think in practice we are still seeing unfortunately the same mistakes being made again and again and again, and that represents a waste of resources and also a great waste of human life and it can be very problematic.

Q46 Chair: Let us explore some of these points. First of all, the number of women who win their cases on appeal tends to show that the initial decision making is not as robust as one would like. Obviously you do not expect the Government to win every single case before the tribunal, but it is quite a remarkable fact that women are more likely to win their appeal cases. The issue of decision making and the time it takes to make decisions is a difficult one. Do you see this being improved at the moment or do you think it is getting worse? One of the features of what this Government said—and it appears to me they are winning this particular battle—is that they want a quick decision, so they tell people, "Yes, you can stay," or, "No, you cannot stay". Having had many, many cases of this kind over the last 26 years, one of the things that most frustrates people is the fact it takes too long. Is that getting better, Debora Singer?

Debora Singer: I think the key issue is the importance of getting the decision right first time, and that obviously then makes things go quicker because you do not have the delays with appeals.

If I could just pick up the point you made about the overturn on appeals and explain that, the research that we did at Asylum Aid showed that the reason that women were being refused at the first initial decision making was because they were not being believed, and then when it came to appeal the immigration judges were believing them. We realised that what was happening was that they were using different standards of proof. The immigration judges were using the lower standard of proof, which is the one that they should be using; it is the one that the appeal courts have agreed, it is the one that is in the UNHCR handbook, it is in the case owner's own guidelines, but when we looked at the cases of the women we researched, we saw that the case owners were using too high a standard of proof. They were using "beyond reasonable doubt", which is the criminal justice standard of proof, or sometimes the civil standard of proof, about the balance of probabilities. The issue with the standard of proof is particularly relevant to women because of the types of persecution that they have experienced.

Q47 Chair: Natasha Walter, there has been a 53% rise in the number of asylum seekers awaiting an initial decision for more than six months. Do you think it would be better to restore the target that was

there before June 2010: that the initial decision had to be in six months?
Natasha Walter: There obviously has to be a balance struck between having quick decisions and giving women a chance to gather the evidence that they need to gather, and to be able to disclose what happened to them. It is important that decisions are made within a reasonable time frame. I would also like to mention the importance of dealing with the backlog with those legacy cases. I know that the Committee is aware of that.

Q48 Chair: Turning to the backlog, the last figures we had were 33,500. You obviously do not have fresh figures, because they come from the Home Office, but is that a concern to you—the fact that 33,500 are awaiting a decision?
Natasha Walter: This is a huge concern. About a third of those are likely to be women applying in their own right, and when you think of those 10,000 women, who may have fled very severe persecution—in our research and reviews we found that typically women seeking asylum in this country were fleeing extremely severe forms of persecution, often gender-related persecution such as rape, sexual violence, forced marriage, forced prostitution and so on. When they have been waiting four, five, six, seven or eight years for a decision, the impact on the individual life is severe.
I would love to just draw the Committee's attention to one case study in the written evidence that we sent through of a woman who made her initial claim for asylum 11 years ago. She has no idea where that case is now in the system—letters from her, letters from her solicitors, go unanswered. John Vine I know has brought evidence on the unopened mail, and just the impact of that on an individual woman, who now has a couple of young kids and is not entitled to support, is extreme and severe.
Chair: That is very helpful.

Q49 Mr Winnick: Thank you. The Chair has spoken about successful appeals by women in asylum cases. Would you say that by and large the line that is taken by the Home Office, obviously before the cases go to appeal, avoids gender discrimination or otherwise? Everyone denies gender discrimination, don't they?
Debora Singer: They do. I think the system is not gender-sensitive and in that way it does discriminate against women. The wrong standard of proof is an example of that. So, when the women come, because of the types of persecution that Natasha has described, they do not come with documents in the way you would if you were a political refugee; you do not have documents when you have been subjected to domestic violence, for example. So, because they do not have documents, they are then forced to fall back on giving oral testimony. What we know about women who have suffered these types of human rights abuses is that the trauma affects their memory, they can't remember everything, there are inconsistencies in their memory, and we know that the shame makes it very difficult to disclose issues; they either do not disclose them or they disclose them late. Because of the case owners using the wrong standard of proof, those issues are compounded, and that is what affects particularly the women in terms of the decision making. Yes, you could say that that is gender discrimination.
Mr Winnick: Natasha Walter, would you take the same view?
Natasha Walter: Yes. I do think there is still a lack of understanding in the decisions that I have seen, and talking to others that we work with, a lack of understanding of the kinds of persecution that women do face, in the Home Office and what was the Border Agency. Over the last few years, I think we would all agree that there has been a growth in understanding of the persecution women face around the globe. We now do have this initiative from the Foreign Office to combat sexual violence in conflict.
Mr Winnick: More sensitivity?
Natasha Walter: Much more sensitivity and understanding. We do have, I think, more understanding now in the police and criminal justice system about the nature and impact of sexual and domestic violence. What surprises me constantly is the way that this changing awareness, this learning that seems to be going on elsewhere in Government and in our society, does not yet seem to be reflected in the immigration departments at the Home Office. That is what we need to ask: why can't the decision makers in the Border Agency or the new department bring themselves into line with this growing awareness elsewhere?
If I could just give one example that really struck me recently, when William Hague was on that trip to Goma recently with Angelina Jolie and saying to the women there in Goma, "We want to bring your attackers to justice. We want to end the culture of impunity. We believe you," at that very moment we were supporting a woman from Goma who had come to this country after being kidnapped and repeatedly raped over a period of months, and she was told to her face at the screening interview that they did not believe a word she said. She was sitting in Yarl's Wood Detention Centre trying to resist removal while William Hague and Angelina Jolie were in Goma, and she felt bitterly when she saw that on the news. It is that connecting the dots. I am not saying, and Debora is not either, that anyone coming to this country claiming gender-related persecution should be given some kind of free pass through the immigration process; that would be absurd. We are just talking about a more dignified, humane process.

Q50 Mr Winnick: Some would say, under successive Governments, that officialdom has a sort of feeling that people are not always telling the truth, which you concede, and it would be odd if it was otherwise, and that every effort should be made to minimise the number against a backdrop where, certainly, the present Administration makes it clear it wants to substantially reduce the number of people coming in to live here from abroad. Would you say there is a sort of inbuilt suspicion?
Natasha Walter: Yes, I think there is an inbuilt suspicion, and at the moment the balance has shifted too far towards an emphasis on numbers and trying to increase removals and too far away from the

understanding of protection and of the person seeking asylum as an individual with a true history of persecution.

Debora Singer: May I just add something to that? When you make the comparison with the other systems, with something like the criminal justice system—so, before I worked at Asylum Aid, I worked for Victim Support for 10 years, and I remember the special measures on vulnerable, intimidated witnesses coming in; I remember the Achieving Best Evidence guidance coming in, and senior police who worked on issues of serious sexual violence talk about the importance of believing the victim. It doesn't always work.

At the moment in the media you will have talk about the historic abuse cases, but then you will get the people from the Association of Chief Police Officers and the Director of Public Prosecutions saying, "We need to believe the victims." The reason they do that is not because the police are some radical feminist organisation; they do it because they have worked out that that is the best way to build the case, to collect all the evidence they need to further the case that they are working on. Now, when we raised suggestions like that with the officials in the Home Office, they have not picked that up. They still work from this culture of disbelief.

Q51 Mr Winnick: The guidance given by the Home Office states, "For those without satisfactory childcare arrangements of their own, each UK Border Agency"—as it was named at the time—"regional office has its own arrangements in place to ensure that children are not present when parents are interviewed about their reasons for seeking asylum." Is that followed through in practice?

Debora Singer: Yes. What is interesting with the policy is that it didn't come out as a national policy; it came out as regional practice on the back of a campaign that a number of us worked on. So, over the last few years, since 2007, there is now childcare provision in each of the regional offices except London. It was subsequent to that happening that it was put into the policy. Just as an example about how these gender issues have not been mainstreamed into the asylum system, the letter that goes out to people applying for asylum still says, "We do not have childcare provision. Do not bring your children." I have pointed that out to the right Home Office official for two years now, and that letter has not been changed.

Q52 Nicola Blackwood: I just want to take you back to the comments that you were making about the particular culture of disbelief surrounding violence against women and the point that you were making, that there is a wider sensitivity to these risks, particularly with sexual violence, coming from certain conflict states. Now, it is one thing to try to increase attitude changes, which can be quite difficult, but there is another challenge for the immigration teams where it comes to whether their actual guidance is appropriate and allows them room to use those attitude changes. So, I have an example here of the guidance, which says that forms of persecution may be different for women than men; discrimination may amount to a country seeking serious legal restrictions on women. Do you think that this guidance is appropriate and sufficient and allows those officials to make the distinctions that you think are necessary?

Debora Singer: A lot of training and guidance has been developed over the years and updated in relation to these issues, and a number of the stakeholders have been involved in that. That is all of a reasonable standard now, and the problem is not the lack of guidance or training or its content; the problem is that it is not implemented. That comes out time and time again. It came out in our research, and UNHCR has just published in the last two weeks—since all this training and guidance had been implemented—a report; Amnesty International has done a very recent report. It keeps coming out that the guidance is not being followed, and the concern we have is that it seems that there are no mechanisms, no performance management systems that come back to people when they do not follow the guidance, and that there is nothing that says, "If you do not follow the guidance, there will be consequences".

So, we would see that what is really important is a change in culture, so that you move away from this culture of disbelief towards a culture of protection—towards one that recognises human rights and equalities and gender issues. At the moment, it seems that there is an opportunity to do that, because of the Home Secretary disbanding the UK Border Agency and moving it into the Home Office and talking at that time about the need for culture change. There is the opportunity for a change in leadership, and there is also the opportunity to learn from other systems, like the criminal justice system, of what has worked for them, what the Metropolitan Police has done, what has failed—to learn from those successes and failures.

Q53 Nicola Blackwood: So, where these reports have come out and they have made these points about the different aspects of guidance not being followed, what has been the response of either the UKBA, as was, or the Home Office, to those criticisms? Have they ever accepted that there need to be adjustments and changes?

Debora Singer: I think they have accepted some of it, not all of it, and when they have accepted it they have updated their guidance. They are updating their guidance now on credibility because of the UNHCR report. They have brought in training for the first time specifically on women's issues because of our research, "Unsustainable", but it is not implemented.

Q54 Nicola Blackwood: When did the training come in?

Debora Singer: The training was rolled out from May to about December last year.

Nicola Blackwood: So, was that the first training on women's issues, from last May?

Debora Singer: Specifically on women's issues, yes. But the problem is one of implementation.

Natasha Walter: I would agree with Debora on that. What we feel is that there is a real lack of accountability, that, as I said at the outset, we see the same mistakes being made over and over again and

we do not have any sense that in the Home Office there is a real desire to learn from those mistakes. So, as you were saying, there often is quite good guidance on paper, whether in the gender guidance or in the country of origin information.

Q55 Nicola Blackwood: So, how many appeals do you think are granted based on these sorts of issues, women facing persecution or violence against women?
Natasha Walter: Gender-related persecution?
Nicola Blackwood: Yes.
Natasha Walter: I would really love the Home Office to start collecting transparent statistics on that, because Debora and I have both overseen research over the last few years that is really trying to shine a light on what the Home Office is doing—and Debora's excellent research on the overturn rate at appeal—and we have looked at research of the impact of refusal on women seeking asylum. But I think it is very difficult for small NGOs to hold this big system to account, and it is really important that the Home Office starts to collect transparent statistics, looking at how many women are claiming gender-related persecution and the outcome of those claims. In our research, we found that about two-thirds of women's claims involved gender-related persecution. The majority of those three-quarters were turned down because they were disbelieved.
Chair: Thank you. May I just say to the witnesses, what you are saying is fascinating and we will ask you further questions, but we are on a time constraint, and if you would give more succinct answers, I would be very grateful.

Q56 Bridget Phillipson: Just to clarify the evidence you have given so far, you are not arguing for preferential treatment for women; you are simply saying that there is a disparity within the system, and to make sure that decisions are fair the Home Office needs to take measures to address that?
Debora Singer: In order to get those fair decisions, you need to have a gender-sensitive asylum system.

Q57 Dr Huppert: May I first go back to the issue that you raised, Chair, about people waiting for a long time for an initial decision, and presumably you have both seen some of the consequences of people stuck in that position; the Oxfam report, "Coping with Destitution", for example. Do you have any comments on those specific issues around asylum support levels, uprating, section 4 support, and the idea that has been raised in a number of places that if the Government have failed to make a decision for six months—and I am aware of a number of my constituents—people should have the right to work to support themselves, rather than relying on state support?
Natasha Walter: We would strongly support the right to work for people seeking asylum who have been waiting more than six months for a decision. We also feel very strongly that people should not be left destitute without any access to support and housing. This problem is prevalent among people refused asylum. In our report, "Refused", where we looked at the experiences of women who had been refused asylum in the UK, more than half of those who had been refused but not removed had experienced destitution. This can be a very severe experience for women.
If you are thinking of a woman who may have fled severe persecution already and the vulnerabilities that that entails, to be left basically on the streets, we found that high numbers were forced to sleep rough or to work unpaid and it had a huge impact on their mental health, so that the vast majority felt depressed and more than half contemplated suicide. We were also very concerned about the way this makes women in particular vulnerable again to sexual violence or to having to engage in transactional sex, and we have some anecdotal evidence on that, which we presented in our written evidence.
Dr Huppert: That is in the Oxfam report quite substantially.
Natasha Walter: That is also in the Oxfam report. Obviously if that is the kind of experiences that a woman has fled from—I mean, I was just hearing the other day about a woman who had been trafficked for sexual exploitation to this country and was refused asylum. She was eventually recognised as a survivor of trafficking and was given refugee status, but while collecting the evidence to make a fresh claim, she was destitute and was exchanging transactional sex and did become pregnant. You just think a woman who was trafficked originally into sexual exploitation, then being put in that situation in this country—it is very upsetting.
Debora Singer: We do feel that there is a huge inequity in the fact that there is a policy—the Government has a very strong policy, and the previous Government did as well—against violence against women, and yet the policies that happen in relation to asylum create a situation where women end up being extremely vulnerable to violence against women in this country.

Q58 Dr Huppert: I have to say that the idea of encouraging people to work rather than getting state support seems to fit with the Government thinking, so far as they have not gone for this.
But can I then turn to the issue about credibility, because in my experience with constituents, there is a huge problem with that. The most extreme case was a constituent who converted to Christianity in Iran who was sentenced to death, applied for asylum here, including a copy of the death sentence that had been passed against him, and that was not sufficient evidence that he was at risk. One wonders what people normally have as proof. He has now been able to stay. There is a question about how we get that, because we cannot, clearly, trust everything anybody says; that would not work.
One suggestion has been that all screening interviews should be video-recorded, so there is a chance for people later to have a look at what was said and how it was said, rather than notes and records of it. Is that something that you think would make a significant difference? Are there other tangible things like that that would make a difference?
Debora Singer: I think there are other things that would really help with screening. I think the issue of

credibility and a poor credibility assessment at screening is a real problem, because one of the things it results in is people being sent into the Detained Fast Track, and for women that means they are then in a process that is much too quick for them to feel able to disclose what has happened to them. The research by people at UNHCR and Human Rights Watch has shown that there is a real lack of gender sensitivity within the Detained Fast Track. But also what happens at screening is if you are then in the normal asylum system, any inconsistencies or any omissions are then used against you.

We have suggestions about what would help at screening. One is legal representation, and another is to provide childcare. At the moment, everybody is expected to be screened in Croydon, unless they are particularly vulnerable, which means that there are pregnant women, women with babies and children, coming often on night buses, because they have to be there first thing in the morning, from all areas of the country. The worst example I have heard is from the Scottish Refugee Council, who were supporting a woman. They tried to get her screened in Glasgow; that was refused. She was pregnant. She came down to Croydon, and she went into labour on the steps of the asylum screening unit. So, being able to have your screening interview at the office that is nearest to where you live would make a lot more sense.

Also at the moment, you are asked at screening whether you would prefer to have a male or female case owner or interpreter. That is something we have lobbied for very strongly a few years ago. We were pleased when it was brought in at the time. What we have discovered since is that women often do not understand the implications of that question. They are not from countries where people say, “Would you like this official or that official?” and so what would make most sense really is for there to be an automatic allocation of a female screening officer, a female case owner and a female interpreter for women applicants. So, that is another of our recommendations.

In terms of videoing, I think we would have concerns about that, because at the moment what is happening is what you say at one place is then used against you at another place, so then if it is videoed, it would make it even harder, and I know Natasha will have ideas about how it affects women.

Natasha Walter: Yes. We were concerned about the idea of videoing at a screening interview because of the chilling effect that it might have on women and their sense of being able to comfortably disclose, but I was talking to a couple of solicitors prior to coming here and they were quite keen on the idea of the screening interview being audio-taped, in terms of the usefulness possibly to the applicant of being able to point to what they had said if there were any discrepancies with the written record. Apparently, audio-taping should be available for the substantive interview, but according to the solicitors I talked to, it often is not, and that is a concern.

Q59 Michael Ellis: May I pursue this issue of the credibility assessment, and pursue this point about guidelines, because you both referred to the issue of guidelines. I want to ask you a bit more about Home Office guidelines, but of course we must remember the meaning of the word “guidelines”; guidelines are just what they say they are, not a hard and fast set of rules. For example, there are sentencing guidelines in the criminal courts. Judges can and do, sometimes controversially, depart from those guidelines, but they are not hard and fast sets of rules, so I would assume that you would also concede that the guidelines are there as guidance and can therefore be departed from. But looking at the Home Office guidance, it does state that the disclosure of gender-based violence belatedly, at a later stage in the determination process, should not automatically be prejudicial to the assessment of the credibility of the complainant. I presume you agree with that as a guideline. Do you think that guidance is being followed?

Debora Singer: May I just say quickly, before Natasha responds, that the guidelines—I am not going to answer on the sentencing guidelines, but this guidance, their asylum policy instructions—they are supposed to be exactly following them. I have had that from Immigration Ministers in the past.

Q60 Michael Ellis: So, the word “guidance” is a misnomer, is it? They should be called regulations?

Debora Singer: Yes. I think that would make sense, so they are absolutely supposed to follow that guidance and it can be used in appeals if they have not.

Q61 Michael Ellis: Okay. May I just draw you back to my question, which is that it does use the word “automatically”, so it does say that a person making a complaint of gender-based violence at a later stage in the determination process should not automatically have that count against his or her credibility. Does that happen?

Debora Singer: It does happen, and one of the things that I think is interesting is that we see this happening regularly. There has been research on it that shows it happens. The most recent research is probably by Baillot et al; it is academic research. When you compare with the police, the police understand that just because somebody discloses something late, like rape or domestic violence, it does not mean it did not happen. And the guidance goes all the way up to judicial level.

Q62 Michael Ellis: Yes. May I just challenge you on it, because I want to give you the opportunity to pursue what others might say in answer to your point, which is, how else can the putative assessor assess someone if they do not disclose something? Put yourself in the shoes of the person making the assessment. You have both conceded that not everyone will come with an honest mind to these things, so how else can you detect untruthfulness if you cannot do that?

Natasha Walter: What we are arguing is that the assessment of credibility should be made more fairly and more humanely. When somebody’s credibility is destroyed—when we get those decisions that just say, “We don’t believe you,” we often see that just one tiny little aspect, maybe a tiny inconsistency or a little bit of missing evidence, will be used to throw out the

whole case and it is as though all the other evidence is not looked at.

Again, in the written evidence, we put in the case of Ella, which is another very recent case—a woman who was fleeing extreme domestic violence and her husband was very influential in a small African country. She had good evidence, very compelling evidence, but she was put into the Detained Fast Track, despite the evidence she had. Her refusal said, "We don't believe you were married to your husband because you couldn't remember his date of birth," and did not look at any of the other evidence. Brilliantly, because she speaks excellent English and because she knows how to use the internet, she had her marriage certificate couriered over from The Gambia to Yarl's Wood Detention Centre in time for the appeal, but how many women would have time to do it? So, that is what we are talking about when we are talking about unfair assessments of credibility. We know that sometimes it is very difficult if somebody is not giving a wholly coherent account; how much time can you give them? These are judgments that have to be weighed up fairly, and, as I say, we are not talking about just giving everyone a free pass.

Michael Ellis: To be fair, there will be people who are dishonest.

Natasha Walter: Yes but everyone deserves a fair hearing. At the moment, we seeing these decisions that are so unfair, so weighted against the evidence that is brought.

Chair: Thank you very much.

Q63 Bridget Phillipson: In terms of the country of origin information, you have been quite critical of that. Is it that you think the information within the country of origin information is not of a high enough quality, or is it that it is not being properly implemented and used by decision makers?

Debora Singer: There are a couple of points there. The quality of the country information has been improving over the years. The most recent research by Heaven Crawley did show that there were gaps, particularly in relation to risk on return and in relation to internal relocation. Our own research showed that the country information was being used selectively. The worst example we had of that was somebody whose refusal letter said, "The country information says"—this was in Iran—"that women will be safe if they go to the police station", and when you look at the country report, the sentence above says, "Women are at risk of being sexually assaulted by the police if they go to the police station". But our key point really is that the best-quality country information, and it being used completely appropriately, will not do any good if you start by not believing the women.

Natasha Walter: I would agree with Debora, that I feel that it is more a question that it is often used very selectively and cherry-picked and not looked at in the round or with proper attention to the specifics of somebody's case. Although there is room for improvement in the country of origin information, it is often the way that it is then used so selectively in decisions that is often very troubling.

Q64 Bridget Phillipson: When immigration judges look again at decisions, what is it that tends to lead to immigration judges overturning cases that had previously been refused? Is it the country of origin information?

Debora Singer: I would not say it is always, but in our research it was literally always the standard of proof. It is about using the correct standard of proof, which is a lower standard of proof than the case owners were using. It is actually in their guidelines to use that lower standard of proof, and they are not implementing their own guidelines.

Q65 Bridget Phillipson: So, it is not a question of information then being presented later?

Natasha Walter: With successful appeals it can also be a question of better information being presented, and more understanding on the part of the judge, more, the readiness to look in the round at that country of origin information and think about risks of return. A poor initial decision is not always about disbelief; it can also be about the trivialisation of gender-related persecution, so we do see those decisions that rest on, "Yes, we do believe that all these things happened to you. However, there is no reason why you should not go back to the same place and rebuild your life." I think we have seen—in my personal experience—that judges on the tribunals seem to have more understanding of the nature and impact of gender-related persecution and are less likely to trivialise it in that way and more likely to look again at those risks on return, as well as the credibility.

Q66 Chris Ruane: The March 2013 "Violence Against Women and Girls Action Plan" contains a number of commitments to improve the asylum system in relation to gender issues. Is there sufficient commitment within Government to ensure that these will be implemented?

Debora Singer: Those additional action points in the violence against women action plan came about because of a major campaign that we led through the "Charter of Rights of Women Seeking Asylum". What we are very aware of is that that strategy has really, up until now, shown a gap—that is why we called our campaign Missed Out—that women asylum seekers were missed out. It has a lot of activity in relation to women in this country. For example, I know this Committee has been interested in forced marriage as an issue. There is legislation against forced marriage, and it has been strengthened recently; there is legislation and activity in relation to preventing female genital mutilation, and yet when women come from abroad because they are at risk of forced marriage, they or their baby daughters are at risk of female genital mutilation, they have great difficulties in getting their cases understood and in getting protection.

Then the violence against women strategy also has a strong part in it now about what is happening abroad—violence against women abroad and protecting them. Natasha mentioned the Foreign Secretary's initiative to prevent sexual violence in conflict. One of the countries that is very active in is DRC. We know that the proportion of women who

come from DRC and seek protection here and are refused an initial decision is 67%, and that is in a country that people here know, through the media, as the rape capital of the world. So, we are very pleased that there are the additional points in the violence against women action plan, but we do feel that there needs to be a more robust joining up of issues across the Government, because from our point of view, whether a woman is in this country or whether she lives abroad or whether she comes from abroad to this country, all women deserve the right to dignity and respect and protection.
Natasha Walter: Yes, I would go along with what Debora said. Obviously we welcome the fact that there are these statements in the "Violence Against Women and Girls Action Plan"; I think it is important to see women asylum seekers included there. We do not yet see the real commitment from Government to make sure that this happens and that there is a real change on the ground for women seeking asylum. I really welcome the opportunity to be here today, and I do hope that this Committee will help the Home Office to see what is important now to take forward and try to stimulate that commitment and to challenge that culture of disbelief.
I know this point has been made; this is not an enormous problem in terms of numbers. It is quite small numbers of people now coming to this country to seek asylum. The proportion of women is just a minority of those. We are only talking about 5,000 to 7,000 women who seek asylum every year. It is not a huge problem in terms of numbers; it is huge in terms of its human impact. But it is something that I think it would be possible to see real change on if there was that commitment from Government to the Home Office.

Q67 Chris Ruane: Finally, what has been the impact of the introduction of the gender champion and the trafficking champion?
Debora Singer: We are not aware of a trafficking champion, but for the gender champion, that came in because it was a recommendation in the "Charter of Rights of Women Seeking Asylum", and a gender champion was appointed from the senior management team in the spring of 2010. So we are really pleased there is a gender champion. We would see their role as being limited by not having the time and resources because it is an add-on to the rest of their work. Ideally, we would see them as having more of a role in sharing a vision across the asylum system. I think the changes in culture that we were talking about earlier would be a beneficial point placed with that gender champion to then have a role. It would be easier for them to be putting forward the suggested changes we have been discussing.

Q68 Chair: Some very quick final questions with quick answers: first of all, do you think that asylum seekers should be allowed to work while their cases are being considered? A quick yes or no.
Debora Singer: Yes.
Natasha Walter: Yes. From what Julian Huppert said, if they have been waiting for more than six months for their case to be decided—

Q69 Chair: So, that is what it should be; if they are waiting longer than six months, they should work?
Natasha Walter: That seems to be a good benchmark. We would also like to add on to that that it is very important to retain support for those seeking asylum for those who are unable to work.

Q70 Chair: Secondly, the £5 a day Azure card that they use; there are a lot of problems with this. It cannot be used in certain shops. It can only be used in certain ways. Do you have worries about that?
Natasha Walter: Huge worries. We think it is very difficult, particularly for women and children. I understand that the Azure card was introduced as a tool to be used for the shortest possible period of time. Because of the backlog that we have spoken about, we see women living for long periods this kind of asylum support.

Q71 Chair: Because they cannot use it on the bus, can they?
Natasha Walter: They can't use it on a bus. You just need cash for your daily life, in order to make ends meet. It is horrible for very vulnerable people to be forced into this situation.

Q72 Chair: Debora Singer, finally, on the COMPASS programme—the £883 million contract that has gone to G4S. Are there concerns about it? We have received evidence that some of the sub-contractors are pulling out and G4S is not managing it effectively.
Debora Singer: Yes.
Natasha Walter: Yes. We have huge concerns about it. From all the evidence that is coming back, G4S clearly does not have mind to the needs of vulnerable people in this contract. We do not feel that they are the appropriate people to be taking this forward.

Q73 Chair: Was it a mistake to take it away from the original contractors and give it to G4S?
Natasha Walter: Yes. From the evidence that we have coming back, it is hugely problematic. We hate hearing about women and children in these dreadful situations being unable to be housed with dignity and safety.

Q74 Chair: The Committee will be visiting some of these places.
Natasha Walter: We would welcome it.

Q75 Chair: You have mentioned particular individuals whom you have highlighted in your written evidence. If you would like us to meet in private, we are very happy to do that as part of the inquiry that we are having. Thank you very much indeed for coming in to give evidence. If there is something you have missed out, please write to us or send us a message and we will follow it up. Thank you.
Natasha Walter: Thank you very much.
Debora Singer: Thank you.

Examination of Witnesses

Witnesses: **Sonya Sceats,** Freedom from Torture, and **Catherine Ramos**, Justice First, gave evidence.

Q76 Chair: Ms Sceats, Ms Ramos, thank you very much for coming to give evidence. You are going to have the excitement, I think, of a Division in the middle of your evidence, which means we are all going to disappear and come back, but we will try to get through as many questions as we possibly can in the short time we have available.

Thank you so much for coming to give evidence. We are going to concentrate in this part of the evidence session on some of the international dimensions, and specifically to do with torture. What do you think the scale of the mistreatment of returnees is? Sonya Sceats.

Sonya Sceats: That is a very difficult question to answer, obviously. We at Freedom from Torture have direct knowledge in the context of Sri Lanka of 30 Tamils who were harmed after returning voluntarily to Sri Lanka from the UK. We are directly involved in a further three cases of people who were harmed after forcible return from the UK.

Q77 Chair: Is it your view that people should not be returned to Sri Lanka because of the evidence that you have received? Or do you think that the Tamil community should continue to be sent back?

Sonya Sceats: After a very careful consideration of the specific evidence coming through our clinical intake, our position is more nuanced than that. What we have said is that any Tamil returning from the UK who has real or perceived links with the LTTE at any level, those people are unsafe and those people should not be forced back to Sri Lanka.

Q78 Chair: Catherine Ramos, you are the author of the Justice First report, “Unsafe Return”. Is there a list of countries that you have or the organisation has, which you have told the Government are unsafe countries as far as returning people is concerned?

Catherine Ramos: No. I am not aware of that having been done. I have monitored what happened to Congolese returnees, and so I have concentrated particularly on that. I have followed what happened to some Cameroonian clients that were sent back, but I have concentrated on DRC.

Q79 Chair: As far as the Congo is concerned, the Home Office went on a fact-finding mission to the Congo following the publication of your report. Do you know whether the country guidance has been updated? Has there been any change as a result of the report that you published?

Catherine Ramos: The fact-finding mission went to the Congo after the country of origin information was updated. That was updated in March 2012. The fact-finding mission went to Kinshasa in June 2012. A country policy bulletin on returns was published, which drew on the fact-finding mission report. But I am concerned that there are inconsistencies between the two reports, which I have highlighted in written evidence.

Q80 Chair: Which we have. Your figures are pretty shocking. Fifteen of the 17 returnees to the Congo had experienced some kinds of violations. Is that right?

Catherine Ramos: Yes.

Q81 Chair: Violations included electric shock treatment, sexual abuse, being arrested at the airport, and two out of the five women had been raped. These are very serious.

Catherine Ramos: Yes. Men admitted to having been sexually abused, but that is what they admitted to— just sexual abuse during interrogation.

Q82 Chair: So, as I put to Ms Sceats, is it clear to you that nobody should be returned to the Congo until there is a satisfactory explanation as to what is going to happen to them?

Catherine Ramos: I don’t think people should be. I also think that, as the Amnesty International researcher for DRC said in April 2012, all information relating to DRC should be reassessed in the light of the violence during the election, pre and post election. It is said that there has not been a change in country conditions that would warrant a change in policy. But I think that information must be reassessed. Perhaps it has been.

Q83 Chair: When those 15 people out of the 17 were here, they must have told the Home Office in support of their claims to remain here that this was what they feared would happen to them if they returned.

Catherine Ramos: Yes. They were found to be of a lower level. They were lower-level activists in DRC. Even though certainly the Justice First clients whose cases I know better were involved with the Combatants, the Resistance Council, they were still deemed not to have come to the attention of the DRC authorities. But I have given the Committee members the International Crisis Group information.

Chair: Yes. Indeed; we have received it. Thank you.

Q84 Mr Winnick: Your organisation and others have made the allegation that the Congolese and Sri Lankan authorities monitor the activities of low-level political activists. What would be your definition of “low-level”?

Catherine Ramos: It would be the definition of the Congolese authorities as to what was low-level.

Q85 Mr Winnick: Would any political activity come within some definition as far as they are concerned?

Catherine Ramos: Yes. Again, during talks with people from Amnesty International, they felt that there was no distinction between high and low-level. That was this year, when I put it to them, “No, there should not be a distinction.” Also, the International Crisis Group information that I gave you today states that the authorities are well able to monitor even low-level activities.

Q86 Mr Winnick: Are you surprised that the May 2012 operation guidance notes of the UKBA, when it was so known, say, “As regards political activity in

the UK, no evidence could be found to support the allegations that the DRC authorities"—I do not know why Congo describes itself as a democratic republic, but there you are—"have either the capacity or capability in the UK to monitor low-level political opponents, including those participating in anti-government rallies in the UK"? Where would the Home Office come to that from?
Catherine Ramos: We have to ask who they are asking for evidence. I asked International Crisis Group, and I received a reply that they are capable; that the secret services receive high-level, high-quality training and are able to monitor. During my research I have been told, and I believe, that there is a national intelligence section within the embassy in London.

Q87 Mr Winnick: And of course social media and all the rest of it would be monitored.
Catherine Ramos: Again, that is in the fact-finding mission, that the national intelligence has operatives in Vodacom; that they monitor Twitter and Facebook for political activities. I have not been able to verify this further, but I believe that people handing in envelopes to DHL in Kinshasa have to hand in the envelopes not closed; open. I think that will of course affect anybody in the UK or in Europe or in any country who is having to find further evidence as part of an asylum claim, because usually DHL is used to send this evidence between countries.

Q88 Mr Winnick: Have you challenged the Home Office with the quote that I have given you? Have you or your colleague said to the Home Office that this is not so and included your evidence?
Catherine Ramos: I am in the process of finishing an update to my "Unsafe Return" report. That is what I am concentrating on.

Q89 Mr Winnick: Surely what the Chair asked you about, the number of people who had been allegedly tortured on return, is all bound up—it must be, presumably—with the way in which those authorities monitor what is happening, and if such people refuse permission, then such information is very useful if they want to persecute them.
Catherine Ramos: I think the fact-finding mission found the NGOs, who are all described as credible, being able to give independent, impartial evidence, refer to a blacklist. If there is a blacklist, somebody is putting names on a blacklist. There is also a code, P32, which identifies those who are involved in anti-Government demonstrations. Again, the UKBA document suggests that there is monitoring. Also, the NGOs refer time and again to the danger to UK activists or opposition to the Government because the UK is seen as a centre of political resistance to the Kabila Government.
Sonya Sceats: Would it be possible for me to add something to that set of questions on the Sri Lanka dimension?
The other dimension to this is of course what is happening in interrogations of people who are going back to these countries. In the Sri Lankan context we have a lot of evidence that those in that risk category that I set out before, going back to Sri Lanka, are being interrogated about low-level activities; whether it is about fundraising for the Tamil Tigers; whether it is about protests; whether it is about networks and so on. So, another way in which they are getting at this information is through people who are going back, which creates all sorts of very serious questions around the risk on return to certain groups going back.

Q90 Chair: Indeed. That is why I am surprised that your organisation has not called for a ban on Tamils being returned to Sri Lanka.
Sonya Sceats: We have been very careful to be faithful to what our evidence is telling us. When we have looked at the profile of our clients—and don't forget that when I was giving you those figures before, these are really high numbers when you consider that these are only the ones who have been able to get out of detention, to flee, to make it to the UK and then to access our services. We have never seen numbers like this from any other country in our 27 years of people who have been tortured after going back from the UK to a particular country.
Chair: That is very helpful.

Q91 Bridget Phillipson: How easy is it for both the Congolese and the Sri Lankan authorities to identify failed asylum seekers on their return?
Sonya Sceats: That is a very difficult question for an organisation like ours, without in-country operations in Sri Lanka, or DRC for that matter, to answer. Our supposition is that it is fairly easy to guess that somebody coming back on a charter flight or somebody on a scheduled flight who is accompanied by an escort is likely to be a refused asylum seeker. There is also the question of information-sharing practices with the receiving authorities, and I am aware of—I have seen—correspondence from the Treasury Solicitor's Department to the Administrative Court here in the UK suggesting that in around 14 cases there has been information passed to the Sri Lankan authorities identifying certain Sri Lankan nationals as refused asylum seekers, which begs lots of very serious questions, I think.
Catherine Ramos: As for the situation with the Congolese authorities, again I have given Committee members some of the documents that were handed to the Congolese authorities at the airport when a man was removed in 2011. He was handed these as he was being held in an office at the airport. They referred to him as being a member of Apareco and also as having taken part in demonstrations in the UK against the Government. The Congolese immigration officer I spoke to when I was in the Congo—it is in my report—said that they should be passed the names of people who are being sent back, and once they are passed the names that they would do a check. If that person has had any political problem before leaving the country, then the information in there would be passed to the national intelligence agency. Certainly, it seems from my monitoring last summer and what is identified by NGOs and the fact-finding mission, that returnees were taken from the airport into DGM detention in Kinshasa and from there they were taken to national intelligence for interrogation. Again, I was told that the travel document identifies the person as

a failed asylum seeker. Even if the person does not have a political problem, if they have left the DRC on a false passport, they will still be imprisoned. The country policy bulletin has identified all of those who are being interviewed by Congolese officials in our immigration removal centres as either failed asylum seekers or foreign national offenders.

Q92 Michael Ellis: May I take the opportunity to thank you both for the work that you do, which is clearly very valuable and important.
I want to ask you about country of origin information. I note that both of you have been critical about the information that is published in what are known as country of origin reports and such things as operational guidance notes and country policy bulletins. This is the information provided to those interested about the countries in question. Can you outline what your specific concerns are? Can you be a bit more particular about what your concerns are with such country of origin information? Where is it going wrong? Why is it going wrong?
Sonya Sceats: In the Sri Lanka context, Freedom from Torture operates as a source of country of origin information for the COI service at the UKBA. We have generally found that service to be fairly responsive to the evidence that we put out in the country of origin information reports. It is a wholly different matter when it comes to the policy, and it is the policy that we really do implore this Committee to look at very closely.

Q93 Michael Ellis: Is this the country policy bulletins?
Sonya Sceats: Exactly. The country policy is found either in the operational guidance notes or in the country policy bulletins, and we have very serious concerns about the safety of the country policy bulletin for Sri Lanka.

Q94 Michael Ellis: Would you agree with that?
Catherine Ramos: Yes.

Q95 Michael Ellis: So, as far as the country of origin information is concerned, you are both happy about that, and you say that if you wanted to make some input into changing something about a particular country, you can do that and you know the mechanisms for doing it and they tend to work satisfactorily?
Sonya Sceats: We found, for example, that they have been very quick to put out updates where we have put new information out about, for example, the risk to certain categories of Tamil returnees.

Q96 Michael Ellis: And they have adopted that?
Sonya Sceats: They have, in so far as they have reported it, but these reports do not contain analysis. We have an example of where we have lodged an objection to an extraordinary allegation that was sourced apparently from the Sri Lankan security intelligence officials themselves that the Tamils were scarring themselves in order to fabricate torture claims. We put in very strong objections to that on the basis that there was no medical evidence to support the claim, and after our objections were lodged they did agree to withdraw that.

Q97 Michael Ellis: When you put in your points, you provide some medical evidence, or some sort of evidence, to support your contentions?
Sonya Sceats: Freedom from Torture is one of the world's largest torture rehabilitation centres, so most of the evidence that we put forward is grounded either in the forensic medico-legal reports that we produce or in the clinical treatment that we provide.

Q98 Michael Ellis: How would you recommend this Committee deal with the issue of the policy bulletins? Where do you think the changes ought to be made there, and how do you think they can be made?
Sonya Sceats: In the Sri Lanka context the current bulletin is deeply flawed. It fails to reflect the evidence that we and many other NGOs have put out identifying risks to certain categories of Tamils. Not only that, the current policy bulletin does not even acknowledge the extraordinary information that was disclosed to us via a Freedom of Information Act response, which we have annexed to the written evidence that we have supplied to the Committee. That evidence demonstrates that in up to 15 cases the UK Border Agency or the Tribunal here has granted protection to people who were previously refused protection, put back on planes to Sri Lanka, made it back and then alleged torture. What they did not tell us, what they refused to disclose, was the number of those allegations of post-removal torture that were found credible by either the UK Border Agency or the Tribunal, and it is really imperative that you get to the bottom of that. Among other things, there is a very serious risk that Parliament has been misled by Ministers, who have repeatedly being saying that there are no substantiated allegations of post-removal torture.

Q99 Michael Ellis: Unwittingly, of course.
Sonya Sceats: This is for you to look at. One of the things that we would love this Committee to do is to call for a cross-departmental review, including not just the Home Office but also the Foreign Office and the Attorney-General's office, to look at what has gone wrong in the handling of the evidence from the NGOs about the risk facing certain categories of Tamil. We think the terms of the reference for such a review should be looked at by you.

Q100 Michael Ellis: Briefly, do you have anything to add, Ms Ramos, for the Congo?
Catherine Ramos: Yes. The "Country of Origin Information 2009" was the last report before the update of last year. You can see that in 2012 there is clearly evidence in the possession of UKBA and the Belgian and French fact-finding mission that indicated there was risk to people being removed to DRC and also that they knew that the office of Voice of the Voiceless, which was supposedly closely monitoring returns at N'djili airport, had closed, but there was no update to the country of origin information from 2009 in 2011—not until 2012. So, in fact the 2009

information has been churned out all this time when in fact there was no office.

Q101 Michael Ellis: It had not been updated?
Catherine Ramos: It was not updated. And you cannot say there is no evidence from European countries if a fact-finding mission from Belgium and France has gone to the country. And you cannot say that local NGOs have no evidence if in fact you are saying in 2012 that an NGO expressed its concerns.

Q102 Michael Ellis: So, what you are saying is that it has become misleading because it is out of date, in that case?
Catherine Ramos: It is out of date. But it is said that the local NGOs in the Congo have no evidence of ill-treatment. That was said in a letter to William Hague from Theresa May, that they have no information of ill-treatment. But two months later, when they go and they interview NGOs, they now have a 90 to 100-page document of information.
Michael Ellis: But to be fair, that was two months later, you are saying.
Catherine Ramos: There were two months where it changed from, "There is no information with local NGOs," to, suddenly, "There is a lot of information". And that was given in the fact-finding mission report.

Q103 Nicola Blackwood: Ms Sceats, I want to ask you about the issues that you raised in your submission about the Detained Fast Track and your concern about the screening process being insufficient to determine the suitability for the fast track. Could you explain your concerns to the Committee? Could you also comment on whether you think that video recording screening interviews might help to address your concerns in some ways?
Sonya Sceats: Sure. Thank you for asking. It is a really important question. And thank you for all the work that the Committee has been doing on this issue over many years.
The fundamental problem with the Detained Fast Track system for survivors of torture is that people are selected for that procedure at a very early point in the process, after screening, when most survivors of torture have not been able to disclose their torture experiences for all sorts of reasons to do with the trauma that they are suffering, from the distrust that they have of authorities and so on. So, the problem is that we have a policy that says that people with independent evidence of torture are not suitable for the Detained Fast Track system but that policy is operating at a point before people have the chance to acquire the independent evidence that is required to demonstrate that they are not suitable. So, you have a Catch 22, and I would draw the Committee's attention to the recent recommendation on 31 May from the UN Committee Against Torture that that evidential threshold be lowered, because it is essentially impossible for people to meet it at that point.
Nicola Blackwood: The UK evidential threshold?
Sonya Sceats: Exactly. So, they were looking at that very closely.
Our position as an organisation is that the Detained Fast Track system is an inherently unfair system and it should be abolished. But if it is going to continue, it is absolutely imperative that there is no routing into that system that takes place before people have had an opportunity to seek legal advice.

Q104 Nicola Blackwood: So, first they would need to seek legal advice, but also they would have to have a medical so that they could have a Rule 35?
Sonya Sceats: Or just access to an independent doctor who is competent to assess their health needs and their vulnerabilities and potentially to identify indicators that somebody may be a victim of torture.

Q105 Nicola Blackwood: I know that you have also been very critical about the functionality of Rule 35 as it stands despite the fact that we have had this audit. I also know that the last time we had Mr Whiteman here we were quite concerned by the fact that he seemed to think that Rule 35 reports could be submitted by detainees themselves or by the legal team, which is obviously not the case. They can only be submitted by medical practitioners. But obviously we have seen a very small percentage of Rule 35 reports resulting in release; I think it was between 5% and 11% last year. Can you say exactly what you think could be done to improve Rule 35 as it stands?
Sonya Sceats: Rule 35, as you know, was put in place by Parliament as a safeguard to equip the Agency to better comply with its own policy that survivors of torture should not be detained except in very exceptional circumstances. The whole point is that it is supposed to allow medical practitioners to flag to the decision makers that somebody might be a victim of torture. When you are looking at some of the statements that come from Government on what might be wrong with Rule 35 you need to keep in mind that the doctors in these removal centres are not torture specialists. So, it is not right for criticisms to be directed at them that they are not recommending release, for example, because firstly they are not told to do that and secondly many of them lack the skills or the confidence to do that. We feel very strongly that, as you have said before, an immediate independent review needs to be conducted of the application of Rule 35. That is the most important thing.

Q106 Nicola Blackwood: How would you respond to the comments that we as a Committee received from Mr Whiteman explaining that one of the reasons for the low percentage of releases resulting from Rule 35 reports was that there were three reasons for these Rule 35 reports? One was that a medical practitioner might report that detention would be injurious to the detainee's health. The second was that the individual might have suicidal intentions. The last was that the detainee might be a victim of torture. He said that it was only really in the first instance that detention would be overruled, necessarily. How do you respond to that?
Sonya Sceats: That looks to me like a frustration of Parliament's will. There is an entire section of Rule 35, Rule 35.3, the last part that you read out, which is about trying to indicate to decision makers that a potential survivor of torture is in detention. It operates

on a precautionary principle. You should not have to require a recommendation to release in order for the decision maker to look at that evidence and to assess whether the Home Office's own policy is being complied with.

Q107 Nicola Blackwood: So, in your assessment this is an incorrect assessment of policy because it should be simply sufficient for a Rule 35 report to say that a medical practitioner is of the view that this detainee is a victim of torture and if the UKBA agrees with that, then the detainee should be released? It is not necessary for it to be in addition to that, that detention would be injurious to the victims?
Sonya Sceats: No. And it should not even be necessary for the doctor to be saying this person is a survivor of torture because they are not skilled—and in many cases lack the confidence—to make that kind of call, because they are not specialists. And they would say that themselves. We have been engaging with the doctors in the medical centres in the IRCs for many years, and this is not their area. What they should be doing is flagging a concern, and that is all that Rule 35.3 requires them to do. They need to flag a concern that somebody may be a victim of torture, and it is at that point that the decision to detain needs to be reviewed.

Q108 Dr Huppert: To follow on from that, a number of us were surprised at the various descriptions from Mr Whiteman about how Rule 35 worked. He did have to clarify his position on quite a few occasions. But things have now moved on, and he is not in charge. Presumably you have had quite a lot of interaction with the new visa and immigration directorate. We will be hearing from the director of that shortly. Have they been good at engaging with the two of you about the whole asylum process? Does the asylum process even sit entirely within that directorate?
Sonya Sceats: It is a very good question. We and a number of other organisations wrote to the Minister following the announcement of the changes and the reabsorption of the functions back into the Home Office, requesting a meeting to talk about what the implications for the asylum system would be, and as usual, we were not granted that meeting. So, we are still ourselves a little unclear about where things will be sitting and what changes there will be.
In terms of our engagement generally, you have heard evidence from us and seen written evidence from us about the very disappointing experience we have had trying to engage on the country policy bulletin on Tamil removals. That has been aberrational. We have other areas in which we co-operate in a healthy way with the Agency, where we are listened to. We are very much hoping that that will continue, notwithstanding the structural changes. One of our key priorities is to make sure that the work that we have been doing very constructively with the Agency on a new asylum instruction for the handling of medico-legal reports prepared by us and the Helen Bamber Foundation in torture claimant cases, will continue and that that pilot will be rolled out notwithstanding all of the structural tumult in the agency/Home Office right now.
Catherine Ramos: I think there has been very little dialogue with the Home Office since my report was published. I know MPs are told that the Home Office is in dialogue with us at Justice First, but in fact nobody has asked to talk to me about my report. Nobody has asked to view any of the interviews or to look at any of the filming that I did when I was in DRC. So, the idea that there is dialogue is not a reflection of the reality.

Q109 Dr Huppert: I am surprised and alarmed that you have both been struggling so much to have a hearing. We have Sarah Rapson, the Director General, immediately after this. I am sure we can ask her if she will agree to meet you to talk through that.
I am particularly alarmed both about the details, Ms Ramos, of your experience but also that you do not know where these things sit. It seems to me astonishing if you do not know who it is who is dealing with all of this.
Sonya Sceats: There is a very important question that I think you should be putting to her, either today or afterwards, about where responsibility for country policy will sit in this new structure. If you think about the parallels in our evidence today, it is where you are looking at policy about removals where things get really unstuck, and you need to keep a very close eye on where responsibility for that area of policy will sit within the new structures and be very alarmed if you are getting signals that this is moving into the enforcement arm, because that—it seems to Freedom from Torture at least—is the nub of the problem: that they do not want to see inconvenient evidence where it disrupts removals objectives with respect to particular countries, and there are structural implications of that which we hope you will look at closely.

Q110 Dr Huppert: So, you think it should be entirely within the visa and immigration directorate, but you have been unable to find out whether that is the case?
Sonya Sceats: Exactly.
Dr Huppert: I hope we will be able to clear that up.
Sonya Sceats: Thank you.

Q111 Chair: May I end by asking you the same questions as I asked the previous witness? Brief answers would be appreciated.
Do you think that asylum seekers should be allowed to work as soon as they make their application for asylum? Or should there be a delay of about six months or so and after six months, if they have not completed their case, they should be allowed to work?
Sonya Sceats: Ideally, yes, asylum seekers should be given the right to work. Certainly if they have been waiting for more than six months, they should be given that right.
Chair: So, not immediately but after six months.
Sonya Sceats: If that is what is on offer, we would be delighted.
Chair: I am not offering; what do you think?

Sonya Sceats: No, but in terms of the recommendations that you would be putting.
Chair: We have not decided yet. What do you think? Do you think it should be immediate or after six months or so?
Sonya Sceats: Ideally immediately.
Chair: Right. But do you think that might send out a message to say, “Claim asylum in Britain and start working immediately”?
Sonya Sceats: This is one of the things that you will need to balance.

Q112 Chair: What do you think? We will do the balancing.
Sonya Sceats: From our point of view there are all sorts of rehabilitative reasons for giving people the right to work if they have been through a traumatic set of experiences, in terms of integration—
Chair: Immediately?
Sonya Sceats: Absolutely.

Q113 Chair: Ms Ramos?
Catherine Ramos: We do not meet our clients at the beginning of the process, so I cannot speak for Justice First about whether they should perhaps be given permission to work after six months. What we see are people who have been waiting for decisions for 10 years. I spoke to somebody from Congo who has been waiting 16 years.
Chair: But what do you think? Do you think they should be allowed to work? Obviously 16 years is a very long time.
Catherine Ramos: Exactly. I think that people, yes, should be allowed to work.
Chair: Immediately or after a period of time?
Catherine Ramos: I can’t speak for Justice First. I would have to speak for myself, but perhaps after a short period of time.

Q114 Chair: After a period. What about the COMPASS contract? Have you all received any concerns about the way in which that has operated? Do you know what I am talking about when I mention the COMPASS contract? Has that had any impact on your clients? Sonya Sceats.
Sonya Sceats: Yes. It has.
Chair: For the better or worse?
Sonya Sceats: The situation for our clients was not good before the transfer to COMPASS and so I would be loath to make comparisons on the spot. It is the kind of thing that I could come back to the Committee with further written evidence on, if that would be helpful. We are going to be publishing very soon a new report on poverty among survivors of torture here in the UK as an impediment to rehabilitation. It is one of the issues; we may have some evidence from that to provide you with.

Q115 Chair: Ms Ramos?
Catherine Ramos: We do not deal with problems of destitution, but obviously within the Tees Valley area there are charities. We are working together. We have a local fund to help people who are destitute. One charity is housing at the moment 43 people in houses that they are running. Again, I could get back to you with information about that, because it is not an area of expertise.

Q116 Chair: That is very helpful. What about the Azure card? Any concerns about the way that operates? You are both nodding.
Sonya Sceats: Yes.
Catherine Ramos: Yes.

Q117 Chair: In 30 seconds, Ms Sceats, what is wrong with it?
Sonya Sceats: The restrictions; the operation of the card; the stigma that comes along with the card, the administrative problems with it, the malfunctioning of it when you arrive at the tills, the shame that is attached to that experience, and so on. It is something that our clients feel extremely strongly about.
Chair: And it is only £5 a day.
Sonya Sceats: Exactly.

Q118 Chair: Catherine Ramos?
Catherine Ramos: And it is the length of time that people are on the Azure card. It is years and years.
Chair: To receive it? Or to use it?
Catherine Ramos: That they are having to use the Azure card or, before, the vouchers. They have been without cash for many years.

Q119 Chair: What would you replace it with?
Catherine Ramos: I think people should have cash. I think people should be able to get a bus.

Q120 Dr Huppert: One quick question following up from the Chair’s questions: do you know of good information about how much the whole Azure card system costs to process? It strikes me that it must be far more administratively costly than just giving out cash. But do you know of any direct information on that or where we could find some?
Sonya Sceats: Not that we would have to hand in our organisation.
Catherine Ramos: No.

Q121 Chair: Ms Sceats, Ms Ramos, thank you very much for coming in. We, as you know, intend to visit as part of the inquiry—as has been suggested by Dr Huppert—a number of establishments. If you have any examples of places for us to visit, please let us know. We are very keen to get out and about and not just to sit in Westminster but to meet some of your clients. There are no plans to go either to the Congo or Sri Lanka, so we cannot see it at that end. But certainly we would very much like to meet those people who are most affected by what you have been saying. Thank you both very much for coming here to give evidence.
Sonya Sceats: Thank you.
Catherine Ramos: Thank you very much
Chair: I said there was going to be a vote, but obviously the Government found your evidence so compelling that no vote was called. You went right through the 45 minutes. Thank you very much.

Tuesday 25 June 2013

Members present:

Keith Vaz (Chair)

Nicola Blackwood
James Clappison
Michael Ellis
Dr Julian Huppert
Steve McCabe
Mark Reckless
Chris Ruane
Mr David Winnick

Examination of Witnesses

Witnesses: **Serge**, Survivors Speak OUT, and **Saron**, Women for Refugee Women, gave evidence.

Q122 Chair: This is part of the Select Committee's inquiry into asylum and this particular session at your request is going to be in private. We will, of course, record it for the purposes of our report but we will not broadcast it, so things that you say in answer to us will appear in our report. Can I just start by saying we are extremely grateful to both of you for giving evidence to us today? You have been through some pretty appalling sets of circumstances and I think none of us can appreciate what you have been through but I would like to start with you, Serge. I am interested in how the process has been for you. If you can give us some timelines, when did you arrive in the United Kingdom?
Serge: I arrived in the United Kingdom on 29 March 2005. I arrived through Heathrow Airport and I was taken through the check-in service and taken out of the airport, and we got to one train station and I was left on the bus to get to the UK Home Office.

Q123 Chair: Let me just take this in stages. You arrived in 2005?
Serge: Yes.

Q124 Chair: When did you finally get the leave to remain?
Serge: Unfortunately, I have not had any leave to remain up to now. I will just try to emphasise here that I would like to represent here our network, which is Survivors Speak OUT network, so most of my intervention will be talking about the experience of all the group in general.

Q125 Chair: Sure, this is very helpful but since you are before us, you arrived in 2005 so you are still seeking asylum?
Serge: I am still an asylum seeker.

Q126 Chair: After eight years?
Serge: After eight years, I am still waiting.

Q127 Chair: For that period of eight years, have you been on any financial support?
Serge: Thanks for asking that question.
Chair: We will go into greater detail later on, but just a yes or no is fine.
Serge: Yes, I had a financial support. I have been destitute. I have been in the situation where I have nothing at all.
Chair: We will come on to more of that. I am not cutting you short. We will come back to that in a moment.
Serge: All right.

Q128 Chair: Which country are you from, Serge?
Serge: I'm from an African country.

Q129 Chair: Saron, for the purposes of our record, when did you arrive in this country and when were you given leave to remain?
Saron: First of all, thank you for giving me this chance to speak.
Chair: The acoustics in this room are really bad. I know you are very nervous. We are all very friendly, I can assure you. No matter what they write in the papers about Members of Parliament, we are really quite nice people. You will need to speak up just a little so we can get a proper recording.
Saron: All right. Thank you very much for giving me this chance to speak of my experience. I came here in April 2003.

Q130 Chair: When did you get leave to remain?
Saron: Five years later, 2008.

Q131 Chair: Do you have indefinite leave or are you a British citizen now?
Saron: No, it was refugee status for five years.

Q132 Chair: You are on refugee status now?
Saron: Yes.

Q133 Chair: Your problems in the African country—very briefly describe what they did to you that meant that you could not stay there and had to come to Britain.
Serge: Thank you for being interested in what happened to me back home. Each time I am asked the question, it is painful to explain or to take any one true words of when I suffered but so that you understand, however difficult it is, I will try to explain to you.
Chair: Right.
Serge: In 1997, I got myself involved in political activities. Unfortunately, I chose the wrong path with the opposition because I believed what was going on was not right and something had to be done about it. I will say from my first year entering into the political domain, it has never been easy because in that first year I got arrested. It was the year that I was supposed to go to university.

Q134 Chair: We have read the brief about the history.
Serge: Yes.

Q135 Chair: Can you just briefly describe the elements of torture that you had to—I know it is painful.
Serge: Yes, it is.

Q136 Chair: We all know that you were involved in an opposition area. What was the torture that led you to come here?
Serge: I was imprisoned for quite some time where I was left in a confined room where I was on my own, and usually I was beaten because they wanted information that I could not provide. So I would be taken to another police station where I would be beaten at night during interrogation if I did not answer the question the way they wanted me to answer.

Q137 Chair: Were you beaten with sticks or with fists?
Serge: They had a rubber. It was like a long rubber. I was beaten on the sole of my feet most of the time and—sorry, it is very difficult. Sorry.

Q138 Chair: No, it must be very painful. I do understand. I think we have a flavour of it. You do not need to go on. I think we have a flavour of what you had to go through.
Serge: Yes, it is very painful.

Q139 Chair: Of course, it is. Of course. Saron, we have been told by Women for Refugees that you were a journalist in Ethiopia, that you were arrested on a number of occasions when you were there in Ethiopia, and that you suffered serious violence and that you were raped by one or more police officers. Is that a correct statement?
Saron: Yes.

Q140 Chair: How soon after this appalling attack on you occurred did you then leave the country?
Saron: Yes, I was arrested twice, once for five months, once for four months. I do not remember which year because I lost memory. Because of the demonstration, I reported news, that is what happened, and then the Government wanted to cover it up so that is why I was imprisoned.

Q141 Chair: The terrible assault that you were subjected to, was that routine as far as the Ethiopians were concerned? Were there a lot of other women in that same position?
Saron: In Ethiopia, everyone knows, even until now, there is no freedom for journalists or for free speech, and every journalist in the entire world, the most exiled journalist is from Ethiopia because there is no chance to speak or you cannot tell the true story of what happened.
Chair: Sure.

Q142 Mr Winnick: When you came to Britain, Serge, you applied for asylum obviously, as all people do who have a claim, or believe they have a claim, to asylum. You were, as I understand, detained in the fast track. Did they explain to you that your case would be dealt with quickly?
Serge: They never explained to me, or to most of the members of the network group that we talked about. When you arrive at the Home Office, they first take you through the screening interview, which is itself a very robotic and intimidating system where it does not give you that human contact with people. The feeling you have from the screening interview is, first, that you are rejected or you are just a liar. People have reported, including myself, a situation where you explain how you managed to get here and the interviewer on the phone tells you, "You are lying. No one will believe you." All the interviewers, in a very intimidating manner will tell you, "Why did you come here?"

Q143 Mr Winnick: An intimidating manner?
Serge: Very intimidating. I will take the case of one of my members who said she went into screening without really knowing what it is because most of us, we do not really know what it is until we are routed into that system. The way she was being asked those questions, she was coming from a difficult background where she has been subjected to very difficult use by men in the region, and yet they put her to have men to question her. Yet she managed to go through and say, "Look, I have been through a situation here, for example, the scar," because the men asked her, "Show us the scar", which is already painful and difficult for women—not just women but us men as well—it is difficult that you find yourself in the situation where they say, "Give us the proof." Yet when you give the proof, they do not believe it. You do not have the proof they do not believe it. In the case of this woman, this lady, she—

Q144 Mr Winnick: Do you take the view, however, Serge—we have a brief about what you and Saron went through—
Serge: Yes.
Mr Winnick: —certainly, none of us would wish to go through it in a million years—but do you accept that immigration officers have a responsibility to make sure that the person who is claiming asylum is genuine, and it may well be that during the course of their work, immigration officers will conclude that certain people are not genuine—they may or may not be right—but do you accept that if a country has an immigration control system, there are bound to be questions and trying to find out through such examinations whether the person is genuine? Do you accept that?
Serge: Yes, it is the right purpose of having an immigration office and making sure whoever comes in is a very genuine person, but if we rely on the intimidating manner or the culture of disbelief, when people are saying to you, "We do not believe it," then it sets back a bit that system where we are building to try to get the trust or to get the real thing. But if we set up a system where we can approach, we set up a system where it is more of a customer-based system, this means the person in front has to really understand the story. Go through the story. Try to get the answer

from that story and make the analysis. But what tends to happen with the immigration system is they do not want you even to answer the questions. When they ask you a question, they are trying to get your no to be a yes and your yes to be a no. The example when you have interpreter, you have come in to the system, you have already a barrier in front. If you have been subject, if you have been fragilised morally, as most of the people we have been talking to have been, it does not give you the chance to really express what is happening to you. It does not give you the chance. You are not prepared to exactly explain because you come from a situation where torture is a shame on the person. When you have been tortured, it is a shame on you, where you find it difficult to relate it to someone, to tell somebody exactly what has happened to you, and most of the time what people are trying to do is to hold back on that because they do not want everyone to know.

Q145 Mr Winnick: You have been here since 2005. As you have said to the Chair, the situation is that your application has not been finalised, has it?
Serge: No.

Q146 Mr Winnick: But you are allowed now to work?
Serge: Yes. Coming to that situation is one of the questions we ask ourselves every day. In our group, we have members that have been granted refugee status just after three days of them arriving in the country. Some people have waited 15 years. Some people have waited 10 years. Some people have been rejected four or five times and at the end they grant them, so the question is, what do we rely on? Myself, I have submitted two medical evidence to the Immigration.
Chair: We will be coming on to some of these points in later questions. That is very helpful.

Q147 Chris Ruane: What is your view on what would have happened if the interview had been screened? You may have felt that you would have been treated with more respect if the TV cameras were on you and the interviewer, or you may have felt intimidated by the presence of a camera. What would you, Saron, and you, Serge, feel about having your interview filmed or videoed?
Saron: In the past or—
Chris Ruane: If you were to go through it again, would it be a good thing to be filmed so that you would be treated with respect, or would you feel intimidated?
Saron: It would feel very intimidating from my point of view because women come from different cultures and they might have a problem and also, in some cultures, you cannot communicate, "Where is the camera?" or something like that. So it might feel very intimidating if that camera is there.

Q148 Chris Ruane: But if you were trying to get something across and you did not quite get it across, and they made notes that did not add up to what you were saying—
Saron: With the camera in front of me, I would feel very intimidated.

Q149 Chris Ruane: What about if it was audio?
Saron: Audio probably would be much easier because they cannot see. Yes.

Q150 Chris Ruane: All right, Serge?
Serge: Yes, at the present time where I am at the level of moving on from what has happened to me, I will not perceive that as a problem. Instead I would perceive that as an add-on into my interview.

Q151 Chris Ruane: So you would see it as a good thing?
Serge: At the present time, depending on the level of the state of mind of the person.

Q152 Chris Ruane: Yes.
Serge: But when you are just coming in, you are a very fragile person where probably your level of torture involved one of these. At that particular point, I think it will become intimidating. You will become worried. First, you do not know how that is going to be used. Let me explain why—
Chair: Sorry, we have other witnesses so we do need to be quick with your explanation.

Q153 Chris Ruane: Would you prefer video or audio?
Serge: At the fragile moment, I will not prefer because in my case—and it is most people's case—that has been used against them. It is a very fine line where we have to really check who will be able to access the video or audio, but it is a process that would have to be worked out.
Chair: I think Mr Ruane's question is this. If you are saying that people are intimidating you in the way in which they ask their questions, is not the best way of ensuring that these interviews are properly conducted if they are recorded, not necessarily by cameras but certainly in an audio recording, so people can hear the way questions are asked? On a piece of paper, you simply do not know the intonation of people.

Q154 Chris Ruane: If there was an appeal later, you could have said, "I was not treated with respect. I was intimidated. He shouted at me," and you would have access to the audio and you could say, "I can prove it. He shouted here and he shouted there."
Serge: You could certainly prove it with the audio but my problem is, with that audio present there, would there not be a barrier as well to full disclosure? Whereas if we establish a very human contact with the individual who comes, giving them the chance to really explain themselves, then they can have the time where they can move on and think. The video is what I want.
Chair: Thank you. May I just say to my colleagues, we do have another five other witnesses to come in and we have about five minutes left on this?

Q155 Dr Huppert: Firstly, thank you both very much for coming in to share your experiences. I hope one of the things that will be able to come out of this

is making sure that other people do not have to go through the same problems that you and so many others, including many of our constituents, have. I will have to try to be brief. Can I start with Saron? You mentioned that you had five-year limited leave to remain. Have you started the process of reapplying for that?
Saron: It is going to be in September. I am going to apply next September.

Q156 Dr Huppert: Because I have heard concerns about that process. Have you come across those yet or is it not yet?
Saron: Not yet.
Dr Huppert: Maybe we should hear from you a bit later.
Saron: All right.

Q157 Dr Huppert: Can I ask, do both of you have certain views about the asylum support system? I do not want to put words in your mouth. How would you describe the amount of support there has been from the period when you came and applied to the period where you were given leave or in your case, Serge, the whole period?
Saron: Yes, I was only for five months on asylum support and then I was destitute after that for two years, and then I was detained three times because I do not have a place to stay, and they tried to forcibly deport me in 2006. When my application was dismissed for asylum, they stopped the asylum support. I had to be destitute for a long time.

Q158 Dr Huppert: When you say "destitute", how much money did you have to spend?
Saron: None, nothing.

Q159 Dr Huppert: So what did you—
Saron: I had to go to the charity to collect food. It really affected my mental wellbeing because I used to earn my own money and then going to charity to charity was really painful but I had to do that for almost two years, and that was really difficult. Most women now in Women for Refugee Women, they have that kind of problem. There is no support after your application is dismissed.

Q160 Dr Huppert: It has been suggested that this country tries not to have too much support for fear of attracting people to come here and live off asylum support. You presumably chose to live for two years on no money at all rather than go back home. Do you think that people who are forced into being destitute, realistically the point is that they could not go back home?
Saron: If they could go back, they would. They maybe can't go back because it's not a safe place to go back to. For me, it was not a safe place to go back to so I could not go back. That is why I was left destitute.

Q161 Dr Huppert: Thank you. Serge if I could just hear—
Serge: Can I add on on that? Thank you for the question because we have looked into that at Freedom From Torture and the Survivors Speak OUT network sat on the panel during the Poverty Research Project that will be launched by Julian Huppert on 17 July and we would be grateful that you Members can be there.
Chair: Dr Huppert certainly will be there.
Serge: It would be a good thing, so you all are welcome.
Chair: Thank you. We look forward to being there.
Serge: But talking about—the support itself is a world of—they just put you into a difficult situation. The poverty itself plunged every member who goes through, and it is difficult for rehabilitation. It does not allow you to rehabilitate or give you that window. It is a process. You have the cash support. I went through the cash support, which is £36 a week that you get given. This money usually is not enough for somebody who is a stranger to the environment to be able to feed themselves, leaving many members to rely on charity. Then you need accommodation as well. There needs to be a system where those accommodations can be checked because sometimes even the housing given is not liveable.
Chair: Yes, we are going to look at this issue later.
Serge: Yes.

Q162 Steve McCabe: It has been suggested to us that both of you at times during your years in this country have had suicidal thoughts because, presumably, things have been rather grim. Is that true? From your experience, is that a common situation for asylum seekers to find themselves in?
Saron: Yes, in my experience, I have been detained three times and I have made two suicide attempts. That really still affects my life but I have moved on from that situation because of the help I get from different organisations and I am able to start living now. I am all right now.

Q163 Steve McCabe: Is that common for other people you have come across?
Saron: Yes.
Serge: I will say that given the essence of what everyone goes through, if you are talking about support or destitution—which many members on our network have gone through—having to sleep in the street does not give you any other feeling than that life is not worth living. From the moment you get in the country, as we just said, the type of treatment you receive does not make you feel like a human. You feel that what you have just fled from, it just carries on. You have the feeling that it will never end. In my personal case, I went through the point of ending because I could not see anymore where to go. It just took somebody to step up and say, "What are you doing?" for me to realise, to save me. It is very common around the network where we have many members who say, "Look, I went through that situation."

Q164 Chair: Thank you. What would be very helpful is if you could get other members of the network, before this inquiry ends, to write to the Committee. We would be very keen to have them. As you know, time at Committee meetings is quite limited. You have now been here for about 25 minutes. It has given us a

flavour, both of you, as to the kinds of problems that you have experienced. People like Mr Winnick, Dr Huppert, Ms Blackwood and Mr McCabe have a lot of immigration cases, but we do not have the kind of time that you have given us today, and we are extremely grateful. You are welcome to stay for the open session because we will now open it up and we will have questions for a number of other groups, another asylum seeker, and indeed G4S and Serco, who run the accommodation that you have just been talking about. So thank you very much.

Serge: I just want to thank you for taking your time to listen to us. We are very grateful and as you said, members of the network, we are really happy to welcome you to have more open evenings at Freedom From Torture, we would like it that if you can make it, we would really appreciate to share what we went through.

Q165 Chair: We will. We are going to do it. Dr Huppert, I know, and I and others are very keen to come and visit. Thank you very much.

Serge: That will be lovely. Thank you so much.

Tuesday 25 June 2013

Members present:

Keith Vaz (Chair)

Nicola Blackwood
James Clappison
Michael Ellis
Dr Julian Huppert
Steve McCabe
Mark Reckless
Chris Ruane
Mr David Winnick

Examination of Witnesses

Witnesses: **Jan Shaw**, Amnesty International, and **Mike Kaye**, Still Human, Still Here, gave evidence.

Q166 Chair: We are continuing now with the inquiry into asylum. May I welcome Mike Kaye, the Advocacy Manager for Still Human, Still Here, and Jan Shaw, the Refugee Programme Director of Amnesty International? We expect a vote at 4 o'clock so this part of the session will end at 4. We will ask you crisp questions and I am sure we will get crisp replies. Mr Kaye and Ms Shaw, do you think that there is a fundamental problem with the way in which the Home Office processes asylum applications?
Jan Shaw: Yes, I do in some cases. Very recently, and in our written submission, we identified that we have done quite a large piece of research into the quality of asylum decision making, initial decision making, done by the Home Office. We selected 50 cases. Perhaps I should go back a bit because 10 years ago Amnesty International conducted a similar piece of research where we wanted to ascertain why, at that time, one in five initial decisions to refuse asylum were overturned on appeal. Throughout the interim years, the situation has remained very static. In fact, it is probably slightly worse because over the last few years one in four initial decisions to refuse have been overturned on appeal.

Q167 Chair: Is it the case that 30% of asylum cases are now successful?
Jan Shaw: Thirty per cent of asylum applicants at first instance are getting refugee status and a further 6% are getting humanitarian protection or discretionary leave.

Q168 Chair: Mr Kaye, do you agree with that? Is it the issue of the quality of the decision-making process; if it was better there would not be the kind of overturns that we are seeing?
Mike Kaye: Yes, I think you have put your finger on the issue there. Certainly, they have improved the quality of decision making because you have a 36% recognition rate at initial decision, so they are getting more of the decisions right. The overturn rate is still high; it is still at 27%. The research that Amnesty and Still Human have done has shown that the real problem with the decision-making process is credibility. It is all coming down to credibility. The positive of that is it is not a variety of different issues. It is not that they are not following the country of origin information, they are not looking at the operational guidance notes on particular countries; the problem is they are not addressing the question of credibility in the correct manner. If we focus more on improving the guidance and training around credibility there is a great potential to correct that last big hurdle in improving the quality of decision making.

Q169 Chair: Mr Kaye, later we will be hearing from G4S and Serco about the COMPASS contract and the way in which they look after asylum seekers. There was a piece in the *Guardian* on 14 December last year where one of the residents was quoted as saying, "The whole floor has diarrhoea and is vomiting. An ambulance comes to the building every week." Is there any evidence that you can give us today about the way in which these contracts are being conducted?
Mike Kaye: It is not an area that I focus on particularly in terms of the contracts that are operated by Serco or G4S.

Q170 Chair: But you have people in your organisation who are in that accommodation, is that right?
Mike Kaye: Well, Still Human, Still Here is a coalition of 58 different organisations and certainly there are many organisations that are members of the coalition that have raised concerns about the quality of accommodation, the speed with which applicants are given access to accommodation, and on multiple occasions have said that it is inappropriate for the people who are put in those particular accommodations.

Q171 Chair: Jan Shaw, have you any anecdotal evidence for the Committee about that?
Jan Shaw: Yes, I heard something earlier this morning, actually, about pregnant women who were being housed in very dirty accommodation. The bathrooms were not fit for purpose and they were having to feed babies and try to sterilise bottles. It just sounded quite horrendous.

Q172 Chair: As you know, the Home Secretary announced that the UKBA was being abolished. Everyone was delighted and balloons were released into the sky, only to discover that most of the people, if not all the people bar one, were exactly the same as those who worked in the previous organisation. The Committee will be reporting on this very shortly, but is that your understanding as well? Have you seen any changes in the way in which the Home Office now conducts what is going on, as opposed to the way in which the UKBA conducted policy?

Jan Shaw: It is a little bit chaotic. It is actually quite hard to pin down who is doing what.

Q173 Chair: Is it more chaotic or less chaotic?
Jan Shaw: Well, there now seem to be three directorates. One was the original directorate that seems to have existed under UKBA. Then there is the visa and immigration, directorate, which is the bit where we will know people and have discussions with. Then there is the enforcement and removals. We have tomorrow a national asylum stakeholder forum with the Government so things should become more apparent.
I am quite alarmed from the information and analysis that came out of our report. By the way, the cases that we analysed were actually selected randomly by the Home Office. They were processed under the old system. Although they are recent cases since the credibility guidance was published last February, they were done under the new asylum model and processed that way. Now we have this new asylum operating model where the standard of the decision maker is going to be of a lesser calibre. They are of a lower rank. The Home Office is trying to assure us that things will be the same, but people are going to be moved around, they are going to be specialising in one thing and then moved somewhere else when they are needed. We did hear that the interviewer was going to be a different person from the decision maker, which has to be a move backwards. We would like to see much more continuity in the process, whereby the interviewer and the decision maker, if they refuse an application, should take it through to appeal because then there would be some feedback of what mistakes they were making.

Q174 Chair: Mr Kaye, it has only been two or three months but has there been any material difference in the way in which these matters have been dealt with by the Home Office?
Mike Kaye: I do not think that is the right question. I think the problem is 10 years ago we said exactly the opposite. We set up UKBA—
Chair: Well, whether it is not the right question or not, I am asking you has there been any change since the Government abolished the UKBA. You may not think it is the best question in the world that you have received, but I want to know whether it has made any difference because it was heralded as a big change.
Mike Kaye: I do not think those changes make any difference in the short term and I think—

Q175 Chair: So you have not seen any change? Because we have not reached the long term yet, have we?
Mike Kaye: No, and I think the issue is about performance management. I think over the last few years we are seeing positive changes. We are seeing better policy from UKBA as was, but the real issue is performance management.

Q176 Chair: Sure. So this is still not there? Despite the fact that it was heralded as a big change, you do not see this happening?
Mike Kaye: Well, as you rightly say, it is too early to say, but if you look at the report on credibility, what we are saying there is not that we disagree with the Home Office decision. What we are saying is, the judge disagrees and we can show in 80% of cases that the case owner has not followed their own instructions. Now, if you are not following your own instructions, to give you an example, they detained someone in the fast track, which is supposed to be only for simple decisions, and questioned them for 12 hours over two days. That is so clearly not in line with UKBA policy that that person should be having their performance reviewed and should be criticised and if they repeat that kind of error they should be moved out of the decision-making process.
Chair: Sure. That is very helpful.

Q177 Dr Huppert: It is good to see you both here. As the Chair said, one of the key things is the decision-making process. We have discussed issues in the past where that is not done. Can I focus on what happens alongside that about how asylum seekers are treated when they are waiting for a response or waiting to be removed, and particularly focus on this issue about allowing people to work? I think you have both suggested that if a claim has not been resolved within six months, if people cannot be removed for reasons that are not their fault within six months, they should then be allowed to work. Can you talk through how you see this would work and any international examples where this has been allowed and what effect it has had on other employment opportunities, for example?
Mike Kaye: This is a situation that 11 other European Union countries have. They all allow people to work after six months or less. They have had this policy in place for more than 10 years. None of them have experienced any problems. Quite to the contrary; there are other European Union countries like Denmark who are now going to reduce the period of time that asylum seekers have to wait to six months. In fact, across the whole of the EU they are reducing the maximum period of time of excluding asylum seekers from the labour market if they are still waiting for a decision from one year down to nine months, which means the UK will be the only exception. The other countries basically recognise the merit—both to the individual and to their country as a whole—of permission to work because if you are allowing permission to work you are going to reduce the support costs of the asylum system. You are going to allow those people to contribute in taxes. They are going to share their skills. They are going to be able to integrate faster into society. I think the thing to emphasise is it is particularly important because roughly 50% of asylum seekers, once you include appeals, are going to get status in this country. The longer you exclude them from the labour market the more difficult it will be for them to contribute in the long term.
Jan Shaw: I can only add that the people that I have interviewed in the past when I have been doing research, because they have not been able to work and they are languishing for a very long time some of them, waiting for a final decision on their claim, lose

all sense of their own self-worth and quite a lot of them have mental health problems. I just think it is a much more dignified way to approach the system and that they can make a contribution to the society.

Q178 Dr Huppert: It has been suggested that the Government have a drive to get people off benefits and on to work and that this would fit very nicely with this. Would you suggest, perhaps, that we should consider it more like anybody else—that they are expected to try to find work if they can, so obviously allow them to as well, but also expected to, if they can, be actively hunting? Or would it just be purely a possibility for them to do?
Mike Kaye: I am not quite sure what you are asking.

Q179 Dr Huppert: One suggestion that has been made is that we should see, let us say, section 95 support—I accept the point about section 4 hopefully going, becoming section 95—that people should get support if they cannot find employment but the focus should be on trying to encourage people waiting for asylum to find employment. Rather than just saying, "You will be allowed to," it should be an actual encouragement to work.
Mike Kaye: Asylum seekers want to work. They come to this country and they are surprised that they are not allowed to support themselves to stand on their own two feet and make a contribution. I think giving them permission to work after six months is only reasonable given that the level of support that they are on—75% of asylum seeker single adults will be receiving just over £5 a day—is so low that it is very likely that you are going to have a negative impact on those individuals' health and wellbeing after six months. Many of them are waiting six months. We have 5,000 people who have been waiting for an initial decision for more than six months. The exclusion from the labour market not only will reduce their ability to contribute in the longer term and make integration slower, but it actually increases the chances that you are going to see indirect costs through increased mental and physical illness by excluding them from work opportunities.
Jan Shaw: Many of them are very highly skilled and highly educated. I was talking to a Zimbabwean accountant, it was a while ago now, and she felt completely de-skilled because she had been here for four or five years and had not been able to work and felt that she would have to be retrained, whereas she would have been able to make a very positive contribution.

Q180 Dr Huppert: Lastly and very briefly, would you both suggest that given that other countries already have permission to work it would not be a strong pull factor to the UK?
Mike Kaye: Absolutely, when you have 11 other European Union—
Jan Shaw: No evidence at all to suggest that.

Q181 Michael Ellis: Do you accept that robust questioning is necessary from those in authority? Because otherwise if they were to take the approach that they accept on face value everything that they are told, it would negate the necessity to check the veracity of what asylum seekers are saying. In other words, I presume you accept that some people will not always tell the truth and may give false reasons why they want to stay here, which, wrong in itself as it is, also has a negative effect on the value of what those people who really have genuine reasons for coming here for asylum would give. Do you accept that as a premise?
Jan Shaw: I would absolutely accept that, but I would also ask that the rigour of the questioning should be backed up by available evidence and that the questioning and the decision making should not be of a speculative nature or delve into minor inconsistencies and not use the documentary evidence that is provided or back it up with the country of origin information. Once you have made one small inconsistency in your response it has a domino effect; we have seen in refusal letters where they have said, "You have said this. I do not believe this; therefore, I do not believe that." I would expect rigorous questioning but fair questioning backed up by proper defensible decisions. That is not what we are seeing, unfortunately.

Q182 Michael Ellis: In criminal law, I appreciate it is not the same but where that is used and questioning is used to establish the truth of what a suspect or defendant is saying, very often it is a minor point that a defendant or suspect might have got wrong that allows the questioner to delve deeper into the veracity of the general aspect of what that person is saying. In other words, one broken chain in the link of that person's argument can weaken the whole of their argument. Isn't that what these interviewers are doing? They are using perhaps what might on the face of it seem to you to be a small point of incongruity or irregularity in the account that a witness has given, but that could lead to the result that is clearer.
Jan Shaw: But how is it then that when they get before the immigration judge—and the judge is possibly the first time that the whole case has been looked at in its totality and in the round considering all the evidence—that the immigration judge is finding their arguments to be flawed because they are not following the credibility guidance that the Home Office has provided them?
Mike Kaye: We do not disagree with you, but the cases we are looking at I think you will find quite shocking. We are talking about, for example, six Sri Lankans who provided evidence of scarring, which is completely ignored, and they are still taking that to appeal after they got full medical and legal reports showing torture has taken place. We are talking about examples where the case owner has the evidence in front of them and has misconstrued the evidence, got the dates wrong and refused a case on that ground. We are talking about serious failures to follow their own guidance and look at the evidence in front of them.
Chair: Thank you. Sorry, the reason why I am hurrying you a little is because there is a vote at 4. I do not want to interrupt your evidence in the middle.

Q183 Mr Winnick: Regardless of the exhibitionism that you may hear about, I am sure all of us much appreciate the work that both organisations—and Amnesty, of course, which has been around since 1960—do on behalf of people who desperately need the kind of help that you give. We are sympathetic, to say the least. Leading from earlier questions about the economic situation, financial situation, that quite a number of asylum seekers are having, you are saying, Mr Kaye, in your evidence that the amount of financial support should be increased and you give illustrations in your written evidence of how other European countries give more to provide help on a weekly basis. Do you think that in the present economic climate that is a viable proposition?
Mike Kaye: Yes, I certainly do because, first of all, section 4 is completely cost-ineffective, so by abolishing section 4 you would actually save money.

Q184 Mr Winnick: Could you just explain that? Do you mean because more will be spent and—
Mike Kaye: All right, bear with me on the section 4—

Q185 Mr Winnick: It is good for retail outlets and the rest?
Mike Kaye: Well, first of all, under section 4 you have to give up accommodation with friends and family and go into Government-paid accommodation, so you are actually getting the taxpayer to pay for accommodation that is not necessary. You are running a parallel support system that costs £350,000 just to run for less than 3,000 people. You have to administer that system, which is incredibly complex. It is dozens of pages of an application that have to be faxed to the Home Office and a case owner has to go through that. There is lots of additional cost with section 4 that totals, in my calculation, between £2 million and £4 million that will be saved by abolishing section 4 and retaining those people under section 95.
I think the real cost in the system is the indirect costs because we are leaving people on less than £5 a day for prolonged periods of time. To quote the surveys of people under section 95, 50% thought they did not have enough to eat; 70% could not afford toiletries; 90%-plus could not afford clothing. The impact on health and wellbeing is a cost to the economy. It is a cost to the NHS. It is not only a cost to those individuals. Those indirect costs are not being calculated when we leave people on inadequate support or no support at all.

Q186 Mr Winnick: You are very critical, and no doubt Amnesty is as well, about the card system. You argue that it would be more useful, indeed financially, to get rid of it. That is your view?
Mike Kaye: Absolutely. Do not forget, the people on this support are people that the Government has already recognised cannot be returned through no fault of their own. The Government recognises they cannot go home through no fault of their own temporarily, yet we are penalising them by paying them less, giving them a plastic payment card they can only use in certain outlets. They cannot get cash for travel or for phone calls to the Home Office or to their solicitors and it costs more to administer, as I have just outlined.

Q187 Mr Winnick: I have one more question if I may, Chair. Do you consider that in a way it is almost humiliating for the people involved in having this sort of card, that it is the wish of the Home Office, or UKBA as it was known in the past, to make life that much more difficult for the people involved?
Mike Kaye: Definitely.

Q188 Mr Winnick: That is your view, Ms Shaw?
Jan Shaw: Absolutely, and I have discussed it with officials in the Government and I think it is very much not a cost thing but certainly to differentiate people who have been refused asylum. It is humiliating.

Q189 Chris Ruane: It is a short question first and it is a question we have asked other witnesses. Do you feel that the interviews for asylum seekers would be better if they were video or audio taped or not?
Mike Kaye: I think the key is to get early advice to asylum seekers. I think the problem is that they are going into interviews without understanding what it is they are supposed to be proving to the officials. We have seen pilot projects where asylum seekers have advice from legal representatives prior to their interview and they are better able to put forward the full spectrum of what the Government wants them to prove.

Q190 Chris Ruane: Some of the witnesses we have had felt they were intimidated, that in the line of questioning they were not treated with respect, that there was a lack of respect. If it was videoed or audioed then that would be able to be proven.
Jan Shaw: I think it would be very good if people were accompanied by their legal representative and I agree with what Mike said. We are really worried about the enormous cutbacks in legal aid. Although asylum seekers during the asylum process should not be affected, the very fact that so many immigration firms are not going to be representing people because of the lack of legal aid is going to have an effect on the asylum system as well.

Q191 Chris Ruane: So you would not be in favour?
Jan Shaw: I am not in a position to say, really.

Q192 Chris Ruane: No opinion?
Mike Kaye: Certainly, in the cases that you are talking about it would prove if conduct was unacceptable, so it would deal with that. Given the difficulties that the Home Office has in terms of dealing with applications, it seems to do that for every single case and to retain that for every single case there would be a cost involved, I would think.

Q193 Chris Ruane: You cite research that suggests that welfare policies do not have an impact on the decision of where to claim asylum. If that is the case, then why do so many asylum seekers travel through the EU countries to claim asylum here?
Mike Kaye: I will just pick up the first bit and then you can deal with the general thing. If you wanted to

go to the country that provides the best level of support, you would be off to Scandinavia where you get more than double the support that you get here, and they get a third of the applications that we get here. That is not an isolated example.

Q194 Chair: What is the reason? This is what is puzzling everybody. Unfortunately, we are not able to hear from the asylum seekers themselves, but why do they come here and not go somewhere else?
Jan Shaw: I think you have to bear in mind—
Chair: Mr Kaye? Why Britain?
Mike Kaye: First of all, it is not just Britain. Germany and France for the last two years have taken more than twice as many asylum seekers as the UK. We have the lowest number of asylum seekers over the last three years since the Berlin Wall came down in 1989. We do not get a lot of asylum seekers. I know that is not a generally understood concept.

Q195 Chair: That is not the perception, is it?
Mike Kaye: It is not the perception but, as I say, France and Germany have taken twice as many as us in the last three years.

Q196 Chris Ruane: According to the top receiving countries for 2008–2012 in the briefing, Sweden was ahead of us. Is that the case?
Mike Kaye: Off the top of my head I only have the last year but I can definitely confirm that Sweden—
Chair: I think Mr Ruane has some official figures here.
Mike Kaye: Yes, but you are going over the last four years. I do not have that to hand, but definitely—
Chris Ruane: In 2012 Sweden was ranked fourth; we were ranked fifth, I think. Anyway, if you can get back to us on that.
Mike Kaye: Yes.

Q197 Chair: Jan Shaw, why? Why do they come to Britain? The weather is so awful.
Jan Shaw: First of all, I think we have to bear in mind that people do not often make a choice. They are brought in by smugglers and they do not choose to come to the UK. The other main thing is that 90% of the people who apply for asylum apply in-country, so they are already here. An example of that is with the Libyans during the Libyan crisis. The Libyan students were already here and the same with many Syrians. We have a large Commonwealth. A lot of people have historical links with this country and they speak English and they have family and community here.

Q198 Chair: That is extremely helpful. Mr Kaye, Ms Shaw, thank you very much for coming to give evidence. We will be writing to you again, I am sure, asking for follow-up information from you.
Jan Shaw: Thank you.

Examination of Witnesses

Witnesses: **Stephen Small**, Managing Director, Immigration & Borders, G4S, and **Jeremy Stafford**, Chief Executive, Serco UK & Europe, gave evidence.

Q199 Chair: May I welcome Mr Stafford and Mr Small? It is not that the public do not like you, Mr Stafford and Mr Small, it is just that I have had to clear the gallery because there was a slight disturbance during the previous session. This is slightly quieter than one would have imagined. May I thank you both very much for coming to give evidence today? This is the Select Committee's inquiry into asylum and the reason why you all are here is obviously because Serco and G4S have been given part of the COMPASS programme. For the purposes of the record, Mr Stafford, how much of the pie, so to speak, does Serco have?
Jeremy Stafford: Serco has two regions: the North West and Scotland and Northern Ireland. That is an annualised contract value of about £27 million.

Q200 Chair: What about G4S?
Stephen Small: We have two regions: Midlands and east of England, and North-East Yorkshire and Humberside, housing around about 11,000 asylum seekers worth circa £30 million per annum.

Q201 Chair: In total, what is the COMPASS contract worth?
Stephen Small: Well, for us it is a variable amount because the asylum seeker population will go up and down, but it is around about £30 million-worth of revenue for both regions over a five-year period. It might go up as high as £40 million depending on the population.

Q202 Chair: That is an annual figure, so that is £150 million?
Stephen Small: That is an annual figure so it would be that amount over the five years.

Q203 Chair: Right. What about for Serco?
Jeremy Stafford: For Serco it is £27 million annually over the five years.

Q204 Chair: The complaints that we have received from those who are either representing asylum seekers or those living in accommodation that has been provided for asylum seekers is that the standard and quality of the accommodation is not very good. I quote for you an article in the *Guardian* of 14 December where somebody was quoted, and obviously she has wanted to remain anonymous. It is a hostel in Stockton for asylum mothers and babies and this is what she said: "the whole floor has diarrhoea and" there "is vomiting" on the floor. "An ambulance comes to the building every week." Do you recognise that description? When it appeared in

the *Guardian,* presumably G4S would have wanted to know where this particular place was.
Stephen Small: We know exactly where it is, Chair, and we do not recognise that description. In fact, after that article appeared, which I can supply to the Committee, we had—unsolicited—a number of the residents in that building write to us to say themselves they did not recognise it. They did not recognise the description of the housing officers who attended it. So my answer is I do not recognise that description at all.

Q205 Chair: Okay. Mr Stafford, what about complaints made against Serco? We will come on to the detail in a moment, but just generally have you all received any complaints about the way in which you provide this accommodation?
Jeremy Stafford: We have taken a very methodical approach to ensuring that the accommodation that we have for initial accommodation and dispersed accommodation is to the correct standard for the contract. If you take, for example, the facility that we have for initial accommodation in Liverpool, Birley Court is a facility that will take 197 people. We have just completed a £1.2 million refurbishment of that and opened that, so I think that is to a very good standard. We have a similar facility in Glasgow and a much smaller facility in Northern Ireland.
What we are doing with the dispersed accommodation is we are working our way through the accommodation that we moved across during transition and we took a conscious decision at that stage, which was that we wanted to have minimum disruption for the people using the service. Then since transition we have been working through that estate either investing in the properties, so we spent £197,000 on the properties that we had, and we have been bringing in new properties that measure up to the standards of the contract. We feel we have a good quality estate.

Q206 Chair: Prior to the contract being given to yourselves and G4S and Reliance, this was being administered by a number of SMEs, as I understand it. The contract was then given to all three of you and you all have subcontracted. Your subcontractors, Mr Small, I think are Urban Housing, Target Housing, Jomast Ltd, Live Management Group, Cascade and Fentons.
Stephen Small: Yes.

Q207 Chair: Mr Stafford, we have a list that begins with Happy Homes Ltd all the way down to First Choice Homes, Cosmopolitan Housing. I can see about 20 or so subcontractors. So it is not really Serco that is providing this accommodation, is it? You have taken the contracts and then you have subcontracted it out to somebody else. In Serco's case you do not have direct management of these places. You take a management fee, I would imagine.
Jeremy Stafford: We have management of the estate and then we work with the subcontractors, who you have the list of, to ensure that the properties are to the right standard. If money is required to bring the property up to the right standard then we will make that investment.

Q208 Chair: Sure, I understand that, but in terms of subcontracting, the actual day-to-day running of these organisations is not done by you because you are the Chief Executive for the UK and Europe. It is actually done by one of the subcontractors.
Jeremy Stafford: We find that a very effective model and we do that in a number of the services that we deliver, whether it is reducing reoffending with the Doncaster pathfinder or whether it is the Work programme.
Chair: I understand that.
Jeremy Stafford: We find the combination of ourselves as a substantial player with service methodology and a balance sheet complemented by smaller organisations that are very focused on delivery locally is a good combination.

Q209 Chair: What is the fee? In respect of the money you receive from the Government, what is the fee for management? Because the Committee, of course, have looked at this area of management fees when we looked at the Olympic contract. How much do you get for management?
Jeremy Stafford: May I just refer to my colleague Dawn, who runs the contract?

Q210 Chair: Yes. While you are doing that, may I turn to you, Mr Small? Mantel, one of your subcontractors, quit as a subcontractor. I think they said that they were not able to do the contract because it was no longer viable to continue.
Stephen Small: One of the issues they had is they started to experience difficulties in delivering the whole contract. As soon as they highlighted this, we started working with them with the main objective of ensuring that we kept secure the housing that the asylum seekers were already in and managed by Mantel. We worked with both Mantel and the Home Office.

Q211 Chair: But Mantel have gone, I understand; they have quit?
Stephen Small: They have gone from the contract. What we have done, Mr Chair, is that we have now secured the properties so there is absolutely no change to the asylum seekers' housing they are in. We have also transferred the staff that were delivering the frontline service for Mantel into G4S, so there has been absolutely no change at the coalface for the asylum seekers. They see the same people in the same properties.

Q212 Chair: Sure, I understand that because you in your own memo of 25 February, which has got into the public domain, said that the subcontractors were having to face "property defects" and "issues with the pastoral care offered to Service Users." Was that your memo?
Stephen Small: That was my memo.

Q213 Chair: That is quite serious, isn't it?
Stephen Small: It was, and the main issue they had, Chair, was that during the transition phase it was one of our objectives to cause minimum disruption to the asylum seekers already housed in the previous

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contract. That was to ensure that all the social cohesion that had been built up by the asylum seekers during their time in those properties, as well as the education of their families in the local schools they were attending, did not have to change. We wanted to minimise that. That meant transferring nearly 3,000 properties from the previous provider. What we have found since is that those properties were not up to the standard that is required within the COMPASS contract and it required a huge amount of investment, time and energy, which Mantel, as an SME, were never structured to do. That is why they have exited and that is why we have changed, where we are now delivering the property standards.

Q214 Chair: Yes, I understand that but, you see, this is the problem for the Committee: that here we have a massive contract that has been given by the Home Office—the second biggest contract that the Home Office gives out—to big companies like G4S and Serco and Reliance. What they do is, they subcontract. You obviously put in a bid that was quite low; that is why you got the contract. If you look at an individual person, how much does Serco get from the Government for each person?
Jeremy Stafford: May I answer the first question and then come back to that point?
Chair: Yes.
Jeremy Stafford: In terms of the subcontracting, the Scotland and Northern Ireland region is subcontracted to Orchard & Shipman, who are a specialist lettings company. The North West region, the list of companies that you have are purely providing property. The management of that property is done directly by Serco.
To pick up your second point, the revenue per person per day is £11.71 for dispersed accommodation and £30.28 for initial accommodation.

Q215 Chair: You get £11.71 a day for each asylum seeker?
Jeremy Stafford: That is correct.

Q216 Chair: What do the subcontractors charge you for each asylum seeker?
Jeremy Stafford: For Orchard & Shipman I would like to come back to you and verify that number because the numbers that I have here do not break it out that way. If I may, I will come back very promptly with that answer.

Q217 Chair: Do you know roughly what it is?
Jeremy Stafford: It is a very small amount. It is a very small difference between what we are paid and what we pass through.

Q218 Chair: If that is the case, a very small difference, is it pence or pounds?
Jeremy Stafford: Dawn, thank you for passing that through. It is pence. In Scotland and Northern Ireland, we receive from the Government £11.71 and we pass on £11.50 of that to the provider, Orchard & Shipman.

Q219 Chair: You are telling this Committee that Serco makes 21p per asylum seeker?
Jeremy Stafford: That is correct.

Q220 Chair: Why do you bother to do this, then?
Jeremy Stafford: Because we are very focused on building an accommodation business and we believe that by taking on regions of the COMPASS service we could establish the right team to do that. We felt that we could establish a very good platform that we felt was scalable. You are probably aware that some of the services that we develop in the United Kingdom we then go and take to other geographies. For example, the court escorting service that we operate in London and the South East is operated in Western Australia. For us, we felt accommodation management was an important development area.

Q221 Chair: For the future of Serco?
Jeremy Stafford: That is correct.

Q222 Chair: Would it surprise you that some of the contractors who previously had the contract that you now have have been offered £7.81 a person by some of your subcontractors? In other words, your subcontractors are making £4 out of every person, where you are making 21p.
Jeremy Stafford: I am not aware of that.

Q223 Chair: Would it surprise you?
Jeremy Stafford: Well, thank you for sharing that with me.

Q224 Chair: Mr Small, what are your figures?
Stephen Small: Well, I would like to come back to the Committee on that, Chair, and the reason—

Q225 Chair: You do not know how much you get?
Stephen Small: I do but it is not a single number.

Q226 Chair: Okay. Well, give me a region and give me a figure.
Stephen Small: Well, it depends. You get paid for single asylum seekers and family asylum seekers.

Q227 Chair: Tell me a single man as Mr Stafford just did.
Stephen Small: But it is paid on a banding, Chair, and it depends on the volume on any given night on the rate that the Home Office pay us. It is not as clear-cut as quoting a single figure to you. I would be happy to supply that information.

Q228 Chair: Why is Mr Stafford able to do this but you are not able to do this?
Stephen Small: I cannot comment on Serco's commercial arrangements with the Home Office. All I can comment on—

Q229 Chair: Could it be a different arrangement that you have entered into?
Stephen Small: I cannot comment on what his arrangement is with the Home Office.

Q230 Chair: But you will give the Committee a figure as to how much you get for each asylum seeker?

Stephen Small: I can supply you with the figures that we get paid for single and families and initial, but once again I will give you the bandings because each night you have to calculate the numbers.

Q231 Chair: Okay, that is very helpful. Thank you very much. If you could give us the list of your subcontractors that would be very helpful, and provide us with any information concerning how much they then subsequently charge to other people to do the job. Because at the moment, Mr Stafford, I am not sure what your shareholders are going to say but 21p does not sound like a huge amount of money for one of the biggest service providers in the world.

Jeremy Stafford: Well, as I say, we are investing in our accommodation business. If you look back at the history of the company we have done that successfully in other areas. We see this as an opportunity to demonstrate the quality of service that we can offer.

Chair: Excellent.

Q232 Mr Winnick: Mr Stafford, you have answered some of the questions the Chair has put to you on the financial implications and that applies, of course, to G4S. The fact of the matter is that you are both very large commercial organisations. You are not philanthropists. You are in the business, are you not, to make profit one way or the other—yes, obviously?

Jeremy Stafford: We are.

Stephen Small: Yes.

Q233 Mr Winnick: That goes without saying. Presumably, you are involved in this particular sort of work, asylum, because as you said, Mr Stafford, it may give the opportunity for other work, but basically the whole purpose of the operation is commercial?

Jeremy Stafford: Yes.

Q234 Mr Winnick: Obviously, yes; that is a question to which one can only give but one answer. Now, I want to ask you whether you are aware of the complaints that are often made to us—be it as Members of Parliament or in evidence by those organisations that represent asylum seekers—that both organisations that you have senior positions in are insensitive to asylum seekers. Bearing in mind obviously there are those who are not genuine, but those who have suffered a great deal abroad come here. Many have been tortured, some raped and certainly suffered great indignities. They do find that Serco and G4S on many occasions, and I say on many occasions, those who work for you or subcontractors, which you have just been referring to, lack that sensitivity. What would be your reaction to that, Mr Stafford?

Jeremy Stafford: When we decided to pursue this opportunity we looked at the sort of service that we would be proud to deliver. We very much focused on the people, the service users, and how we could give them an experience that was as good as it possibly could be. From where we pick them up with the transport in Croydon, take them through the initial accommodation and then into the dispersed accommodation, we seek to have continuity of care throughout that. We make sure that each point on that journey they have very high quality welcome packs; we have a translation service, so if the individual does not have English as their first language they can have a three-way translation. Then we make sure that while they are in our care, while their case is being heard, whenever we make a visit to the premises we do that in a planned way. We notify them two weeks in advance that we are going to attend. If there are any changes to that, we will notify them by text that there has been a change. If we arrive at the premises and they are unable to answer the doorbell, we will knock and make sure that if we do enter the premises, because sometimes we do need to do that, we wait and we treat them in the most respectful way.

Q235 Mr Winnick: We have heard differently and, indeed, we have heard of a lack of privacy where representatives working for your organisation or subcontracted by your two organisations enter the premises without even knocking. You hold a senior position, Mr Stafford. How do you know what actually happens on the ground? You have been telling us what you believe is happening but how do you know that this is actually occurring? How do you check on that?

Jeremy Stafford: We have a very clearly defined method so any of the employees, the 160 or so people who work for us in the North West of England, for example, know exactly what is expected of them. Then we have a feedback loop through the complaints process. We monitor the feedback through complaints to see whether people are having an experience that is out of step with what I have just described. I am pleased to say that since January the number of complaints that we are receiving monthly has dropped by more than 50%. For me, that gives me a good check that what we plan to happen is the reality on the ground.

Q236 Mr Winnick: My last question to you before Mr Small: you are aware of a number of criticisms that have been made of the way in which asylum seekers have been dealt with?

Jeremy Stafford: It is a large and complex service and we have been through a transition period. What I am observing is that as we have come out of that transition period, the rigour with which we are approaching the service is bearing fruit in the way that I just described. So yes, if there have been some issues during that period that is a great disappointment to me, but I am confident that we have the steps in place to get a continuous improvement.

Q237 Mr Winnick: G4S, of course, has been criticised, as you know, Mr Small, on numerous occasions, including what has happened on taking failed asylum seekers to the airport and on the plane and all the rest of it. But leaving that aside, you take the same view as Mr Stafford that everything is all right?

Stephen Small: Well, the one thing I want to say, and it is linked to the use of our supply chain and subcontractors, is one of the reasons we have that model is that the providers we use are experienced in operating in the asylum-seeking market. They are not

new to this. Of the 200 employees that work in this area, the vast majority of them have worked in that area for some considerable time. Within my senior team, the Accommodation Director has over 25 years' experience in housing, which includes working with the third sector on asylum-seeking housing. The Accommodation Manager has worked for PPNW/ Clearsprings for over 10 years specifically in this marketplace in the provision of housing for asylum seekers. We work very closely with third sector organisations. One of our suppliers, Target, is indeed a third sector charitable organisation, which works in a wide range of social housing.

We do recognise the vulnerability and the difficult time that an asylum seeker is going through at this point when they are in our care. We have a long history in G4S of working with vulnerable people, be that in offender rehabilitation, the Work programme, so we do understand the vulnerability that people will find themselves in at points in their life, particularly around the asylum-seeking process.

Many of the reports that have been published we do not recognise. We have a number of—

Mr Winnick: You do not recognise?

Stephen Small: Some of them have been completely unsubstantiated. We have asked for details from those that have published those reports and to date they have not been forthcoming. That is not just us but the local authorities have asked and the Home Office have asked, and no detail has been forthcoming to help us investigate those. We have a number of avenues where complaints and issues can be raised and the contract is very clear what complaint processes should be laid down. We have an incident and call management team who are open 24/7. All of their details are given in a number of languages in induction packs, which I have copies of. These are all in different languages, from Arabic, Chinese and so on, and I am more than happy to leave those with the Committee.

Mr Winnick: The Clerk will take them. Thank you very much.

Stephen Small: I also specifically have, as a member of my senior team, a head of quality and compliance who reports directly to me, not to any of the operational team. Part of that remit is looking into complaints, checking and auditing the operational teams, not just my direct team but also those of our supply chain. If I give you an example, we receive around about 800 calls per month into our incident management team. Most of those relate to an asylum seeker seeking advice, support on their payment card not working, and we will help manage that back into order for them. Very few of them, less than 2%, are around property issues. Where we do get property issues, there is a response time we need to meet within the contract at different levels.

Chair: Thank you; that is very helpful.

Q238 Dr Huppert: Mr Small, Mr Stafford, thank you very much for coming. You will, I am sure, have seen sessions that we have held with your companies and others previously. The position you have presented is consistent. You believe things are going well and I think you are describing the theory as you believe it to be. I do not think either of your companies is deliberately setting out to provide a bad service. However, the reality that we hear about, both from talking to a whole range of organisations and people who have written to this Committee, feels different. We have heard concerns about standards of property from the Joseph Rowntree Foundation and the Local Government Association. You may be aware we have had allegations in one case of somebody who was forced to stay nearly a month with her five-month-old baby in a Cascade property—I think that is a G4S one—in a house with wet rotten floors infested with cockroaches and slugs. Now, I do not know about the cockroaches and slugs, but the city council environmental health inspector described it as capable of becoming a category 1 hazard unfit for human habitation in its current condition, which strikes me as bad. I am sure that is not what you intend to provide and may well not even be a majority, but do you accept that there are cases where the accommodation simply is not appropriate for people? Do you accept that does happen?

Chair: Mr Small?

Stephen Small: Yes, I would but I go back to my previous remark and some of the detail we put in our notes to the Committee. We transferred nearly 3,000 properties across the Midlands, East of England, North-East Yorkshire and Humberside from the previous contract and most of the issues—so of the property complaints we have had, the vast majority, over 65% of those—relate to the properties that were transferred over. We have a programme of working through those, investing in them, so I do recognise there are issues with property but we have a programme to work through those. Where those issues, and particularly the one around Cascade, comes to our attention we deal with that quickly. In that particular case, we moved the family very quickly. Do I say that all the properties are meeting all the standards? No, we recognise they do not, but we inherited a lot of the issues and we are addressing them quickly. I would say that, yes, we have a view on how we are doing but also the Immigration Minister, Mr Harper, did comment to the House on 19 June and said that we deal with issues quickly and our performance is satisfactory.

Q239 Dr Huppert: May I move on to the issue of privacy? You will probably be aware of the recent parliamentary inquiry into asylum support for children and young people chaired by my colleague Sarah Teather. There was some astonishing stuff in there and I hope you have had a look through those reports or tried to address these. One of them was about the issue of privacy. One of the seven recommendations was, "The Government should ensure that asylum seekers' needs for privacy are respected by housing providers, who should not enter properties unannounced". Now, I think you both touched on this. May I just have it very clearly from you both that nobody should be entering properties unannounced except potentially in some sort of emergency? I would also like to hear what steps you would take if any of your subcontractors are behaving in a way that I hope you will agree is not acceptable?

Stephen Small: Can I put some context into that? Like Serco, we plan our visits. However, there is part of the contract we have to adhere to and that is ensuring that the property is still being resided in by the asylum seeker and, therefore, the taxpayers' money is being spent for the right reason. When we arrive at properties as we have made an appointment to do, we will do the usual thing, knock on doors, ring on the bell, to have somebody answer. Where there is no answer after repeated attempts, we must and have the right to enter the property to ensure that it is still being inhabited by the asylum seeker. On occasions, unfortunately, the asylum seekers do not always answer the door and, therefore, we have no choice but to enter that property. We make every effort to announce our entry into that property so it is not our intent to enter unannounced, but we are obliged to ensure where we cannot get an answer from the asylum seeker and nobody answers that door despite repeated attempts—

Q240 Chair: Mr Stafford, do you have any comments to make to Dr Huppert's question?
Jeremy Stafford: Just to add to that to say, as I said before, we plan the visit. If the visits are going to be changed we notify the resident normally by text to their mobile phone. We are very clear that this service is designed around the people, the service users, and we make sure that in terms of any entry in the way that Stephen was just describing is done in a respectful way because we have our duties to perform under the contract.

Q241 Dr Huppert: Again, you are describing a theory and if that were the case that would be good. What I cannot do is fit that with the comment, for example, from Sarah Teather, "Almost every family told us that housing contractors routinely enter properties without knocking". Now, it is possible that you have one view on what the rules ought to be and your subcontractors have a different view on what the rules ought to be. I would be interested to understand how you will make it actually fit in with these briefing packs, which look very nice having gone through them carefully, but again we have heard in many cases that although they exist they are not actually being provided. It seems that there may well be an issue that the two of you have policies that are, let us say, right, appropriate, sensible, but they are simply not happening on the ground. I would like to understand far more about what you are doing to make sure that these things actually do not go wrong on the ground rather than just saying that the policy is very sensible.
Stephen Small: I refer back to my comment. We have a quality and compliance process that includes accompanied visits with housing officers and we do not recognise some of that reporting. It would appear in the report that there is a consistent practice of our housing officers entering properties regularly unannounced and without any notification. We just do not recognise that whatsoever. As far as making sure in service is doing what our policies and processes state they should do, we have regular auditing processes. It is not just within G4S but also includes the Home Office inspectors accompanying our housing officers out into the field as well.
Jeremy Stafford: May I just add to that?
Chair: Yes, Mr Stafford.
Jeremy Stafford: Because we do with the many different types of services that we operate have very well-established service user groups so we make sure that there is an opportunity for people to raise issues of this sort informally if they do not feel comfortable making a complaint. We have stakeholder consultations. We have worked hard at our stakeholder relationships so we should be picking that up through, for example, the local authority if there were a problem. We have our internal and external audits to ensure that this is being operated correctly. We do have several lines on that which we pursue rigorously.

Q242 Chair: May I take you back to my original questions about the cost? Anecdotal evidence has come to members of the Committee, myself in particular, that some of the subcontractors that you have given these contracts to have themselves gone out to charities and to the public sector in order to get grants because they cannot afford to fulfil the contract at the price that they have been given. Clearly, you, Mr Stafford, have given us a figure of £11.71. That is Serco making 21p and the rest all going straight to the subcontractor. Do you know, have you heard of this, that any of your subcontractors—and it is basically a quick yes/no—have gone out to charities or to the public sector in order to get grants in order to subsidise the amount of money they have received?
Jeremy Stafford: May I check with Dawn?
Chair: Of course.
Jeremy Stafford: Okay. No, we have no awareness of that.
Chair: No, and you do not?
Stephen Small: I have the same answer.

Q243 Chair: Just a couple of things, if we may, about one or two other issues to do with Serco and the Select Committee's work. The e-Borders programme, of course, you must know about that, Mr Stafford, as the Chief Executive. Are you still involved in the e-Borders contract?
Jeremy Stafford: No, we have exited that programme. I think there are some very small elements that we were asked to run for a couple of further months, but no, we have no interest in that any more.

Q244 Chair: Do you know whether anyone else is doing the work that you were doing on e-Borders? Do you have any idea about that?
Jeremy Stafford: I think there is another supplier that is delivering that service, but we have exited the arrangements that we had, which we agreed to follow through until the end of the Olympic period. That now I think is complete.

Q245 Chair: You did some work for the UKBA when it was in existence in order to look at the migration refusal pool, a contract that subsequently went to Capita?
Jeremy Stafford: Yes.

Q246 Chair: Do you have anything to say? Did you produce any reports about your work for the UKBA? Because it is rather unusual for a private sector firm to be offering to do work for nothing for the Government, because you obviously have shareholders, but you did it for free and then they rewarded you by giving the contract to Capita.
Jeremy Stafford: We were clearly disappointed. In terms of—
Chair: Do you have a report on the work that you did?
Jeremy Stafford: I am sure there is a report and if you would like me to provide that to the Committee I would be happy to do that.

Q247 Chair: Please; that would be very helpful. My final question is about the Ministry of Justice tagging contract because, as you know, earlier this year—I think on 17 May—auditors reported that both Serco and G4S had been overcharging the Ministry of Justice for tagging services. I think the cost together came to £107 million. Has there been any progress about finding out whether, indeed, you were overcharging? Mr Stafford?
Jeremy Stafford: The audit is under way.
Chair: This is by PwC?
Jeremy Stafford: That is the PwC audit and I think it is making good progress. I think it is too early to comment. The latest feedback that I have had from the Ministry of Justice is that they expect to have feedback on that by mid July. I think at this stage it is too early to comment.

Q248 Chair: But you are confident that you have not overcharged on this public sector contract?
Jeremy Stafford: We do not believe we have overcharged.

Q249 Chair: Mr Small?
Stephen Small: Like Mr Stafford said, the audit is under way. It is not part of my division and, therefore, I do not think it would be appropriate for me to comment directly on this. All I do know is that my colleagues within the division in which electronic monitoring sits are working closely with the Ministry of Justice and the auditors on that programme, and the findings of that will come out in due course. I am not informed enough to make any other comment on that.
Chair: Thank you.

Q250 Mr Winnick: At least as I understand it—I think it is well publicised in the public domain, Mr Small—the Chief Executive of G4S has left?
Stephen Small: There has been a change, yes. That is correct.

Q251 Mr Winnick: Was that in any way connected with what occurred last year?
Stephen Small: I could not comment on that. I am not up at the heights where the shareholders—
Mr Winnick: You do not wish to comment on that?
Stephen Small: I cannot comment.
Mr Winnick: I understand. I will not press you.

Q252 Chair: On behalf of the Committee, may I thank both of you? We only contacted you last week to appear. I know, Mr Stafford, you were doing something else. We are most grateful. We know that Mr Hyman was unable to be here. Thank you, Mr Small, for readily coming before the Committee and answering our questions in such an open and transparent way. We look forward to receiving the information that we have asked for. Thank you very much.
Stephen Small: Thank you very much.
Jeremy Stafford: Thank you.

Tuesday 2 July 2013

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Mr James Clappison
Michael Ellis
Dr Julian Huppert
Steve McCabe
Chris Ruane
Mr David Winnick

Examination of Witness

Witness: **Alison Harvey**, Immigration Lawyers Practitioners Association, gave evidence.

Q253 Chair: Alison Harvey, welcome to this session. As you know, the Select Committee is conducting an inquiry into asylum and we are most grateful to you for being here. Could we declare any interests that are over and above what is in the Register of Members' Interests? I declare that my wife is an immigration solicitor.
Can I start with a question about backlogs? Of course, all the time you have been in the ILPA, a considerable length of time, you have heard about the asylum backlogs. Do you think these backlogs will ever be cleared?
Alison Harvey: That is a question of the resources that go to them. There will always be what the Border Agency calls "frictional levels" because there will always be cases going through. There is no reason that I can see why there should be any backlogs when the numbers of persons claiming asylum have fallen so dramatically. There is not a big intake of cases. There is no reason why they cannot be decided. I think we will continue to have backlogs as long as we do not have sustainable decisions. That is not going to help. We are not going to turn the cases around.

Q254 Chair: Do you think the abolition of the six-month target has had any effects on your members and their clients?
Alison Harvey: Not really, because I do not think the target was ever stuck to. It never happened, so we have not noticed its passing.

Q255 Chair: What about the level of success as far as those who go to the tribunal is concerned? I think it is now running at 25%, a quarter of the cases.
Alison Harvey: It is between 25% and 30% but it also varies considerably by country. For a country such as Sri Lanka, you are more likely to win on appeal than not. It is surprising that that sort of failure rate on appeal does not inform the Border Agency's decision making and mean that they start looking again at what they are doing on those cases.

Q256 Chair: Do you find that your members and their clients feel that there is a deliberate decision to slow down the whole process for one reason or another? Or do you think that there is a willingness to try to get things moving? I am thinking about the abolition of the UKBA and its replacement by the Immigration and Visa Department of the Home Office. Has it made any difference whatever?
Alison Harvey: Not yet—no, none.

Q257 Chair: Do you foresee it making any difference? Because the Committee has taken evidence from a number of individuals who suggest that the people who are running things are going to be exactly the same.
Alison Harvey: The leaked memo from the Permanent Secretary[1] at the time of the change said, "You will be sitting in the same desks next to the same people doing the same job." That is a part of the concern. There has been restructuring but that is nothing new. The Border Agency was always restructuring.
There are also the changes in the grades of decision maker, which I do find very concerning. The idea is if you make decisions, you will be at executive officer rather than higher executive officer grade, and that means that a lot of people are leaving the asylum decision-making jobs. Anyone who can get a job at the higher executive grade—unless they desperately want to stay making decisions—will be moved on. There is a huge churn of staff, which is going to slow things down. I do not think the intention was to slow things down. I could sign up to every word the Home Secretary said about the Border Agency when she abolished it; I agree with her.

Q258 Chair: Yes. Closed, secretive and defensive?
Alison Harvey: Closed, secretive and defensive, and the rest. I thought she did an excellent summary of what was wrong with it.

Q259 Chair: But the solution to try to make it open and transparent and less secretive you do not think is apparent at the moment?
Alison Harvey: I think it will be necessary to go right to the top to look at all the layers of management you have and who are doing the jobs. I think that until one grapples with that, dealing with the people on the front line is not going to change things and is likely to create a lot of confusion for them.

Q260 Chair: As you know, the private sector firm Capita was asked to ensure that those who were still here in the migration refusal pool, some who could include asylum seekers, were notified and they were trying to remove them. Do you have any evidence from your members as to whether or not this has been

[1] Full reference is Permanent Secretary's bulletin of Tuesday 26 March 2013, Home Office Governance and Management. The precise words were "Most of us will still be doing the same job in the same place with the same colleagues for the same boss and with the same mission…"

successful? Because we are trying to track down how many people Capita have managed to remove in exchange for their £40 million over four years.

Alison Harvey: There are no figures and I understand there was no performance target either. We have seen all kinds of people with whom Capita has got in touch wrongly—British citizens, people who have invested £1 million in the UK, nurses, people with live claims. I am not surprised because Capita were not given a list by the Border Agency of people who had no outstanding matters and asked to send them a text and encourage them to go, which never looked like the most likely way of making people move.

Q261 Chair: We do not have benchmarks?

Alison Harvey: No benchmarks.

Q262 Chair: Rather like the e-Borders contract, it all sounds like a very good idea but at the end of the day if you do not know how many people—

Alison Harvey: Well, it does not sound like a terribly good idea—a message on your mobile phone saying, "Excuse me, please, sorry, would you mind awfully leaving the UK?" It is not obvious how that was supposed to work.

Capita were just given access to the Border Agency's database. Now, some of those cases are incredibly complex. It is not surprising they were making mistakes because to look at that database and work out whether the person still had permission would be difficult enough without the backlogs, which mean that updates on status have not made it on to the database so that half the time Capita is looking at out-of-date information in any event.

Q263 Dr Huppert: It is good to see you again, Ms Harvey. We have discussed this on a number of occasions. Could I look at a whole range of issues around legal advice?

Alison Harvey: Certainly.

Dr Huppert: There are a number of areas I would like to ask you about. Firstly, we have discussed the fact that the Border Agency, now the Home Office, does not always make the right decisions; there are issues there. Would you agree there are also legal advisers who do not give accurate advice, that there are immigration practitioners who on occasion give rather poor advice to their clients?

Alison Harvey: Yes.

Q264 Dr Huppert: What steps can you take or could we take to try to control that market?

Alison Harvey: The most important thing in my experience that keeps you away from bad advice is having good advice to go to. Many people are in touch with migrant community organisations, with various support groups of one kind or another, refugees, in cases of domestic violence, so many lawyers receive phone calls from people seeking to refer the clients and cannot take them.

The latest legal aid contracts, in the Legal Aid Agency's wisdom, gave just some 100 case starts to each firm. There was no real differentiation on quality. Some people who got in are marvellous; some people were people who did not get a contract in the previous round and who no one missed. If the person who everyone wants as their lawyer and who has capacity to do more than 100 cases runs out of case starts, they can have up to 50% more but then no more, even if the person down the road cannot use up their case starts because they are dreadful. You cannot follow the quality. The very issue that the Lord Chancellor has backed down on today in criminal legal aid is a feature of the contractual set-up.

Q265 Dr Huppert: I have certainly seen it in some of my constituents' concerns about very poor advice, so I think we need to follow that up. You mentioned legal aid. One of the issues that was raised in debate last week in the House was about the proposed residency test: people would have to be here for 12 months. With a particular focus on asylum claims, do you have concerns about that and what sort of concerns are they?

Alison Harvey: Many. There is an exception for asylum seekers but it is only for as long as you are seeking asylum. Once you are recognised as a refugee you will have to wait 12 months before you get legal aid. That is contrary to Article 16 of the Refugee Convention, which requires that refugees have legal aid on the same terms as nationals.

As to the asylum seeker exception, clearly when you are a failed asylum seeker, for example, a child who because of section 83 of the Nationality, Immigration and Asylum Act 2002 cannot appeal and upgrade to refugee status, that would also kick you out of eligibility for legal aid. Asylum seekers at the end of the process will not be able to get legal aid for support matters insofar as it is otherwise available for housing and homelessness matters or for care proceedings. The asylum seeker exception itself is extremely confusing as to how it will work for fresh claims. The consultation paper says if you have made a fresh claim you will get legal aid. I cannot tell if "made" is a term of art or if it is the case that you will get legal aid to make the fresh claim itself. The Border Agency, the Home Office[2], are worried about that because they could receive a fresh claim and then get, evidence later.

Q266 Dr Huppert: One last question, if I may, Chair, just following up from that. We have had suggestions that one of the problems is exactly that—that applicants do not get legal advice before their initial screening interviews and so the process does not go well from the start and they are then trying to rectify it afterwards. Do you think there should be some sort of process where there is some even basic legal advice prior to screening or is that unrealistic?

Alison Harvey: Ideally, I think you would have legal advice at the earliest possible stage. I think the most important thing with screening is that you take the minimum of information at screening, almost nothing, and that you give a decent time to build a relationship of trust and confidence with the legal representative before you present the claim. The Border Agency, the Home Office, seems to assume that we would spend

[2] In these cases I was correcting myself—I kept saying Border Agency but it no longer exists so then I would stop and say Home Office.

that time helping cook up a pack of stories, whereas in fact very much of that time is spent persuading people to set their case before the Home Office.

Q267 Mr Clappison: Can I ask you a big picture question on this because the subjects we have been dealing with so far—and I suspect some of the ones to come—are really fine-tuning parts of the system? If you were giving marks out of 10, how many marks out of 10 would you give the asylum system and how do you improve it?
Alison Harvey: I would probably give it three to four, but it is decreasing because the agency is introducing a new asylum operating model that I would give zero. I would give it zero because I think it is conceptually flawed. It cannot work. It is about routing your case through the system in a certain way based on information it is not possible to obtain at the stage when the case is routed.
You go into this route provided you are not trafficked, tortured, et cetera, but I will not know that when I put you in the route. I am then told that the "hand-off" will have to be managed to get you out of the wrong route back into the right one, but no one has worked out how to do that yet so my confidence is a bit low. Collecting good information early on is the answer and concentrating on the meat of the claim. Rather than running around thinking of reasons not to believe somebody, look at whether on return they would face persecution. If they would not, why bother to work out whether they are telling the truth or not? It is simply that you are not faced with a refugee.

Q268 Mr Winnick: Britain has a very good history, despite blemishes, in giving asylum over a long period of time. If you made a list of some of the most unpopular issues in the country among people in the country at large, asylum would come pretty near the top. Do you think those who are looking at claims and deciding on these issues, case owners and the rest, are influenced by the Government's general approach, which is not necessarily friendly, and the fact that that Government approach—whichever Government is in office—knows full well the position of our public opinion about asylum seekers?
Alison Harvey: The experience I recall that showed that to me most clearly was when I was at the Medical Foundation for the Care of Victims of Torture many years ago. We were going in with stories of what was happening to people with low levels of support, children in bed and breakfasts. We were terribly worried because all our examples were of Kosovan children and we said we will stick with it because although everyone hates them, these are the children who are suffering.
By the time our examples came before Committees like this, Ministers had started speaking positively about Kosovo; suddenly, everyone was listening. It turned around overnight and it was partly what people saw on their television screens but it was partly the lead from the top. It influenced everybody. It influenced parliamentarians. It influences the case workers, I think.

Q269 Mr Winnick: If politicians have a responsibility to try to distinguish and explain between genuine asylum seekers and those—obviously there are a number, you would not deny it—who have no genuine claim.
Alison Harvey: I think they are all genuine asylum seekers. They may not be refugees, but if you are seeking asylum then—
Mr Winnick: But you do recognise that some do not have genuine claims?
Alison Harvey: I recognise that some do not, but I also think there are a number of people who do not meet the criteria in the Refugee Convention who think they do. They are asking for protection with a sincere heart but we are telling them, "I am sorry, there is a threshold and you are below it."

Q270 Mr Winnick: Recognising that quite a number are certainly genuine, coming from countries where the utmost repression and violence and rape is so common, do you think that if politicians have a responsibility to try to explain that to the public so organisations like your own and others, however difficult, also have a responsibility to put that across as far as is possible through the media and other sources?
Alison Harvey: Yes. I think immigration lawyers perhaps do not play well in the media so we are perhaps doing everyone a favour by keeping out of it. Yes, I think if people make the connection between where someone has come from and what is happening to them the story makes more sense. People do have a concept that maybe Afghanistan is not a great place to be, or that Sri Lanka is not a great place to be, and that at least gives them a context to think about an individual case. It does not mean everyone from that country is a refugee, but it starts you thinking in a clearer way.

Q271 Chair: Further to Mr Winnick's question, do you not think there is even more of a responsibility if somebody comes in to see a member of ILPA and they say, "Well, actually, I am seeking asylum from India" isn't it important for the lawyer to say, "What is the asylum problem there?" If they find that there is not a problem in India, they need to tell the person that.
Alison Harvey: I think that generally happens. In the case of asylum, it is mostly done on legal aid where if you have less than 50% prospects of success you get no funding. You have to start with that. I think countries are often deceptive because you are at the most risk when the country is broadly okay and your case is atypical. People are more likely to notice that you might be a refugee from Syria than that you might be a refugee from India where, in fact, your individual circumstances may put you at risk. Yes, I think a lawyer has a big responsibility to be as realistic as possible at the outset. As I say, that is shored up by legal aid, but even a private client you have a responsibility to tell them what their chances are and advise them.

Q272 Chair: Is there a view that after you have told them and they still want to go ahead are you actually—

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Alison Harvey: Some will and it is your professional duty as a lawyer to represent them. As long as you are not misleading the court or falling foul of your duties to the court, your job is to put your client's case. If you say to your client, "You have a snowflake's chance in hell" and your client says, "I will take it", your job is to put that case, not to exaggerate it but to put their claim as it is spoken. The Border Agency could deal with those: I would put the claim as it is and they would say, "Thank you, you are not a refugee".

Q273 Chair: Ms Harvey, you recognise the argument that the Government puts across on asylum, which is after every single legal avenue has been exhausted, when they are on their way to the plane, an immigration lawyer, probably a member of ILPA, then sends in a judicial review application to try to delay departure and actually the lawyers are making it more difficult for the genuine cases to be dealt with. You recognise that argument?
Alison Harvey: I recognise that is stated and I think it is inaccurate. You will see last minute judicial reviews. They will very often be from people who are not represented. A lawyer cannot put in a judicial review to delay departure without falling short of their duties to the court. If you are suggesting that it is routine for lawyers to fall short of their duties to the court, then I do not think there is any evidence that that is accurate.
Chair: Since I am married to one, perhaps I am the wrong person.
Alison Harvey: Yes, I was going to say be a little bit careful.
Chair: We will go to another lawyer before we go to Nicola Blackwood. You had a quick question.

Q274 Mr Clappison: I am pleased you mentioned Syria. Are you seeing many applications from people in Syria?
Alison Harvey: We are seeing some. It started very early when what we saw were applications from investors, business people, people moving. Before the conflict blew up we saw movement as an early warning, and now the asylum cases are starting to come. They are not huge numbers but they are building slowly.

Q275 Mr Clappison: It is undoubted that there is terrible strife and persecution in Syria. Just take us through how somebody who, say, flees their village because they are at risk of being killed because of their ethnic or religious identity would claim asylum.
Alison Harvey: How do you mean, how would they put their case?
Mr Clappison: Yes, how would they get to the UK? What happens?
Alison Harvey: Different people have different routes out of the country. You tend to get to the UK if you have some sort of family backing or means because you are going to have to get on a plane, which will probably involve having false documents[3]. We know from the news reports today that the borders all round the country are closing. I think only the Lebanese border is now open, so fleeing across the land is becoming impossible.

Q276 Mr Clappison: Just to take you back to the plane, if they try to get on the plane they come up against the Carriers Liability Act and the obligations—
Alison Harvey: They will be doing it on false documents and they will be knocked back if the carrier detects them. It is when they get through the detection that they will get on the plane[4].

Q277 Nicola Blackwood: I just want to take you back to the comments you made about the asylum operating model. You mentioned the problems being that it would be difficult to identify trafficking and torture in time. I just wondered what your assessment was of the trafficking identifying system, but also the Rule 35 implementation and also this country of origin information, which I understand you have been quite critical of.
Alison Harvey: I am critical of the way it is used, less critical of the information itself. I think we have some good information. The trafficking is getting much harder because now you do not get legal aid unless there has been a decision that there are reasonable grounds for thinking that you have been trafficked. You do not get legal aid until that point and those decisions, which are meant to take place in a matter of days, take weeks and weeks and often months and months to happen. Now trafficked people do not have the assistance that they previously had at that initial stage, and I think that is a problem.
Trafficking has always been harder than torture in one respect in that if you went into the detained fast track, if you were a person who had an appointment with the Medical Foundation for the Care of Victims of Torture or the Helen Bamber Foundation, then your case would be lifted out, whereas in trafficking you had to have a report from the UK Human Trafficking Centre not just an appointment[5].

Q278 Nicola Blackwood: But isn't it supposed to go into the national referral mechanism?
Alison Harvey: It goes through the national referral mechanism but the asylum claim continues—although there is a 40-day reflection period built into the

[3] Persons already in the UK for other purposes, for example working or studying could have decided it was not safe to return and claimed asylum.
Persons could have travelled to the UK on a visa issued for another purpose, for example work or study, and then decided to claim asylum. There is no difficulty with this where the information given was accurate at the time. If the Home Office determine that the person applied for a visit which required an intention to return but always intended to claim asylum having arrived in the UK, the Home Office might serve that person with papers declaring them to be an illegal entrant.

[4] This is an accurate transcript of what I said. On reflection, some will be entering as visitors etc.—i.e. on their own passports.

[5] I was cut off here and did not say these words, but the sentence does need them to make sense. The next question went off on a different tack.

referral mechanism—as far as the Home Office is concerned that does not cause everything to stop. The asylum claim trundles on underneath that. I think that is extremely problematic where the trafficked person has an asylum claim, which not all of them do.

Q279 Nicola Blackwood: How will this operating model make that worse?
Alison Harvey: I think its aspirations are unrealistic. It is trying to work out if someone is trafficked when it routes them down a particular decision-making route, but it is doing that before the reasonable grounds decision has happened, sometimes before the evidence has been collected for the reasonable grounds decision maker to make their decision on. The risk is that you get a rough and ready, "You are not trafficked, into the detained fast track you go", at which point when you are in detention you lose confidence—your trafficker has probably told you, "If you run away and tell on me you will just get thrown into prison and no one will help you" and, lo and behold, it is true.

Q280 Nicola Blackwood: Yes. What about with the Rule 35—
Alison Harvey: We set out in our written evidence the concern that the Rule 35 reports can be very perfunctory. People often do not realise they are being interviewed to find out if they have problems stemming from torture when they have been through a rule 35 interview. They do not know that has happened. They did not necessarily have an opportunity. When you do get a report that says, "This person reports a period of torture and imprisonment" all too often the attitude to that is that that is, "Well, that is simply reporting what the individual told the doctor".

Q281 Steve McCabe: I would just like to briefly return to the question of immigration lawyers. I just wondered if ILPA was doing anything or had any plans to do anything about these immigration lawyers who actually charge asylum seekers money, write a few perfunctory letters, the kind the average assistant clerk or apprentice could write, and then suggest they go to see their MP when there is no result—or, indeed, the ones who actually write a letter to the MP, which obviously means they are just acting as a post box. Isn't that giving your profession a bad name and isn't it giving a lousy service to people who are entitled to expect more?
Alison Harvey: If we break that down into various things, there will be people, even people who are entitled to legal aid, who will pay because they cannot find anyone or cannot find anyone near them. Obviously there are some people who claim asylum who are too rich to qualify for legal aid so they will have to pay.
Steve McCabe: No, I am talking about paying for a lousy service.
Alison Harvey: Yes, I am getting to that. I am just trying to break the elements down. When you come to the service, of course you should get what you pay for and you should know in a client care letter what you will get and those who are giving a lousy service are a disgrace. Good lawyers tend to see them if the client reaches the good lawyer at a later stage. We urge them as hard as we can to support that client to lodge a complaint against the representative to the regulators.

Q282 Steve McCabe: Should I refer these lawyers to your organisation when I come across them? Because, frankly, I am fed up seeing these people.
Alison Harvey: You can. All I would be able to do if they were members of ILPA, and I hope they are not, is throw them out of ILPA because I am not a regulator. Your best bet would be to send them directly to the Solicitors Regulation Authority or the Office of the Immigration Service Commissioner, who have power to take away their ability to practise. You can also direct complaints to the Legal Ombudsman, who again could actually stop them in their tracks.
As to sending to the MP, because I think it is an important point, there are many good lawyers who will also send people to their MP. MPs are hotwired into the system with the MPs' hotline and so on. With delays, sometimes sensible advice to a client is to see their MP.
Steve McCabe: I am objecting to the lawyer who gets the fee for acting as a post box, that is my point. I am not objecting to anyone coming to see me as their MP, but I am wondering why a lawyer is entitled to a fee for doing that.

Q283 Chair: I think what Mr McCabe is lamenting is that so many lawyers send their clients to MPs and really it is the job of the lawyers to try to work their way through the system. You are saying if there are a lot of delays the MPs need to know about it because that is the only way that something can be done. I can assure you whenever Home Office officials come before us, including Ministers, we all hammer away at correspondence issues because we are the last resort. When everything else fails, they are then sent to us. That is right, isn't it?
Alison Harvey: Yes, but I think it is a fact about the immigration system as it works that you get to the point where everything else fails more frequently. I train MPs' case workers and I say to them, "Notice you are wired into this system in a way that in other systems you are not."
Chair: Indeed. We are very short of time today, but I am going to take Mr Winnick and then finally Chris Ruane.

Q284 Mr Winnick: On lawyers, and perhaps yours is not the appropriate organisation to ask, but be that as it may I can understand lawyers contacting MPs when there is a long delay. In fact, without giving secrets away, the Committee will be discussing this in the very near future, one way or another. Regarding payments, if solicitors contact a Member of Parliament sometimes without that long delay, should the client pay the solicitor?
Alison Harvey: It depends on what is being done. No client should ever be forced to pay. You should always be told, "You can go and see your MP. They are free. You can walk in for free." I have equally seen cases, not necessarily asylum but immigration, where people

have asked their solicitors to put together a substantial dossier of information in the hope that that would make the MP more willing to assist them. In that case, that is billable time.

I think the important thing is that the lawyer has explained to the client that the person is perfectly entitled to go to their MP, take every document the lawyer has produced to the MP, absolutely free of charge. If there is any question of asking the lawyer to do some paid work, that should be clear at the outset what you are getting.

Q285 Mr Winnick: But if a solicitor nevertheless has written to the MP and the case has been pursued by the solicitor would it not be appropriate to deduct payment if, in fact, the case is then being pursued by the Member of Parliament?

Alison Harvey: The lawyer should only be billing for the time they are spending. If the MP is spending the time, no lawyer should be billing for it.

Q286 Chris Ruane: Since the Government has dispensed with the voluntary discretion policy for LGBT asylum seekers, has there been a greater emphasis on the need for the applicant to prove their sexuality?

Alison Harvey: Absolutely, yes, very visibly, yes.

Q287 Chair: What kind of additional information do they want?

Alison Harvey: It is difficult to know what would satisfy them.

Q288 Chair: Give us some examples of what lesbian and gay people are supposed to provide to the Home Office.

Alison Harvey: They are supposed to provide an account that convinces the Home Office. Good luck—how do you do that? The ability to doubt anything you are told or shown about what, in the end, is about the way someone is inside is infinite. You cannot. There is no standard where you could say you satisfied it, and I think it is a real problem.

Q289 Chair: What is ILPA doing about that?

Alison Harvey: Well, we have had training sessions on the topic for lawyers. We have raised it with the Home Office. We have written to them. We have expressed concerns. We have taken case studies and examples of cases that we think are wrongful refusals.

Q290 Chair: Would you send the Committee examples because we are very keen to pursue this?

Alison Harvey: I can certainly ask members if they have clients who will share them, yes.

Q291 Chair: Thank you for giving evidence today. We are very grateful. Thank you for the work that you do and your members do in helping this Committee and helping other Members of Parliament whenever the issue of immigration law comes before the House. We are most grateful.

Alison Harvey: Pleasure. Thank you.

Examination of Witnesses

Witnesses: **Tom Hamilton-Shaw**, British Red Cross, and **Maurice Wren**, Refugee Council, gave evidence.

Q292 Chair: Mr Hamilton-Shaw, Mr Wren, welcome to the Committee. This is the Select Committee's inquiry into asylum. I am going to start with a question about the Azure card system. When we have two witnesses, obviously there is a tendency for repetition so we apologise if we repeat a question, but you are welcome to chip in. If we address a question to one of the witnesses and the other wants to chip in, you can. Mr Hamilton-Shaw, has the Azure card, introduced by the last Labour Government, been a success?

Tom Hamilton-Shaw: Frankly, no. The position that we take is very simple: that all support should be in cash and that parallel currencies do not work. What they do is basically close down the options for a very vulnerable group of people and take away choice and dignity for those groups. For example, you cannot use the Azure card on a bus or on travel. You cannot choose which supermarket you do your shopping at, so that excludes budget supermarkets and halal stores. We see a lot of people very frustrated and depressed as a result of that.

Q293 Chair: Mr Wren, are you and your organisation calling for an increase in resources for asylum seekers at a time of economic hardship or do you think the resources that they are given are enough at the moment?

Maurice Wren: Increasing support for people going through the system, we are calling for the relationship with income support levels to be maintained on a par with income support levels, with a discount reflecting the fact that accommodation is provided.

On the question of Azure cards, if I may, we think they are wrong on a number of counts: the inflexibility, the expense, the cost of administration. They are a demeaning factor in the asylum process and the very fact that you have them marks you out as something different. The point that we have made repeatedly to Government is the impact they have on women who are pregnant or new mothers in particular and the difficulties they encounter by not having access to cash at a very difficult period of their lives. We have cited a number of cases in our evidence to you of the problems.

Chair: Yes, you did. Thank you for that.

Q294 Mr Winnick: There is a problem that I have seen that the organisations concerned with refugees and asylum seekers have mentioned. It is those who have been granted leave to remain but are unable to access mainstream benefits. Is that an acute problem?

Maurice Wren: It is a serious problem. It is a growing problem as well. At the point of handover, when you have been granted your status you are given 28 days if you are in supported accommodation. That clock starts ticking and it is relentless and pretty remorseless. We deal with a number of cases across all our offices of people who reach the 28 days without having income guaranteed to move on to.

What we need is more flexibility in that post-decision period. If you think of the number of people involved or the number of agencies involved, the Home Office is involved at the end of the 28 days. The accommodation provider; it might be G4S, it might be Serco. The DWP is involved, and maybe the local authority is involved. It is far too complicated—far too many requirements are visited on those people to demonstrate that they qualify for income support provided by the DWP. It is a real problem.

Q295 Mr Winnick: Recognising that asylum seekers are not necessarily the most popular group in the country and perhaps at times the refusal to recognise between the genuine and the not genuine, if you also link that issue with benefits it becomes even more unpopular—even though in many instances I am perfectly aware that asylum is fully justified, so initially benefits are as well. Do you accept that if people are allowed to stay here, assuming that they are off benefits and are actually in employment—if employment can be found—that would be much better for all concerned, including the people involved?

Maurice Wren: Absolutely, and we spend a lot of time at the Refugee Council helping people into employment. We have a project called "Refugees into Jobs" and we have a particular specialism in helping doctors obtain employment in the health service.

Tom Hamilton-Shaw: Yes, I think we would echo that. We certainly find that often the case is that people want to get involved as soon as they can in society and make a contribution. For example, a lot of our volunteers are refugees and asylum seekers who then go on, once they have refugee status, to become members of staff. That is a hugely positive story that we want to tell as much as we can.

Maurice Wren: If I may, it also opens up the issue of whether people seeking asylum should be given permission to work at some point.

Chair: Yes, we will be coming on to that at the end.

Q296 Dr Huppert: Can I just come back to this issue that you raised, Mr Wren, about pregnancy during asylum applications? In February, you published *When Maternity Doesn't Matter—Dispersing Pregnant Asylum-Seeking Women*, which had some pretty horrific case studies of two women being dispersed a day before they gave birth and then people having to walk very long distances. The Home Office has responded to that. Are you content with all of their responses, whether that has solved the problem?

Maurice Wren: I am very pleased to say that we have had a very productive meeting. The report was published by ourselves and Maternity Action and Maternity Action were able to use their contacts with the Royal Colleges of Midwives and Obstetrics and Gynaecology and some of the university hospitals to get some pretty high-ranking medical professionals along to meet senior officials. That meeting was very productive and there is an apparent willingness on the Home Office's part to further revise their guidance.

One issue came up that I particularly want to highlight. At the moment, the guidance allows for a protected period of eight weeks—four weeks before the birth, four weeks after—when there is an expectation that a woman would not be moved from her accommodation. We would argue, and certainly this was being proposed by the medical professionals, for the idea of protected status. The argument is that a woman at any stage of pregnancy—particularly asylum seekers where we know there is evidence of particularly negative and serious differential impacts on their health—need to be given an assurance they are not going to be moved into inappropriate or unsuitable accommodation and, picking up the earlier discussion, are going to be able to obtain cash support as and when they need it.

Q297 Dr Huppert: Thank you very much. I think we will want to look into this a bit further. Can I also just move on to another issue? There has been lots of discussion about people needing to speak English in this country. There were some changes to the amount of support for asylum seekers and other refugees in the broader sense looking for getting English language lessons. What is the position with that? Is there enough available language training for people who need it?

Maurice Wren: Certainly not. I am not sure if it is your constituency, but certainly in the services we provide out of Cambridge we are working with Student Action for Refugees, volunteers who are providing it, and that is a pattern repeated across the country in our destitution centres, in our offices. We are reliant on volunteers coming forward. It is absolutely crucial that people have access to English language tuition in my view, but they are not getting it.

Q298 Dr Huppert: Is working with volunteers doing enough to provide the language training or is it not supplying the need?

Maurice Wren: No, it is certainly not sufficient. It is meeting whatever needs we can but the very active recruiting and supporting of volunteers is resource intensive for NGOs like ourselves. It has to be provision either at local authority level or national Government level.

Q299 Steve McCabe: I just wanted to ask about the issue of the use of country of origin information. I think you have both been quite critical of that. I just wondered what your take on this is. Is this just further evidence of a culture of disbelief or do you think there is something specific about that that could be changed to make better use of that approach?

Maurice Wren: Certainly in my previous job before I joined the Refugee Council, where I led an NGO called Asylum Aid, we were very critical of the lack of gender information contained in country information. I would agree with your previous witness, Alison Harvey. It is not the country

information itself; it is the use to which it is put and the selective use occasionally of it supporting what we would regard as unsustainable decisions.

The collection of information, the information that is made available to decision makers, may be appropriate. It is how that is used in reaching a decision and drawing conclusions based on the evidence provided by the applicant. That is where the problem lies and that goes to the heart of the problems around quality of decision making in the asylum process.

Tom Hamilton-Shaw: From the British Red Cross perspective, we do not get involved in the asylum application itself. Our primary purpose in the UK, where we operate in 48 towns and cities, is to alleviate destitution and humanitarian suffering. We see around 10,000 clients every year and 6,000 of those people are destitute. We are much more involved with the initial food package, hygiene packs, that kind of thing. I am not sure if it is something that we would be able to comment on publicly, but as an aside we do anecdotally hear problems with inconsistencies across COI information and also that the Foreign Office may say one thing and then the Home Office says another.

Q300 Steve McCabe: Could I just ask very quickly about the suggestion that staff should be in country-specific teams? Would that make any significant difference?

Maurice Wren: We have discussed that with the Home Office. It is not a recommendation we would make. We can see some advantages to it, but we can see some disadvantages to it. I think, on balance, I favour mixed teams that are able to go for the core of the claim and are not getting hung up on arcane detail or minute detail about that country because inevitably you are going to have people sitting around twiddling their thumbs if there are shifts in patterns of migration flows or false migration flows. I think all-rounders, generalists, are what are needed. It is the quality of those people to make the kind of judgments and assessments that is important. Alison was raising some concerns about the asylum operating model that is being rolled out at the moment.

Chair: Alison Harvey?

Maurice Wren: Alison Harvey, I beg your pardon. I have described it in discussions with the Home Office previously as a backlog generator because that is what we see that they are putting in place. Not intentionally—they are doing it with the best reasons and on paper it works for them.

Q301 Chair: Nobody gets fed up, do they, when they are sitting in a backlog? Nobody has come to my surgery in 26 years and said, “I have been waiting in a backlog that has gone on for years and years. I have had enough. I am going back”. Do you have people like that in the Red Cross and at the Refugee Council? Do they say, “It has just been too much for me, I am going”?

Maurice Wren: Yes, certainly.

Q302 Chair: How many did you have last year, Mr Hamilton-Shaw? Who said they wanted to go back?

Tom Hamilton-Shaw: It is unusual to have that experience.

Q303 Chair: No? Mr Wren?

Maurice Wren: There was a programme on TV, Granada—

Chair: Well, we would rather rely on your evidence than Granada TV.

Maurice Wren: No, indeed, but it was interviewing people—

Chair: In your view, did people turn round—

Maurice Wren: A small number.

Chair: Five, 10?

Maurice Wren: I could not give you a figure. They are people who will have looked at their prospects in this country, living on support or perhaps not living on support because they have been moved off it so are living in the shadow economy and regard that as unsustainable, particularly if they are raising a family. There may be an assisted voluntary return package available to them, but it is not a huge problem.

Chair: On that point, Mr Ruane has a question about packages.

Q304 Chris Ruane: You make the recommendation that asylum seekers ought to be allowed entrance to the job market if their claims have not been resolved within six months. How would this benefit the UK?

Maurice Wren: Well, we would go further than saying an arbitrary six-month limit. We do not see a justification for any bar at all. How would it benefit the UK? Well, I would point to three areas in particular. Firstly, it would reduce the expenditure the Home Office has to make on providing welfare support and accommodation support for people going through the asylum process, which can last for a long time.

The second point is that we are depriving ourselves of some skills and talents that are much needed where there are job vacancies and a lack of experts, particularly in the medical profession—also in teaching and other professional areas. The third point is the fact that you are not allowed to work lawfully does not mean that some people do not find work in the shadow economy where because of their very nature, their uncertain immigration status, they are ripe for exploitation in a way that should not be allowed in any civilised society.

Tom Hamilton-Shaw: I would echo that and add that the numbers we are talking about are large. The last Chief Inspector’s report puts it at 33,000 people. What a contribution they could make to British society if they are paying tax and off benefits. I think the experience that we have in terms of our volunteers is that these are people who are intelligent, who want to make as big a commitment as possible to the country that would give them refuge, and they are willing and able to make that difference.

Q305 Chair: I will put this proposition to you. In fact, because the amount of support they get is so low, the majority of asylum seekers probably work in the shadow economy because there is absolutely no way they can survive on the money that they receive. Perhaps the best way to deal with this is after a limited

period of time, if their case is not dealt with, they should be allowed to work after, say, six months or even a year. Many of us will have had cases where people have been waiting for years and years. Do you think a time limit would help the Home Office deal with these cases in a more timely way, Mr Hamilton-Shaw?
Tom Hamilton-Shaw: I think six months is a realistic timeframe and we could certainly support people with right to work at six months. What I would say is that we have supported people coming to our services, so people who are on section 4, which is a very low level of support, who essentially—
Chair: Tell us how much that is.
Tom Hamilton-Shaw: It is around £35 a week to live off, so the caricature of people who are seeking to arrive in the country for £35 a week—

Q306 Chair: What is the top amount they could get? £35 a week is basic.
Tom Hamilton-Shaw: They will be living in supported accommodation so they will have their accommodation needs met and other associated costs, but that will be cash spend on the Azure card.

Q307 Chair: £35 a week?
Tom Hamilton-Shaw: £35 a week.

Q308 Chair: Mr Wren, a time limit and then give them the right to work?
Maurice Wren: Well, a time limit might be acceptable to the Home Office. As I was saying—

Q309 Chair: No, what is acceptable to you? Forget about the Home Office, what would you like to see?
Maurice Wren: We would work with a time limit. We do not think there is a need for any limitation at all, as I have said.

Q310 Chair: You think people should arrive in this country, claim asylum and then be allowed to work immediately?
Maurice Wren: As was the case until four or five years ago. That was the position. There is no justification—

Q311 Chair: But do you think that would encourage more people to come here?
Maurice Wren: No. There is no evidence to show that the bar to employment acts as a disincentive to people applying or when people had permission that it was a pull factor into the country—no evidence whatever.

Q312 Dr Huppert: Certainly, having seen some of the destitution reports it does not look like we are doing very much pulling, given the way people are treated. Can I ask you, Mr Hamilton-Shaw, about a slightly different issue? In your written evidence you talked about cases of clients who are registered attending signing sessions at police stations, but their claims were still in a controlled archive because they could not be found. I think the Chief Inspector found this as well. Do you think this is still happening and do you have a sense of the scale?
Tom Hamilton-Shaw: We do not have a sense of scale in terms of hard numbers and it is something that we are looking to ascertain ourselves. I would point the Committee to the last Chief Inspector's report on the issue, which is where he found that the 2,000 clients who had been signing had been put into the controlled archive in the migration to CAAU.
The CAAU had found that actually these were 2,000 people who should have been easily put into the live case cohort who had not been. That is obviously a huge problem for those people who through no fault of their own are now back to the beginning. Essentially, this is emblematic in a sense of some of the administrative failures at the Home Office/UKBA where you have one part of the computer system that does not seem to speak to another, where through no fault of any individual there seems to be a complete systemic failure.

Q313 Dr Huppert: There is definitely an issue with people who have been waiting for a very long time and I have constituents like that. This Committee has previously suggested that where there has been an extremely long delay that is not the fault of the individual applying, they should be given the benefit of the doubt when it comes to things that are hard to prove because they were 10 years ago, that medical tests that could be done simply cannot be done 12 years ago. Would you agree that that is the right approach where somebody has just been kept waiting?
Tom Hamilton-Shaw: Certainly, in terms of evidence, if there has not been a fault of any individual asylum seeker, and these may be people who are destitute because of the fact that the claim has not been dealt with properly, then the idea of granting some form of leave to remain, as has been done in the past, is something that we would support.

Q314 Chair: Mr Hamilton-Shaw, Mr Wren, thank you very much for coming in to give evidence to us today. We appreciate it. Could you please, if you have any further information that you need to send the Committee, send us that further information? That also applies to any of your clients who wish to write into us about their personal experiences. We tried to take evidence from some clients last week unsuccessfully, but we are always very keen to have more information and we are extremely grateful. Thank you to both of you and your organisations for the very important and impressive work that you do to help these people.
Maurice Wren: Thank you. We would be happy to arrange visits for any Members of the Committee to meet some of our projects, to meet our clients.
Chair: Yes, I think we intend to do so. Thank you.

Written evidence

Written evidence submitted by Home Office (ASY 00)

Executive Summary

1. The UK has a proud tradition of granting asylum to those in need of protection. Every asylum application is carefully considered on a case by case basis in line with UN High Commission for Refugees guidance, and protection is given where there is a well-founded fear of persecution in the claimant's home country. The Home Office recognises, however, that efficiencies and further improvements in quality of decision-making can be made in the system, and that is why we established a UK-wide management structure and began designing an improved asylum operating model in July 2012. Rollout of the new model began from 1st April 2013, as part of a wider Home Office transformation programme. The objective being to deliver a highly competent, continuously improving Asylum Casework Directorate that controls the UK asylum system and inspires public and Ministerial confidence by delivering asylum decisions faster, at lower cost and higher quality than ever before.

2. We will do this by:

— controlling inflow—by cracking down on unfounded intake. We will use strategic and operational intelligence feeds to implement enhanced country plans and reduce routes of asylum abuse;

— controlling workflow—by simplifying our systems to improve the way our teams navigate the fixed points of the asylum process; increasing our ability to deal with early grants and refusals; delivering high quality high volume enforcement referrals; delivering radically improved performance in processing and concluding asylum claims, stabilising and reducing the volume of our work in progress; and by

— controlling costs—by taking a central grip of asylum support expenditure; moving to an Executive Officer graded casework model; and driving continuous improvement.

3. We continue to provide updates to the Chief Inspector's previous report on Asylum, from 2011. These are provided every six months to the Chief Inspector, detailing recent progress made on the recommendations, as well as any requests to formally close specific actions. Our latest updates will be provided this month.

4. Scrutiny of the asylum system includes the identification of the individual needs of claimants as they seek asylum. The Home Office has been working hard to ensure its asylum screening processes are effective, so that only suitable cases are admitted to the Detained Fast Track process.

5. We continue to work closely with key corporate partners to drive continuous improvement in our approach to credibility assessment, including partners such as UNHCR and Still Human, Still Here.

6. Our purposefully light-touch review of the status of refugees and those with humanitarian protection following five years' leave, gives us the opportunity to review all cases. It allows us to readily capture cases which require further investigations to determine whether the individual still qualifies for protection—for example those cases where the person has been convicted of criminal activity—whilst allowing cases where protection needs still exist and there is no behaviour which would preclude them from receiving ILR to move swiftly through to settlement.

7. The Home Office provides a properly balanced asylum support system, meeting the essential living needs of those in the asylum system. Certain aspects of the support system are currently under Home Office review, including the weekly allowances provided to asylum seekers and to certain failed asylum seekers, but we are satisfied that there is an adequate safety net for those who are destitute.

8. We are content that suitable mechanisms are in place for reporting concerns over legal practitioners.

9. We will be interested to see the outcome of the inquiry's investigations into the balance within the media on asylum issues.

10. Home Office country of origin information is based on a wide range of external sources, and is updated regularly to provide decision-makers with accurate information with which to make informed decisions.

11. We take our obligations very seriously, and do not return anyone to a country where there is a real risk that the individual will be tortured, or face other inhumane or degrading treatment.

12. Below sets out the Home Office position in relation to the specific areas of interest outlined in the HASC press release.

The effectiveness of the UK Border Agency screening process, including the method of determining eligibility for the 'Detained Fast Track' procedure

13. Applicants claim asylum in one of three main ways:

— On arrival to the UK;

— Whilst in the UK, at the Asylum Screening Unit in Croydon; or

— Following detection through local enforcement or police activity.

14. The applicant's method of claiming will influence where they are screened. Those who claim asylum on arrival will be screened at port. Those who claim whilst in the UK are required to register their asylum claim at the Asylum Screening Unit (ASU) in Croydon unless their individual circumstances or vulnerability merits their claim being registered locally. Those who claim asylum following detection through local enforcement or police activity (this could include those working illegally or overstayers) will be screened either at a police station, an Immigration Removal Centre or via an Immigration Compliance and Engagement team.

15. In 2012, internal Home Office data suggests that approximately 47% of claims were registered at ASU, 11% at ports and 42% were enforcement cases. The function of screening is the same regardless of where that screening takes place.

16. The key function of screening is to:

- Gather biometrics—fingerprints and photographs to establish identity;
- Carry out identity and security checks; and
- Complete a screening interview to gather: bio data, brief basis of claim, method of entry/ travel route to the UK, health information, security questions, family details, register an application for biometric residence permit and gather information to assist with onward routing of the case.

17. Suitability for the Detained Fast Track (DFT) process is assessed once the screening interview has been completed, against our published suitability policy, found here: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/detained_fast_processes?view=Binary

18. In general terms, any asylum claim may be considered suitable for DFT if, on the basis of information held, it appears that a quick decision can be made. This assessment is made on a case by case basis, and will exclude some cases, for example those where it is reasonably foreseeable that further lengthy enquiries are necessary.

19. DFT processes do not under any circumstances apply to children. Further defined exclusion factors apply, acknowledging that particularly vulnerable people should not ordinarily be detained. Such groups include trafficking victims, those with independent evidence of torture, heavily pregnant women, and those with medical conditions that cannot be satisfactorily managed in a detained environment.

20. The process operates robustly but fairly. Our focus is on getting the suitability consideration right, ensuring only suitable cases are admitted to DFT and constraining the proportion of people detained only to be released later. Where we find individuals who are subsequently shown to be unsuitable for DFT we release them as soon as possible. We seek to keep those numbers to a minimum, but of course, there will always be cases where bail is granted by the Tribunal or new evidence weighing against entry into DFT is presented after the initial decision and the applicant is therefore released, as is appropriate.

The assessment of the credibility of women, the mentally ill, victims of torture and specific nationalities within the decision-making process and whether this is reflected in appeal outcomes

21. The Home Office provides comprehensive guidance to caseworkers on how to assess credibility in asylum claims. This is supported by additional specific instructions on gender issues, victims of torture and those with mental health support needs. All asylum decision-makers undertake an intensive foundation training program which includes the assessment of credibility of vulnerable groups or individuals and they receive dedicated training on gender and sexual orientation.

22. The Home Office continues to work closely with corporate partners to drive continuous improvement in our approach to credibility assessment. In particular, we are working with UNHCR on a Hungarian Helsinki Committee project entitled 'CREDO' that aims to improve credibility assessment in EU Asylum procedures, and with the organisation Still Human, Still Here on their research undertaken into credibility in allowed appeals. We intend to issue improved guidance in this key area of decision-making in summer 2013. In addition, the Appeals and Litigation Directorate will be undertaking a limited analysis of credibility assessments in asylum claims and the impact on appeal win rates. This analysis will be based on a small sample of about 150 cases, and will report internally only, later in the year. Its findings will be used to further inform guidance and training within asylum and appeals. We are also working with Freedom from Torture to develop a vulnerable applicant's course for Asylum Screening Unit (ASU) staff and with the UNHCR to develop an advanced credibility course for asylum decision-makers.

23. We have begun the implementation of an enhanced quality auditing framework called Next Generation Quality Framework (NGQF) which builds on our previous auditing experience and our work on quality with UNHCR. The marking standards within NGQF will categorise errors as critical, serious, or minor and provide more detailed information than under the current system on where processes are not being managed as efficiently as possible, where there may be opportunities for system improvements, and what caseworking staff are getting wrong and the impacts of those errors. The new framework will also provide a better mechanism for capturing very good performance and disseminating best practice.

24. The changes will include auditing more of the asylum process than has been previously the case. The Quality Audit Team (QAT) sample will follow cases through the registration, decision and appeals stages. The

primary focus of the appeals marking standards and criteria is on gathering evidence regarding how the business has performed at ensuring a sustainable decision appears before the courts, and to offer a view as to why an appeal on a decision has been allowed or dismissed by analysing Immigration Judges' determinations. Data will be analysed by nationality and case type, including gender. Furthermore the QAT will observe live appeals on a thematic basis. The QAT will report quarterly on its findings and make recommendations to the caseworking teams. The QAT will undertake targeted audits and offer practical advice to reinforce caseworking training as well as ensuring relevant information is fed back to the Home Office's operational and strategic policy units if changes to guidance or asylum instructions may be needed. Feedback will be given to staff, managers and the training team to deal with any localised points of concern.

The effectiveness of the 5 year review system introduced in 2005

25. Prior to 2005 refugees were granted permanent residence in the form of Indefinite Leave to Remain (ILR). In August 2005 that policy changed and refugees were granted a period of five years limited leave after which they could apply for permanent residence and we would review the refugee's case to determine whether the person still required, and was still eligible for, protection. We also brought the leave granted to those who qualified for Humanitarian Protection (HP) in line with these changes. Prior to this those who qualified for HP were granted three years limited leave.

26. The review element of the settlement protection system was designed to allow the Home Office to check that refugees still qualify for protection before they are granted ILR. There are three main grounds on which the Home Office can refuse settlement to a person with refugee / HP leave: criminal conviction; voluntary re-availment of the protection of the country of origin; or a significant change in the country of origin.

27. This review is purposefully light-touch. The Government did not want to create a process whereby a secondary asylum decision is required. Such a system would be overly onerous on the Home Office and with very little benefit. The review system is better viewed as a safety net which captures cases that require further investigation to determine whether they still qualify for protection, whilst allowing cases where protection needs still exist, and there is no behaviour which would preclude them from receiving ILR, to move swiftly through. For example, where through the review the Home Office identifies that a person has a criminal charge pending further investigations, the review allows us to check whether the person is convicted and thereafter whether the criminality is sufficiently serious to warrant revocation of the person's refugee status and leave. In the vast majority of cases however, ILR is granted with no further investigations required.

28. The review process also allows the Home Office to determine whether there has been a significant change in the refugee's country of origin to the extent where international protection is no longer required. However, given the volume of cases (approx 8,000 a year) it would be impractical to individually reconsider every case to determine whether a protection need still exists. In the vast majority of cases the need for protection will still persist. Only in instances where there has been a significant change in the country of origin, e.g. a change of regime, will there be a need to review significant numbers of refugee / HP cases. To utilise a widespread country-specific review of protection needs in these instances the Secretary of State would be required to announce to Parliament his intention to review these cases and why he considers the country to be safe. Whilst this provision has not been used to date, we cannot rule out that it may be needed in the future. Removing the active review process and either granting ILR immediately, or after five years but without a review, would inhibit the Government's ability to use such a provision.

29. The effectiveness of the refugee / HP review system must be examined through the prism of the wider immigration system. Under the Immigration Rules all routes that lead to permanent settlement require firstly a period of residence in the UK and then a review of the case (to check the person's character and conduct) before ILR is granted. It is right that refugees and those with HP are subjected to the same review procedure—both for the sake of creating a fair, coherent immigration system and to ensure only those with a right to permanent residence are granted it.

30. The review process provides an effective safety net to ensure those who no longer require protection or who have engaged in serious criminal activity are not granted permanent residence in the UK. The review process is also effective in quickly identifying those with a persisting protection need and whose conduct in the UK has been honourable, and rewarding them with permanent residence.

Whether the system of support to asylum applicants (including section 4 support) is sufficient and effective and possible improvements; The prevalence of destitution amongst asylum applicants and refused asylum seekers

31. The Government is committed to a UK asylum support system that is properly balanced, and able to meet the essential living needs of people in the asylum system. Automatic entitlement to support stops if the asylum claim is rejected (unless there are children in the household), but accommodation and other assistance ("section 4 support") is available to anyone who is taking steps to leave the United Kingdom or where there is a temporary obstacle to their departure.

32. All destitute asylum seekers can access fully furnished accommodation with no utility bills or council tax to pay. A weekly allowance is also provided to cover essential living needs, with the payment rates varied to reflect the number of children and other dependants in the household. Additional assistance is provided in other circumstances such as pregnancy. A payment of £300 is made to assist with the extra costs arising from

the birth of a child and suitable adjustments made to the accommodation (for example through the provision of specialist equipment and sterilising equipment).

33. The Government is currently reviewing aspects of support policy, including the weekly allowances provided to asylum seekers and failed asylum seekers. This review has included targeted consultation with a range of internal and external partners. We expect to be able to notify interested partners of any changes resulting from the review early in the new financial year.

34. It is right that we support destitute asylum seekers while they wait for the outcome of their asylum claim, but equally right that we do not support failed asylum seekers who have no reason to remain here. No person need be destitute if they comply with the law and the decisions of the courts and go home when required to do so.

35. Where a person is granted leave to remain in the UK on the basis of a need for protection, their asylum support must cease following a 28 day grace period, designed to enable them time to apply for mainstream benefits, should they be eligible. The Home Office is aware that the move from Home Office-administered asylum support to Department for Work and Pensions (DWP)-administered mainstream benefits for those granted protection is not always as smooth as it should be. Since December 2012, we have been working closely with DWP on reviewing a small sample of cases to identify process improvements to be implemented individually and between both Departments to resolve issues, taking account of relevant evidence provided by key external partners. We continue to work on this, in order to improve the transition from asylum support to mainstream benefits for recognised refugees, with the support of targeted external partners.

Whether the UKBA or third sector organisations should be able to highlight concerns regarding legal practitioners to the Law Society

36. The Law Society works with its members to help them comply with the Solicitors Regulation Authority (SRA) principles, which define the professional standards expected of all firms and individual solicitors. Complaints regarding any solicitor, not just those accredited by the Law Society, relating to infringement of the SRA principles or issues of professional conduct should be raised with the SRA; complaints relating to service matters from clients should be pursued with the Legal Ombudsman.

37. The Home Office is able to raise concerns about any solicitor with the SRA. Further information can be found on their website: http://sra.org.uk/consumers/problems/report-solicitor.page

38. Where the issue of concern is a matter which may affect the Legal Aid Agency's contract with their provider, then Home Office staff should contact the provider's contract manager, and such mechanisms are in place.

39. Where an immigration practitioner is accredited by the Office of the Immigration Services Commissioner (OISC), mechanisms exist for anyone to make a complaint; further information can be found on their website: http://oisc.homeoffice.gov.uk/complaints_about_immigration_advice/

Whether the media is balanced in their reporting of asylum issues

40. No formal evaluation of media coverage on asylum issues has been undertaken by the Government.

The use of Country of Origin Information and Operational Guidance Notes in determining the outcome of asylum applications

41. Country of Origin Information (COI) is compiled by the Home Office's Country of Origin Information Service (COIS) from a wide range of external information sources, including the United Nations and its various agencies, international and domestic human rights organisations, inter-governmental organisations, non-government organisations, news media and the Foreign and Commonwealth Office (FCO).

42. COI assists decision-makers in assessing the legal, political, human rights, cultural, economic, and social situation as well as the humanitarian situation in countries of origin. COI reports are produced for the countries which attract most applications for international protection and are updated regularly. Decision-makers also have access to a general information request service, which provides rapid responses to specific country-based enquiries. The Home Office thus ensures that those involved in the decision-making process have the most up to date information available to them when assessing applications for international protection.

43. Operational Guidance Notes (OGNs) are produced by the Home Office's Country Specific Litigation Team to provide an evaluation of the relevant country information and apply that together with general asylum policy and case law to provide caseworkers with clear guidance on how to deal with the common categories of claim for international protection. As with COI reports, OGNs are updated regularly,

44. The main aim of OGNs is not to replace other publicly available information or guidance but to supplement it and ensure the consistent application of law, asylum policies, and country information. It is emphasised in the introduction section of each OGN that the Home Office's caseworkers must not base decisions purely on the information contained within the OGN, but that it must be read in conjunction with all other relevant policies and guidance. OGNs are intended therefore to be an important tool in ensuring both quality and consistency in asylum decision-making.

45. Country information and policy bulletins are produced on an ad hoc basis when the situation in a country is rapidly changing and requires urgent guidance for the Home Office's caseworker. Bulletins will also be issued if a country issue is raised which warrants in depth consideration.

46. By these means the country policy and country information teams aim to provide timely relevant products to assist caseworkers in the decision-making process.

47. The country of origin information used in COI reports and OGNs is subject to the external and independent scrutiny of the Independent Advisory Group on Country Information (IAGCI), which was established by the Independent Chief Inspector of Borders and Immigration in 2009.

48. Following recommendations made by the Independent Chief Inspector in his report, 'The use of country of origin information in deciding asylum applications: A thematic review', in July 2011, the Home Office revised guidance on considering asylum applications to include more detail on the use of country of origin information and specific links to COI reports and OGNs as part of our work to provide a more efficient and accessible suite of guidance products to support decision-makers.

The prevalence of refused asylum seekers who are tortured upon return to their country of origin and how the UK Government can monitor this

49. Applications for international protection are considered on the individual facts of the case and taking into account up to date country of origin information. The Home Office does not remove anyone to a country where there is a real risk that the individual will be tortured, or face other inhumane or degrading treatment.

50. The assessment of the risk of persecution is based upon evidence from published and wide-ranging country information obtained from reliable sources, including the Foreign and Commonwealth Office (FCO) and other governmental sources, the United Nations High Commissioner for Refugees, (UNHCR), international and national human rights organisations, and news media. To assist in assessing risk on return, information will also often be obtained from other returning states. Decisions to refuse applications for international protection are subject to a right of appeal to the courts.

51. The Home Office takes all allegations of mistreatment of returnees very seriously. Where allegations are made about the general ill treatment of returnees, the Home Office will conduct inquiries, generally with the assistance of FCO. If any allegation is found to be of substance then appropriate swift action will be taken. The Home Office does not routinely monitor the treatment of individual unsuccessful asylum seekers once they are removed from the UK. There are practical limits to our ability to do so and there is also a risk of drawing undue attention to those being removed. 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.

Home Office

April 2013

Written evidence submitted by Asylum Aid (ASY 02)

About Asylum Aid

Asylum Aid is an independent, national charity working to secure protection for people seeking refuge in the UK from persecution and human rights abuses abroad. We provide free legal advice and representation to the most vulnerable and excluded asylum seekers, and lobby and campaign for an asylum system based on inviolable human rights principles. The Women's Project at Asylum Aid strives to obtain protection, respect and security for women seeking asylum in the UK by providing specialist advice and research and campaigning on the rights of women seeking asylum. Asylum Aid was highly commended in the Charity Awards 2010.

Executive summary

1. The Women's Project at Asylum Aid has been running for more than a decade, and has become a focal point for work on women seeking asylum. Throughout that time it has undertaken legal representation and research, and campaigned for fairer, more dignified treatment of women seeking asylum in the UK. This includes the initiation of the *Charter of Rights of Women Seeking Asylum* in 2008, a programme for reform now endorsed by well over 300 organisations.

2. As a result, this submission will focus in detail on the assessment of credibility in women's asylum claims, with broader details about the asylum system as a whole where necessary.

Paragraphs 4-29 focus on the assessment of credibility of women when they seek asylum, the evidence of women facing disproportionate barriers to being believed by officials, and the reasons behind this; paragraphs 30-35 focus on Country of Origin Information, the gaps in this research, and weaknesses in its implementation; paragraphs 36-45 focus on the Detained Fast Track process, and flaws in decision-making during screening; paragraphs 46-49 focus on destitution, the risk that poor decisions will leave women at particular risk, and the impact on those who are left destitute. Paragraphs 50-63 provide concrete recommendations on addressing cultural and operational issues at the UK Border Agency.

3. Asylum Aid would be very interested in providing further, oral evidence to the Committee, particularly on the assessment of credibility when women seek asylum.

The assessment of credibility of women, the mentally ill, victims of torture and specific nationalities within the decision-making process and whether this is reflected in appeal outcomes

'The culture of disbelief'

4. Asylum Aid believes that there are deep and lasting problems with a 'culture of disbelief' at the UK Border Agency (UKBA). As a result of this culture, accounts of persecution by many men, women and families are rejected by officials without clear grounds in relation to international refugee and human rights law, or with little detailed attention towards the case.

5. This is extremely serious, as research has shown how often assessing the credibility of an asylum seeker is prioritised to the exclusion of other elements of the decision-making process. For example, Asylum Aid research in 2011 found that:

> *The assessment of credibility formed the core of the decision to refuse; other aspects of the decision-making process such as identifying the Convention ground and assessing issues of state protection were marginalised.*[1]

This problem has persisted despite concerns raised by national charities and international NGOs over a sustained period. The UN Refugee Agency (UNHCR),[2] Amnesty International,[3] and others have published detailed research into how the credibility of asylum applicants is assessed, and how often accounts of persecution are arbitrarily dismissed. UNHCR has raised concerns about flawed credibility assessments, an application of the wrong standard of proof, a failure to apply objective Country of Origin Information (COI), and the adoption of a mindset where officials appear to be looking to refuse a claim from the outset.[4] In the words of Amnesty:

> *Amnesty International is concerned about the frequency with which Home Office caseworkers make unreasoned and unjustifiable assertions about asylum applicants which cast doubt on the applicant's individual credibility. [...] [Decisions are] often based on catching applicants out rather than investigating the details of the claim.*[5]

6. This approach is not in the government's interests. It is the Coalition's stated aim "to ensure that we are taking the highest quality decisions; getting it right first time".[6] Charities working with the UKBA have long recognised the importance of achieving this, and urged the Agency to focus its resources on doing so.[7] However, the abiding culture of disbelief clearly creates substantial barriers to this.

Assessing the credibility of women

7. This section will look at the assessment of credibility in initial asylum claims. Please see paragraphs 36-45 on assessments of credibility in relation to the Detained Fast Track (DFT).

8. Asylum Aid believes that women seeking asylum face a risk, *specific to them as women*, of being disbelieved without good reason by officials. We believe that many women are failed twice: first as asylum seekers, and then again as women.

9. One third of all people seeking asylum in the UK in their own right are women. This proportion has been consistent for the last decade, and means that between 5,000 and 7,000 women seek asylum here each year.[8] Gender is *not* one of the five grounds for engaging the Refugee Convention, so it is imperative that officials interpret the Convention in a manner sensitive to the persecution women may face. As the UNHCR has stressed:

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1 Asylum Aid, *Unsustainable: the quality of initial decision-making in women's asylum claims* (2011), p. 51.
2 UN Refugee Agency, *Quality Initiative: Fifth report to the Minister* (2008).
3 Amnesty International UK, *Get it right: How Home Office decision making fails refugees* (2004).
4 UN Refugee Agency, *Quality Initiative: Third report to the Minister* (2006), p.5.
5 Amnesty, *Get it right*, p. 19.
6 Minister's speech to the National Asylum Stakeholder Forum (May 2011).
7 Jane Aspen, *Independent evaluation of the Solihull Pilot* (2008), p. 10; Asylum Aid, *Right First Time: how UK Border Agency officials and legal representatives can work together to improve the asylum system* (2013).
8 Asylum Aid, *"I feel like as a woman I'm not welcome": A gender analysis of UK asylum law, policy and practice* (2012), pp. 19-20.

It is an established principle that the refugee definition as a whole should be interpreted with an awareness of possible gender dimensions in order to determine accurately claims to refugee status.[9]

10. Women asylum seekers claim protection from a range of human rights abuses in their home countries. A woman may claim asylum because she has been persecuted by the state, such as political activity for which she has been detained. Alternatively, she may face persecution from her family or community, in a country where laws to protect her either don't exist or go unenforced. Some forms of persecution are particular, though not exclusive, to women, including domestic violence, rape, forced marriage, so-called "honour" crimes, and Female Genital Mutilation.

11. Women are thus more likely than men to have fled non-state persecution. The assessment of credibility has an especially important role in cases of non-state persecution, as people are unlikely to have any documentary evidence, whereas those fleeing state persecution may be able to support their asylum claims with documents such as political membership cards.

12. The UKBA does not collect statistics on the reason for refusing asylum in a given case, but 87% of the women interviewed by Asylum Aid for its research *Unsustainable* had been disbelieved when they recounted what had happened to them,[10] as had 75% of the women interviewed by Women for Refugee Women for their report *Refused* (2012).[11] These reports are based on relatively small samples, but in the absence of UKBA data on this it has fallen to charities to fill the gap.

13. *Unsustainable* found that women were disproportionately likely to see their asylum refusal overturned on appeal. In its sample, judges reversed the UKBA's credibility findings and accepted the applicant's own account in every successful appeal. 42% of refusals issued to women were overturned, compared with the average across both sexes in 2010 of 28%. The UKBA confirmed that its own internal data showed the same pattern, with 35% of appeals allowed for women where the initial decision was made within six months, and 41% where the asylum decision took longer.[12]

14. This disparity in the overturn rate for decisions which take longer than six months in especially relevant given the Select Committee's finding that 53% more cases are now waiting six months or more for a decision.

15. As a result of *Unsustainable*, the UKBA agreed to disaggregate appeal statistics by gender for the first time. UKBA data shows that a higher percentage of refusal decisions issued to women have been overturned on appeal compared to those issued to men, in each of the years between 2007 and 2011 (see appendix 1 for full table).

16. Recent research indicates that between 50-75% of women asylum seekers have been raped, either in their countries of origin, during transit, or once in the UK.[13] Despite this, the refusal to believe women who give accounts of gender-based persecution, allied to the disproportionately high overturn rate for women, suggests that something goes badly wrong when there is a gender dimension to any asylum claim.

17. The cost implications for this are substantial. Exact public costings when asylum applications are sent to appeal are difficult to come by, not least because the funding is shared between the Home Office and Ministry of Justice. Therefore estimates should be treated with caution. But one independent estimate from 2008 calculated £2,730.57 per case as the total cost of hearing an appeal and support costs in the meantime.[14] This does not include potential tax payments if an asylum seeker had been recognised as a refugee at the right time and entitled to work, nor the costs to the health service of care associated with refusal of asylum.[15]

18. There are several possible, over-lapping explanations why credibility assessments for women remain disproportionately poor, listed in paragraphs 19-23. Asylum Aid strongly believes that these issues cannot effectively be addressed piecemeal, but must be part of a commitment to place gender-sensitive reforms at the heart of UKBA strategy on asylum.

19. *Unsustainable* found that asylum interviews for the majority of women in the research sample concentrated on looking for inconsistencies in applicants' subjective accounts, rather than verifying their accounts against objective information.[16]

20. The appropriate standard of proof for assessing asylum claims is that of "reasonable degree of likelihood" or "real risk" that past events had occurred, and of future risk that the applicant would be persecuted in their

[9] UN Refugee Agency, *Gender-related persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 protocol relating to the status of refugees* (2002), p. 2.

[10] Asylum Aid, *Unsustainable*, p. 5.

[11] Women for Refugee Women, *Refused: the experiences of women denied asylum in the UK* (2012), p. 9.

[12] Asylum Aid, *Unsustainable*, p. 13.

[13] Scottish Refugee Council & London School of Hygiene and Tropical Medicine, *Asylum seeking women, violence and health* (2009); Refugee Council, *The vulnerable women's project: refugee and asylum seeking women affected by rape or sexual violence—literature review* (2009); Women for Refugee Women, *Refused*.

[14] Aspen, *Independent evaluation of the Solihull Pilot*, p. 66. Updated calculations are likely to be available when the Early Legal Advice Project pilot reports later this year.

[15] On impact of asylum refusal on women's health, see Asylum Aid, *Unsustainable*, pp. 43-44; and Women for Refugee Women, *Refused*, p. 5.

[16] Asylum Aid, *Unsustainable*, p. 52.

country of origin. This is reflected in guidance for case owners.[17] However, *Unsustainable* found a failure to apply the lower standard of proof.[18]

21. *Unsustainable* found a striking failure by some asylum officials to understand the basic nature of the gender-related persecution from which women might flee. This included officials who had never heard of the term 'female circumcision', who confused the terms 'arranged marriage' and 'forced marriage', and whose definitions of domestic violence were arbitrary and confusing. This is despite the fact that an individual who has suffered gender-related persecution such as Female Genital Mutilation, forced marriage or domestic violence may engage the Refugee Convention.[19]

22. Women who claim asylum after being raped or falling victim to sexual violence are often traumatised as a result of this abuse. There is overwhelming independent evidence that trauma can lead to discrepancies and confusion over recall of events surrounding that trauma, or to late disclosure of those events.[20] Despite this, we have found that officials often display a limited understanding of how trauma might impact on the way women present their case. Decision-makers will sometimes dismiss the credibility of applicants whose accounts of traumatic events are hesitant or inconsistent, or are provided at a later date, even in the face of specific evidence that this is more likely to indicate trauma than untruth.[21]

23. The routine disbelief of women seeking asylum mirrors the disbelief which has long confronted victims of rape and sexual violence in the criminal justice system (CJS). A raft of measures has been introduced to make the police and Crown Prosecution Service more sensitive to the needs of women who have reported rape, sexual violence, domestic violence, and so-called "honour" crime. This was intended to support the victim, but also to create an environment in which the right information is made available as early as possible. While poor practice remains in the CJS, the UKBA has taken only very limited steps to learn from the successes and failures of this sort of work elsewhere in government. This is despite pressure from hundreds of UK charities and NGOs as early as 2008, who argued:

> *If a woman suffers rape, domestic violence or honour crimes in the UK there are gender-sensitive practices that have been developed within the criminal justice system to respond appropriately. If a woman suffers similar violence in her home country and comes to the UK to seek protection, the immigration system should respond to a similar standard, learning the lessons from the criminal justice system.*[22]

In practice, just two meetings have taken place (in 2011) between police and senior UKBA officials to discuss gender rights and training, three-and-a-half years after the first requests by charities.

24. In recent years, the UKBA has introduced some reforms which improve the chances of accurate, sustainable assessments of women's credibility, albeit in response to sustained lobbying by charities. Women are now automatically offered the choice of a male or female asylum interviewer (within operational constraints), and childcare is available during asylum interviews everywhere in the UK except London. The latter is a crucial step to ensuring that no asylum seeker is forced to choose between disclosing traumatic details in front of her young children or failing to discuss relevant, sensitive information and risking that impacting on her credibility.

The UKBA's failure to implement or track gender policy

25. It should be noted that asylum policy and training on gender-based asylum claims is strong in many places, often as a result of pressure from asylum charities. There is clear guidance to officials on dealing with women's asylum claims, including how trauma might account for delayed disclosure of persecution, and how women contradicting social mores might be interpreted in some countries of origin.[23] New training on gender-based persecution was rolled-out for all UKBA decision-makers in 2012, building on the evidence in *Unsustainable*. The poor quality of credibility assessments persists because these policies and training are ignored or overlooked by the UKBA, only for judges to apply the appropriate standards in accepting many of the same accounts of persecution further down the line.

26. The UKBA acknowledges that its own auditing process is inadequate for monitoring and addressing how gender-based asylum cases are handled. The UKBA Quality and Development Audit team states in its 2011 thematic review of gender and asylum:

> *It is apparent from conducting this audit that some areas of the decision making process are not always easily identified as areas of concern because of the current auditing criteria and marking standards used in the audit process.*[24]

[17] Asylum Instruction on Considering the Protection (Asylum) Claim and Assessing Credibility, p. 21.

[18] Asylum Aid, *Unsustainable*, pp. 51-55.

[19] Asylum Aid, *Unsustainable*, p. 6.

[20] See, for example, Jane Herlihy and Stuart W. Turner, 'The Psychology of seeking protection' (2009); Diana Bögner, Jane Herlihy and Chris R. Brewin, 'Impact of sexual violence on disclosure during Home Office interviews' (2007).

[21] Asylum Aid, *Unsustainable*, pp. 55-56.

[22] *Charter of Rights of Women Seeking Asylum* (2008), p. 3. The values and recommendations outlined in the *Charter* is endorsed by well over 300 organisations, including Liberty, Oxfam, and the British Red Cross.

[23] UKBA, *Gender issues in the asylum claim* (2010).

[24] UKBA, *Quality and efficiency report: thematic review of gender issues in asylum claims* (June 2011), p. 2.

An audit system which accurately tracks and measures the quality of decisions for women seeking asylum is urgently needed.

A LACK OF JOINED-UP WORK ON VIOLENCE AGAINST WOMEN

27. The government's Violence Against Women and Girls (VAWG) Strategy was launched in November 2010, with a promise to provide a "cohesive and comprehensive" response to violence against women, whether taking place "in modern Britain or anywhere else in the world".[25] However, the initial strategy contained just one, heavily-qualified commitment to helping women seeking asylum, who were missed out despite having fled violence in one country and who research shows are at increased risk of violence once in the UK.[26] These commitments were expanded in March 2013 only after concerted pressure from NGOs and charities, and now include specific commitments on better training of asylum decision-makers, greater transparency, and enhanced COI.[27] These could make a material difference to whether or not women are believed when they seek asylum, and the implementation of these promised actions is essential.

28. The government is promoting and resourcing important work to protect women overseas from domestic and sexual violence and sexual violence in conflict,[28] and launching major UK initiatives to combat forced marriage and FGM. The UKBA has shown little commitment, however, to sharing in the experiences of the Foreign and Commonwealth Office and Department for International Development in order to reach better, more sustainable decisions for women seeking asylum on the same grounds.

29. Asylum Aid is also concerned that the Coalition's hesitancy over opting-in to some key European instruments compromises its commitment to improving the treatment of women seeking asylum.

Firstly, the UK has decided not to opt-in to the recast EU Qualification, Procedures and Reception Conditions Directives developed as part of the EU harmonisation process,[29] and will therefore continue to be bound by previous Directives which have far more limited reference to gender.

Secondly, the government delayed signing the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, which was finalised in Istanbul in May 2011.[30] The convention includes strong provisions on women asylum seekers, and requires signatories to recognise gender-based violence as a form of persecution within the Refugee Convention; provide a gender-sensitive interpretation of the Refugee Convention grounds; develop gender-sensitive reception procedures and support services for asylum seekers; and have gender guidelines and gender-sensitive asylum procedures (articles 60.1-3). The government signed the Convention in June 2012,[31] but only *after* the UK had unsuccessfully put forward new amendments, one of which would have made it possible for Member States to make reservations to article 60.3:

> *Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.*

The use of Country of Origin Information and Operational Guidance Notes in determining the outcome of asylum applications

30. The courts have long stated that the assessment of an asylum seeker's credibility can only be made in the context of COI. As one judgment stated in 1998:

> *It is our view that credibility findings can only really be made on the basis of a complete understanding of the entire picture. It is our view that one cannot assess a claim without placing that claim into the context of the background of the country of origin. In other words, the probative value of the evidence must be evaluated in light of what is known about the conditions in the claimant's country of origin.*[32]

31. The use of COI is evidently crucial to any asylum claim. Officials are aided by COI reports, provided by country-specific researchers. Yet evidence shows that COI is used selectively and partially, and that asylum officials will sometimes make assumptions where there are gaps in the COI available. The Independent Chief Inspector of the UKBA has raised his concern that such assumptions might undermine the credibility of asylum claimants where information is missing from COI reports, and stressed that this would be a particular problem for those claiming asylum on gender-based grounds.[33]

32. It was found in 2007, for example, that COI reports often provide evidence on human rights conditions in a specific country from a male perspective only, and that there is only a short section addressing women's

[25] Home Office, *Call to end violence against women and girls* (2011), pp. 1,2.
[26] See Heaven Crawley, Joanne Hemmings and Neil Price, *Coping with destitution: survival and livelihood strategies of refused asylum seekers living in the UK* (2011), pp. 41, 42, 43.
[27] Home Office, *Call to end violence against women and girls: action plan* (2013), paragraphs 46-48.
[28] Foreign Secretary's speech to mark International Women's Day (2013).
[29] Written Ministerial Statement on European Union opt-in decision (October 2011).
[30] Home Office, *Ending violence against women and girls: action plan progress review* (2011), p. 27.
[31] Foreign Office press release (2012).
[32] *Horvath v. Secretary of State for the Home Department*, Appeal No: 17338, AIT/IAA, 28 September 1998 , paragraph 21.
[33] Independent Chief Inspector of the UKBA, *The use of country of origin information in deciding asylum applications: a thematic inspection* (2010-2011), paragraph 3.

issues.[34] More recent research identified the number of gaps in addressing gender issues which still existed in COI reports, including information necessary to assess the risk on return to the country of origin, the possibility of internal relocation, and the health of asylum seekers.[35]

33. Asylum Aid's 2011 research report *Unsustainable* found specific examples of COI being used selectively in the majority of the cases it sampled, so that:

> *sections [from COI] that undermined the applicant's cases were quoted and highlighted, while sections (often from the same reports) that corroborated the applicant's case were ignored.*

This included one case in which the UKBA reproduced independent COI which stated that women in Iraq could gain effective help from a local police station, but omitted the preceding sentence which stated that "women have been sexually assaulted by the police when reporting to a police station".[36]

34. *Unsustainable* also identified how extremely weak COI is used to undermine a client's credibility or claim. In one case, a woman seeking asylum from Uganda on the grounds of her sexuality was told that her account of the danger of persecution at home "is inconsistent with available country of origin information" before citing two American gossip websites, gawker.com and queerty.com. Other, more authoritative sources of information about the persecution of lesbians in the COI report for Uganda, including a report by the US State Department, were omitted.[37]

35. *Unsustainable* also examined five cases of women from Somalia, all of whom described to the UKBA gender-related persecution. None of the refusal letters contained any examination of the status of women in Somalia, nor the way in which women are treated.[38]

The effectiveness of the UK Border Agency screening process, including the method of determining eligibility for the 'Detained Fast Track' procedure

36. Inappropriate screening practices affect the way women's credibility is assessed in a number of ways.

37. The UKBA undertook a review of screening during 2011 which included gender issues. The appointment of a 'Gender Champion' and 'Trafficking Champion' in 2011 is a welcome step towards strategic thinking on how women are treated during screening, but very serious problems persist.

38. Asylum applicants are expected to disclose only basic information about where they are from and why they need protection during their screening interview. Yet Asylum Aid's legal team continues to see—and has seen for many years—refusal decisions which question an applicant's credibility because an issue raised during the substantial asylum interview was not mentioned during screening. Conversely, minor discrepancies between information given at screening and at the substantive interview are also then used to question the credibility of the applicant.

39. The UKBA has agreed to try and provide women interviewing officers for female asylum seekers at screening, but this is not guaranteed. This leaves a major barrier to women giving general, clear information about why they are claiming asylum.

40. Anyone seeking asylum must do so in person at the Asylum Screening Unit (ASU) in Croydon. Charities and advocates have reported many problems with this process, including women with children forced to travel very long distances across the UK without any financial support in order to arrive at the ASU early enough to be screened on the same day.[39] This is evidently unsuited to taking appropriate, reliable information from exhausted asylum seekers, especially when the detention or otherwise of that person is at stake.

41. The formal criteria for placing someone in the DFT require evidence that "a quick decision is possible" on their asylum claim, provided that that person does not fall into the exclusion criteria:

- Children
- Women who are 24 or more weeks pregnant;
- Family cases
- Those with a disability which cannot be adequately managed
- Those with a physical or mental medical condition which cannot be adequately treated
- Those who clearly lack mental capacity or coherence

[34] Asylum Aid, *Country of origin information and women: researching gender and persecution in the context of asylum and human rights* (2007), p. 11.

[35] Heaven Crawley, *Thematic review on the coverage of women in country of origin information reports, prepared for the Independent Advisory Group on Country Information* (2011), PP. 136, 142.

[36] Asylum Aid, *Unsustainable*, pp. 61-62.

[37] Asylum Aid, *Unsustainable*, p. 60.

[38] Asylum Aid, *Unsustainable*, p. 61.

[39] A first-hand account is provided in Lauren Butler, 'Lodging a claim for asylum under the new procedures: a first-hand account' in *Women's Asylum News* (95: September 2010), pp. 1-4. This account describes a journey from Rochdale to London, starting at 4.15am and arriving in Croydon "four hours and three transfers later".

— Those who are victims of trafficking

— Those with independent evidence of torture[40]

42. However, the information provided at screening is extremely limited, and there is no guidance to identify how or why an asylum claim might be decided quickly. Asylum Aid strongly refutes the UKBA's unevidenced statement that this assumption can be applied to the 'majority' of claims.[41]

43. In practice, Human Rights Watch and others have observed that the basis for routing into DFT has included doubts about the credibility of an account provided by the applicant during a screening interview.[42]

44. This threatens to undermine the roll-out of new asylum procedures under the Asylum Operating Model (AOM) from April 2013, including for handling complex claims. If poor decisions mean that complex cases are routed into DFT, these will never be considered through the AOM. Asylum Aid knows, from first-hand experience of officials' work at the Fast-Track Intake Unit and the testimony of asylum seekers, that women have been allocated to DFT even where they have disclosed complex gender-based persecution at screening.

45. The accelerated decision-making process in DFT, and restricted access to legal representation,[43] means that it can then be very difficult to demonstrate credibility after being detained. This can be especially true for victims of gender-based persecution, whose cases can be highly complex and who may, through trauma, fear or embarrassment, come forward with sensitive, relevant information late in their claim or not at all. Furthermore, the UN Refugee Agency has previously noted of the DFT that "[s]ome [UKBA] Case Owners demonstrate a limited understanding of refugee law concepts and gender specific issues are often not correctly assessed in decisions".[44] There is a real risk that women are placed in DFT as a result of poor and inappropriate credibility assessments during screening, and are then at risk of being removed from the UK after asylum decisions which are overly swift and ill-informed on gender issues.

The prevalence of destitution amongst asylum applicants and refused asylum seekers

46. There is a terrible irony that women who have often fled from persecution and violence overseas are left at risk of further violence here as a result of shortcomings in the UK asylum system. This exposes a contradiction at the heart of government promises to protect women who suffer from violence, as some women are exposed to greater risk precisely as a result of UK asylum policy.

47. Failings in the way the UKBA assesses the credibility of women (see paragraphs 19-23) leaves women at particular risk of receiving poor asylum decisions, and subsequently being left destitute.

48. If a woman does not have children, and does not face extraordinary circumstances (such as being unable to leave the UK because of a physical impediment), then accommodation and support will be withdrawn by the UKBA if a woman's asylum claim and appeal have been refused.[45] But decisions to remove support are also deeply flawed. Research by the Asylum Support Appeals Project (ASAP) in 2011 showed that:

> *Over 80% of the London Project's clients between July 2008 and March 2010, who were refused support by the UKBA on the grounds that they were not destitute, won their appeals after being represented by ASAP's duty scheme. This poor decision making resulted in unnecessary appeals, which meant unnecessary cost to the public purse and unnecessary hardship and stress to already vulnerable adults and children.*[46]

ASAP's research does not disaggregate these figures by gender, but half of their sample are women.

49. In the event that support is withdrawn, a woman can be left destitute, and reliant on friends for housing and money. There are gender-related reasons why the situation might become still worse for women asylum seekers. Pregnancy or the birth of a child is the most common reason for women to move out of accommodation provided by family or friends, and be left street homeless. Women may be forced out of insecure accommodation because of domestic violence and sexual exploitation. Recent research by Oxfam has shown that some women are forced to participate in 'transactional sex' in order either to prevent losing somewhere to sleep or finding a new roof over their heads.[47]

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[40] UKBA, *Detained fast track processes*, section 2.3.
[41] UKBA, *Detained fast track processes*, section 2.2.
[42] Human Rights Watch, *Fast-tracked unfairness: Detention and denial of women asylum seekers in the UK* (2010), p. 38
[43] 85% of those in DFT sampled by Detention Action in 2011 only met their legal representative on the day of their substantive interview, and the overwhelming majority were left highly unclear about their rights. See Detention Action, *Fast-track to despair: The unnecessary detention of asylum-seekers* (2011), p. 26.
[44] UN Refugee Agency, *Quality initiative project: Fifth report to the Minister*, p. vii.
[45] Asylum Support Appeals Project, *No credibility: UKBA decision-making and Section 4 support* (2011), p. 5.
[46] Asylum Support Appeals Project, *No credibility*, p. 11.
[47] See Crawley et al, *Coping with destitution*, pp. 48-49.

Recommendations

The UK Border Agency needs an overhaul of its culture, such that its approach to all asylum seekers is founded on dignity and respect. The following recommendations are divided in two parts: those which will help ensure this over-arching culture change, and the operational changes on the ground which will improve the asylum system straight away.

Culture change

The Chief Executive of the UK Border Agency should:

50. Guarantee women seeking asylum access to a fair and dignified system which results in asylum decisions made right first time.

51. Focus on developing a culture at the UKBA focused on protection, equalities, and human rights. As part of this, the Chief Executive should demonstrate leadership and vision to create a gender-sensitive culture within the UKBA as a whole, in line with the Equality Act 2010.

52. Create an approach to gender-based persecution at the UKBA consistent with the government initiatives in the UK on forced marriage, FGM, and so-called "honour" crime, as well as government initiatives to protect women from violence overseas.

53. Implement the commitments to asylum rights in paragraphs 46-48 of the government's revised Violence Against Women and Girl Action Plan (March 2013) in the next six to twelve months.

54. Incorporate recognition of gender as a strategic objective in all planning processes in respect of asylum seekers and refugees.

Operational changes

The UK Border Agency should:

55. Ensure gender is mainstreamed by undertaking gender impact assessments of all policies, including the new Asylum Operating Model.

56. Automatically provide screening at their local UKBA office for women with children/babies or who are pregnant, rather than at Croydon.

57. Provide childcare at the Asylum Screening Unit.

58. Whilst the Detained Fast Track continues to exist, exclude:

(a) cases where there is evidence or an assertion or indicator of gender-based violence or of sexual orientation or gender identity (whether at screening or whilst in the DFT); and

(b) women at any stage of pregnancy.

59. Guarantee that women asylum seekers are provided with female case owners and interpreters for their screening and substantive interviews.

60. Training, audit and performance management systems should be used to ensure that case owners:

(a) apply the correct standard of proof and give applicants the benefit of the doubt where appropriate;

(b) recognise that omissions and inconsistencies in accounts of gender-based persecution and torture can result from trauma, and should not automatically be taken as evidence of untruth;

(c) assess credibility based on the core facts of the claim taking all facts into account including any medical evidence or country of origin information available in the round;

(d) interpret the Refugee Convention in a gender-sensitive way; and

(e) seek out gender issues in country of origin information and apply this appropriately.

61. Transfer the understanding of models of rape trauma and domestic violence used by the criminal justice system to the UKBA.

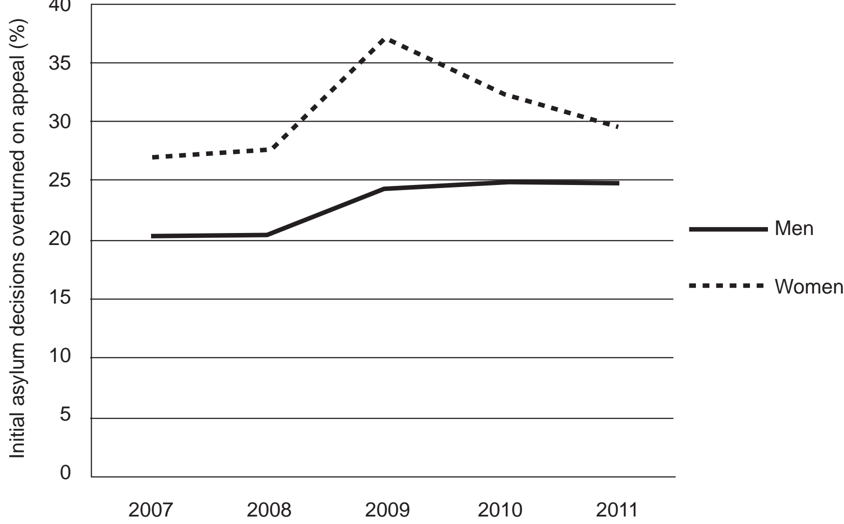
62. Undertake a gender audit on the quality of decision-making in women's cases.

63. Include in Country of Origin Information and Operational Guidance Notes relevant information relating to gender persecution, discrimination, cultural and economic issues that impact disproportionally upon women and regularly review that information/guidance to ensure that it is up to date.

Appendix 1

The rate of successful appeals by gender for each of the last five years:[48]

	2007	*2008*	*2009*	*2010*	*2011*
Initial decisions overturned for men at appeal (%)	20.2	20.6	24.5	24.8	24.8
Initial decision overturned for women at appeal (%)	26.9	27.3	36.9	32.3	29.6



Asylum Aid

March 2013

Supplementary written evidence submitted by Asylum Aid (ASY 02a)

I am taking up the opportunity you offered when I gave evidence at the Home Affairs Committee inquiry into asylum on 11 June to provide supplementary evidence. As my focus was on the importance of case owners using the correct standard of proof, I wanted to provide the legal references for this. A summary is below and I am also attaching an extract from UNHCR's report on credibility. This has just been published so it provides up-to-date information on the case law regarding the standard of proof in the UK's asylum system.

According to UK case law:

The standard of proof in the examination of all asylum claims is that of "reasonable degree of likelihood" or "real risk". [49]

The same standard of proof should be applied to the consideration of whether historical facts have occurred and whether there is a future risk of persecution.[50]

This is effectively a low standard of proof which operates for the benefit of the applicant.[51]

The Asylum Instruction on Considering the Protection (Asylum) Claim and Assessing Credibility which case owners are expected to comply with confirms this particularly in these two extracts:

> "Evaluating whether an applicant is in need of international protection often requires decision-makers to decide whether they believe the applicant's evidence about these past and present events and how much weight to attach to that evidence bearing in mind the low standard of proof required."[52]
>
> "The appropriate test for a decision maker to apply is to consider whether, at the date when they are making their decision, there is a reasonable degree of likelihood of the applicant being persecuted

[48] Asylum Support Appeals Project, *No credibility*, p. 11.
[49] Sivakumuran, R (on the application of) v Secretary of State for the Home Department [1987] UKHL 1 (16 December 1987).
[50] Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11 (25 January 2000), para. 99.
[51] Symes and Jorro, Asylum Law and Practice, 2010, para. 2.2.
[52] Asylum Instruction on Considering the Protection (Asylum) Claim and Assessing Credibility, para 4.1

in their country of origin. The courts have said that a 'reasonable degree of likelihood' has the same meaning as the term 'real risk.'[53]

The UNHCR Note on Burden and Standard of Proof in refugee Claims states the "standard of proof means the threshold to be met by the applicant in persuading the adjudicator as to the truth of his/her factual assertions." It goes on to clarify: "In common law countries, the law of evidence relating to criminal prosecutions requires cases to be proved "beyond reasonable doubt". In civil claims, the law does not require this high standard; rather the adjudicator has to decide the case on a "balance of probabilities". Similarly in refugee claims, there is no necessity for the adjudicator to have to be fully convinced of the truth of each and every factual assertion made by the applicant. The adjudicator needs to decide if, based on the evidence provided as well as the veracity of the applicant's statements, it is likely that the claim of that applicant is credible" and later states "persecution must be proved to be reasonably possible." [54]

I hope this information is useful to yourself and the committee and that you will come back to me should you have any questions.

Once again, I would like to thank you and the Committee for giving Asylum Aid the opportunity to give evidence at the inquiry.

Yours sincerely,

Debora Singer MBE
Policy and Research Manager
Asylum Aid

July 2013

Annex

EXTRACT FROM
BEYOND PROOF: CREDIBILITY ASSESSMENTS IN EU ASYLUM SYSTEMS MAY (UNHCR, 2013)
PAGES 239 – 241
http://www.unhcr.org/51a8a08a9.html

Jurisprudence and policy guidance in the UK confirms that decision-makers should adopt one approach to all applications. However, the issue has arisen before the courts in recent years over whether a 'standard of proof' applies to the establishment of facts, and if so which standard, or whether another approach should be taken.

The UK Immigration Appeal Tribunal rejected the proposition that facts should be established on the basis of the civil standard of 'balance of probabilities' because this would result in uncertain facts not being accepted and being excluded from the assessment of prospective risk, which, it concluded, could not be right.[102] It held that the standard of proof of 'reasonable degree of likelihood', which applies to the determination of prospective risk, foresees a more positive role for uncertainty with regards to acceptance of facts. The tribunal emphasized that, therefore, uncertain facts should not be excluded from the ultimate evaluation of prospective risk.[103] This judgement was thereafter understood to mean that the lower standard of proof, that of 'reasonable degree of likelihood', applied to both the assessment of past and present facts as well as to the assessment of future risk.[104]

However, the Court of Appeal subsequently opined that this constituted a misunderstanding of the true effect of the majority decision of the tribunal. It stated that the tribunal had not decided that one standard of proof applied to both stages of the determination.[105] Instead, the Court of Appeal suggested that rather than applying a standard of proof to past and present facts, decision-makers should instead adopt a particular 'approach'. It was explained that decision-makers are likely to encounter disparate pieces of evidence, which they must take into account.[106] This includes:

— evidence about which they are certain;
— evidence they think is probably true;
— evidence to which they are willing to attach some credence, even if they could not go so far as to say it is probably true; and
— evidence to which they are not willing to attach any credence at all.

The Court of Appeal noted that decision-makers should accept evidence in categories (1), (2), and (3).

In other words, decision-makers should accept all those material facts that may be possible, even if not probable:

> "*it must not exclude any matters from its consideration when it is assessing the future unless it feels that it can safely discard them because it has no real doubt that they did not in fact occur (or, indeed, that they are not occurring at present). Similarly, if an applicant contends that relevant matters did not happen, the decision maker should not exclude the possibility that they did not happen (although believing that they probably did) unless it has no real doubt that they did in fact happen.*"

53 Asylum Instruction on Considering the Protection (Asylum) Claim and Assessing Credibility, para 5.6
54 UNHCR Note on Burden and Standard of Proof in refugee Claims (16 December 1998) pages 2 and 4 http://www.refworld.org/docid/3ae6b3338.html

This approach, as the Court acknowledged, reflects case law in Australia.[107] In Australia, decision-makers should accept all asserted facts that are possibly true, as well as those that are probably or certainly true.[108]

"*In other words, a proper application of the real chance test calls upon the decision-maker to take account of possibilities, even if these are considered unlikely.*"[109]

The UK Court of Appeal was keen to differentiate this as an 'approach' and not to label it as the application of a 'standard of proof '.[110] However, notwithstanding its own guidance, the Court subsequently referred to the 'reasonable likelihood' of the truth of past facts.[111] Referring to this latter judgment, the UK Supreme Court summarized that "*in relation to the standard of proof, it may be worth recording that the Court of Appeal stated that the applicants had to do no more than prove that there was a reasonable degree of likelihood that the past facts that they asserted [...] were true*."[112]

The Supreme Court found that this was consistent with the approach adopted by the European Court of Human Rights.[113] However, the Supreme Court also stated that adopting a standard of 'balance of probabilities' may also be consistent with the approach adopted by the European Court of Human Rights.[114] The Supreme Court decided to proceed on the basis that 'real possibility',[115] rather than balance of probabilities, was the correct 'test' to apply to the assessment of past and present facts, but considered that it should, on another occasion, decide authoritatively on this point.

The most recent UK policy guidance does not refer to the above-mentioned case of the Supreme Court but states:

> "*When considering what to accept or reject, decision makers will have to consider facts supported by evidence which will inspire varying degrees of confidence. As originally noted in the case of Kaja this will mean considering: [...] parts of the evidence which on any standard (i.e. up to and including the criminal court standard of proof: 'beyond reasonable doubt') were to be believed or not to be believed. Of other parts, the best that might be said of them was that they were more likely than not (i.e. the civil court standard of proof of – 'probably true'). Of other parts it might be said that there was a doubt (i.e.the fact cannot be rejected as beyond reasonable doubt false, but cannot be accepted as either beyond reasonable doubt true or probably true). [...] It is clear that facts which are 'beyond reasonable doubt'true and 'probably' true should be accepted, and facts which are 'beyond reasonable doubt' false should be rejected.*"[116]

With regards to facts about which there is some doubt, the updated guidance refers to the case law that specifies that, unless completely disproved, evidence should be given some weight: "*the case of Karanakaran established that decision makers should not ignore facts which were in doubt (or uncertain) but rather consider that: 'everything capable of having a bearing has to be given the weight great or little, due to it' (Lord Justice Sedley).*"[117]

Other legal jurisdictions have endorsed the broad approach stipulated by the UK courts and policy guidance.[118]

References

[102] *Koyazia Kaja v Secretary of State for the Home Department* [1994] UKIAT 11038, 10 June 1994. LJ Brook at p. 10 in *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ. 11, 25 January 2000, 3 All E.R 449. However, it should be noted that there was a dissenting opinion expressed by R E Maddison to the effect that historical facts should not be accepted on a standard lower than balance of probabilities. Furthermore: "*confusion is introduced by a disinclination to distinguish between the standard to be adopted for the assessment of facts relating to events in the past, which either did or did not occur, and the possibility of events occurring in the future, where obviously there is a wider area of uncertainty*."

[103] *Koyazia Kaja v Secretary of State for the Home* Department [1994] UKIAT 11038, 10 June 1994: "*The task of the adjudicator or the Secretary of State remains as in all cases – to assess the belief in the evidence with the ultimate evaluation in mind and to base that evaluation on the views of the evidence as a whole. We stress the need for an adjudicator in each determination to make it clear to the parties that the assessment of whether a claim to asylum is well founded is based on the evidence as a whole (going to past, present and future) and is according to the criterion of the reasonable degree of likelihood*."

[104] *Horvath v Secretary of State for the Home Department* [1999] EWCA Civ 3026, which explained that this was the general understanding of the Kaja decision. However, it should be noted that in this case, the Court of Appeal, obiter, suggested that there was no reason why past or existing facts should not be established on the basis of the balance of probabilities, and then the prospective risk evaluated according to the 'reasonable degree of likelihood' test.

[105] *Karanakaran v Secretary of State for the Home Department*, [2000] EWCA Civ. 11, 25 January 2000. Brook LJ at p. 10: "*It isimportant to understand clearly the true effect of the majority decision in Kaja. They did not decide, as is suggested in one headnote ([1995] Imm AR 1) that:* '*the lower standard of proof set out in Sivakumaran applied both to the assessment of accounts of past events and the likelihood of persecution in the future.*' *[...] It appears, however, that whatever the majority of the tribunal actually decided in Kaja, their decision has been generally interpreted as meaning that decision makers are at liberty to substitute a lower*

standard of proof than that conventionally used in civil litigation when judges make findings about past and present facts."

[106] *Karanakaran v Secretary of State for the Home Department*, [2000] EWCA Civ. 11, 25 January 2000, p. 10.

[107] *Chan Yee Kin v MIEA* (1989) HCA 62, 169 CLR 379 (9 December 1989); *MIEA v Wu Shan Liang* (1996) HCA 6, 185 CLR 259 (27 May 1996); *MIEA v Guo Wei Rong* (1997) HCA 22, 191 CLR 559 (13 June 1997); *Abebe v Commonwealth* (1999) HCA 14, 197 CLR 510 (14 April 1999); *Rajalingam v MIMA* (1999) FCA 719 (3 June 1999); *MIMA v Epeabaka* (1999) FCA 1 (6 January 1999). All these cases are cited in the Karanakaran judgment.

[108] *Rajalingam v MIMA* (1999) FCA 719 (3 June 1999). The case, at para. 60, set out the principle that there may be circumstances in which a decision-maker must take into account the possibility that alleged past events occurred even though he or she finds that these events probably did not occur. The reason for this is that the ultimate question is whether the applicant has a real substantial basis for his or her fear of future persecution. The decision-maker must not foreclose reasonable speculation about the chances of the future hypothetical event occurring. Also, in para. 62, when the decisionmaker is uncertain whether an alleged event occurred, or finds that, although the probabilities are against it, the event might have occurred, it may be necessary to take into account the possibility that the event took place in considering the ultimate question. Depending on the significance of the alleged event to the ultimate question, a failure to consider the possibility that it occurred might constitute a failure to undertake the required reasonable speculation in deciding whether there is a 'real substantial basis' for the applicant's claimed fear of persecution. Similarly, if the non-occurrence of an event is important to an applicant's case (for example, the withdrawal of a threat to the applicant) the possibility that the event did not occur may need to be considered by the decision-maker, even though the latter considers that the disputed event probably did occur.

[109] A Glass, 'Subjectivity and refugee fact-finding', in J McAdam (ed.), *Forced Migration, Human Rights and Security*, Oxford: Hart Publishing, 2008.

[110] Sedley LJ's comments at para. 14, states explicitly that he does not accept that a prescribed standard of proof for historical and existing facts is requisite.

[111] *GM (Eritrea) and Ors v Secretary of State for the Home Department*, [2008] EWCA Civ 833, 17 July 2008.

[112] *MA (Somalia) v Secretary of State for the Home Department,* [2010] UKSC 49, 24 November 2010, at para. 18.

[113] *MA (Somalia) v Secretary of State for the Home Department,* [2010] UKSC 49, 24 November 2010, at para. 19 cites para. 132 of *Saadi v. Italy*, no. 37201/06, ECtHR, 28 February 2008: "*132. In cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court considers that the protection of Article 3 of the Convention enters into play when the applicant establishes ... that there are serious reasons to believe in the existence of the practice in question* ***and his or her membership of the group concerned***"(emphasis added).

[114] *MA (Somalia) v Secretary of State for the Home Department,* [2010] UKSC 49, 24 November 2010, at para. 20: "*Nevertheless, the approach in Jonah and Horvath to the ascertainment of past facts may also be seen as consistent with the requirement for'substantial grounds' or 'serious reasons'*."

[115] The Court appears to equate 'real possibility' with 'reasonable degree of likelihood'.

[116] UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, p. 13, para 4.2.

[117] UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, p. 13, para 4.2.

[118] For example, the Irish High Court case of *A. v Refugee Appeals Tribunal & Ors,* [2011] IEHC 147, 8 April 2011. See also the earlier case *R.K.S. v Refugee Appeals Tribunal and the Minister for Justice, Equality and Law Reform,* [2004] IEHC 436, 9 July

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Written evidence submitted by Catherine Ramos (ASY 06)

Monitoring of Congolese Asylum Seekers Refouled to Drc

This evidence is submitted by Catherine Ramos BA MCIL RPSI, a trustee of the charity Justice First (Reg. Charity No. 1116388) and the author of the report, '*Unsafe Return*', which documents the refoulement of refused asylum seekers to the Democratic Republic of the Congo between 2006 and 2011. Monitoring of returns has continued to date. I travelled to the Democratic Republic of the Congo in September 2011 to interview and film returnees and to speak to human rights activists, a barrister and a Congolese official before publishing *Unsafe Return* in November 2011. I am willing to give oral evidence to, and answer questions from, the Home Affairs Select Committee regarding the details of evidence referred to in this summary.

This evidence aims to support the findings of "*Unsafe Return*", demonstrating that the conclusions of Country Policy Bulletin—DRC (November 2012) are flawed and aspects of the Fact Finding Mission (FFM) information are misrepresented in the Country Policy Bulletin (CPB). It should not be used in determining asylum applications as it could lead to applicants being returned to torture and inhuman treatment.

Chronology of reports referred to in this summary

March 17 2010 Dari Taylor MP gives a copy of '*Wake up a Devil in the Dark' (*WDD), compiled by Catherine Ramos, to junior Home Office Minister, Meg Hillier. This is a compilation of e mails and statements from Congolese refused asylum seekers and their support networks in the UK and the late Frank Cook, MP, regarding post return imprisonment and ill treatment**.**

November 24 2011 '*Unsafe Return*' is published. It documents the post return imprisonment and ill treatment of Congolese refused asylum seekers and their children. DVD and transcripts of interviews are available to the committee. 100% of the clients of Justice First were unsafe post return, suffering ill treatment at the hands of the authorities. This included nine children, six of whom were imprisoned with or separately to their mothers.

March 2012 Country of Origin Report updated. This indicates that evidence of post return ill treatment had been available in 2009 and 2011 but there had been no update of COIR.

May 22 2012 I attended a meeting with Minister for Immigration, Damian Green, at which representatives of UKBA confirmed that a fact finding mission would be sent to DRC and that Ms. Amanda Wood from the Country of Origin Information Service would form part of this delegation. The *'Minister's official'* indicated to MPs Mary Glindon and Alex Cunningham, also present at the meeting, that the '*Unsafe Return'* report was to be used as a basis to '*challenge'* the DRC authorities.

June 2012 A UKBA and FCO FFM delegation carries out interviews in Kinshasa regarding treatment of returnees. The Congolese authorities are given abbreviated Terms of Reference and are not questioned about treatment of returnees. (FFM report Page 4, xi)

September 2012 A FFM report is made available to legal representatives in the UK but is not available on the UKBA website.

November 2012 The FFM report is published. The Country Policy Bulletin on DRC is published as a response to '*Unsafe Return'*.

I consider that the Fact Finding Mission report has omissions and that the resulting Country Policy Bulletin contains errors and omissions and cannot be considered a response to '*Unsafe Return'*. *Unsafe Return'* finds that DRC refused asylum seekers suffered post return imprisonment and ill treatment. If the Congolese authorities were not questioned about treatment of returnees, was '*Unsafe Return'* used to challenge the DRC authorities, as stated to Mary Glindon MP and Alex Cunningham MP? CPB Section 15 states that UKBA did not carry out investigations into the specific cases recorded in '*Unsafe Return*'. UKBA alleges it is not able to verify the identity of returnees. This is not borne out by the facts.

1. *Anonymity*

At 5.2.6 of the Country Policy Bulletin (CPB) it is stated that, as the names of individuals making allegations of ill treatment in '*Unsafe Return'* were not given to UKBA, the latter can only 'reach conclusions on the allegations contained within the report based on evidence before it.' At 15.2 (CPB) it is stated that, *'As the testimonies are anonymous, there was no investigation into specific cases.'* I maintain that the UKBA does have the means to identify returnees from Tees Valley and International Organisation for Migration (IOM) returnees. Furthermore, the British Embassy in Kinshasa checked in prisons for at least four '*Unsafe Return'* returnees. Names were, therefore, in the possession of the FCO. The Embassy looked for one returnee on the day before his arrest. He was, consequently, not found in prison. At 6.2.3(CPB) it is stated that '*nor have these issues been escalated to the UN's attention.'* **.** The office of the UN Rapporteur on Torture, Professor Juan Mendez, is in possession of the names of seven returnees documented in '*Unsafe Return*' **and [xxx].**

2. *Incidences of ill treatment wrongly recorded in the Country Policy Bulletin*

Two cases of ill treatment of returnees in 2008 and 2010 and ill treatment of two Schengen returnees in 2009 and 2010 are cited at CPB 9.4. (Source: Oeuvres Sociales pour le Développement—OSD). At 4.07 a, b, c, the FFM report stated clearly that the 2008/2010 returnees were from the UK. The CPB fails to mention the country. There were four Schengen cases cited in the FFM report, not two.

3. *UNJHRO evidence omitted from the FFM report.*

The e mail sent from the UN Joint Human Rights Office to the FFM delegates who had visited the Kinshasa office is not referred to in the FFM report. I was e mailed the relevant paragraph which referred to the General Administrator of the National Intelligence Agency's (ANR) confirmation that one UK returnee from 8th June 2012 was found to be not Congolese. He had been detained and deported the following day. This contradicts information from the British Embassy official (migration) in the FFM report at Para. 4.10, information passed on from the FCO to Minister for Immigration, Damian Green. Rob Whiteman, Chief Executive of UKBA,

wrote to Alex Cunningham MP; '*none of those returned on 8 June were detained on arrival in the Democratic Republic of Congo.'(CTS REF: M2174/12, HO Ref: A1340962)* The British Embassy official refers to overseeing their transit through N'djili airport and passage through the documentation process over a two hour period after the plane landed. The official gave 100 dollars to each man. This is denied by one returnee and the father of a second returnee who allege arrest.

4. *Allegation of arrest on 8 June 2012*

A letter from Detention Action stating that **[xxx]**, a June 8 returnee, was not being allowed to leave N'djili airport is attached with this summary**. [xxx]**. I informed Alex Cunningham MP by e mail on 29th June **[xxx]** that one of the five returnees imprisoned with him was not Congolese. This fact was confirmed on 10th July in the e- mail from UNJHRO. At least two of the 8 June returnees had committed crimes in the UK. **[xxx]** The DRC Ambassador in London in a letter to the Rt. Hon. Mary Glindon MP states that such returnees will be detained for a period of time whilst clarification is carried out by the Congolese Justice System.

5. *Policy not being adhered to*

Mr. David Becker of UKBA was asked to confirm the aforementioned deportation. He stated that a returnee whose nationality is not accepted by the receiving country should be brought back to the UK. It would appear that in DRC the policy was not observed. In 2010 a DRC national was removed to Republic of Congo. He was then escorted to DRC but travelled on alone from Kinshasa, without documents, to Lubumbashi, in Eastern Congo. A bribe was paid by a British citizen to secure his release from the airport, as the returnee, allegedly, had only a letter from the Home Office. A similar case is referred to in the FFM report. Correspondence from the British Embassy to UKBA in 2009 appears to have no reference number.

6. *Monitoring system*

The UN Joint Human Rights Office in Kinshasa does not monitor returns of refused asylum seekers. Discussions between the FFM delegation and the UNJHRO about setting up a system to monitor returns and reintegration are not referred to in the FFM report. UNJHRO had informed me in a phone call and by e mail that UNJHRO staff had indicated to the UK delegation that the office could not monitor returns and had not identified an NGO which would be able to carry out monitoring due to the cost of doing so. Mr. Alex Cunningham MP was informed by UKBA that I was mistaken about discussions relating to a monitoring system. The Country Policy Bulletin states at Para. 13.1 that the UK is under no obligation to monitor returnees. This ignores the UK's responsibility not to return people to countries where they will be tortured.

7. *Amnesty International—Country Policy Bulletin 7.1.1 and 7.2.2*

Neither Amnesty International nor Human Rights Watch monitors returns to DRC. AI does not have the resources to investigate allegations of ill treatment. AI researchers state that the fact they 'do not document detention' does not mean that 'detention does not take place' (CPB 7.1.5). AI refers to the detention of a S. African returnee in CPB 7.1.5, yet does not refer to the two interviews with *Unsafe Return* returnees in 2009 that it holds on file. To conclude that AI has no evidence that returnees are subject to detention/mistreatment is misleading. It has not carried out its own research but has been provided with evidence in *Unsafe Return* which the DRC researcher found to be credible. In April 2012 DRC researcher Theo Boutruche stated in a minuted phone conference with Peter Sagar, Regional Representative of AIUK in the North East and Yorkshire Region, and Catherine Ramos that all information relating to DRC should be re-assessed due to the level of pre and post electoral violence. In 2012 Motion A1 was unanimously passed at the Annual General Meeting of Amnesty UK. It requested that additional resources be invested into assessing the risk to refused asylum seekers removed to DRC.

8. *UNHCR—Unsafe Return returnee granted refugee status by UNHCR*

In April 2012 an '*Unsafe Return'* returnee, RAS2, was granted refugee status by UNHCR. A letter from the NGO AMERA-UK is attached. It states it is of the opinion that the UK authorities made a 'serious error' in returning RAS2 and her children to DRC. In June 2012 I ascertained from UNHCR—London that there was no system in place for this information regarding the torture of a returnee to DRC and the grant of status to be passed from it to the Home Office. Also, UNHCR London does not share information with UNHCR—Egypt, so would not have been informed of the grant of refugee status nor of the ill treatment of RAS2, even though they had held a file on her since 2010.

9. *CPB—Torture in DRC prisons*

At Para. 11.4 the CPB states that, according to the UN there were 'less cases of torture or ill treatment in Kinshasa's prisons' and Conclusion 11.7 refers to the 'very poor general conditions within DRC prisons'. Yet a March 2013 report by the UN Joint Human Rights Office states that in 2012 deaths in prisons in DRC doubled and out of 154 deaths 24 were as a result of torture.

10. *British Embassy evidence in FFM*

A British Embassy official (Migration) stated that there were no enforced returns from the UK in 2011 (FFM 1.09). UKBA data in CPB at 12.2.4 indicates there were 25 asylum removals of which *Unsafe Return* returnee RAS 17 was an enforced removal (UR Page 18). The British Embassy states that until 2012 there were no UK returns for three years (FFM 1.09). It is acknowledged by UKBA and the UK judiciary that extortion takes place at N'djili airport and it can continue outside the airport building. The British Embassy alleges an official gave 100 dollars to five returnees on 8th June 2012. This would have put returnees 'at risk'. RAS 2 was given 100 dollars by UK escorts for her transport from N'djili airport. She had been removed from the UK in a wheelchair. The money was taken from her during her detention in an office at the airport (*Unsafe Return* Page 28).

The human rights official stated the DRC regime has no 'problem with or any particular standpoint on Congolese nationals who apply for asylum in the UK or other parts of Western Europe.' This is contradicted by NGOs and the Congolese TV broadcast, Lingala Facile, in March 2012 during which it is stated the Belgian returnees shown will be imprisoned in Makala prison and ill treated.

11. *Monitoring of mobile phones*

'*Unsafe Return'* states on Page 11 that returnees believed phones were tapped and this was further emphasised in an email from a DRC contact of Mothers' Union. The FFM report refers to a MONUSCO and ASADHO report which records that mobile phones are tapped and National Intelligence Agency (ANR) officers are placed in VODACOM.

12. *Operation Orbit*

For its own operational reasons DRC carries out interviews in UK Immigration removal centres, this is called Operation Orbit. A Freedom of Information request found that the cost of flights for DRC Immigration and Foreign Affairs officials is paid for by UKBA**.** It is believed that accommodation and a per diem are also paid. Operation Orbit is referred to in the FFM. The FFM also refers to code 32 which will be used to identify a certain category of returnee who will be given no mercy.

Based on the above and on further detailed evidence it is maintained that conclusions in the Country Policy Bulletin should not be relied on when determining asylum applications. The findings of *Unsafe Return* are corroborated by credible Congolese NGOs. The British Embassy cannot be considered to be one of the 'broad spectrum of informed sources' which could provide 'accurate, relevant, balanced, impartial and up to date information' (FFM P. 3) in order to provide a response to '*Unsafe Return'* and inform a Country Policy Bulletin.

UNSAFE RETURN

Executive summary of main report

'Unsafe Return' documents the post return experience of 17 Congolese men and women who were forcibly removed to DRCongo from the UK between 2006 and 2011. Eleven of these were clients of Justice First (www.justicefirst.org.uk), a charity working with refused asylum seekers in the Tees Valley. Nine children were removed to the DRC with their parents or with their mother.

The document was written to provide evidence to the government that DRC is not a safe country to return asylum seekers to, and to request the Government to review its decision from the Country of Origin Information Report for DRC (2009), that it was safe for them. There is no monitoring mechanism in place to test the UKBA hypothesis that it is safe for rejected asylum seekers to be returned to the DRC. Every effort has been made, as is documented in the report, to show that all the evidence is credible.

A visit was made to DRC in 2011 by the author of the report to verify the current situation of the returnees still living there. At least six returnees had fled the country and others were found to be still living in hiding, fearful of re-arrest and unable to live with their families because of threats. Those returned consistently reported being punished in the DRC as they had spoken out in this country about having been ill-treated and the lack of human rights in the DRC, thereby betraying their country and the President.

A Congolese Immigration official was interviewed in 2011. He explained that, when UK Immigration passed on the names of those to be removed, the files in the possession of the Immigration authorities were studied. If the asylum seeker were deemed to be a problem to the state, the secret services would be alerted and the asylum seeker imprisoned and worse. This is described on page 33

This report aims to demonstrate the need for:

- A review of the UKBA assessment that it is safe to remove failed asylum seekers to the Democratic Republic of the Congo.
- A system to monitor the post return experience of Congolese returnees to be established in order to inform policy.
- Steps to be taken to ensure documents relating to asylum applications in the UK are not given to the Congolese authorities.

— First hand evidence collated by UK civil society groups to be taken into consideration when assessing safety on return.

— A wider range of NGOs and INGOs to be consulted when drawing up Country of Origin Reports on DRC and for the latter to be regularly updated.

— British Embassy assessments to be subjected to more rigorous scrutiny given that, in the past, they have proved inaccurate.

The main issues of concern based on the findings of the report are on page 14—16

The summary of documented human rights violations are on page 16—17

There are details of the appalling treatment of returnees throughout the document but particularly on pages 18—20.

Of the 15 that were traced, 15 were arrested at the airport**; 2** arrested after leaving the airport building and transferred to Kin Mazière prison; 1 was arrested after leaving the British Embassy in Kinshasa; 3 were arrested at home; 1 was threatened with death in Tolérance Zero by officers; 4 were threatened at the airport.

Congolese human rights activists and a lawyer confirmed that detainees are not given access to lawyers during their imprisonment. Returnees reported the following ill treatment in prison:

One was handcuffed, blindfolded and severely beaten; 6 were severely beaten; 2 were given electric shock treatment; 2 of the men were sexually abused; 2 of the women were raped; 2 of the women received slaps and blows with hand/fist.

Experiences of the children are on pages 20—22.

Inhuman and degrading treatment of the returnees, and how they are interrogated on return is detailed from pages 22 to 27, followed by issues around extortion and ransom on page 28.

Page 29—32 documents contradictory messages from Government.

Conclusions based on the evidence gathered are on page 34.

Recommendations

— That Country of Origin Information be updated to reflect the findings of this report.

— That, until there is a review of the policy that it is safe to return people to the DRC, no further removals should be carried out.

— That until the hypothesis of safe return can be tested through an effective monitoring system, people should not be removed to DRC.

— That, as recommended by the Independent Asylum Commission, UKBA and the FCO begin a meaningful dialogue with UK civil society groups and individuals who have remained in contact with those refouled to the DRC.

— Steps be taken to ensure that no document relating to a returnee's asylum claim be given to Congolese authorities.

— That, based on the experience with the International Organisation for Migration, more robust procedures be put in place to ensure that UKBA partner organisations do not facilitate voluntary returns without a verifiable reassurance of safe passage and without a functioning network on the ground to follow up the well being of returnees.

— That any investigation carried out by FCO or UKBA be done discreetly, so as not to identify those who have, courageously, given testimony for this report and not to place them at further risk.

Catherine Ramos

April 2013

Written evidence submitted by Women for Refugee Women, the London Refugee Women's Forum and Women Asylum Seekers Together London (ASY 13)

Women for Refugee Women works with women who have sought asylum. We aim to challenge injustices experienced by women who cross borders to flee persecution, and we aim to empower women refugees themselves to speak about their own experiences. For this submission, we worked with the London Refugee Women's Forum, which brings together refugee and asylum seeking women to campaign around the issues that affect them, and with Women Asylum Seekers' Together London, a self-help group of women who have sought asylum.

SUMMARY

This submission focuses specifically on three areas of the inquiry's remit: **the assessment of the credibility of women; the adequacy of asylum support, and the prevalence of destitution**. We have kept this submission very brief and would be glad to provide further information or evidence at any stage.

Women seeking asylum in the UK are often fleeing extreme human rights abuses:

49% have experienced arrest or imprisonment

32% have been raped by soldiers, police or prison guards.

48% have been raped as part of the persecution they are fleeing

66% have experienced some form of serious gender-related persecution including female genital mutilation, sexual violence or forced prostitution (source: *Refused: the experiences of women denied asylum in the UK*, Women for Refugee Women, May 2012)

Women seeking asylum make up only a small proportion of migrants to the UK, but are not encountering a fair hearing:

5,364 of the 19,865 people seeking asylum in 2011 were women (source: Home Office)

74% of women seeking asylum were refused at first decision in 2010 (source: Home Office)

76% of women refused asylum said they were not believed by the Home Office (source: *Refused*, WRW)

Refusals on women's asylum claims are more likely to be overturned at appeal than refusals on men's claims (source:*Unsustainable: the quality of initial decision-making in women's asylum claims*, Asylum Aid 2011)

The impact of refusal is extremely harsh:

Among our sample of women refused asylum in the UK and not removed, 67% became destitute

25% had been detained

97% were depressed

63% said they had contemplated suicide (source: *Refused*, WRW)

Destitution is very prevalent among women refused asylum:

Of 30 women asylum seekers interviewed in March 2013, 23 had experienced destitution and 18 were currently destitute (Women for Refugee Women research for this submission, 2013)

Of the 23 women who had experienced destitution, 18 had visited charities for food, 7 had worked unpaid, 6 had worked illegally, and 16 had slept outside

10 of the 23 women had experienced destitution for more than 3 years

Destitution has a devastating impact on women's mental health and makes them more vulnerable to sexual violence:

Of the 23 women who had experienced destitution in March 2013, 18 said that this had made them lonely, 21 said it made them worried, and 15 said they thought about suicide

13–16% of destitute women we spoke to have experienced sexual violence while destitute (source: *Refused*, May 2012, and WRW, 2013)

A. WOMEN IN THE ASYLUM PROCESS: CREDIBILITY AND REFUSAL

1. Recently, understanding has been growing of the abuse and violence that women experience across the globe. The Foreign Office's new initiative to tackle sexual violence in conflict is a potentially important step in supporting women who are experiencing gender-related persecution. The Home Office has made improvements in criminal justice processes to ensure more reporting and prosecution of sexual and domestic violence in the UK. However, women who have crossed borders to escape persecution still too often encounter barriers to a fair hearing, and can be retraumatised by the difficulties they face in the asylum process.

2. WRW carried out research last year, published as *Refused: the experiences of women denied asylum in the UK*, for which we interviewed more than 70 women who had claimed asylum in the UK. We discovered that these women had typically experienced serious human rights abuses in their home countries. 49% had experienced arrest or imprisonment, 52% had experienced violence from soldiers, police or prison guards, 32% had been raped by soldiers, police or prison guards. 6% were fleeing forced prostitution, 10% were fleeing forced marriage, and 48% had survived rape as part of the persecution they were fleeing. Overall, 66%, or two

thirds, had experienced gender-related persecution in the areas we asked about, including rape and other sexual violence, forced prostitution, female genital mutilation and forced marriage.[55]

3. There are many reasons why women who are fleeing genuine persecution which satisfies the terms of the Refugee Convention may not be given refugee status, including the problems that they face in disclosing their experiences, the lack of up to date information about their countries, poor legal representation, and the attitudes that they face from decision-makers in the Home Office and judges at tribunals.[56] As Frances Webber has stated, "The legal arguments may have been won, but the procedure for claiming refugee status, and the widely observed 'culture of disbelief' in the UK Border Agency and among immigration judges, makes the road to recognition as a refugee a very rocky one, which comparatively few succeed in traversing." [57]

4. In recent years case law has shown that even though persecution on the grounds of gender is not specifically included in the Refugee Convention, such persecution may well fall within the terms of the Convention. Gender-related persecution has been defined as any persecution in which gender plays a part; whether because the type of persecution (such as sexual violence as retribution for political activities) or the reason for the persecution (such as resistance to forced marriage) is related to the person's gender.

5. However, concerns have recently been growing about the way that the Home Office deals with asylum claims involving gender-related persecution. Asylum Aid has carried out important research showing that initial refusals on women's claims are more likely to be overturned at appeal than refusals on men's claims.[58]

6. Our recent research in *Refused* adds to the growing body of evidence that suggests that women are not being given a fair hearing in the asylum process. In our sample the vast majority of women, over 90%, were turned down for asylum. (Overall, in 2010, 74% of women claiming asylum were turned down at first decision.) When we asked the women in our sample why they had been refused, 76% of those refused said that they had not been believed. Yet none of the women we interviewed felt able to contemplate voluntary return to their home country.

7. We are very concerned about the quality of initial decision-making in women's asylum claims. Looking at recent decisions, we have found that a small discrepancy in a woman's account, or a small area in which she cannot bring evidence, will too often lead the case-owner to dismiss her entire claim (see Ella's case study below). We have read Home Office decisions which reproduce discredited myths about the nature and impact of sexual violence and domestic abuse in order to discredit women—asking, for instance, why women or even their children did not fight off powerful attackers. We have read decisions which expose ignorance about the situations in the countries women are fleeing—for instance, stating that women who are fleeing family-based violence can return and rebuild their lives safely even in traditional societies, without any protection from family members.

8. The refusal of asylum to women who have crossed borders to flee persecution must be tackled urgently. These are not mere administrative decisions.The impact of refusal is devastating for individual women, often the turning point which turns hope into despair. In our sample, of those women refused asylum, 67% had become destitute (left with no means of support or accommodation), and 25% had been detained. The effects on women's mental health were particularly severe. 97% of those refused asylum said that they were depressed and 63% said that they had contemplated suicide.[59] Even if a woman who has been initially refused does get leave to remain further down the line, the legacy of these experiences will remain with her.

9. Ella claimed asylum in the UK after fleeing a forced marriage and extreme domestic violence in her home country, the Gambia. She had not felt able to remain in her home country due to the fact no successful prosecution for domestic violence has ever been brought there, and because her husband was a famous and influential man and was a friend of her father's, so she felt it would be impossible to protect her daughter and herself from him and his family in their country. Ella went to Croydon to claim asylum, travelling from the north of England where she had gone on arrival in the UK. But when she arrived at the Asylum Screening Unit, she was told, "We don't believe you. Get out. We will call security if you don't leave." With no acquaintances and no money, Ella stayed the whole night in a bus shelter. She returned to the offices at 4am the next day and was finally allowed to claim asylum and was sent to a hostel.

Ten days later she was recalled to the Asylum Screening Unit and this time she was taken into the detained fast track. She found the experience of detention extremely traumatic. Her case was refused while she was in detention. The refusal stated that the Home Office did not believe she had been married to her husband, because Ella did not know his date of birth. The evidence of the scars of abuse all over Ella's body was not even considered, because the Home Office had fastened on one shaky answer to dismiss her whole case.

[55] *Refused: the experiences of women denied asylum in the UK*, by Kamena Dorling, Marchu Girma and Natasha Walter, Women for Refugee Women, May 2012, at http://www.refugeewomen.co.uk/images/refused.pdf and provided as supplementary evidence here

[56] For more discussion on barriers to gaining asylum, see *Refused*, pp22-27

[57] Frances Webber, *As A Woman I Have No Country*, Women for Refugee Women, 2012, http://www.refugeewomen.co.uk/images/Pdfs/asawoman.pdf

[58] *Unsustainable: the quality of initial decision-making in women's asylum claims*, Asylum Aid, 2011

[59] Refused: the experiences of women denied asylum in the UK, by Kamena Dorling, Marchu Girma and Natasha Walter, Women for Refugee Women, May 2012

Luckily, Ella has good English and knows how to use the internet, so she contacted a friend in the Gambia who sent Ella's marriage certificate and her daughter's birth certificate to the detention centre by courier. Ella was then released from detention. At her appeal hearing the Helen Bamber Foundation gave evidence of more than 50 scars on Ella's body consistent with deliberate abuse, including burning with irons. Ella was given refugee status. She still realises that she was lucky to have saved herself from removal. While she was waiting for her appeal hearing she told us, "I will never go back. I will kill myself first."

B. Asylum Support

10. Asylum support levels are extremely low, typically about half the level of mainstream benefits. Many women have to live for very long periods below the poverty line in this way, struggling to fulfil basic health and nutritional needs. Section 4 support, which is given to some refused asylum seekers who cannot be removed, and relies on a card rather than cash, is particularly inflexible and causes particular hardship, as women are left without money even for a bus or a phonecall. Living on asylum support is especially difficult for women with children who recognise that their children are spending formative years below the poverty line but are completely disempowered from being able to contribute or improve their situation.[60]

11. The chaos and delays at the UK Border Agency have been well documented by the Independent Chief Inspector of Borders and Immigration, who found in November 2012 that the Border Agency had failed to deal effectively with the legacy caseload of previously unresolved cases, and commented, "This has serious consequences for asylum seekers who had already waited many years for the resolution of their case." [61] This means that even if women have not been refused asylum, and have tried to stay in touch with the authorities, they may have found themselves living on asylum support, prevented from working and forced under the poverty line, for many years.

12. Helen first claimed asylum over 10 years ago, after leaving her home country, Ethiopia, because of persecution resulting from her political activities. She was initially refused asylum and is currently in complete limbo, having never been informed about the outcome of her most recent submissions to the Home Office, made years ago to the Case Resolution Directorate of the UK Border Agency. Over the last 12 months various solicitors have given her conflicting advice about how to resolve her situation. In the meantime she is ineligible for any support herself, and has to feed and clothe herself and her three children on the £60 a week which she is given by a local authority for their support.

> *"I think what is so difficult is the indecision. It really damages your confidence and I need to build a life. I want to work and contribute. I would like to be an independent person earning my own money. I am not allowed to work, but that is the dream that I strive and hope for." Helen has spoken about how hard it is to give her children healthy food, how sad she is that they don't have the toys and play opportunities that other children might take for granted, and how stressful their situation can be: "I have to go to Hammersmith twice a month to pick up one hundred and twenty pounds each time for me and the three children to live off. If I don't go there at the right time I won't get the money and the children won't have anything to eat. One day, even though they were ill I wrapped them up as warm as I could went with them on the train. I was so embarrassed because all three of them threw up, and were crying as I was trying to clean them up. I could see that the other travelers were really disgusted by me and the kids and it made me feel very stressed and ashamed."*

Most recently, during the very cold spell of weather, the heating in Helen's flat, which is owned by a private landlord, broke. When we called an electrician for her, he refused to work there because of a terrible rat infestation. She said, "I am so worried about my children's health. I am trying as hard as I can to keep them warm and clean.I got so worried about the rats that I brought all the children into my bed because I didn't like the thought of them coming near the children at night." She remained without heating or hot water, and at the time of writing is still living in this condition."It does feel as if I am stuck somewhere, which is neither one place nor another, and not able to progress in the way an adult woman or a mother should. I have been waiting so many years now for leave to remain. I so want to give a good example and work ethic to my kids. If I get leave to remain I think I will feel less heavy and depressed and full of regret."

C. Destitution

13. Many women who have fled persecution and come to the UK for asylum are forced into complete destitution without any support or housing. Destitution is common among women who have been refused asylum and have exhausted their rights to appeal, but are unable to leave the country. Destitution can also happen at other times in the asylum process, for instance when an individual makes a fresh claim for asylum but the asylum support system has not yet caught up with her changed situation. When an individual is granted asylum and is making the transition to mainstream support, she often becomes homeless and destitute. We were

[60] Report of the Parliamentary Inquiry on Asylum Support for Children and Young People, January 2013 http://www.childrenssociety.org.uk/sites/default/files/tcs/asylum_support_inquiry_report_final.pdf

[61] Independent Chief Inspector of Borders and Immigration, *An Inspection of the UK Border Agency's handling of legacy asylum and migration cases*, November 2012, http://icinspector.independent.gov.uk/wp-content/uploads/2012/11/UK-Border-Agencys-handling-of-legacy-asylum-and-migration-cases-22.11.2012.pdf

shocked to hear about the death of a destitute woman and her child who were in this situation in London in 2012.[62]

14. Along with other charities who have contact with many asylum seekers and refugees, we are unable to provide the support that individuals need in order to deal with errors and delays by the UK Border Agency, Jobcentres, private landlords and local authorities, all of which can contribute to refugees and asylum seekers falling into periods of homelessness and destitution. We also come into contact with many women who are living in sustained periods of destitution due to the fact that they have been refused asylum but are unable to leave the country voluntarily, and we are aware that there are no services sufficient to meet their basic needs.

15. Women for Refugee Women and the London Refugee Women's Forum took a snapshot of the experiences of destitute women in London in March 2013 to assess the prevalence and impact of destitution, compared to the period when we carried out our previous research published in 2012.

16. On this occasion, we interviewed 30 women, most of them at meetings of Women Asylum Seekers Together London or the Refugee Council London drop-in centre. We found that the situation for women refused asylum was still the same: destitution was common and the impact of destitution was very harsh. 23 of these women had experienced destitution, 18 of them are currently destitute.

17. Some had experienced prolonged periods of destitution—one for 13 years, one for eight years, one for six years, and others for periods of between six months and five years. 10 of them had experienced destitution for more than 3 years.

18. In order to survive, 18 out of the 23 had visited charities for food, 7 had worked unpaid, 6 had worked illegally, and 16 had slept outside.For instance, one woman from Zimbabwe has been destitute for 6 years. In order to support herself she has worked illegally in the past, and she has had to sleep outside. When asked how she currently survives, she said, "I go from charity to charity looking for food parcels."

19. We are very concerned about the impact of destitution on the mental health of already vulnerable women. 18 of the 23 women said that destitution made them lonely, 21 said it made them worried, and 15 said that they thought about killing themselves.

20. We are also very concerned about the fact that many women who are destitute become vulnerable to sexual violence. Three out of the 23 destitute women we spoke to for this submission had experienced sexual violence while destitute that they were prepared to disclose to us. This proportion, at 13%, is comparable to the 16% we found in the larger sample for the 2012 research who told us that they had experienced sexual violence while living destitute. One woman in her twenties, who had claimed asylum from Uganda, had been refused asylum and become destitute in 2009 to the present day. She had been sleeping rough in the month before she talked to us, and had been raped on the streets. She had not reported the rape to the police or received any counselling or support, because she was too afraid to talk about her situation.

21. From anecdotal evidence presented by the London Refugee Women's Forum and Women Asylum Seekers Together London, we are also concerned that many women who are destitute or on very low levels of asylum support feel forced into sexual relationships or sex work in order to get food or shelter. One woman stated baldly in this research when asked what she did to support herself, "I have sexual relationship with a man." Another woman had previously said to us, "I was forced to sleep with man for me to have accommodation and food, I was forced to go and be a prostitute for me to survive." One woman who is known to a member of the London Refugee Women's Forum was being assaulted by her violent partner, but she stayed with him as she was too scared to go back to sleeping on the streets.

22. By driving women who have been refused asylum but who cannot return to their home countries into destitution, the government is making many women who have already fled persecution which often involves rape and sexual violence vulnerable to further abuse. It is time to tackle this issue urgently.

23. We are also particularly concerned about the experiences of women who have children and remain destitute. Although in theory children may have a right to access support even if their mothers are ineligible for support, in practice this can be hard to access for some women who are very scared of the authorities. One woman, whose story we tell here in more detail, lived destitute for four years, since the birth of her baby son, because when she went to social services for help they told her that they would take her child into care.

24. Mariana became destitute after being refused asylum in 2005. "I was not entitled to any support or housing, so I was moving from friend to friend and having to rely on food parcels from charities. I had to get rid of most of my belongings because people became less welcoming when they see you arrive with a lot of things. Once I took a big suitcase to a friend who was letting me stay for a while but when I left she put it out on the street and the council took it away.

> *"In 2006 I became pregnant but my boyfriend was unhappy about it and left me when I was only 20 weeks pregnant. At this time I was staying with a lady with two children. I was helping her with her children and housework.*

[62] For an analysis of this case and other issues around destitution, see *Lives of Destitution*, Inside Housing, 18 January 2013, http://www.insidehousing.co.uk/care/lives-of-destitution/6525384.article

> *"As soon as I held my son my life changed. Before, I had only thought about myself. But then all I wanted was to protect him and love him.When I came out of hospital my friend could not have me there anymore so I went to social services. I walked in holding my son. He was just three months old. The manager of the social services told me that they cannot help failed asylum seekers. She said that the only support they can provide was to take my baby to another family. That made me so frightened that I felt sick. I got up and somehow made my way out of the room. I remember leaving the office and walking down the street, crying and holding my baby and wondering what I should do. I could not give my baby son to a stranger.*

> *"I went to stay with friends, one after another. One of them told me I could sleep on the floor, and gave me a blanket. It was cold and hard and my son and I were awake much of the night. In the day I didn't have a key to her home so I was walking the freezing streets. I had to walk and walk all day, or sit on a park bench, or maybe in a library for a few hours. You are not treated well if you have nothing. Once I was staying in a family and I was looking after my son and six other children, and then the mother would shout at me if she came back and the dinner wasn't ready. During the day we were always outside. That made us vulnerable. Once a neighbour assaulted me but I couldn't call the police. I thought I would be arrested if I did. As my son started to walk and talk it became even harder to make sure that the people we were staying with did not get irritated by him. I had to try and keep my son quiet and not let him be a normal child. One lady I stayed with would shout at my son whenever he cried. I became anxious about him making a noise, even if it was the happy, sweet sounds that babies make. This was our life for four years."*

25. The Home Office response to the issue of forced destitution is typically that the individual should take steps to return home once asylum has been refused. This ignores the very real problems that many women face in getting a fair hearing in the asylum process and the fear that they will face further persecution if they return to their home countries. Despite their experiences while destitute, none of the destitute women we spoke to, either in 2012 or in March 2013, had contemplated voluntary return.

26. "I cannot go home because I fear for my and my husband's life," said one woman who had sought asylum from Algeria and been destitute for seven months. Another woman who has sought asylum here from Ecuador and been destitute for ten years said, "I came to the UK for a reason. I have a problem with the government of my country." She said about her mental state, "If I am alone I would have killed myself, but I have a son to look after." Another woman who said that her parents were so against her marrying a Muslim that they had hired people to kill her, had been destitute for 4 years and had experienced sexual violence where she was sleeping rough. She said, "It is hard, especially when the weather is bad, but I can't go back to my country."

27. Bella is currently destitute. "I have been destitute for three years now. I come from Eritrea and I am 43. When I first arrived I was given accommodation for three months but since then I have slept on people's floors, on their sofas and even in baths, in hostels and in the streets. I would not sign section 4 which gives the government the right to detain and deport you because the situation back home is so terrible. I don't understand why they would want to send me back there because everyone knows the situation is bad there. Even David Cameron knows that the situation is bad there.

> *"It is difficult staying with other people because I have been in situations in which I feel very vulnerable and have to do what people want in exchange for a roof over my head. I have had a woman much younger than me treating me like a servant and wanting me to be a maid to her friends and shouting at me and abusing me. When that happened I left to stay with another friend and I completely broke down and couldn't stop crying because it had been so stressful and degrading. It is terrible because they feel they have control over you and you are in such a weak position.*

> *"Worse though was trying to sleep outside in the streets. I would find a bus shelter and I would make myself invisible and I couldn't sleep because it was so cold and because I feared what might happen to me if I did. Last spring I was outside and my asthma got so much worse because of the freezing air. I have been staying in a hostel run by nuns but when it was so cold recently I thought of all the people trying to sleep and thought of those that wouldn't survive it and would die. I have met some very old people who live on the streets and are asylum seekers and I can't see how they can still be alive. Two months ago I was very sick and was finding it very hard to breathe and thank god a friend helped me and took care of me.*

> *"From tomorrow I have nowhere to stay and yet again I must face either sleeping on the streets, asking someone if I can sleep on their floor or trying to get a hostel place which so far I have not managed to secure. I go from charity to charity to get one meal a day and that is enough for me. I want the government to realise that everyone who is seeking asylum and cannot return home for fear of what will happen to them needs to have a place to stay and to not fear that they will die from the cold and from hunger. Does the government really want to be responsible for so much suffering?"*

D. Recommendations

28. Along with other organisations who work in this area, Women for Refugee Women, the London Refugee Women's Forum and Women Asylum Seekers Together London believe that it is time to build a fairer and more

humane asylum process. Among the many improvements that could be made to the asylum process, we would particularly like to flag up the need to improve the decision-making process and to end destitution.

29. Improve the quality of decision-making in women's asylum claims:

Members of Parliament should show leadership on the importance of breaking down the culture of disbelief in the Home Office.

The Home Office must ensure that decision-makers grasp the nature and impact of gender-related persecution and how it engages the Refugee Convention. Training that is currently being developed for case-owners on gender-related persecution should be monitored for its impact on the quality of their decision-making.

The Home Office should undertake further research on the quality of decision-making in women's cases, and should collect statistics on the proportion of women's asylum claims which involve gender-related persecution and the outcomes of those claims.

30. End the detention of those seeking asylum:

If detention continues, more rigorous procedures should be put in place to ensure that claims involving gender-related persecution, torture and other serious human rights abuses are never routed into the detained fast track.

31. End the destitution of those refused asylum:

Grant asylum seekers permission to work if their case has not been resolved within six months or they have been refused, but temporarily cannot be returned through no fault of her own.

Provide welfare support for all asylum seekers who need it, up until the point of return or integration.

32. The numbers of people entering the UK to claim asylum are not large. Only 19,865 people sought asylum in the UK in 2011, and only 5,364 of those were women claiming asylum in their own right. Many of the women who come here to seek refuge have fled extreme abuse, and are desperate to find safety. But they are not just victims; many are true survivors who could help to build a more equal society both here and in their countries of origin. It is time that we built a just and dignified asylum process, in order to give every woman who comes to this country fleeing persecution a fair hearing and a chance to rebuild her life.

All names have been changed.

Women for Refugee Women, the London Refugee Women's Forum and Women Asylum Seekers Together London

April 2013

Written evidence submitted by the Still Human Still Here coalition (ASY 16)

EXECUTIVE SUMMARY

(i) Still Human Still Here is a coalition of 58 organisations that are seeking to end the destitution of asylum seekers in the UK.[63] The coalition believes that all asylum seekers who would otherwise be destitute should receive sufficient support so that they can meet their essential living needs until they are returned to their country of origin or are given permission to stay in the UK.

(ii) Asylum support rates for those on Section 95 have been severely reduced in recent years and are no longer calculated with reference to any system. For example, single adults over 25 get 52% of Income Support, a lone parent 50% and a couple 65%.

(iii) The majority of asylum seekers now have to pay for food, clothing, toiletries and other essential items on just over £5 a day (housing and utility bills are paid for separately). An asylum seeker will spend an average of nearly 18 months on Section 95 support.[64] Those on Section 4 receive lower levels of support via a plastic payment card. The vast majority of asylum seekers are not allowed to work to support themselves. This submission provides evidence which indicates that:

- The inadequate level of support is contributing to physical and mental health problems amongst asylum seekers. Those asylum seekers without any statutory support suffer the most pronounced impact on their health (Sections 1, 4 and 5).
- A basket of basic goods required to meet essential living needs and prevent absolute poverty costs approximately 70% of Income Support (Section 2).
- The UK provides significantly lower support to single adult asylum seekers than comparable EU states including Belgium, France, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden.

[63] The coalition includes the Red Cross, Crisis, the Children's Society, Mind, OXFAM, Citizens Advice Bureau, Doctors of the World, National Aids Trust, Amnesty International and all the main agencies working with refugees and asylum seekers in the UK. For all members see: www.stillhuman.org.uk

[64] House of Lords Hansard, 5 March 2013, Col. 1457

In 2012, the German Constitutional Court ruled that the level of support provided was not sufficient to guarantee a "dignified minimum existence", but even *before* this ruling Germany provided more support to single adults than the UK (Section 3).

— The perception that asylum numbers can be controlled through welfare policies is unfounded. A review of the 19 main recipient countries for asylum applications in the OECD concluded that policies on support levels, permission to work and access to healthcare did not impact on the number of applications made in destination countries (Section 6).

— A more streamlined and efficient asylum support system would deliver direct savings within an estimated range of £2-4 million, with indirect savings likely to far exceed this figure (details provided in Section 7).

(iv) Still Human urges the Government to implement the following recommendations as a matter of urgency.

— Asylum support rates should be equivalent to ***at least*** 70% of Income Support, with the system recognising the additional needs of children.

— Annual increments to asylum support rates should be linked to those for Income Support rates or its equivalent.

— Section 4 support should be abolished and all those who meet the current Section 4 criteria should be maintained on Section 95 support.

— Asylum seekers who have not had their cases resolved in six months or who have been refused, but cannot be removed through no fault of their own should be granted permission to work.

1. Does Section 95 provide sufficient support to asylum seekers?

1.1 During most of the 1990s, asylum support rates were set at 90% of Income Support, with housing provided separately. The rationale for this was that Income Support is set at the minimum amount people need to meet their basic living needs, but asylum seekers would need less because they would only be in this system for a short period of time and would not need to pay for replacement goods. This ignores the fact that many asylum seekers arrive with few possessions. Furthermore, an asylum seeker will spend an average of 525 days on Section 95 support, which can hardly be described as short term.[65]

1.2 If a 10% deduction to asylum support is made on the basis that people will only be on it for a short time, then payments should be increased if an application has not been resolved promptly. At the end of 2012, more than 4,400 asylum seekers had been waiting more than six months for an initial decision.

1.3 In 1999, the Government reduced Section 95 support from 90% to 70% of Income Support on the basis that all utility bills would be paid for separately. It is reasonable to reduce asylum support on these grounds, although the level of this deduction should be calculated in a transparent and fair way.

1.4 While no new rationale for calculating the level of asylum support payments has been announced, the actual support rates have been further reduced in recent years. For example, in 2009, the Home Office reduced support for single adults aged 25 or above to just 55% of Income Support.[66] Furthermore, asylum support payments have not been increased in line with inflation. For example, the Government did not provide any increment to asylum support for 2012-13, despite raising Income Support payments by 5.2%.

1.5 Consequently, asylum support levels for those on Section 95 have been severely reduced in real terms and are no longer calculated with reference to any system. For example, adults over 25 get 52% of Income Support, a lone parent 50% and a couple 65%.[67]

1.6 The Government defines an asylum seeker as destitute if they do not have adequate accommodation or any means of obtaining it or if they cannot meet their "other essential living needs". As a result of the reduction in support rates, many asylum seekers can no longer meet their essential living needs. In 2009, a random survey of Refugee Actions' clients who were on Section 95 support found that: 50% had experienced hunger as a result of the low levels of support; 70% were unable to buy the toiletries; and 94% were unable to buy clothing.[68] This survey was carried out prior to the significant cuts to asylum support levels outlined above.

2. Calculating essential living needs – the cost of a basket of basic goods

2.1 In 2009, Still Human Still Here undertook research to determine whether asylum seekers could meet their essential living needs on less than 70% of Income Support. This was done by stripping down the basket of

[65] House of Lords Hansard, 5 March 2013, Col. 1457

[66] Benefits for single adults in the general population aged 18 to 24 are lower than for people over 25 because the Government expects their families to help them. However, single asylum seekers do not generally have family in the UK, so it would have made sense to raise the rates for 18-24 year old asylum seekers rather than lower the rate for the over 25 group.

[67] Report of the Parliamentary Inquiry into asylum support for children and young people, Children's Society, January 2013, Appendix D, page 30

[68] Refugee Action Briefing, 2009. The survey was based on a random sample of 16 individuals who were receiving S95 support and visited the one stop service between 14-25 September 2009.

basic goods compiled by the Joseph Rowntree Foundation in 2008 so that only items needed to avoid absolute poverty were included.[69]

2.2 Accordingly, Still Human estimated that an asylum seeker would have needed a minimum of £31.66 a week for food[70] and a further £9.70 a week to meet the costs of clothes, household cleaning items, toiletries, telephone calls, stamps, and travel. Taking inflation into account, the minimum required for a single adult asylum seeker to meet their essential living needs in 2009 was £43.60 a week (the cost of accommodation, utility bills and council tax are not included). This was very close to 70% of income support for a single adult who is over 25 (£45.01 at that time).

2.3 However, it should be stressed that the Still Human budget calculation made no provision for any form of social interaction and did not take into account that asylum seekers may need to buy essential items when they arrive which the existing population would already possess.[71] On this basis we would argue that 70% of Income Support is the absolute minimum required to meet essential living needs.

3. Calculating essential living needs – EU comparisons

3.1 In 2012, a review of support rates for single adult asylum seekers in comparable EU countries found that support levels in the UK are well below the average. The following figures refer to the financial allowances given to asylum seekers in addition to the provision of free accommodation. [72]

Norway:	£88.65
Germany:	£67.56
Finland:	£52.33
Sweden:	£47.60
Netherlands:	£46.45[73]
France:	£41.42
UK:	£36.62
Portugal:	£32.81[74]

3.2 Both Luxemburg and Belgium also have more generous systems than the UK as they give cash allowances to asylum seekers after they have provided accommodation, food and other essential items directly.

Belgium:	£31.45 if they do social work (£5.82 if they do not)
Luxemburg:	£22.68

3.3 At the start of 2012, an asylum seeker in Germany received free accommodation and basic benefits equivalent to £42.14 a week (after paying for electricity in the shelter). This was significantly more than the £36.62 available to adult asylum seekers in the UK.

However, on 18 July 2012, the German Constitutional Court ruled that this was not enough to guarantee a dignified minimum existence and increased payments to £67.56 a week.

3.4 In addition, asylum seekers are able to access the labour market much sooner in most other EU countries than in the UK. Austria, Greece, Portugal, Finland and Sweden allow asylum seekers to work after four months or less, while Italy, Spain, Netherlands, and Cyprus permit them to do so after six months.[75] Denmark has announced that it will also allow asylum seekers to work after six months.

3.5 In addition, the recast EU Reception Conditions Directive has reduced the period when asylum seekers can be excluded from the labour market pending an initial decision on their claim to nine months. In the UK, asylum seekers can only apply for permission to work if they have been waiting for more than one year for an initial decision on their case, and even then are only allowed to work in "shortage occupations". This effectively prohibits asylum seekers from supporting themselves, even after a prolonged period of time in the system.

4. Does Section 4 provide sufficient support to asylum seekers?

4.1 A small number of refused asylum seekers who the Government accepts would otherwise be destitute and temporarily cannot return home, can receive Section 4 support.

[69] The Joseph Rowntree Foundation research on minimum income standards looked at *needs*, not wants. For more information see: www.minimumincomestandard.org For the full budget spreadsheets see: http://www.minimumincomestandard.org/budget_summaries.htm

[70] Food includes 56 items which would provide a balanced diet. Alcohol and other non-essential items of expenditure have been removed.

[71] For example, items such as butter and oil are not included on the Joseph Rowntree Foundation list of essential food items because people did not identify them as something they need to buy each week.

[72] EU Ad Hoc query on allowances for international protection seekers, requested by LU EMN NCP on 27 January 2012 (compilation produced on 29 February 2012).

[73] The Netherlands also provides an additional one off financial payment for clothing (€36.30) and allows, but does not compel, asylum seekers to do work in the reception centre to supplement their support income.

[74] Portugal also provides free travel and phone cards to all asylum seekers.

[75] Still Human Still Here, *At the end of the line*, 2010, page 72.

4.2 While there is no difference between the living needs of those on Section 95 and those on Section 4, the latter are significantly worse off. A single adult receives £1.23 a week less than they would on Section 95, while a child under three is £17.57 worse off.

4.3 In April 2012, 779 children were being supported under Section 4.[76] A lone parent would receive the equivalent of 40% of Income Support and a pregnant woman would get 54%.[77] This is of particular concern given that asylum seeking women are much more likely to suffer complications in child birth than the general population.[78]

4.4 In addition, Section 4 support is delivered through the Azure plastic payment card rather than in cash. The card can only be used in certain retailers, which prevents asylum seekers from getting the best value for money as they cannot use it in markets or discount stores. It also means that they have no cash to make phone calls or take public transport. Single adults supported under Section 4 are also subject to a weekly £5 carry-over limit which means they cannot save to purchase bulk items or clothing.

4.5 Evidence from service providers also indicates that substantial numbers of those on Section 4 are presenting with health problems. In 2011, Refugee Action identified 206 individuals at casework sessions who had physical or mental health problem. This is very high given that only 2,310 people were on S4 at the end of 2011.

4.6 The additional hardship suffered by those on Section 4 is particularly unreasonable given that the Government has recognised that the individuals concerned are temporarily unable to return to their countries of origin.

5. Asylum seekers without any support

5.1 With the exception of those who qualify for Section 4 support and families with children (who should continue to be supported under Section 95), asylum seekers who have had their claim refused and had an appeal rejected are usually left without any statutory support.

5.2 In addition, some asylum seekers who are eligible for support are left destitute because UKBA does not believe the applicant is destitute or because there are delays in processing the support application and/or providing support (including to refugees who move on to mainstream benefits). UKBA's decision to refuse support is overturned on appeal in more than 40% of cases.

5.3 The British Red Cross currently assists approximately 10,000 asylum seekers each year who do not have any access to statutory support. A survey of this group by the Red Cross in 2010 found that 28% slept rough at some stage and nearly 90% survived on one meal a day.

5.4 Numerous research reports in 2012[79], along with a Serious Case Review published by Westminster Safeguarding Children Board, have highlighted the serious impact of destitution on asylum seekers' mental and physical wellbeing.

5.5 The Asylum Support Appeals Project's analysis of 55 cases of refused asylum seekers in 2011 found that 45% had mental or physical health problems.[80] ASAP's follow-up research in 2012, with a sample of 20 destitute refused asylum seekers, also found that 45% had mental or physical health problems.[81]

5.6 This is not surprising given that the British Medical Association has noted that asylum seekers often have specific health problems which are related to the effects of war and torture[82] and the Royal College of Psychiatrists has stressed that "The psychological health of refugees and asylum seekers currently worsens on contact with the UK asylum system."[83]

5.7 The information above shows the serious human costs of leaving asylum seekers without any form of support. However, this policy also has financial costs which are examined in Section 7.

6. Would the provision of higher levels of support lead to increased asylum applications?

6.1 Research commissioned by the Home Office has found that asylum seekers have limited control over where they apply for asylum and little knowledge of entitlements to benefits in the UK.[84] This was confirmed

[76] House of Lords Hansard, Minister of State, Lord Henley's written answer, 22 June 2012.

[77] *Report of the Parliamentary Inquiry into asylum support for children and young people*, Children's Society, January 2013, Appendix D.

[78] The Royal College of Obstetricians and Gynaecologists noted that pregnant asylum seeking women are seven times more likely to develop complications during childbirth and three times more likely to die than the general population. See Faculty for Public Health, *The health needs of asylum seekers*, 2008.

[79] Women for Refugee Women, Refused: the experiences of women denied asylum in the UK, May 2012; Destitution Concern Bradford, No Return No Asylum – The extent and impact of destitution amongst asylum seekers in Bradford, August 2012; and Morag Gillespie, Trapped: Destitution and Asylum in Scotland, September 2012.

[80] ASAP, *No credibility: UKBA decision making and Section 4 Support*, April 2011, pages 3 and 8.

[81] ASAP, *One Year On, Still No Credibility,* December 2012. Research conducted July 2011—Jan 2012.

[82] Sharpe A, Asylum seekers: meeting their health care needs, BMA, 2002 www.bma.org.uk

[83] The Royal College of Psychiatrists (RCP), *Improving services for refugees and asylum seekers: position statement*, Summer 2007.

[84] V.Robinson, *Understanding the decision-making of asylum seekers*, University of Wales, July 2002

by a review of the 19 main recipient countries for asylum applications in the OECD in 2011[85] which concluded that policies which relate to the welfare of asylum seekers (e.g. support levels, permission to work and access to healthcare) did not impact on the number of applications made in destination countries.

6.2 The UK's own experience confirms these findings. In 1996 and 1999, the UK introduced a raft of restrictive policies in relation to support provisions, but asylum applications rose despite these measures.

6.3 Progressive welfare measures do not act as "pull factors"[86] and this is illustrated by the fact that counties like the Netherlands receive much fewer asylum applications than the UK, despite having a more generous asylum support system and allowing applicants to work six months earlier than the UK.

7. Potential cost savings from a simplified asylum support system

7.1 A simplified asylum support system which unifies the levels and types of payment, minimises transfers between different systems and ensures that asylum seekers can properly meet their essential living needs, has the potential to deliver substantial financial and administrative savings to the Government. Areas in which savings could be made are outlined below.

Retaining asylum seekers who meet the Section 4 criteria on Section 95

7.2 The additional cost of maintaining all those on Section 4 on Section 95 support rates would be approximately £692,000 a year.[87] Still Human estimates that the cost savings from removing this parallel support structure would significantly outweigh the costs. These savings include:

- Accommodation cost savings: Some 13% of asylum seekers on S95 stay with family and friends and claim subsistence only support. There is no subsistence only option under S4 and therefore the current system compels them to give up accommodation in order to claim S4 and UKBA then has to pay for housing. If they were able to stay on S95, they would remain with their relatives or friends. The estimated savings from this would be around £2 million a year.[88] It is likely that the net savings would be less than this as some individuals who would otherwise not have claimed because there was no subsistence only support would now do so.
- Administrative savings: If those who meet the criteria for S4 are maintained on S95, UKBA staff would only have to review whether a refused asylum seeker qualifies for S4 and whether that person's financial circumstances have changed. This would simplify the process and save a substantial amount of staff time as UKBA would not have to source new accommodation or pay the travel costs of moving people. This could free up staff time and enable them to take faster decisions with consequent cost savings. Additionally, UKBA would not have to run a separate payment card scheme for less than 3,000 people with an annual running cost of some £350,000.[89]
- In 2008-09, UKBA made overpayments of £9.6 million on accommodation and support to asylum seekers who no longer had entitlement (this would include both Section 4 and Section 95). A simpler system which does not force people to reapply for support or move people from one form of support to another would help reduce the likelihood of this happening in the future.[90]

Improving the quality of asylum support decisions

7.3 Some asylum seekers are left without any statutory support even though they qualify for it. According to the Asylum Support Tribunal statistics for April-August 2012, 50% of oral and paper appeals were either allowed or remitted. When applicants are represented by ASAP this percentage increased to 66%.[91]

7.4 A survey of destitute asylum seekers represented by ASAP between July 2011 and January 2012 found that, where the decision related to destitution, 80% of these cases were overturned on appeal. This indicates that there are serious problems in the asylum support decision making process.[92]

7.5 If only half the successful appeals taken to the Asylum Support Tribunal could be avoided through improved initial decision making this would lead to savings of some £326,000 a year.[93] In addition to the

[85] Hatton, T. *Seeking Asylum: Trends and policies in the OECD*, Centre for Economic Policy Research, 2011.
[86] Still Human Still Here can provide evidence showing how specific UK policies relating to the support of asylum seekers have not reduced asylum applications or encouraged refused asylum seekers to return home.
[87] This uses the breakdown of those supported on Section 4 as of April 2012: 73% single adults, 18% children and 9% single parents (House of Lords Hansard, 22 June 2012) and applies it to the 2,757 on S4 at the end of 2012. These groups would receive £1.23, £17.57 (based on the child being under 3) and £8.55 a week extra respectively. This would amount to £13,310 a week or an annual cost of £692,120.
[88] At the end of 2012, 2,757 applicants were supported on S4. 13% of those on S95 receive subsistence only support. If the same percentage of those on S4 do not require accommodation, then savings would equal £105 a week (average accommodation costs per person on Section 4, based on £97 cost in 2009 plus inflation (Hansard, 23 Feb 2009) x 358 cases: £37,633 a week or £1,956,919 a year.
[89] Hansard, 19 May 2009.
[90] Phil Woolas, Minister of State, House of Commons Hansard, 7 January 2010.
[91] Outcome of appeals represented by ASAP 31 March 2011 – 1 April 2012.
[92] ASAP, *No credibility: UKBA decision making and Section 4 Support*, April 2011, pages 3 and 8.
[93] Based on the Tribunal's annual report 2004/05, the cost of processing one appeal was £738. Allowing for inflation the current unit cost would be aro und £905. Approximately 60 appeals are allowed or remitted a month of which we estimate 30 could be avoided through improved decision making. This would save £27,150 a month or £325,800 a year.

savings to the Ministry of Justice, this would significantly reduce the amount of UKBA staff time spent attending appeals against refusals of support. This time could then be reallocated and would lead to further cost savings.

Indirect savings from avoiding destitution—healthcare

7.6 The evidence cited above shows that many asylum seekers on Section 95 and Section 4 support are having difficulty meeting their essential living needs. This is likely to have an impact on their mental and physical health, either causing illness or complicating existing health problems. This will be more pronounced than in the general population as asylum seekers are a more vulnerable group. For example, pregnant asylum seeking women account for 12% of maternal deaths in the UK while only representing 0.3% of the population.[94]

7.7 If only one quarter of those asylum seekers on Section 95 and Section 4 support have to make an additional visit to a GP during the course of a year because low levels of support caused or exacerbated health problems this would cost the NHS a minimum of £573,475.[95] If problems paying for transport or registering at a surgery stop individuals from visiting a GP and their condition deteriorates, this would significantly increase the costs for the NHS.

7.8 Other research provides clear evidence of the health impacts and costs of homelessness. A 2012 report looking at homeless single adults who move between the streets and hostels found that "being homeless ***for even a short period of time*** increases the risk of long term health problems" with individuals demonstrating high levels of both physical and mental ill health.[96]

7.9 These people seek help at a much later stage in an illness than the general population, usually through A& E departments. They consequently attend A & E six times as often and stay in hospital three times longer than the general population. Once discharged they rarely go back to an environment which facilitates effective recuperation and often end up back in A & E.

7.10 This situation, which mirrors that of destitute asylum seekers who receive no statutory support, contributes to secondary healthcare costs which are around £1,575 per person per year higher than for the general population. It has been estimated that a homeless population of around 45,000 people moving between the streets and hostels or other temporary accommodation, would cost around £71 million annually in increased secondary healthcare.[97]

7.11 Even if these additional costs were only applied to those asylum seekers who are destitute and then have their appeal to the Asylum Support Tribunal allowed or remitted, this would still equate to additional costs of some £1.13 million a year in secondary healthcare which could have been avoided through better decision making.[98]

Other indirect savings from avoiding destitution

7.12 It is important to stress that nearly 50% of all asylum seekers are eventually given some form of protection in the UK.[99] The impact of having to subsist on inadequate support for prolonged periods of time is likely to have a negative impact on their ability to integrate quickly and play a productive role in the economy and wider society, with significant cost implications.

7.13 Furthermore, some asylum seekers who have no access to support or who are struggling to sustain themselves on the support they receive are likely to seek other survival strategies such as illegal work, prostitution and begging. All of the above will put these individuals at risk and will also have considerable social and financial consequences for the wider community.

Total potential savings from reforming the support system

7.14 We estimate a more streamlined and efficient support system would deliver direct savings within a range of £2-4 million, with indirect savings likely to far exceed this figure (e.g. through faster integration of those given protection and through reduced health problems and illegal working).

7.15 It should be stressed that there are other areas of the asylum system where additional savings could also be made to further offset costs in the support budget, particularly in relation to improved decision making on asylum applications;[100] granting permission to work after six months if an application has not been concluded;

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[94] G. Lewis (ed) *The Confidential Enquiry into Maternal and Childs Health (CEMACH)*, London , 2007. The Royal College of Obstetricians and Gynaecologists also published similar findings noting that are pregnant asylum seeking women are seven times more likely to develop complications during childbirth and three times more likely to die than the general population. Quoted in Faculty for Public Health, *The health needs of asylum seekers*, 2008.

[95] There were a total of 22,939 asylum seekers on S95 and S4 support at the end of 2012. A 30 minute consultation with a GP would have cost £90 in 2008. Allowing for inflations this would be approximately £100 today (not including translation costs). Lesley Curtis, *Unit cost of health and social care 2008*, University of Kent, 2008, page 109.

[96] Deloitte Centre for Health Solutions, Healthcare for the Homeless, 2012, page 2.

[97] Deloitte Centre for Health Solutions, Healthcare for the Homeless, 2012, pages 5-6.

[98] Approximately 720 appeals are either allowed or remitted each year at the Asylum Support Tribunal. 720 x £1575 (increased secondary healthcare costs for those who have been destitute) equals £1.3 million.

[99] In 2012, 36% of asylum seekers were granted some form of protection at the initial decision and a further 27% of those who appealed a negative decision had their appeal allowed and were also granted status.

[100] See evidence from Amnesty International and Still Human Still Here to this Inquiry.

and through reduced and more efficient use of detention. For example, a study calculated that UKBA is wasting £377 million over a five year period on the detention of migrants who are ultimately released.[101] A further £12 million was spent in special payments in 2009-10 which included compensation for unlawful detention and other legal or compensation costs.[102]

7.16 Still Human considers that the recommendations made in this paper will contribute to the creation of a support system which is both fundamentally fairer and more efficient.

Still Human Still Here coalition

April 2013

Written evidence submitted by the Immigration Law Practitioners' Association (ASY 39)

1. The Immigration Law Practitioners' Association is a member of the Refugee Children's Consortium and for specific evidence on children we refer you to the consortium's submission as well as to our evidence submitted to the Joint Committee on Human Rights for its current enquiry into refugee and migrant children.

— **The effectiveness of the UK Border Agency screening process, including the method of determining eligibility for the 'Detained Fast Track' procedure**

2. ILPA has repeatedly expressed concern to the Agency and to the European Commission about screening[103]. We are concerned about the process and effectiveness of screening; we are concerned about the way in which people are treated at screening, which all too often is without dignity, respect or kindness. See **Appendix one** for our letters to the UK Border Agency of 13 June 2011, 12 August 2011 and 22 September 2011. See also the case studies at **Appendix two**. Concerns have been reiterated by ILPA and others at meetings such as the UK Border Agency's National Asylum Stakeholder Forum. At the UK Border Agency National Asylum Stakeholder Forum on 8 October 2012, it was stated that the average time children spent at the Asylum Screening Unit was four hours 49 minutes. This was said to represent a reduction in waiting times.

3. ILPA and the AIRE centre's complaint of 13 January 2013 (see **Appendix three)** was communicated to the UK Government under the "EU Pilot."[104]

4. The new 'asylum operating model', to be implemented from April 2013, appears to build on the worst faults of the current system in that it attempts to judge and categorise cases before they have been investigated, at the screening stage. Little is known about a person at screening: their name (which may be in dispute), their nationality (which may be in dispute), their gender, their age (which may be in dispute) and how they arrived in the UK (which may be in dispute).

5. There are limited opportunities for disclosure at screening. The screening interview is not designed, and nor should it be, to investigate the substance of a claim. A person may be distressed and fearful, tired and confused. A relationship of trust and confidence is likely to need to be built before a person will describe torture, rape or other abuse or humiliation; it is unlikely to emerge at this very initial stage. This is not simply a question of the skill or training of the staff at screening. Highly trained and skilled legal representatives, of whom many persons seeking asylum may be less suspicious than they are of officials, are aware that their skills are no substitute for a relationship of trust, built up over time. Training can help staff to react to such signs as they do pick up and a change of culture might increase the chances that they would notice signs of distress, but training will not by itself produce disclosure.

6. On 6 February 2013 ILPA wrote to the newly appointed Head of Asylum, Mr Graham Ralph, to reiterate these concerns. We highlighted a case that had occurred that day. See **Appendix four.** We forwarded the letter to the European Commission. On 22 March 2013, acknowledging receipt of that letter, the Head of Directorate B in the European Commission, Mr Mathias Oel, wrote to ILPA:

> "I would like to emphasise that the Commission is taking your complaint very seriously. It is treated jointly with other issues which raise particularly complex legal questions, which have led to some delay in its treatment. Following an exchange with the UK authorities, we are currently assessing the possibility of taking further steps. We will make sure to inform you as soon as a decision has been reached."

7. The "asylum operating model" appears designed to channel cases into the Detained Fast-Track[105]. ILPA emphasises that the current Detained Fast-Track is very different from that found to be lawful by the European Court of Human Rights' in *Saadi v UK.*[106] Persons remain in detention for very much longer both before the

[101] Matrix Evidence Study. Quoted in House of Lords Hansard, 19 July 2012.
[102] House of Lords Hansard, 29 November 2010.
[103] The Law Society has also voiced strong criticism, see, for example, *Asylum seekers 'prevented from lodging cases*, The Guardian, 29 September 2011.
[104] Reference 3909/12/HOME.
[105] For a description see ILPA's *The Detained Fast-Track process: a best practice guide*, 2008, available with 2010 update at http://www.ilpa.org.uk/pages/publications.html
[106] Application no. 13229/03.

asylum determination process begins and after it has finished, while the substantive parts of the process in which the claim is considered are very much accelerated. It is members' experience that those detained at screening may wait for days and weeks before the very fast Detained-Fast Track process starts, often without being allocated a legal representative until just before the process has started.

8. ILPA's March 2008 and March 2009 (the latter jointly with the Anti-Trafficking Legal Project) submissions to the Home Affairs' Committee enquiry into human trafficking set out some of our concerns about screening and the Detained Fast-Track. Those concerns persist. We also append at **Appendix five** our March 2012 letter to the Independent Chief Inspector of the UK Border Agency about the Detained Fast-Track.

9. It is ILPA's contention that the Detained Fast-Track is unjust and inefficient because it is not capable of producing sustainable fair decisions on claims. It is unjust because there is a risk of a person being returned to face persecution.

10. Where a person whose claim for asylum has been finally refused remains in the UK for many years, new risks to them as a result of changes in their country of origin or in their personal circumstances may result in their making a fresh claim for asylum. That is understandable. Where a person has a fresh claim for asylum within days of finally being refused because they have obtained evidence that they were trying to secure as their case was being rushed through the system, that is avoidable.

11. And cases are rushed through the Detained Fast-Track. The person sees a legal representative one day and has an interview the next. Following an interview there may be only half a day to provide further evidence, including expert evidence. The initial decision comes in a matter of days.

12. This is not a timescale likely to produce disclosure by applicants, especially given that levels of distrust are likely to be increased by being thrust into detention. They are unlikely easily to trust their representatives, who are allocated by the detaining authority, the UK Border Agency. They are unlikely to trust the medical staff in the detention centre.

13. In any event, medical screening on entry into detention is all too often, based on instructions members receive from their clients, a cursory affair. Detainees often arrive late at night. All too often professional interpreters are not used and detainees report not being aware of having been asked about, for example, torture or ill-treatment. Even where a medical report made under Rule 35 of the Detention Centre Rules gives rise to concerns about ill-treatment, all too often the contents of such a report are dismissed by the UK Border Agency. Reasons for such dismissal include that the report merely repeats a story told by the detainee, with no evidence to corroborate it and that the doctor did not diagnose torture as the cause of any injuries seen.

14. It is not a timescale likely to produce any evidence. Those in the Detained Fast-Track are detained; they are not well placed to gather evidence in support of their cases. For a legal representative, it is difficult to research a case, let alone secure original documents or expert evidence within days. In any event, it was the practice of the Legal Services Commission and we have no reason to believe that it will not equally be the practice of its successor, the Legal Aid Agency, not to authorise payment for expert evidence until a claim has been refused by the Secretary of State.

15. In theory a person only remains in detention following refusal, for the period of any appeal and afterwards, if they meet the general criteria for detention. In practice, it is not usual to see a person who has been refused within the detained track released prior to any appeal. The case is then normally dealt with under the accelerated procedure for which provision is made in the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (SI 2005/560) as amended. There are only two days in which to lodge an appeal against refusal, in which timescale the reasons for rejection of the application must be examined and evidence produced to refute them. ILPA is delighted that the Tribunal Procedure Committee in its *Consultation on the proposed Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2013 and amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008*[107] has proposed getting rid of these separate fast track procedure rules and has proposed longer timescales in which to lodge an appeal. ILPA considers that these would not only be fairer, they would be more efficient and would reduce the likelihood of 'protective' grounds of appeal being lodged because there was no time to establish whether these grounds needed to be included or not.

16. The evidence appellants provide in the form of a statement or corroborating documents and witnesses is likely to be imperfect. A legal representative has little time to carry out research, let alone instruct and obtain expert medical and country evidence. An immigration judge determines the case on the evidence presented to him/her.

17. Very many persons in the Detained Fast-Track do not have a legal representative at the appeal stage[108]. This will often be because lack of evidence means that they have been held to fail the merits test for legal aid. Uncertainty ought to weigh in the client's favour. But in practice, whether a person is judged to pass or fail the merits test too often seems to depend upon who is representing them. Work paid for by legal aid in detention centres is run on a system of exclusive contracts with just two or three providers. This means that if a person is judged not to meet the merits test by one provider in a centre, s/he can turn only to the other provider in

[107] April 2013.
[108] See *Fast Track to Despair,* Detention Action, May 2011.

that centre for a second opinion, rather than, for example, an expert in cases from his/her country of origin, or with the particular features of his/her case. Meanwhile the latest consultation on legal aid[109] proposes removing eligibility for legal aid in cases where prospects of success are only "borderline[110]:

> 389. This proposal [*to abolish the 'borderline' category* would apply equally to asylum cases assessed as having 'borderline' prospects of success. The Government recognises its responsibilities under Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. This requires the Government to provide legal assistance for those refused asylum. However article 15(3)(d) of the Directive makes clear that this obligation only extends to those appeals which are 'likely to succeed'.

18. The UK Border Agency Asylum Process Instruction[111] states at 2.2:

Without prejudice to outcome, unless there is evidence to suggest otherwise (or the case is one already recognised as not generally being … there is a general presumption that the majority of asylum applications are ones on which a quick decision may be made.

19. However, there has long been confusion among officials as to whether the Detained-Fast Track is for cases that can be decided rapidly, as is the position taken in the UK Border Agency's Enforcement Guidance and Instructions and related official policies, or for weak cases that have no merit (ie cases that can be refused rapidly). In its 2008 report *Fast Track to Despair*, Detention Action highlighted a refusal rate of 99% in the Detained Fast Track compared with 70% when figures from the Detained-Fast Track were combined with those from other cases. Given the lack of information at the time of routing a case into the Detained Fast-Track and the approach that most cases are suitable for the detained fast track, it appears that a pretty random sample of cases enter the Detained Fast Track. This reflects the experience of ILPA members. That those cases do so much worse than other cases we conclude to be a result of the process itself.

20. Written confirmation of an appointment with the Medical Foundation for the Care of Victims of Torture or the Helen Bamber Foundation is likely to enable a legal representative to secure their client's case being taken out of the Detained Fast-Track. Securing such an appointment within the Detained Fast-Track timescales puts pressure on the legal representative, on those institutions and, of course, on the client. Appointments from other doctors will not be sufficient, only their reports will be, and the chances of securing a report within these timescales are almost non-existent.

21. Some of the most detailed reports about the process are by the UNHCR as part of its Quality Initiative Project. The June 2008 report[112] catalogues problems with the quality of decision-making in these cases. UNHCR expressed concerns about the cases routed into the Detained Fast-Track, and that they were remaining there instead of being identified as unsuitable and lifted out. They highlighted an incorrect approach to credibility, rejection of medical evidence, using standard wording and using it inappropriately and the use of speculative arguments to dismiss cases based on a limited understanding of refugee law. Subsequent reports have echoed these findings [113].

— **The use of Country of Origin Information and Operational Guidance Notes in determining the outcome of asylum applications**

22. It is unclear how often country of origin information is consulted by UK Border Agency case owners. Instead it appears to be the case that Operational Guidance Notes and standard paragraphs are used, although these may be at odds with the Country of Origin information.

23. Recent examples of a failure to make proper use of country of origin information centre on Sri Lanka. ILPA has been in correspondence with the UK Border Agency for many years about the inadequacy of its country information about Sri Lanka[114]. On 23 October 2012 a charter flight left the UK carrying persons back to Sri Lanka. As usual, ILPA was copied in to a letter to the Administrative Court a few days before the flight, alerting the court that it would take place. Then, just after 11am on the day of the flight, we received another letter from Treasury Solicitors. This drew attention to errors in the country bulletin on Sri Lanka which had been relied upon in the previous letter. These errors suggest recklessness as to the accuracy of the facts that mislead the court. A number of injunctions were granted and thus some people were taken off the flight. ILPA wrote to Mr Justice Ouseley to ask that the court look into the unreliability of the information submitted to it. The Committee for the Prevention of Torture subsequently confirmed that representatives of the Committee, who were visiting the UK at the time, were on the flight. The letters are appended hereto at **Appendix six.**

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[109] Ministry of Justice, *Transforming Legal Aid: Delivering a more credible and efficient system*, CP 14/2013, 9 April 2013.
[110] *Ibid*. at 5, paragraph 3.80ff.
[111] *Op.cit.*
[112] Quality Initiative Project, *Key Observations and Recommendations*, UNHCR Representation in London, June 2008, available at http://www.unhcr.org.uk/fileadmin/user_upload/pdf/5_QI_Key_Observations_and_Recommendations..pdf
[113] See also ILPA's *The Detained Fast Track: a best practice guide*, of 2007 and Bail for Immigration Detainees *Working against the clock: Inadequacy and injustice in the fast track system Refusal factory: Women's experiences of the DFT asylum process at Yarl's Wood Immigration Removal Centre*, September 2007, Human Rights Watch *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, February 2010 and Detention Action, Fast *Track to Despair*, May 2011.
[114] See e.g. ILPA to Head of Asylum Policy, UK Border Agency of 18 September 2009 re failed Sri Lankan asylum seekers and correspondence between ILPA and Phil Douglas, Country Analysis and Returns Strategy Team, Central Operations and Performance, UK Border Agency of 16 and 22 October 2009 re Sri Lanka: enforced returns of failed asylum seekers.

24. Her Majesty's Inspectorate of Prisons personnel accompanied a charter flight to Sri Lanka on 6–7 December 2012, described below. A further charter flight to Sri Lanka was set to have taken place on 28 February 2013. The flight was scheduled during a period when a country guidance case was pending before the Upper Tribunal[115]. The Administrative Court of its own motion scheduled a hearing to deal with the question of whether it was appropriate to remove persons to Sri Lanka when a country guidance case was pending that would determine whether returnees were at risk of torture in Sri Lanka. The information that the UK Border Agency put into its letter to the Court advising the Court of the flight so that the court would be on notice should it receive applications for emergency injunctions (which was, as is standard practice, copied to ILPA), was at odds with the Home Office pleadings in the country guidance case. This, having been alerted by ILPA, the lawyers for the applicant pointed out in a letter to the Court. The court granted a stay in all the cases before it, on the basis of which others were able to achieve a stay. The letters are appended hereto as **Appendix seven.**

25. The UK Border Agency subsequently issued a new version of the country policy bulletin responding to some, but not all, of the concerns expressed by Freedom From Torture about the misrepresentation of its evidence. This was posted on the UK Border Agency website in March 2013[116], described as a reissue of version 2 of the bulletin, rather than as a third bulletin. It cannot be reached through the Agency's *Sri Lanka: Country of Origin information* homepage[117]. Instead it appears on a page headed *Country Specific Asylum Bulletins.* On that page it continues to be described as the October 2012 bulletin. It will only be found on a determined search for evidence by those prepared to check information that appears no longer to be relevant. The Committee may wish to urge the Agency to explain why it has not made information that corrects earlier misrepresentations more prominent.

26. As to Operational Guidance Notes, the UK Border Agency's predecessors consistently opposed these being reviewed by the Advisory Panel on Country Information on the basis that they were not country of origin information but rather policy documents and that the country of origin information in those documents was selected to support policy and did not purport to be a balanced factual assessment. It was only when the work of the Panel passed to the office of the independent Chief Inspector that Operational Guidance Notes came under scrutiny[118]. The Chief Inspector devoted Chapter 8 of his report on the use of country of origin information in decision-making [119] to the Operational Guidance Notes, saying

> *8.2 There is a concern that the inclusion of country information in OGNs means Case Owners will use information selectively in individual decisions based on an overall policy position and will also use the OGN as the primary source of country information rather than referring to the COIS report or other available sources. Many Case Owners acknowledged in our focus groups that they were often the first port of call, if not the only one. Any shortcomings in OGNs would therefore translate into shortcomings in decision making.*
>
> *8.3 Our interviews with staff and managers revealed they were unclear about the purpose of OGNs and the value of having both these and COIS reports.*

27. Of the Operational Guidance Note on Afghanistan the report said:

> *8.6 Some interpretations of the case law included in the OGN were confused and at odds with the COI that was cited.*
>
> *8.7 COI was not properly referenced in the OGN, citing only the general area in the COIS report where the conclusions could be found. However the references could not be located and examination of the COI in the COIS report indicated far greater weight of evidence against the conclusions drawn in the OGN than for it. Guidance in the OGNs was confusing and contradictory and would not serve to assist a Case Owner in conducting an interview or making a decision. The guidance did not seem to relate directly to any known COI.*

28. ILPA has long expressed concerns about Operational Guidance Notes. One of the most longstanding questions in current asylum policy is the question of return to Zimbabwe. In 2008 and 2009 ILPA corresponded with the then Home Secretary, Jacqui Smith MP about Zimbabwe. That is some time ago but it remains an important illustration of the problems that Operational Guidance Notes create and there are many parallels between it and the current situation concerning Sri Lanka. The question of return to Zimbabwe remains live and is coloured and affected by what has happened to date in the country guidance litigation.

29. In a letter of 3 February 2009 the then Home Secretary told ILPA she accepted the latest country guidance, the case of *RN (Returnees) Zimbabwe* CG [2008] UKAIT 83. However, ILPA received an undated

[115] The determination is awaited.

[116] See http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificpolicybulletins/srilanka-polbulletin?view=Binary. *Country Policy Bulletin Sri Lanka, v.2 [sic.] (reissued March 2013)* [accessed 13 April 2013].

[117] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/srilanka12/ [accessed 13 April 2013].

[118] See ILPA's submission of 21 December 2010 to the Chief Inspector's *A thematic inspection of asylum – the use of country information in decision making* available at http://www.ilpa.org.uk/data/resources/13008/10-12-20-Chief-Inspector-COI-Consultation.pdf. The Chief Inspector's report is available at http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/Use-of-country-of-origin-information-in-deciding-asylum-applications.pdf . The UK Border Agency's June 2011 response to the report is available at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/chief-insp/a-thematic-review

[119] *Op. cit.*

letter addressed to stakeholders from the then Chief Executive of UK Border Agency, Lin Homer, circulated by email on 24 March 2009. It was accompanied by a new Operational Guidance Note and gave notice of advice to officials no longer to comply with the new Country Guidance. The justification offered was that "the *RN* determination took place against the backdrop of widespread and indiscriminate political violence that attended the Zimbabwean presidential elections last summer" which has not been repeated since then. Yet the Tribunal in *RN* concluded in November 2008 that "there can be no doubt at all" as to the risk category identified. Its consideration of the issues included an additional hearing on 30th October 2008 to enable the Secretary of State to present her argument that the general risk was restricted to summer 2008. That argument was rejected and the Secretary of State did not appeal. No change of circumstance since November 2008 was identified which could have provided a legal basis for failing to comply with *RN*. The Home Office further represented to the Court of Appeal in January, February and March 2009 that it accepted the Country Guidance. It persuaded the Court of Appeal to reject a challenge, the then lead case of *HS*[120], to the previous 2007 Country Guidance in March 2009 without consideration of the merits based on a commitment given to the Court that the Home Office would reconsider cases in light of *RN*. That was less than a fortnight before the letter from Ms Homer. The correspondence appears at **Appendix eight.**

— **The assessment of the credibility of women, the mentally ill, victims of torture and specific nationalities within the decision-making process and whether this is reflected in appeal outcomes**

30. Problems with the assessment of credibility for specific groups arise, in ILPA's experience, from problems with the assessment of credibility in general. The dynamic at work, for example in the cases of survivors of torture and certain nationalities, is that because membership of the group may result in extra protection, recognition as a member of the group is more closely policed and claims to be belong to the group treated as lies. Children are particularly affected: their age is doubted, then that they are held to be lying about their age is treated as impugning their credibility more broadly[121]. Another example is of those claiming to be refugees on the basis of their sexual orientation. As the case law, has become more favourable to this group, so their credibility has increasingly been doubted[122].

31. We are particularly concerned at the rise of pseudo-scientific methods of trying to determine credibility, for example the use of language analysis in an attempt to determine nationality, the attempts to introduce x-rays to establish age[123] and DNA analysis to determine nationality[124]. Language analysis and DNA tests cannot tell you a person's nationality. The possibility of their allowing interferences to be drawn as where a person is from is considerably weakened where that person has moved about and mixed with different groups in their life, as is the case with many refugees, many of whom will have spent time in camps. Language analysis is opinion evidence. As such it is inadmissible in a higher court of law unless it falls within an exception to the ban on opinion evidence, such as expert evidence. But members' experience of cases in which language analysis is deployed, backed up by scientific papers, suggests that there is an insufficient scientific basis for language analysis in refugee cases to be regarded as expert evidence.

32. There is no scientific or other solution that will cut a swath through the difficult task of determining credibility in asylum cases. As set out in UNHCR's UN High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*[125], this involves a scrupulous application of the burden and standard of proof and an exercise of judgement. The thread that guides the decision-maker through the labyrinth is the proper application of the law.

— **The effectiveness of the 5 year review system introduced in 2005**

33. In 2005 it was determined that rather than being given indefinite leave to remain when recognised as refugees, those so recognised should instead be given five years limited leave to remain with the possibility of applying for indefinite leave at the end of the five years. At that stage the case would be subject to an "active review" to determine whether the person qualified for international protection.

34. The overwhelming majority of applications for indefinite leave to remain at the five-year stage are approved. Many people will still stand in need of international protection after five years. Those who do not, having been in the UK lawfully for at least five years and often very much longer, while their claim for asylum was determined, will have a strong case for settlement on human rights' grounds. ILPA emphasises that once a person has been recognised as a refugee then the onus is on the Home Office to demonstrate that one of the cessation criteria in the Refugee Convention is met.

[120] *HS (returning asylum seekers) Zimbabwe* CG [2007] UKAIT 00094.
[121] See ILPA's *When is a child not a child: asylum age disputes and the process of age assessment,* Heaven Crawley for ILPA, May 2007 at page 55.
[122] As documented by the UK Lesbian and Gay Immigration Group in their report *Failing the Grade* in April 2010 and by Stonewall in its report *No going back: Lesbian and gay people and the asylum system* of May 2010.
[123] A topic on which ILPA has recently provided evidence to the Joint Committee on Human Rights for its enquiry into the human rights of unaccompanied migrant children and young people in the UK.
[124] See the critique in Science Insider http://news.sciencemag.org/scienceinsider/2009/09/border-agencys.html
[125] December 2011, HCR/1P/4/ENG/REV. 3, available at: http://www.unhcr.org/refworld/docid/4f33c8d92.html [accessed 9 April 2013], see especially paragraph 195 onwards.

35. The giving of five years' limited leave thus appears to create extra work for the Government to little purpose. It adds to the prospect of delays and backlogs in other cases because work must systematically be directed to reviewing all these cases, and in deciding these cases themselves.

36. The effects for refugees and persons with humanitarian protection can be grave. A grant of limited leave can produce a sense of insecurity, a fear that at the end of five years one will be forced to return. It is difficult to provide reassurance, especially to a person who was refused at first instance and only succeeded on appeal. A lengthy wait for resolution of an application for indefinite leave exacerbates these fears and can lead to all the practical problems associated with an uncertain status such as difficulties in obtaining or continuing in work, because current and future status appears or is uncertain.

37. The practice militates against fulfilment of the UK Border Agency's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to have due regard to the need to safeguard and promote the welfare of the child. A child born to a person British or settled is born a British citizen. A child born to a parent with limited leave is not. Some children born to refugees may be stateless. More will acquire the nationality of one or both parents, but in circumstances where the parent is estranged from his/her country of nationality and fears to approach the national authorities for a passport for a child.

38. While refugees are given limited leave they are also at risk of being affected by differences between the rights and entitlements of settled persons and those with limited leave and changes to those differences. That can increase feelings of insecurity.

— **Whether the system of support to asylum applicants (including section 4 support) is sufficient and effective and possible improvements**

39. As set out in the January 2013 report of the Parliamentary Enquiry into Asylum Support for Children and Young People[126], the findings of which have implications beyond this group, the system is not sufficient or effective. See, for example, the consideration of evidence linking increased infant mortality rates and deaths in pregnancy with inadequate provision of no-cash support. The current support system leaves those who try to survive within it vulnerable to physical and mental ill-health and those who attempt to supplement its meagre provision vulnerable to exploitation and abuse.

40. The level of support is inadequate to meet basic needs in the short to medium term. Problems are exacerbated when a person attempts to live on the support given in the medium to long term.

41. Support is a broader concept than that of food and shelter. For example, it is a matter of profound concern that not every separated child in the United Kingdom benefits from having anyone who has parental responsibility for him/her. In the case of children who are in care under section 31 of the Children Act 1989, a local authority automatically acquires such responsibility but the vast majority of separated children are not cared for under these provisions. Instead they are accommodated and provided with services under section 20 of the Children Act 1989 and as such do not enter the formal care proceedings process. A child is, as a matter of UK law, lacking in full capacity. If there is no one with parental responsibility for him/her then there are things for which consent cannot be given, things that cannot be done. This is not in line with Article 20 of the Convention on the Rights of the Child and the child is disadvantaged.

42. We highlight the February 2011 Education (Student Fees, Awards and Support) (Amendment) Regulations 2011 (SI 2011/87) which mean that those with Discretionary Leave to Remain in the UK, must now pay international student fees and will not be able to access student loans for a higher education course in England even if their long term future lies in the UK. It was established at the National Asylum Stakeholders Forum Children's subgroup of 8 October 2012 that the Department for Education and the Home Office had not been in consultation about this matter.

43. We are concerned that the proposals in the latest consultation on legal aid[127] will deny legal assistance to those with asylum support claims, especially claims for section 4 support for those whose applications for asylum have been rejected. The consultation paper says:

> 3.58 If an asylum seeker had their claim for asylum rejected and their appeal rights had been exhausted, they would cease to qualify for legal aid under the asylum seekers exception, and funding would cease. Only where they had made a 'fresh claim' for asylum would they once again benefit from the exception for asylum seekers.

44. As per the examples in **Appendix nine (below)** many persons will be unable successfully to make that fresh claim without legal assistance and may meanwhile be in very desperate circumstances indeed.

The prevalence of destitution amongst asylum applicants and refused asylum seekers

45. We highlight a class not mentioned in the question, persons in need of international protection who are living underground, hand to mouth. If you anticipate that you will receive a rapid, wrongful refusal of your claim for international protection, however strong that claim is and whether your anticipation is correct or not, you may prefer not to bring yourself to the attention of the authorities by claiming asylum but instead

[126] See http://www.childrenssociety.org.uk/parliamentary-inquiry-asylum-support-children. The papers at this link include ILPA's submission to the enquiry.
[127] *Op.cit.*

to attempt a hidden existence, thus securing, if not protection, at least that you will not be returned to persecution, for a while. Such persons are very likely to be destitute and they are at grave risk of exploitation. Legal representatives see such people at a later stage, when they finally seek advice, or when they come to the attention of the authorities, for example in a workplace raid. .

46. have succeeded, but who have not been able to make the transition to mainstream support. The case of child EG, who starved to death in this interregnum, is one example[128]. ILPA and some others have repeatedly expressed concern at the National Asylum Stakeholder Forum at the failure to address this problem and have been trying to instil a sense of urgency about so doing since at least 8 November 2012. We thought that we had finally succeeded, only to be told at the meeting in March 2013 that an end of February deadline for concrete action, imposed by a senior manager at the previous meeting on 12 January, had been unrealistic. It was suggested that the Agency had no power to do as ILPA suggested and provide support until a person succeeded in gaining access to mainstream benefits. Recent decisions of the Asylum Support Tribunal suggest that that is simply incorrect as a matter of law. These are discussed in an excellent briefing from the Asylum Support Appeals Project, appended hereto as **Appendix 10** and which ILPA sent to the responsible person in the UK Border Agency[129].

47. Section 4 support is wholly inadequate and a person cannot live with dignity on it. The principle of a card used to obtain support reflects an ideological commitment to no cash that defies all reason. A person who is considered able to leave will not qualify for section 4 support. In particular we highlight that a person is not eligible for asylum support when they have exhausted all appeal rights but are bringing a judicial review. Where a person does not qualify for asylum support, a local authority may be called upon to pick up the bill as set out in the case of *R (Clue) v Birmingham City Council [*2011] 1 WLR 99.

48. It is extremely difficult for a legal representative to ensure that a client focuses on his/her asylum case where that client is hungry and without food and shelter. It is extremely difficult for a client to trust the UK Border Agency or officials with whom they come into contact when the UK has left them without the basic necessities of life. At **Appendix nine (below)** we include a selection of those cases we made available to the Ministry of Justice on asylum support in February 2011 which set out some of the difficulties with asylum support. We highlight the following features of these cases:

- That it is not until threatened with judicial review or until judicial review proceedings have commenced that the UK Border Agency has acted, often to make any decision at all.
- That particular difficulties arise from requiring persons who are destitute and have no means of support to travel all the way to Liverpool to lodge further submissions in person without any funding being available to defray the costs of the journey. This is pointless. Most of the time the person simply hands in the submissions; there is no interview or action of any kind.

— **Whether the UKBA or third sector organisations should be able to highlight concerns regarding legal practitioners to the Solicitors Regulatory Authority**

49. There is nothing to prevent the UK Border Agency or an organisation highlighting a concern to the Solicitors' Regulation Authority. As its website[130] says

- We can receive reports from anyone who has concerns about a law firm or an individual that we regulate. This can include:
  - members of the public, or people representing them such as relatives or Members of Parliament;
  - lawyers and employees of law firms, or
  - other regulators and professional bodies.

50. As is explained there, the person providing intelligence will not be advised of any action taken on the complaint, unless they are required to provide a witness statement, etc.

51. ILPA is agreement with this approach. The Solicitors Regulation Authority should receive and weigh intelligence from the UK Border Agency and organisations that have concerns about a legal representative. It will be necessary to the weigh the information, some may be based on a misunderstanding of what the solicitor did, or should have done, and there is a risk that, for example, the UK Border Agency takes exception to a solicitor's entirely proper actions in the interests of his/her client. But the intelligence is as important part of identifying poor representatives.

52. These comments are not confined to the Solicitors Regulation Authority; they apply also to the Bar Council, the Institute of Legal Executives and the Office of the Immigration Services Commissioner.

53. With immigration matters (which include matters such as applications for refugee family reunion or applications by persons to remain on human rights grounds) no longer qualifying for legal aid significant numbers of persons who have little or no money will be looking for free legal advice that they are unable to

[128] See *the Serious Case Review of Child EG from Westminster City Council* (April 2012) http://www.westminster.gov.uk/services/healthandsocialcare/familycare/safeguardingchildren/serious-case-reviews [accessed 13 April 2013]. The case is discussed in the report of the Parliamentary Enquiry into Asylum Support, *op.cit.*

[129] ILPA email to Ms Helen Earner UK Border Agency 7 March 2013.

[130] See http://www.sra.org.uk/consumers/problems/report-solicitor/providing-information.page

find, or seeking to negotiate terms with someone who will expect to be paid in the end. Many of these persons will be isolated and alone, with little understanding of UK systems and procedures and no one to ask. Backlogs and confusion in the UK Border Agency can make it difficult even for a person who has some grasp of what should happen to ascertain whether their legal representative is doing a good job or not. This leaves people extremely vulnerable to exploitation by unscrupulous so called advisors and representatives, some of whom who may be giving immigration advice unlawfully without being regulated at all. The need for all regulators to ensure that advice and representation is of the highest standard has never been more pressing.

54. We are also concerned that the legal aid tender for contracts from 2013 did not include criteria that differentiated between applicant organisations on the grounds of quality. The result is that excellent representatives, to whom may people would wish to go have a very limited number of case ("matter") starts, for example just 100 per firm in London and Manchester, the same number as firms who do not provide such a high quality of service.

— **Whether the media is balanced in their reporting of asylum issues**

55. The approach of the Home Office and UK Border Agency determines much of the media reporting. We deplore the making of major announcements on immigration not to parliament but to weekend television programmes or early morning radio. This is all the more surprising giving that we are repeatedly told that proposals cannot be discussed or described in formal or bilateral meetings with officials, even when we understand perfectly well that they are just proposals because they have not been signed off by Ministers or announced. For our part, we have repeatedly asked the UK Border Agency that as "corporate partners" we get news releases at the same time as journalists even if we cannot see them before. This has not happened. We have to rely on journalists for them. The result is that the Government's line may go unchallenged, or cannot be challenged from the best informed perspective.

56. Whether those in need of international protection get as much coverage as those who are not is a question we are not in a position to answer. What we can identify is that reporting of asylum is not always accurate and that the stories covered in the media are not always news. The former is not necessarily a surprise; the law, policy and procedures are complicated and Government statements can create as much confusion as they dispel. The latter is more disappointing. One possible cause is most stories stemming from UK Border Agency news releases rather than independent reporting. If one examines the UK Border Agency website news pages it will be seen that among the unrelenting diet of articles about immigration offenders there is scarce anything about international protection[131].

57. As to accuracy, levels of support for indigent persons seeking asylum is an area where it appears to us that there is considerable inaccuracy in reporting, leaving many members of the public believing that those in receipt of asylum support get very much more than is the case.

58. There is also much confusion about whether a person seeking asylum is lawfully in the UK. A person who claims asylum at port of entry and is given temporary admission is not an illegal entrant.

59. Inaccurate reporting of "tough" talk on the part of Ministers and officials may leave persons seeking asylum and those may be considering seeking asylum confused as to their rights and entitlements. In the case of those who have yet to claim asylum, this may result in their not coming forward and making themselves known. In the case of those who have claimed asylum it may result in their not seeking assistance for themselves or their children, or medical care or not participating in volunteering and other useful activities that are open to them.

— **The prevalence of refused asylum seekers who are tortured upon return to their country of origin and how the UK Government can monitor this**

60. If a person is wrongly refused asylum then, by definition, they will face persecution on return. This may take the form of torture, of killing, of inhuman or degrading treatment or punishment, etc. It is difficult to extrapolate from this to estimate prevalence. States are unlikely to publicise their unlawful actions and persons may disappear or die under torture.

61. The UK Government has access to the range of human rights reports and to expert evidence. As per the Sri Lanka example cited above, it does not always make best use of the evidence it has. The UK Government rarely instructs experts in asylum cases, instead waiting for applicants to proffer expert evidence and then taking issue with this evidence.

62. Her Majesty's Inspectorate of Prisons personnel accompanied a charter flight to Sri Lanka on 6–7 December 2012[132]. The inspectors reported that that, despite representations from the UK Border Agency, "For reasons that were not made clear, the Sri Lankan authorities would not allow inspectors to see the handover process on arrival in Colombo." They also recorded:

> "5.6 Staff were unsure what to do if they had concerns about the behaviour of receiving officials.

They were unaware of any mechanism to report unacceptable behaviour by receiving countries should they witness it on arrival.

[131] See http://www.ukba.homeoffice.gov.uk/news-and-updates/?area=allNews

[132] Detainees *under Escort: inspection of Escort and Removals to Sri Lanka, 6-7 December 2012* by HM Chief Inspector of Prisons.

63. The Committee could usefully pursue the recommendations made in the report.

64. The evidence in *CM (EM country guidance; disclosure) Zimbabwe CG* [2013] UKUT 00059(IAC) was that:

> "Returnees are observed "airside" at Harare Airport by a Migrations Delivery Officer (MDO), who makes contact with the leader of the escort group once the returnees have disembarked but who then withdraws whilst the returnees go through immigration control. Usually, the MDO is able to observe the returnee through the open door of the immigration interview room. Once "landside" the MDO observes the progress of the returnees from interview room to immigration desk and then on to baggage reclaim. The MDO then observes the returnee leave the airport terminal building. The whole process takes about 40 to 60 minutes."

65. The Court in *CM* highlighted that the Home Office evidence ended where the returnee left the airport terminal[133]. There is always very real concern that attempts at monitoring might increase risk, both to those returned and those trying to support them. We have seen attempts at monitoring flounder because individuals have not kept in touch, which may be to avoid drawing attention to themselves.

66. We highlight into particular our concerns about the effects of the clause *Restriction on right of appeal from within the United Kingdom* of the Crime and Courts Bill on refugees. This is designed to reverse the effect of the judgment of the Court of Appeal in *Secretary of State for the Home Department v MK (Tunisia)* [2011] EWCA Civ 333.[134] MK is a refugee from Tunisia, who had been living in Manchester for several years with his wife and daughters. He was extradited to Italy in 2008, further to a European arrest warrant. While out of the UK, his leave was cancelled. He was acquitted of all charges in Italy save one, possession of a false document. Nonetheless, the Secretary of State sought to block his return to the UK. The Court of Appeal held that an appeal could be exercised in-country if the person returns to the UK within the short time-limit (10 days) for lodging an appeal in-country and opportunity should have been given to MK to do so. Meanwhile MK was facing onward *refoulement* from Italy to Tunisia, something the UK courts, in allowing his extradition to Italy had identified would not happen, which was significant in their decision to permit extradition in the first place as they had determined that if returned to Tunisia, MK would face torture. The Crime and Courts Bill will reverse the effect of the Court of Appeal's decision leaving refugees stranded outside the UK vulnerable to return to the country in which they were persecuted.[135]

67. We welcome the Home Affairs Select Committee's decision to monitor the number of individuals granted asylum after having previously had an application refused with a particular focus on individuals who have been returned to Sri Lanka[136]. We urge the Committee, where such cases occur, to look at the person's account of what happened to the person on return and what the UK Border Agency, or any successor, made of this.

APPENDICES[137]

Appendices two and nine appear below. The rest are attached as separate documents.

Appendix 1 ILPA letters to the UK Border Agency of 13 June 2011 (Doc 1), 12 August 2011 (Doc 2) and 22 September 2011 (Doc 3) re screening

Appendix 2 Screening Cases (see below)

Appendix 3 ILPA & AIRE centre complaint to European Commission re screening, 13 January 2012 (Doc 1) and Commission letter of 28 August 2012 (Doc 2).

Appendix 4 ILPA to UK Border Agency Head of Asylum, Mr Graham Ralph, re the Asylum Operating Model (also forwarded to the European Commission

Appendix 5 ILPA to the Independent Chief Inspector of the UK Border Agency about the Detained Fast-Track, March 2012.

Appendix 6 letters pertaining to October 2010 charter flights to Sri Lanka

Appendix 7 Letters pertaining to the charter flight to Sri Lanka scheduled for 28 February 2013

Appendix 8 Correspondence pertaining to operational guidance on Zimbabwe

Appendix 9 Asylum support cases (see below—includes examples of attending to provide further submissions in person)

[133] Paragraph 202 of the judgment.
[134] ILPA provided further detail of *MK*'s case in submissions to the Joint Committee on Human Rights.
[135] For further information see, for example, the debates at 12 December 2012, col 1109 and see ILPA's evidence to the Joint Committee on Human Rights Enquiry into Extradition Policy of 21 January 2011, available at http://www.ilpa.org.uk/data/resources/14418/11.01.21-ILPA-to-JCHR-re-extradition.pdf
[136] Home Affairs Committee, Eighth Report of Session 2012-2013, HC 603, *The Work of the UK Border Agency (April--June 2012)*, paragraph 66.
[137] Not printed

Appendix 10 Asylum support Appeals Project Bulletin re termination of support, 7 March 2013

Adrian Berry
Chair
Immigration Law Practitioners' Association

April 2013

Supplementary written evidence submitted by the Immigration Law Practitioners' Association (ASY 39a)

Following my giving evidence to the Committee on 2 July 2013 you wrote to follow up on the question asked by the chair about the proof that LGBT asylum seekers are asked to provide by the Home Office.

I attach a note by ILPA members the UK Lesbian and Gay Immigration Group that I trust you will find helpful.

I am aware that you have also received evidence from ILPA member S Chelvan, a barrister at No 5 chambers. His "Difference, Shame, Stigma, Harm" model has received considerable attention as a way of examining the evidence in these claims. There is a helpful brief introduction to the model in the summary note of the International Association of Refugee Law Judges, European Legal Network on Asylum and UNHCR *Informal Meeting of Experts on Refugee Claims relating to Sexual Orientation and Gender Identity* that took place in Bled, Slovenia on 10 September 2011[138].

The difficulties faced by LGBT persons seeking asylum are just one aspect of problems encountered by persons seeking asylum more generally when it comes to establishing that they are telling the truth. This is dressed up in the word "credibility," perhaps because it is easier to say to someone "You lack credibility" than to say "You are telling lies." The use of the amorphous term can also mask no accusation of a specific lie having been made. The vexed question of truthfulness or "credibility" has been the subject of UNHCR's CREDO project and also of the work by Amnesty International on which you took oral evidence from Ms Jan Shaw.

For the most part the answer to disputes about credibility lies in a correct application of the standard of proof. The standard is that of a "reasonable degree of likelihood[139]." See the cases of *Ravichandran* [1996] Imm AR 97 and *Karanakaran* [2000] Imm AR 271. See also the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*[140].

The Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted[141] (the "Qualification Directive) also addresses the standard of proof in Article 4.

Section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 attempted to prescribe an approach to credibility and the inferences to be drawn from the timing of the claim, the presentation of a false document etc. In *SM (Section 8: Judge's process) Iran* [2005] UKAIT 00116 the Secretary of State appealed on the grounds that section 8 should be the starting point for an assessment of credibility. The Asylum and Immigration Tribunal disagreed:

> *10. In our judgment, although section 8 of the 2004 Act has the undeniably novel feature of requiring the deciding authority to treat certain aspects of the evidence in a particular way, it is not intended to, and does not, otherwise affect the general process of deriving facts from evidence. It is the task of the fact-finder, whether official or judge, to look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence. Some aspects of the evidence may be matters to which section 8 applies. Some parts of the evidence may shine with the light of credibility. The fact-finder must consider all these points together; and, despite section 8, and although some matters may go against and some matters count in favour of credibility, it is for the fact-finder to decide which are the important, and which are the less important features of the evidence, and to reach his view as a whole on the evidence as a whole.*

Granting permission to appeal in in *ST (Libya) v Secretary of State for the Home Department* [2007] EWCA Civ 24 (12 January 2007), Lord Justice Sedley said

> *6. Section 8 is a problematic provision on which there is, so far, little case law. I cannot at the moment think of any other statute which seeks to prescribe how a judicial fact-finder is to go about finding*

[138] Available on UNHCR Refworld at http://www.refworld.org/pdfid/4fa910f92.pdf .
[139] *R v Secretary of State for the Home Department, ex p Sivakumaran* [1988] AC 958
[140] HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979. See in particular paragraph 196 onwards.
[141] Official Journal L 304 , 30/09/2004 P. 0012 – 0023.

> *facts. In many respects nonetheless Section 8 does no more than rehearse things that a fact-finder will anyway have regard to. But subsection (4) is not quite in that class. It alters the consequence of a failure to seek asylum in a safe third country from removal to that country under the 1990 Dublin Convention to a potential ground for disbelieving the claim when it is eventually made in this country.*
>
> *7. Neither the intrinsic logic nor the forensic effect of this provision is immediately obvious. The requirement is to take the failure into account but to what purpose and effect is not prescribed. It seems to me arguable that there has to be some logical nexus between the particular failure and its circumstances and the applicant's general credibility before it can work against him under Section 8. It may not be enough, in other words, to say, as the Immigration Judge has arguably done here, that solely because the applicant has failed to claim asylum in a safe third country when he had a reasonable opportunity to do so he is less entitled than he would otherwise be to be believed about the risks he faces at home."*

Section 8 is not compatible with the principle of judicial independence and should be repealed in the forthcoming immigration bill.

Alison Harvey, General Secretary
ILPA

July 2013

Annex

Note by UK Lesbian and Gay Immigration Group

Since 1993 UK Lesbian & Gay Immigration Group (UKLGIG) has been supporting lesbians, gay men, bisexual, trans and intersex (LGBTI) people to gain fair and equal treatment in immigration law. In 2003 the group's focus shifted to those who, persecuted in their home countries because of their sexual or gender identity, have escaped to the UK.

Of the 196 countries in the world, there are 76 where homosexuality is illegal—seven having the death penalty[142]. There are around 30 further countries where it is extremely unsafe to be LGBTI and where the risk of persecution is high.

Only a tiny proportion of LGBTI people persecuted worldwide come to the UK to seek a safe haven, and most come only as a last resort. In 2009 Metropolitan Support Trust carried out research into housing issues specific to LGBT asylum seekers. This research produced the only estimate so far of the possible numbers of LGBT people coming to the UK to seek safety. The report, 'Over Not Out', states that a conservative and possibly severe under-estimate of the number of LGBT asylum seekers coming to the UK each year is between 1,300 and 1,800[143].

LGBTI asylum seekers are one of the most disadvantaged, under-represented and excluded groups in UK society. Many of those UKLGIG works with have been beaten, tortured or imprisoned, prosecuted and abused because of their sexuality. Almost all of the lesbians, and many of the gay men have been raped and/or genitally mutilated.

Although the system in the UK is difficult for all asylum seekers, LGBTI people face specific difficulties not faced by other asylum seekers—shame and secrecy about who they are, lack of knowledge that their identity is a ground for asylum, lack of support from either their home community or the LGBTI communities, lack of independent evidence about both their identity and about what happens to LGBTI people in their home country and abuse in detention and accommodation provided by the Home Office.

UKLGIG provides quality legal advice, referral to expert immigration solicitors, mental and emotional support and social interaction. The organisation trains refugee support and LGBTI organisations and solicitors. UKLGIG works with MPs and Lords, the Home Office, in the Courts and in conjunction with other NGOs to influence positive change in policy and legislation.

If LGBTI asylum seekers held in detention and fast-tracked through the asylum process are not supported to prepare their case and do not have expert legal representation, their chance of achieving a fair decision is severely jeopardised. UKLGIG provides both telephone support and regular visits to detained LGBTI asylum seekers.

In 2010 UKLGIG produced 'Failing The Grade', a report questioning why LGBTI asylum claims had a more than 98% chance of refusal by UK Border Agency (UKBA)[144]. This led to work with Stonewall to produce a further report 'No Going Back',[145]. These two reports together with the Supreme Court decision on discretion in July 2010[146] resulted in pressure on UKBA from the then recently elected government. Subsequently, UKLGIG

[142] http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf
[143] http://www.metropolitan.org.uk/images/Over-Not-Out.pdf
[144] http://www.uklgig.org.uk/docs/publications/Failing%20the%20Grade%20UKLGIG%20April%202010.pdf
[145] http://www.stonewall.org.uk/what_we_do/research_and_policy/2874.asp
[146] http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2009_0054_Judgment.pdf

had extensive input into compulsory training for all UKBA decision makers and into an Asylum Policy Instruction on sexual identity asylum claims[147].

UKBA completed the compulsory decision makers training on LGB asylum claims in January 2011. UKBA stated at the time that post the Supreme Court decision, the main issue in decision making is how to assess if the claimant is genuinely lesbian, gay or bisexual. Credibility is therefore the crux of the majority of LGBTI asylum decisions. LGBTI asylum seekers are required to prove their sexual or gender identity. This is frequently a complicated process.

This training encouraged decision makers to understand what sexual identity is and realise that proof of sexual identity is not about sex but about a complete person. It also explained what enquiries to make and how to extract information sensitively.

Some of the issues that UKBA decision makers were trained to investigate are:

- Unlike other people claiming asylum, LGB asylum seekers seldom have anyone else to corroborate what they are saying. Their statement is therefore their only evidence.
- In countries where LGB people are despised and under threat, people develop a recognition of their sexual or gender identity over a period of many years and in small and cumulative steps. When and how a person recognised their identity is important in deciding credibility.
- Thoughts and feelings about this process and about what has happened are important because they are individual.
- Once people have recognised themselves as LG or B, their story becomes very similar to many others from all over the world. The steps that led them to that recognition and their personal thoughts and feelings therefore become the only things that are individual. Being individual means that a person is more likely to be credible.
- People should talk about every aspect of their lives not just sexual relationships or why they left.
- People may have never previously disclosed their identity and will struggle to articulate it especially to authorities.
- People might be ashamed of who they are and therefore struggle to talk about it. There are other asylum seekers who might be ashamed of what has happened to them, eg women survivors of sexual violence, but no others who are ashamed of who they are.
- Previous persecution might have included imprisonment by family, the community or the authorities.
- LGB asylum seekers are commonly survivors of sexual assault, rape or genital mutilation, which they are unlikely to have talked about and might take some time to disclose, especially as it could have been used as a punishment for their identity.

UKLGIG believes these factors mean that preparing information in support of a sexual or gender identity claim takes time and support. The Detained Fast Track process is unsuitable for the majority of LGBTI asylum claims.

UKLGIG supports circa 1,000 LGBTI asylum seekers each year. Almost all of the people the organisation works with who are refused, either by the Home Office or the court, are refused because their identity is not believed.

UKLGIG was pleased that what was at the time UKBA, consulted and took advice from the organisation on how to establish credibility. UKLGIG noticed a genuine improvement in the quality of interviews and decisions after training. However, two and a half years on, there has been a decline in that quality and recently a reversion to inappropriate, invasive and sex-focused questioning and decisions.

UKLGIG is currently undertaking follow-up research to the 2010 report looking again at Home Office decision making. This research is not complete, however, below are some of the findings so far in relation to credibility.

In 17 out of 22 UKBA decision looked at so far, asylum claims were denied because the person was not believed to be lesbian, gay or bisexual. If lesbians and gay men do not mention their sexuality at the earliest possible opportunity, normally the screening interview, this is taken into account in assessing credibility. The sections below explore some of the reasons provided by various decision makers in finding that a person lacks credibility.

Following the criteria set out by the Court of Appeal, decision makers must take into consideration all the material facts of the case, comparing the evidence submitted both cumulatively and together with objective information about the claim and country [1]. UKBA case workers have cited evidence of the following as means of proving one's sexual identity:

- knowledge of the legal position of homosexuality;
- details of relationships in the country of origin and in the UK;

[147] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/sexual-orientation-gender-ident?view=Binary

— how the person first became attracted to same sex partners;
— when the person first realised that they were gay or lesbian;
— how the person came to terms with their homosexuality;
— credible details of gay-friendly places the person has visited in the UK;
— introspection, self-awareness or uncertainty as to sexual identity, 'such feelings might be expected to be evident in the experience of a young individual becoming aware of their homosexuality in a homophobic society' (18 April 2011, Gambia, gay).

Case workers at UKBA have found an asylum claim to lack credibility on the grounds of sexual orientation for a number of different reasons. For example, gay men and lesbians who do not know the full names of their partners or their dates of birth are found to lack credibility.[2] These decisions expose a lack of cultural awareness eg of the numerous cultures where birthdays are not celebrated, or of the need for subterfuge and secrecy in societies where discovery of lesbian, gay or bisexual identity carries extremely harsh penalties.

The inability to recall the names, addresses and the atmosphere of clubs and bars is also cited as a reason, with minor discrepancies going to credibility.[3] In one case, decided in November 2011, the letter refusing asylum to a Nigerian man claiming on the basis of his sexual identity provided the following reason:

> You state that you have not been to any 'gay establishments' in the UK and you can not name any famous gay people. Your explanation for this is that you do not drink or smoke and therefore don't like going clubbing. You state that people would come to you because of your 'eyes' and the way you walk. The behaviour that you have demonstrated in the UK is not considered to be indicative of your sexuality, the reason you have given for not going to gay establishments due to not smoking or drinking is not considered reasonable especially given that smoking in clubs in the UK had been banned since the summer of 2007 and whether or not you drank would be a personal choice. Further you claim that people would know that you were gay simply by looking at your eyes and the way you walk is considered to be unfounded and completely subjective and in no way supports your claim to be homosexual.

In other cases, Home Office case workers have denied claims on the grounds of credibility citing vagueness and inconsistency even where this is not the case. Instead, small inconsistencies are cited in order to find a lack of credibility for the overall claim in what can be termed a snowballing effect.

Further, in at least two of the decisions analysed the case workers have found that the words and terms used damaged a person's credibility. In the case of a Ugandan man, the refusal letter noted that a homosexual would not use the following terms:

> — using the term as an adjective—"A gay"
> — pluralising the social group as if you are separated from them "all the bars and clubs are for gays"
> — Not understanding the terms homosexual and lesbian, "they were either homosexual or lesbian… Homosexuals—those males in a relationship, lesbians are those women when they are in a relationship"
> — Using a derogatory term –"even the homos attended"
>
> 29 June 2012

Case workers also continue to place an emphasis on sexual practice or lack thereof in claims involving sexual identity sometimes passing their own judgment on relationships. For example, in a recent case involving an asylum claim, the decision maker found that "It is noted that your reason for having sexual intercourse with D. was merely to alleviate your stress as opposed to your attraction to D" (04 July 2013). In addition, UKBA refusal letters have not accepted a person to be homosexual where there is a lack of sexual practice.[4]

[1] Karanakaran [2000] EWCA Civ 11.

[2] UKBA decision 3 May 2012, gay man, Ghana; UKBA decision, 24 April 2012, gay man, Uganda; UKBA decision, 14 Dec 2011, gay man, Cameroon; UKBA decision, 29 June 2012, gay man, Uganda.

[3] Ibid, "You initially said that that X club was in Camden Town. Then you stated that it was in Kentish Town. While it is accepted that these locations are very close it is considered that you would be able to disclose full details of this club, if you ever attended it." Also, UKBA decision, 19 June 2012; UKBA decision, 16 Nov 2011, gay man Malawi; UKBA decision, 18 April 2011, gay man, Gambia; UKBA decision, 31 Jan 2013, gay man, Pakistan.

[4] UKBA decision, 17 Feb 2011, gay man, Uganda, "You confirm that you have had no other sexual encounters at all, at secondary school, at university, whilst working in Uganda or even whilst living in the UK for the last 15 months. You offer no evidence as to your sexual orientation saying that you know "in my heart,

in my life". It is therefore not accepted that you are a homosexual, and as this goes to the very core of your claim, it therefore follows that your claim is rejected in its entirety."

Written evidence submitted by the Amnesty International and the Still Human Still Here coalition (ASY 40)

Amnesty International UK is a national section of a global movement of over three million supporters, members and activists. We represent more than 230,000 supporters in the United Kingdom. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

Still Human Still Here is a coalition of 58 organisations that are campaigning to end the destitution of asylum seekers in the UK.

Executive Summary

The assessment of the credibility of women, the mentally ill, victims of torture and specific nationalities within the decision making process and whether this is reflected in appeal outcomes

- In 2004 Amnesty International's report *Get It Right: How Home Office decision making fails refugees* found that one in five decisions to refuse asylum was overturned on appeal. For the last three years statistics show that more than 25% of initial decisions to refuse asylum are being overturned on appeal.
- During 2012 Amnesty International and the Still Human Still Here coalition carried out research to examine why so many initial decisions are overturned on appeal including the cases of women, survivors of torture on specific nationalities.
- We have examined the refusal letters and appeal determinations of 50 cases from Syria, Sri Lanka, Iran and Zimbabwe, all of which have had high appeal overturn rates of the initial decision to refuse asylum in the last two years. In 2012, 52% of appeals were allowed for Syrians, 41% for Sri Lankans, 34% for Iranians and 25% for Zimbabweans.
- The research clearly shows that in more than 80% of a random sample of cases, a flawed credibility assessment is the primary reason why the UK Border Agency's initial decision to refuse an asylum claim was found to be wrong by Immigration Judges.
- Our research found that case owners would typically identify an action that they considered implausible, a minor inconsistency or a lack of documentary evidence and then consider these issues in isolation, rather than looking at all the available information in the round.
- The evidence from the research indicates that a significant number of case owners are making serious and/or multiple errors in the assessment of credibility which are leading to poor quality decisions. The vast majority of these mistakes could be avoided if case owners properly followed UKBA's own Credibility Guidance. [148]

Recommendations include:

- UKBA must monitor the performance of individual case owners and their managers and address high overturn rates on appeal and consistent failure to properly apply UKBA guidance through appropriate support and training. If poor quality decisions persist then case owners and/or their managers must be removed from these roles.
- More flexibility should be built into the asylum process to allow relevant materials (including medical evidence, country information and the translations of documents) to be properly considered both prior to and after the substantive interview, particularly if the applicant is unrepresented. Case owners should have discretion to delay a decision or an interview in order to obtain relevant evidence.
- Decision makers should be required to give applicants an opportunity to explain apparent contradictions in their statements or inconsistencies with objective country of origin information.
- Cases with indefensible reasons for refusal should be withdrawn prior to the appeal.
- Section 8 should be repealed as it gives inappropriate weight to certain actions as damaging to an applicant's credibility. In the short term, current guidance should be amended to provide a wide variety of examples which would be regarded as providing a reasonable explanation for a delay in making an asylum application.

[148] On 26 March 2013, the Home Secretary announced that the Executive Agency status of the UK Border Agency will end and its functions will be brought back within the Home Office. The Government has split up the UK Border Agency and in its place will be an immigration and visa service and an immigration law enforcement organisation. We have referred to UKBA throughout the report as this was the title of the agency during the period in which the research was conducted.

— Case owners should defend their own decisions at appeal. If Home Office Presenting Officers rather than case owners continue to represent UKBA at appeal, then an efficient feedback loop is needed so that case owners can properly learn from their mistakes.

Submission

1. Almost a decade ago, Amnesty International published its report *Get It Right: How Home Office decision making fails refugees.* This study found that one in five decisions to refuse asylum was overturned on appeal.

2. More than 25% of decisions to refuse asylum being overturned on appeal in 2010, 2011 and 2012. In 2012, there were 2,192 cases where the initial asylum decisions were successfully appealed (27% of all appeals).

3. Amnesty International and the Still Human Still Here coalition conducted research examining 50 cases focusing on asylum applications from Syria, Sri Lanka, Iran and Zimbabwe, all of which had high overturn rates on appeal of the initial decision to refuse asylum in the last two years. In 2012, 52% of appeals were allowed for Syrians, 41% for Sri Lankans, 34% for Iranians and 25% for Zimbabweans. This amounts to a combined total of 901 overturned initial decisions.

4. For the research all of the cases had to have received an initial refusal letter after February 2012 when new credibility guidance[149] was issued and we wanted to assess whether these revised instructions had an impact on the quality of the initial determinations.

5. In 42 cases analysed (84% of the sample), the Immigration Judge indicated that the primary reason for an initial decision being overturned was that the UKBA case owner had wrongly made a negative assessment of the applicant's credibility. In all these cases, the case owners had not properly followed the UKBA's own polices on assessing credibility.

6. Case owners made a total of seven different mistakes when assessing credibility which were identified as primary reasons for the initial decision being overturned. However, four errors in applying the credibility assessment are responsible for 88% of these flawed decisions. These mistakes relate to: the use of speculative arguments or unreasonable plausibility findings; not properly considering the available evidence; using a small number of inconsistencies to dismiss the application; and not making proper use of country of origin information.

7. The four errors in applying the credibility assessment which were identified above as being the primary reason for 88% of the flawed decisions being overturned, also account for 59% of the secondary reasons noted in the appeal determinations.

8. In addition to these four issues, case owners in this sample also appear to consistently make mistakes in relation to the application of Section 8[150] and mitigating circumstances. Errors in applying these two aspects of the credibility assessment were identified as being the primary reason for 10% of flawed decision being overturned, and also account for 29% of the secondary reasons noted in the appeal determinations.

9. The research found that case owners would typically identify an action that they considered implausible, a minor inconsistency or a lack of documentary evidence and then consider these issues in isolation, rather than looking at all the available information in the round. Decision makers also focussed on one part of the case that they thought inconsistent or implausible and then used this as the basis for undermining other aspects of the individual's account.

10. During the analysis of the cases, a "domino effect" was observed by which case owners made flawed credibility assessments based on one aspect of the claim and then used this to undermine other aspects of the claim.

11. The following example is a clear illustration of the domino effect in action taken from a Sri Lankan refusal letter:

> "As it has not been accepted that you were a member of the LTTE, it is not accepted that you were arrested…."
>
> "As it has not been accepted you were arrested, it is not accepted that you were detained or received the treatment you claim to…"
>
> "Given that it has not been accepted that you were arrested or detained, it is not accepted you were released…"
>
> "Given that it has not been accepted that you were arrested and released it is not accepted your father was arrested and questioned…".

[149] See the Asylum Process Guidance, *Considering the protection (asylum) claim and assessing credibility* at: http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/consideringanddecidingtheclaim/guidance/considering-protection-.pdf?view=Binary

[150] Section 8 of the 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 Act requires decision makers to "take into account as damaging to the applicant's credibility any behaviour they think is designed or likely to conceal information, mislead, or obstruct or delay a decision. However, the legislation makes clear that case owners should take into account any reasonable explanation given by the asylum seeker for the delay in making the application.

12. While one error in evaluating credibility would not necessarily mean that a decision is unsustainable, the evidence from the research indicates that a significant number of case owners are making serious and/or multiple errors in the assessment of credibility which are leading to poor quality decisions. The vast majority of these mistakes could be avoided if case owners properly followed UKBA's own Credibility Guidance.

13. The following is an example from a Syrian case:

Refusal letter:

> "You answered that 'Turkey, Saudi Arabia and Qatar' opposed a resolution by Arab and European nations in the United Nations Security Council for Syria's President to resign. Given that you claim to have been protesting in February 2012, it is not considered credible that you fail to answer basic questions regarding international politics correctly. It is not accepted that you have undertaken any role in political activities".

Immigration Judge:

> "If as claimed he has never had any education and has lived in a rural area without the benefit of electricity, it is just plausible that his information about his home country, as regards matters and events not within his immediate area, would be limited."

14. The research found that evidence submitted before the initial decision needs to be more carefully reviewed and considered. In 70% of the 50 cases in this sample, some form of documentary evidence (other than personal identification) was provided prior to the initial decision. In seven of the Syrian cases, this evidence included: photographs of attendance at demonstrations, news articles, a witness statement, a lease contract, proof of address, a death certificate, embassy visit documents, a military letter and supporting letters

15. In eight of the Sri Lankan cases, documentary evidence was submitted to corroborate the claim of torture or to show the after effects of torture prior to the initial decision. This came in the form of photographs, NHS assessment cards, doctors' letters and appointment cards. In six Sri Lankan cases, applicants submitted photographs of their scars to substantiate their claims of torture prior to the initial decision, but these photographs were not accepted in a single case.

16. In several cases, the decision maker did not adequately assess or research the evidence provided to them by the applicant. For example, in one of the Syrian cases, the case owner made a mistake regarding the date the applicant returned to the UK which was then used to undermine the claim.

17. While the research did not have access to a record of the interview, the available evidence from the appeals indicates that applicants were frequently not given an opportunity to explain actions that were considered implausible or inconsistent and that material facts were not probed sufficiently at the initial interview.

18. Many issues brought up at the appeal or in witness statement responding to points made in a refusal letter could have been obtained at the interview through better use of follow-up questions or by putting issues which the case owner considered to be inconsistent or contradictory to the applicant at that time.

19. In addition, a more flexible approach to the timeframes for making decision is also likely to have a positive impact on the quality of those decisions. If a substantive interview and/or initial decision was briefly delayed in order to acquire further information or check evidence that had already been submitted, this would help case owners to get the decision right first time.

20. Credibility assessments are inherently difficult because they require the case owner to break with the instinctive practice of assessing someone's behaviour in relation to whether it fits their own expectations of would be a "normal" or "common sense" response to a certain situation.

21. The reality is that "common sense" actions differ across countries and situations. Furthermore, people do not always behave rationally or consistently in situations of danger or under extreme pressure. In addition, there is evidence that "memory for traumatic events is often inconsistent and ill-recalled" meaning that a true account is not always detailed and internally consistent.

22. The research shows that some case owners are having difficulty in relation to these issues, resulting in poor decisions based on the inappropriate use of speculation, mitigating circumstances or Section 8. This needs to be dealt with through better management and training support.

23. Avoidable mistakes in the initial asylum determination procedure is inefficient, costly and causes the applicant concerned considerable anxiety. This study suggests that a significant number of successful appeals could be avoided if the issue of poor quality credibility assessments by some case owners is effectively addressed.

24. Amnesty International and Still Human Still have made a number of recommendations to improve the quality of the decision making process and urge the Government to implement them as a matter of priority:

— The Home Office must monitor the performance of individual case owners and their managers and address high overturn rates on appeal and consistent failure to properly apply policy guidance through

appropriate support and training. If poor quality decisions persist then case owners and/or their managers must be removed from these roles.

- More flexibility should be built into the asylum process to allow relevant materials (including medical evidence, country information and the translations of documents) to be properly considered both prior to and after the substantive interview, particularly if the applicant is unrepresented. Case owners should have discretion to delay a decision or an interview in order to obtain relevant evidence.
- Decision makers should be required to give applicants an opportunity to explain apparent contradictions in their statements or inconsistencies with objective country of origin information.
- The Home Office should encourage greater communication between the case owner, the applicant and their legal representative prior to interview, the initial decision and any appeal to try and resolve matters in dispute or to seek clarification around issues of concern (eg perceived inconsistencies or implausible behaviour). This could be facilitated by:
  - Ensuring that case owners, applicants and legal representatives have access to full contact details of the other parties, including email addresses and direct phone numbers;
  - Case owners contacting legal representatives or the applicants, using the invitation to interview letter, to indicate what information they would like before or at the asylum interview;
  - Case owners contacting legal representatives or the applicants after the interview to raise any further issues arising from the interview so that these can be addressed prior to making the initial decision.
- Policy alerts on fast changing country situations should be issued and case owners should always check whether a new OGN, Country of Origin Information Service report or country guidance case has been issued prior to the appeal.
- Cases with indefensible reasons for refusal should be withdrawn prior to the appeal.
- Case owners should defend their own decisions at appeal. If Home Office Presenting Officers rather than case owners continue to represent at appeal, then an efficient feedback loop is needed so that case owners can properly learn from their mistakes.
- Section 8 should be repealed as it gives inappropriate weight to certain actions as damaging to an applicant's credibility. In the short term, current guidance should be amended to provide a wide variety of examples which would be regarded as providing a reasonable explanation for a delay in making an asylum application.
- Joint training programmes, which include UNHCR and other stakeholders, should be established for case owners to address the problems identified in this research and in particular to deliver:
  - Improved interviewing technique, including making better use of follow-up questions and how to probe material facts;
  - A better understanding of how cultural or personal issues will inhibit or shape an individual's actions in certain circumstances; why people may delay making an asylum application; and how trauma affects memory and recall, (eg through interactive learning and role playing exercises);
  - Specialist training for senior case workers, the Quality Audit Team and those providing training so that they are better place to identify and support staff who are having difficulties with credibility assessments.
- Access to free expert legal advice and representation should be guaranteed to all asylum seekers prior to their initial interview and throughout the asylum process so that resources are focused on good quality, defensible decisions early in the decision making process.

Amnesty International and the Still Human Still Here coalition

April 2013

Written evidence submitted by Freedom from Torture (ASY 54)

1. Executive Summary

1.1. Freedom from Torture is a UK-based human rights organisation and one of the world's largest torture treatment centres. Our centres in London, Manchester, Newcastle, Birmingham and Glasgow provide a range of clinical and therapeutic services to survivors of torture and organised violence, 95% of whom are, or have been, refugees or asylum seekers.

1.2. Freedom from Torture welcomes the Committee's Inquiry into asylum and particularly its focus on ensuring that the right decision is taken first time. This is imperative for ensuring protection needs are recognised at an early stage without protracted appeals and intense distress to vulnerable applicants.

1.3. We welcome UKBA initiatives to improve screening processes and the commitment on the part of senior managers to preventing routing of torture survivors to the Detained Fast Track (DFT) system. Ongoing successful referrals to Freedom from Torture from the DFT demonstrate a need for further reforms including a

policy change to reduce the high evidential threshold before a suspected torture survivor is deemed unsuitable for DFT and ongoing learning and development initiatives for staff. However, it is also essential to recognise that the timing, format and nature of screening interviews makes this a fundamentally inappropriate stage at which to expect torture disclosures such that eligibility for the DFT can be safely assessed and the right decisions taken under UKBA's new 'triage' processes. This and other problems make the DFT a fundamentally untenable system that is incompatible with fundamental human rights guarantees and Freedom from Torture believes it should be abolished. Whilst it remains in place, safeguards should be strengthened to ensure that no torture survivor is placed within it.

1.4. The assessment of credibility in asylum claims involving allegations of torture continues to be a significant problem, with too little attention given to the impact of trauma on memory and disclosure, and inadequate weight given to medico-legal evidence documenting torture and addressing these issues. We are pleased to report that UKBA responded to concerns raised by Freedom from Torture through the development and piloting of new guidance supported with training. Ensuring the speedy rollout of this guidance, amended as necessary to reflect learning from the pilot and accompanied by facilitated training for all case owners, is now a major priority in order to address poor quality asylum decision-making involving allegations of torture which persists across asylum casework teams.

1.5. Research conducted by Freedom from Torture raises serious concerns about the safety of UKBA's removals policy for Sri Lanka. Despite our efforts to engage with UKBA and the Foreign and Commonwealth Office about this matter, the government has persistently refused to revise its policy position to reflect the overwhelming evidence from Freedom from Torture and other NGOs that certain categories of Sri Lankan Tamils are suffering torture and ill-treatment following forcible or voluntary return from the UK. This flawed policy continues to be used as a basis for both asylum decision-making and resisting injunction applications when removals are directed. Despite an ongoing country guidance exploring the risk to Sri Lankan Tamils, the government has continued with efforts to effect mass removals via charter flights, halted only by the courts.

1.6. On account of the gravity of these issues in terms of the UK's international legal obligations and the leading role played by Freedom from Torture in raising the alarm about this issue, we have set out in some detail evidence regarding the prevalence of torture of Sri Lankan Tamils following return from the UK. For the first time, we are able to disclose to the Committee a particularly troubling case involving ill-treatment on arrival at Colombo airport of a Freedom from Torture client who was forcibly returned to Sri Lanka on a scheduled flight in February 2012. Freedom from Torture invites the Committee to closely scrutinise the government's conduct in relation to forced returns of Tamils to Sri Lanka to ensure that any poor practice is not replicated in relation to asylum claimants at risk of torture in other countries.

1.7. High-quality legal advice is an essential safeguard against poor quality decision-making so Freedom from Torture welcomes a mechanism by which concerns may be raised in relation to poor quality legal advisers. We stress, however, that measures must also be put in place to address the chronic shortage of high quality advice provision, the incentives for poor practice created by current funding arrangements and the need for improved implementation and monitoring of quality standards by the regulatory bodies.

1.8. We also recommend that applicants recognised as refugees are immediately granted Indefinite Leave to Remain in light of our experience of the negative impact of the five-year active review system on the rehabilitation of many torture survivors.

1.9. On account of its importance to the issues scrutinised by the Committee, Freedom from Torture has also released in this submission new and early findings from a major research study due to be published later this year on the poverty experienced by torture survivors and the impact this has on their rehabilitation from torture. The level of asylum support is insufficient to meet basic living needs, an issue exacerbated for applicants receiving cashless section 4 support, and the accommodation provided is unsuitable for torture survivors in a significant number of cases leading to health complications. Destitution results from administrative failures across the asylum support system, including transition to the mainstream welfare system following a grant of refugee status. Destitution was experienced most commonly and for prolonged periods by applicants with fresh claims for asylum, with continuing negative effects on their rehabilitation from torture in the long term.

2. Introduction

2.1. Freedom from Torture, formerly known as the Medical Foundation for the Care of Victims of Torture, is a UK-based human rights organisation and one of the world's largest torture treatment centres. We are the only organisation in the UK dedicated solely to the care and treatment of survivors of torture and organised violence.

2.2. Since our foundation 25 years ago, more than 50,000 people have been referred to us for rehabilitation and other forms of care and practical assistance. We have centres in London, Manchester, Newcastle, Birmingham and Glasgow and provide services including counselling, psychotherapy, clinical psychology, psychiatry, family therapy, group therapy, music, art and horticultural therapy. Ninety-five percent of Freedom from Torture's clients are, or have been, refugees or asylum seekers.

2.3. Freedom from Torture welcomes the Committee's inquiry into asylum and particularly its focus on ensuring that '*the right decision is taken first time*'. Our submission draws on:

- — Our extensive experience of providing clinical services to survivors of torture who are passing through or who have completed their passage through the UK's asylum system;
- — Engagement over many years with the UK Border Agency (UKBA) in relation to many areas of asylum policy and practice affecting survivors of torture who are asylum-seekers in the UK;
- — Participatory research conducted into poverty faced by our clients in the UK and the impact of these experiences on their clinical rehabilitation. This research will not be published until mid-2013 however, in view of the importance of this inquiry, we have previewed for the Committee key findings relevant to the terms of reference;
- — Research from our Country Reporting Programme, and in particular our work on post-conflict torture practices in Sri Lanka, relevant to the Committee's interest in country of origin information and country specific asylum policy, and the prevalence of post-removal torture and arrangements for monitoring this.

2.4. This Inquiry takes place against the backdrop of the Home Secretary's announcement on 26 March 2013 that the UKBA is to be abolished and its functions re-absorbed into the Home Office. References and recommendations made to UKBA in this submission should be read as applicable to the Home Office. As no information has yet been provided to us about the implications for the asylum system of the changes, we have not addressed these matters directly in this submission, however we trust that the Committee will explore the opportunities that this development creates for addressing the long-standing failure to prioritise high quality and sustainable decision-making and ensure that those at risk of torture and persecution are able to access protection at an early stage without the need for protracted appeals and claims.

2.5. We have also supported the Survivors Speak OUT network to respond to the Committee directly. This network, which is affiliated to Freedom from Torture, was set up by former clients of Freedom from Torture's clinical treatment services to advocate for change based on their lived experience of surviving torture and of seeking protection. Our submission and the submission of the Survivors Speak OUT network should be read together.

2.6. Our submission addresses most but not all of the issues listed in the inquiry's terms of reference. We would be pleased to provide further information if called to give oral evidence.

3. The effectiveness of the UK Border Agency screening process, including the method of determining eligibility for the 'Detained Fast Track' procedure

3.1. Freedom from Torture welcomes the improvements implemented by UKBA under the Asylum Screening Reform Programme following sustained criticism of its asylum screening facilities and processes. We also commend the commitment on the part of Asylum Screening Unit (ASU) management to promote initiatives aimed at building the capacity of screening staff in their interactions with vulnerable and traumatised people. However, it is also essential to recognise that **the timing, format and nature of screening interviews makes this a fundamentally inappropriate stage at which to expect torture disclosures such that eligibility for the DFT can be safely assessed and the right decisions taken under UKBA's new 'triage' processes**.

3.2. We consider that this and other problems make the DFT a fundamentally untenable system that is incompatible with fundamental human rights guarantees and that it should be abolished. While UKBA continues to uphold the use of DFT, the agency shares our view that torture survivors should not be routed into this system on account of the serious risk of their re-traumatisation in the detained setting. It is important therefore that safeguards are strengthened to ensure survivors are not placed within the DFT whilst it remains in place.

Reforms of the screening process

3.3. Freedom from Torture welcomes the measures implemented under the Asylum Screening Reform Programme to improve screening processes and acknowledges the resources that have been committed to the refurbishment of the Asylum Screening Unit (ASU) to, among other things, remove the glass partitions separating applicants from interviewers and interpreters and to increase the level of privacy and comfort of applicants during screening interviews.

3.4. We also commend the willingness of ASU management to engage with Freedom from Torture and the Survivors Speak OUT network as part of efforts to improve awareness of the impact of torture and trauma on their working practices and recognise the vulnerabilities of applicants using their service.

3.5. In July 2011, Freedom from Torture and Survivors Speak OUT network were invited to participate in an away day for ASU staff to '*provide an insight into the customers that ASU serve and their experiences prior to applying for asylum in order to create an understanding of the vulnerabilities of the customer as a direct result of the trauma experienced in their home country*'. The value attached by ASU staff to experiential learning opportunities emerged clearly at this session and we subsequently agreed to conduct a series of three study visits in 2012 to our facilities in London for a small group of ASU staff. We have a meeting scheduled with the Deputy Director of the ASU (and we hope a representative of the Learning and Development Team) on 1 May 2013 to discuss how to effectively and appropriately cascade learning from this program across the ASU,

including the specialist children's team which has expressed an interest in working with us. There remains a need to ensure that all staff who come into contact with asylum applicants during the screening process, including screening officers as well as security personnel and administrative staff, receive appropriate and regular training in order to improve their responses to vulnerable applicants. It is important that such training is conducted on an ongoing and regular basis, its impact monitored, and associated quality measures developed and integrated into staff appraisal systems.

3.6. As the Independent Chief Inspector of Borders and Immigration pointed out in his 2011 inspection of the DFT, the majority of asylum applicants are not screened at the ASU but at other locations including immigration removal centres and police stations.[151] Despite his emphasis on the need for screening improvements to be applied across all screening locations[152], it is not clear to Freedom from Torture what plans there are to improve identification of torture survivors during screening interviews undertaken outside of the ASU and we consider that scrutiny of this by the Committee would be helpful.

3.7. It is of considerable concern to Freedom from Torture that decisions to route into the DFT are not taken by screening officers but by staff in the Fast-track Intake Unit who, because they have neither participated in the screening interview nor even met the applicant, may lack important information, including from non-verbal cues, indicating vulnerability. This is a matter which the Committee may wish to reflect upon. Further, in recent years UKBA managers have developed a feedback loop so that decision-makers in this Intake Unit are aware of any case which is subsequently released from the DFT and the reasons for this release. It is our understanding that relevant staff in the ASU are not included in this feedback loop which again bears some consideration.

Timing, format and nature of screening processes are inappropriate for routing decisions

3.8. Alongside the considerable challenges that remain in ensuring that asylum applicants are treated with dignity and respect during screening and that victims of torture are identified at an early stage, it is essential to recognise that the timing, format and nature of screening processes make these inappropriate for facilitating disclosure and therefore for decisions on routing into the DFT and for 'triage' of cases otherwise as provided for in the processes taking force from April 2013.

3.9. The screening interview is usually an applicant's first contact with the UKBA, occurring often on arrival at port or shortly afterwards at the ASU. There are real barriers to disclosure of torture by applicants at this stage of the process including: (i) lack of access to legal advice prior to the screening interview; (ii) lack of knowledge that disclosure of torture at this stage could and should prevent detention, particularly as questions are not asked about this; and *most fundamentally,* (iii) lack of trust, a fear of state officials and/or intense feelings of shame about their torture.[153] Disclosure of sensitive information relating to torture and other forms of abuse is a process which usually requires time and the development of a relationship of trust.

3.10. It would be potentially re-traumatising and dangerous for screening staff to ask intrusive questions about torture or abuse at this stage and so Freedom from Torture recommends that registration of asylum claims take place at an early stage of the process with applicants having access to legal advice and an appointment with an independent clinician prior to an initial interview held at a later stage of the process at which routing decisions are made.

Continued routing of torture survivors into the DFT

3.11. Freedom from Torture continues to receive a significant number of referrals from the DFT for medico-legal reports (MLRs) in accordance with a long-standing policy under which successful referral to Freedom from Torture leads to release from both the DFT and from detention.[154]

3.12. In 2012, we accepted 37 referrals from the DFT—an average of 3 referrals per month—for asylum applicants identified by their legal representatives as having *prima facie* evidence of torture and requiring an MLR.

3.13. We would like to draw the Committee's particular attention to the fact that we continue to receive referrals for children who were wrongly routed into the DFT despite advising UKBA at screening that they were children. UKBA's own policy is that only those applicants whose physical appearance or demeanour '**very strongly** indicates that they are **significantly** over 18 years' (emphasis in the original) should be age disputed.[155]

3.14. The numbers of referrals from DFT that we have both received and accepted has declined over the last 1–2 years. Whilst it is *possible* that this reflects improved practice by screening officers and the Intake

[151] Independent Chief Inspector of the UK Border Agency (2011), *Asylum: A thematic inspection of the Detained Fast Track*, p.12.
[152] *Ibid*, p.17.
[153] This is a well understood phenomenon clinically. See for example, Juliet Cohen (2001), 'Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony' *Medico-Legal Journal* 69(1), 25-34; Diane Bögner, Chris Brewin, Jane Herlihy (2010), 'Refugees' Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information,' *Journal of Ethnic and Migration Studies* 36:3, 519-535.
[154] The policy was set out by the then Minister of State for the Home Office to Parliament on 06/11/2006. See HL Deb, 2 November 2006, c47W. By agreement this policy also applies to referrals to the Helen Bamber Foundation.
[155] UKBA (2012) *Enforcement Instructions and Guidance: Detained Fast Track Processes* at 2.4; UKBA (2011) *Asylum Process Guidance: Assessing Age* at 2.2.

Unit in identifying and excluding from the DFT those who are suspected to be survivors of torture, there are other factors that must be considered before conclusions are reached on this point including concerns that it is becoming harder for applicants in the DFT to access quality legal advice at an early enough stage for torture to be disclosed and a referral made to us or the Helen Bamber Foundation.[156] We have certainly identified a decline in the quality of referrals we receive in relation to applicants in the DFT; our MLR service estimates that in at least one additional referral per month, we do not receive sufficient information from the legal representative in order to make an initial assessment.

Irrational policy requiring 'independent evidence' of torture at the screening stage

3.15. A key reason survivors of torture continue to be routed into the DFT is that UKBA policy against their inclusion is not sufficiently robust. The Suitability Exclusion Criteria for the DFT do not state that those suspected to have suffered torture must be excluded from this system. Instead, they specify that those with '*independent evidence*' of torture are '*unlikely*' to be suitable for entry or continued management in the DFT or Detained Non-Suspensive Appeal processes. [157]

3.16. **This requirement for *'independent evidence'* of torture is irrational because survivors rarely have such evidence at the point at which decisions are made to allocate to the DFT**—the vast majority have not received legal advice at this stage and therefore referrals will not have been made either to Freedom from Torture or the Helen Bamber Foundation. Moreover, very few, if any torture survivors will appreciate at this stage that independent evidence of their torture is required either for the purposes of establishing their protection claim or, more urgently, in order to avoid being routed into the DFT.

3.17. UKBA's specific policy against routing torture survivors into the DFT is therefore deficient from the perspectives both of the torture survivor and of UKBA decision-makers trying to select suitable cases for the DFT. An undertaking made in 2011 by the Immigration Minister to review this policy remains outstanding.

Inadequate safeguards for correcting decisions routing torture survivors into the DFT

3.18. When considering these matters the Committee is urged to bear in mind the chronic dysfunction of the Rule 35 process requiring detention centre 'medical practitioners' to notify UKBA of any detained person who (s)he is concerned may have been a victim of torture. [158] Rule 35 is a key safeguard meant to correct inappropriate decisions to detain suspected torture survivors, including in the DFT, and as the Committee knows from years of close attention to this issue, its operation remains deeply problematic.[159]

3.19. While the revised Asylum Process Guidance[160] and Detention Services Order[161] respond to many of the concerns expressed for years by Freedom from Torture and Medical Justice (for example by reinforcing the purpose of Rule 35 reports, the need for these to be completed by medical practitioners, and cautioning against some of the typical examples of bad practice in decision-making which we have drawn attention to over many years), there is still disagreement on a number of fundamental issues that are now the subject of litigation and the UKBA has effectively shut down the forum at which these issues were discussed with NGOs.[162] In the meantime, there is no evidence that the problems have been resolved in practice. Data reported by UKBA to the Committee confirms that only a small fraction of Rule 35 reports (6% in quarter 3, 2012[163]) lead to release, and the UKBA's efforts to explain these statistics have been less than satisfactory.[164] Freedom from Torture has continues to receive referrals for MLRs from legal practitioners representing applicants in the DFT whose paperwork indicates that torture concerns expressed by medical practitioners at immigration removals centres have not led to release.

3.20. Recommendations

— The DFT should be abolished. If it remains in place, processes should be changed to ensure there is no routing to the DFT until after an applicant has had access to legal advice and a medical appointment

[156] See for example, Detention Action (2011) *Fast Track to Despair – The unnecessary detention of asylum seekers*, pp. 26-7.
[157] UKBA (2012) *Enforcement Instructions and Guidance: Detained Fast Track Processes* at 2.3.
[158] See Rule 35 (3) of the Detention Centre Rules.
[159] The operation of Rule 35 has also been a source of persistent criticism from Her Majesty's Inspector of Prisons (including in the joint inspection report issued with the Independent Chief Inspector of Borders and Immigration, *The effectiveness and impact of immigration detention casework* (December 2012)), and the Independent Monitoring Boards for various immigration removal centres (IRC) including those with DFT facilities. See for example the Independent Monitoring Board for Harmondsworth IRC, *Annual report 2012* (March 2013), at sections 4.2.1.6, 4.3 and 5.3.1.
[160] Detention Rule 35 Process available at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/rule35reports.pdf?view=Binary.
[161] Detention Services Order 17/2012 available at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/detention-services-orders/dentention-rule35?view=Binary .
[162] UKBA has repeatedly postponed or cancelled meetings of the Medical Sub-Group of the Detention User Group which are the main forum for addressing these and other healthcare issues relating to immigration removal centres.
[163] Home Affairs Committee, Fourteenth Report of Session 2012-13, *The work of the UK Border Agency (July – September 2012)*, HC 792, para 59.
[164] For example, the Chief Executive of UKBA advised the Committee that detainees could self-refer or be referred by their legal representatives to UKBA under Rule 35 which is, as the Committee pointed out, inconsistent with UKBA's own guidance, *Ibid*, p.29.

with an independent clinician so that vulnerabilities may be better identified and factored into routing decisions.

- The Suitability Exclusion Criteria for the DFT should be amended to reduce the evidential threshold before someone is rendered 'unsuitable' for the DFT on account of torture experiences.
- UKBA should continue its programme to reform the asylum screening process and report to the Committee on how reforms are being extended to staff and facilities involved in screening beyond the Asylum Screening Unit.
- All staff who come into contact with asylum applicants, including those conducting screening interviews, security officers and administrative staff, should receive facilitated experiential training, with input from specialist organisations, in order to improve awareness of the impact of torture and trauma on victims and the implications of this for UKBA processes and their working practices. Training should be conducted on an ongoing and regular basis, its impact monitored, and associated quality measures developed and integrated into staff appraisal systems.
- Appropriate mechanisms should be put in place to ensure that age disputed children are treated as children and are not put through an 'age assessment' process at port or at the screening unit.[165]
- Feedback mechanisms relating to cases removed from the DFT process should be extended to include the staff who conducted the screening interview and their managers.
- The Committee should reiterate its recommendation for UKBA to carry out an immediate independent review of the application of Rule 35 in immigration detention.

4. The use of Country of Origin Information and Operational Guidance Notes in determining the outcome of asylum applications

4.1. Freedom from Torture has an important interface with UKBA in relation to country of origin information (COI) and country specific asylum policies (including Operational Guidance Notes) through our recently re-launched Country Reporting Programme which aims to contribute evidence drawn from our medico legal reports to international accountability processes for torturing states. Since the beginning of 2011, our engagement in relation to these country products has focused on our evidence of post-conflict torture in Sri Lanka and we provide evidence below based on this experience.

Case study: refusal by UKBA to revise its Sri Lanka removals policy to reflect evidence of torture risks

4.2. The UKBA's COI service has generally been responsive in incorporating Freedom from Torture's evidence of post-conflict torture in Sri Lanka into relevant *COI reports and bulletins* and our bilateral dialogue has led to improvements. For example, self-serving verbal claims by unnamed Sri Lankan intelligence officials that many Sri Lankan asylum seekers were having wounds inflicted upon them in order to bolster their asylum claims were removed from the COI report for Sri Lanka after we lodged objections based on the lack of any medical evidence.[166]

4.3. Our engagement in relation to UKBA's *OGNs and associated country specific policy products* on Sri Lanka has been less satisfactory. We have particular concerns about a Country Policy Bulletin on Sri Lanka, first issued in October 2012. This Bulletin has been used by UKBA as a vehicle to affirm its removals policy for Sri Lanka despite evidence from Freedom from Torture and other NGOs (including Human Rights Watch and Tamils Against Genocide) concerning torture of certain categories of Tamils returning to Sri Lanka. The Bulletin was issued after many months of unsuccessful efforts by NGOs to secure a review of this policy based on patterns emerging from our research.[167]

4.4. The Bulletin has been highly controversial. It has to date been revised twice owing to material inaccuracies in the presentation and interpretation of the NGO evidence. The second version involved corrections to the manner in which the Bulletin addressed evidence from Tamils Against Genocide. Because

[165] Note that an emergency social services welfare assessment at port or at the screening unit is not compliant with the *Merton* guidelines. These guidelines are drawn from the judgment of the High Court in *B v London Borough of Merton* [2003] EWHC 1689 (Admin).

[166] These claims, said to have been corroborated by an unnamed NGO source but not supported by any medical evidence, were contained in a letter from the British High Commission dated 11 May 2011 which was cited in the COI report on Sri Lanka dated 4 July 2011 at para 8.35. The reports were removed from the next edition of the report which was published on 7 March 2012. In correspondence to Freedom from Torture on 7 March 2012 concerning our objections to this evidence, a member of the COI service advised us that a decision had been taken to remove the letter.

[167] Freedom from Torture and Human Rights Watch sought over many months to explore with UKBA and the Foreign and Commonwealth Office the *patterns* emerging from our research and to discuss their *policy implications*. However, Ministers and officials resisted engagement with us on a policy level, asking us instead to disclose to UKBA the Home Office case references for the cases in our respective data sets so that they could look into the *individual cases* for themselves. Freedom from Torture has repeatedly explained that we are not in a position to disclose identifying details because this would breach our confidentiality and data protection obligations and, in any case, as an expert witness, or potential expert witness, in adversarial proceedings against the Secretary of State for the Home Department involving the individuals profiled in these publications, it would not be appropriate for us to directly discuss case details with the UKBA. A wider point, which has been made by our trustee Professor Sir Nigel Rodley in evidence to the Upper Tribunal for its current country guidance case on risk on return for Sri Lankan Tamils (*MP & Others (Sri Lanka)*), is the danger that this request for case details could be construed as supportive of efforts by other governments to undermine human rights research by challenging methods of presenting research, including anonymisation and aggregation, aimed at protecting the identities of human rights victims and highlighting patterns of abuse.

these changes were notified to the Administrative Court at very short notice before a charter flight to Sri Lanka on 23 October 2012, the Immigration Law Practitioners' Association sent a letter that day to the Lead Judge of the Administrative Court protesting against the UKBA's actions and questioning the reliability of the other information contained in the Bulletin.

4.5. The treatment of Freedom from Torture evidence in the Bulletin was also highly problematic. On 26 November, our legal representatives sent the Treasury Solicitor's Department a six-page letter of complaint outlining numerous ways in which our evidence had been misrepresented and asking that appropriate steps be taken '*to address the objections raised in an updated version of the [policy bulletin] and to clarify these changes with the courts before any further removals to Sri Lanka take place*'.

4.6. Most importantly, the Bulletin misrepresented the conclusions drawn in our 13 September 2012 briefing entitled 'Sri Lankan Tamils tortured on return from the UK' about which categories of Tamils were at risk.[168] Whereas we had made clear in the briefing our view that the risk attached to Tamils with a real or perceived association with the Liberation Tigers of Tamil Eelam (LTTE) 'at any level' who were returning from the UK, the Bulletin stated that '*FFT alleged that Tamils would be at risk of return to Sri Lanka because of ethnicity and the fact they had been resident in the UK*' thereby omitting our crucial emphasis on LTTE links. This error is surprising given (i) the focus of this Bulletin on the precise issue of which returnees to Sri Lanka are at risk of mistreatment; and (ii) a judgment of the High Court on 18 September 2012 ordering numerous injunctions against removal on the basis of the risk category we set out and noting that our briefing had been '*very careful not to say that everyone being returned from the UK to Sri Lanka is at risk, but it describes those who are at risk as being, specifically: Sri Lankan Tamils who in the past had an actual or perceived association at any level with the LTTE, but were able to leave Sri Lanka safely*'.[169] The authors of the Bulletin were familiar with this judgment because they cited it elsewhere in the document (and again misrepresented our position).

4.7. Although UKBA was on notice of this and many other inaccuracies relating to our evidence, and our legal representatives sent two further written requests for a response, the Bulletin was not withdrawn or corrected and continued to be used as a basis for asylum decision-making and resisting injunction applications. Further charter flights including refused Tamil asylum seekers took place on 6 December 2012 and 28 February 2013. On 28 February 2013, the High Court issued a general injunction against the removal of any refused Tamil asylum seekers[170] and it was not until after this injunction had been granted, almost four months after our original complaint letter, that a substantive reply to our complaints was issued. In this reply the UKBA accepted some but not all of our criticisms and the Bulletin was corrected in some respects.

4.8. This third version of the Bulletin is still problematic in its presentation of Freedom from Torture's evidence and in many other material respects, including its failure to acknowledge the UKBA's response to a Freedom of Information Act response dated 6 February 2013 confirming that since the end of the civil war, refugee status has been awarded to up to 15 Sri Lankans all of whom alleged torture following forcible removal from the UK (we have attached this response for the Committee at Appendix 1 and discuss its implications below in our evidence on the prevalence of torture on return to Sri Lanka of refused asylum seekers)[171]. We are also concerned that the new version of the Bulletin has not been clearly identified as such for case owners or legal representatives[172], and we are not aware of any communication to the courts advising of the revisions.

4.9. The most troubling aspect of the Bulletin is, however, its conclusion that evidence of post-return torture of Tamils from Freedom from Torture, Human Rights Watch and Tamils Against Genocide does not warrant a change in the UKBA's policy on returns to Sri Lanka. The Committee is invited to assess the appropriateness of this in light of the overwhelming evidence from NGOs and the gravity of flawed processes for assessing torture risks in any given country, as well as:

- The Foreign Affairs Committee's criticisms in October 2012 that the government had not been sufficiently '*forthcoming*' about '*its efforts—in general and in specific cases—to assess the level of risk*' to the safety of removed Tamils and its calls for the Foreign and Commonwealth Office (FCO) to be '*energetic*' in evaluating reports and *in spelling out the risk to the UK Border Agency*'[173], and
- This Committee's own calls for the UKBA to engage in dialogue with Freedom from Torture and Human Rights Watch '*to promote a thorough evaluation of risks to Tamil asylum seekers being returned to Sri Lanka*'.[174]

[168] This briefing is available at http://www.freedomfromtorture.org/sites/default/files/documents/Freedom%20from%20Torture%20briefing%20-%20Sri%20Lankan%20Tamils%20tortured%20on%20return%20from%20the%20UK_0.pdf.

[169] *R (on the application of Qubert) v Secretary of State for the Home Department* [2012] EWHC 3052 (Admin).

[170] The order is available at http://www.freemovement.org.uk/2013/02/27/suspension-ordered-on-removal-of-tamil-asylum-seekers/.

[171] The Freedom of Information Act response and Freedom from Torture's statement in response is available on our website at http://www.freedomfromtorture.org/news-blogs/7104.

[172] There is no indication on the landing page for these products on the UKBA website that the Bulletin has been revised (the document is still listed as 'Sri Lanka Policy Bulletin – October 2012', see http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificpolicybulletins/), and when the document itself is opened, it is still identified in the header as the second version, albeit 're issued March 2013' (see http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificpolicybulletins/srilanka-polbulletin?view=Binary). There is no other warning in the document that the substantive content has been amended.

[173] Foreign Affairs Committee, Third Report of Session 2012-13, The FCO's human rights work in 2011, HC 116, paras 56 and 58.

[174] Home Affairs Committee, Eighth Report of Session 2012-13, The work of the UK Border Agency (April – June 2012), HC 603, para 65.

4.10. **It appears to Freedom from Torture that in this particular matter the government has (a) eschewed an evidence-based approach to policy and instead sought to twist the evidence to fit a policy that is preferred for other unknown reasons, and (b) been motivated by an overriding objective to stop our evidence being successfully relied on to stop individual removals or derail the charter flights.** This has been manifested in a failure to engage seriously with both our evidence and our complaints about its misrepresentation in the Bulletin with the practical consequence that decisions in Tamil asylum claims continue to be based on a deeply flawed policy.[175] It is difficult to reconcile this with the Immigration Minister's desire to get '*decisions right, every single case, the first time*'.[176]

4.11. We would welcome close scrutiny by the Committee of the government's conduct in this area so that this poor practice in relation to the country specific policy for Sri Lanka is not replicated for asylum policies concerning other countries. We have made a number of specific recommendations relating to these matters in the section below on the prevalence of refused asylum seekers who are tortured upon return to their country of origin and how the UK Government can monitor this.

5. The assessment of the credibility of women, the mentally ill, victims of torture and specific nationalities within the decision-making process and whether this is reflected in appeal outcomes

5.1. Failure by asylum case owners to take proper account of the impact of trauma on memory difficulties, discrepancies in testimony and the delayed disclosure of degrading experiences of torture and sexual violence—effects which have been documented both by Freedom from Torture clinicians and in a wide research literature[177]—remains a major problem in the assessment of credibility of victims of torture and other forms of abuse. These problems are compounded by the increased difficulties for survivors in accessing good quality and early legal advice to ensure their complex claims are appropriately assembled. As a consequence of these two problems—poor practice by decision-makers and poor legal representation—accounts of persecution provided by victims of torture are too readily disbelieved and dismissed, with the risk that they are put through highly stressful and unnecessary appeal processes and, in the most tragic cases, removed to situations where they face further harm.

5.2. In this context, there is a crucial role for expert evidence documenting the physical and psychological consequences of torture and placing these in the context of an individual's particular history. Freedom from Torture's medico-legal report (MLR) service (still known as the Medical Foundation Medico Legal Report Service) prepares 300–600 MLRs each year, for use mainly in UK asylum proceedings. The reports are prepared by specialist clinicians according to their duties to the court and the standards set out in the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (known as the Istanbul Protocol). Each MLR is subject to a detailed clinical and legal review process.

5.3. Freedom from Torture examined how MLRs were treated by UKBA case owners and Immigration Judges in research conducted in 2011.[178] We found that the rate of allowed appeals in cases where UKBA refused asylum claims in which an MLR had been submitted prior to the decision was 69%[179] compared with the average appeal allowal rate of 28%[180], indicating serious problems in the way asylum cases involving allegations of torture are handled. The research also found a lack of consistency across the Tribunal in handling the asylum cases of survivors of torture, with Judges failing to follow the appropriate guidance from the Istanbul Protocol and case law in a significant number of cases. Specific problems highlighted include:

- An unwillingness to accept medical opinion based on research into the effect of trauma on both memory and recall, and the ability to disclose information;
- Clinical judgments made by decision-makers without being medically qualified;
- Failure to properly evaluate credibility taking account of the evidence in the MLR;
- The application of a higher standard of proof than is legally appropriate for asylum cases;
- Challenges to the expertise of our doctors, including denial of their ability to make psychiatric diagnoses despite their qualifications and experience, and the specific training, guidelines and quality assurance procedures in place at Freedom From Torture; and

[175] In recent months the government has sought to deflect discussions by pointing to an ongoing country guidance case on these issues, but this masks an important point that the government does not require instruction from the judiciary before revising a policy in light of new evidence. In this and any other area of public policy, litigation should be regarded by government as a last resort.

[176] Home Affairs Committee, Fourteenth Report of Session 2012-13, The work of the UK Border Agency (July – September 2012), HC 792, Ev 23.

[177] For example, Juliet Cohen (2001) 'Errors of recall and credibility: can omissions and discrepancies reasonably be said to undermine credibility of testimony?' *Medico-Legal Journal* 69 (1) pp.25-34; D.Bögner, J. Herlihy and C.Brewin (2007), 'Impact of sexual violence on disclosure during Home Office interviews' *British Journal of Psychiatry* 191, p.75-8; J. Herlihy & S. Turner (2006) 'Should discrepant accounts given by asylum seekers be taken as proof of deceit?' *Torture: Journal on Rehabilitation of Torture Victims and Prevention of Torture* 16(2), pp.81-92.

[178] Freedom from Torture (2011) *Body of Evidence: Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal* (London, Freedom from Torture) at: http://www.freedomfromtorture.org/sites/default/files/documents/body-of-evidence.pdf

[179] *Ibid*, p.22.

[180] *Ibid*, p.23.

— Assumptions that our doctors uncritically accept the veracity of a client's testimony when preparing an MLR, despite their medical training and the requirements both of the Istanbul Protocol and their duties as an independent expert witness.

5.4. Since publication of this report, Freedom from Torture has opened a productive dialogue with both UKBA and the immigration judiciary (and HM Court and Tribunals Service) with a view to supporting ongoing initiatives aimed at addressing the problems identified. However, we continue to see numerous decisions involving the poor practice outlined above. These unnecessarily protracted legal processes obviously have serious resource and efficiency implications. They also have a deleterious impact on vulnerable individuals who are subjected to a legal process in which their integrity and credibility are repeatedly questioned and doubted, which compromises their ability to engage effectively in rehabilitation services.

Promising practice

5.5. We are pleased to report that UKBA responded to this research by accepting all the recommendations addressed to it and by collaborating with both Freedom from Torture and the Helen Bamber Foundation to develop a new asylum instruction on handling claims involving allegations of torture and serious harm.

5.6. This best practice approach resulted in the drafting of high quality guidance which addresses the problems identified and directs case owners to give appropriate consideration to MLRs, adopt the correct approach to assessing credibility and avoid making clinical judgments falling outside their expertise. This guidance was released as an interim asylum instruction and piloted in two areas between July 2011 and December 2012[181] alongside a facilitated training session for case owners designed by UKBA's quality assurance team with specialist input of Freedom from Torture and the Helen Bamber Foundation. The delivery of facilitated training that enabled opportunities to better understand our work and methodologies for preparing MLRs, a practical understanding of the standards of the Istanbul Protocol and relevant case law and the application of the new instruction to casework was strongly welcomed by case owners.

5.7. **Ensuring the speedy rollout of this asylum policy instruction**, amended as necessary to reflect learning from the pilot and accompanied by facilitated training for all case owners, **is a major priority for Freedom from Torture in order to address poor quality asylum decision-making involving allegations of torture across UKBA asylum casework teams.**

Addressing vicarious traumatisation

5.8. Freedom from Torture considers that too little attention has been given to preventing and addressing the risk of secondary or vicarious traumatisation among asylum case owners and Immigration Judges and other officials who are regularly exposed to traumatic accounts of torture and persecution. The incidence of vicarious traumatisation following repeated exposure to traumatic material without appropriate preventative and support mechanisms is well-documented in a wide research literature and may lead to subconscious psychological defence mechanisms to avoid hearing about abuse or disbelieving that it could have taken place.

5.9. Through our interactions with UKBA staff, we have gained an understanding of the challenges that their work presents and have seen evidence of problematic coping mechanisms in our clients' asylum case papers. For example, it is quite common to read records of asylum interviews where case owners have failed to ask follow up questions about an applicant's experience of torture and moved on to a different subject, with the consequent risk to the applicant that any further information provided later is held to be a discrepancy or embellishment. Recent academic research examining the treatment of asylum claims involving disclosures of rape similarly identified strategies of detachment or denial deployed by UKBA case owners, presenting officers and Immigration Judges as a way of managing the emotionally difficult, draining and challenging task of listening to accounts of violence and the responsibility of adjudicating on them.[182] It is important, therefore, that structures and training within UKBA and the immigration judiciary are available to support safe practice in relation to vicarious trauma to prevent harm both to staff and applicants.

5.10. Recommendations

— The interim asylum instruction on handling claims involving allegations of torture or serious harm should be rolled out across UKBA as a matter of priority with facilitated training delivered for all case owners.

— A monitoring system should be put in place to measure the impact of initiatives designed to improve handling of expert medical evidence and the assessment of credibility in torture-related claims.

— Improved measures to prevent vicarious traumatisation should be integrated into UKBA work systems and training, including monitoring and management of the levels of exposure of case owners to traumatic material within their individual case loads.

[181] UKBA (2011) *Asylum Policy Instruction: Handling claims involving allegations of torture or serious harm: Interim Casework Instruction (Non Detained Pilot)* (London, UKBA) at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/handlingtorture.pdf?view=Binary.

[182] H.Baillot, S. Cowan, V.Munro (2010) *Research Briefing: Rape narratives and credibility assessment (of female claimants) at the AIT* (London, Nuffield Foundation).

6. The effectiveness of the 5 year review system introduced in 2005

6.1. Torture has devastating consequences for victims which give rise to complex and enduring psychological and physical health problems. Full rehabilitation after torture may take years and Freedom from Torture considers that this process is lengthened by the practice of requiring survivors to apply for Indefinite Leave to Remain (ILR) five years after refugee status is granted. This ongoing uncertainty lengthens the recovery process and causes unnecessary additional anxiety and distress to the survivor. It also increases government expense through both the administration by UKBA of an unnecessary review process (we understand that denial of ILR is very rare) and, in many cases where the process impedes a survivor's recovery from trauma, additional demand on NHS mental health and primary care services.

6.2. The NICE Guidelines[183] for the treatment of Post-Traumatic Stress Disorder advise that therapeutic work may be limited before there is safety from persecution and recommends a treatment model which begins with 'stabilisation' aimed at making the survivor stable and safe enough to engage with the in-depth treatment which will address their actual trauma. This is followed by therapeutic work then finally 'integration' into the community. Though the threat of removal is not immediate when leave to remain is granted for 5 years, the limited nature of this period does not provide sufficient stability and safety to enable many survivors to address their trauma therapeutically. This slows the recovery process for many and causes unnecessary distress and anxiety for others.

6.3. Integration may also be hampered by the grant of limited leave to remain, further undermining recovery for survivors of torture. Survivors have suffered many losses, for example of family, friends, their culture, the position they held in their society before having to flee persecution, that the absence of security and safety can prevent survivors from investing fully in their life and local community in the UK for fear that such relationships could be lost once again if the survivor is removed. We have also seen examples of discrimination against refugees with five years leave to remain by employers and colleges who assume they will not be present in the UK in the long term.

6.4. The process of reapplying for leave to remain after 5 years can also trigger powerful memories of the earlier asylum application process as well as memories of the original torture raised by the possibility of return. This can set the survivor's recovery back significantly, sometimes to the extent that further therapeutic work is required, increasing the burden on public and voluntary sector service providers since the nightmares, flashbacks, intrusive thoughts and other distressing symptoms can start again and require various types of care.

6.5. Freedom from Torture considers that this 5 year review process cannot be justified in light of the detrimental impact on refugees, especially those who are attempting to recover from trauma, and the costs both to UKBA, in a context where it is beset by decision backlogs (at least 11,000 of which are Active Review cases involving applications to extend limited leave to remain[184]) and to NHS primary care and mental health services.

6.6. Recommendations

— Indefinite Leave to Remain should be granted when refugee status is awarded and the 5-year active review system brought to an end.

7. Whether the system of support to asylum applicants (including section 4 support) is sufficient and effective and possible improvements

7.1. Freedom from Torture is due to publish a major research study later this year examining the impact of poverty in the UK on survivors of torture and their capacity to engage effectively in rehabilitation. Over 100 survivors of torture participated in the research, including 28 survivors who were receiving UKBA support at the time (either under section 95 or section 4) and 19 survivors who were receiving no government support within the asylum process. Interviews were also conducted with 18 clinical staff providing direct therapeutic care to survivors at Freedom from Torture.

7.2. **The research paints an alarming picture of poverty experienced by torture survivors**, many of whom have moved through section 95 support, section 4 support and destitution at different stages of the asylum process, with poverty often becoming more deeply entrenched and continuing to have an impact even after refugee status is granted. **The findings raise concerns about compliance by the UK with its obligations under the European Convention on Human Rights and also the right to rehabilitation for survivors of torture protected under Article 14 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**.

[183] National Institute of Clinical Evidence (2005), *Clinical Guideline 26. Post-traumatic stress disorder (PTSD): the management of PTSD in adults and children in primary and secondary care* (London, National Institute of Clinical Evidence) at: http://www.nice.org.uk/nicemedia/live/10966/29769/29769.pdf.

[184] Home Affairs Committee, Fourteenth Report of Session 2012-13, *The work of the UK Border Agency (July – September 2012)*, HC 792 at para 40.

UKBA support is insufficient to meet basic living needs

7.3. For a single adult over the age of 25 years, the current level of section 95 asylum support is £36.62 per week[185], approximately half the comparable Income Support rate of £71.70.[186] Asylum applicants supported under section 4 receive no cash support but are either provided meals in their accommodation or must use an 'Azure' card to buy food and essential items to the value of £35.39 in a restricted number of shops.

7.4. The majority (82%) of torture survivors currently receiving UKBA support reported that they were unable to afford sufficient food of reasonable quality on a regular basis, with similar numbers indicating that they were unable to afford fresh fruit as often as once a week or protein sources such as pulses or beans, all relying on bread as a cheap, filling substitute, that also requires no cooking if facilities are inadequate in this regard. Approximately 40% of UKBA-supported clients stated they were hungry all or most of the time, with clinicians reporting negative effects on their mental and physical health and their ability to engage fully in therapy and counselling sessions.

7.5. Nearly a third of survivors of torture supported by UKBA reported being unable to attend essential appointments with doctors (32%) and likewise appointments with counsellors or therapists (31%) due to an inability to fund the travel costs. Most survivors (79%) were unable to buy essential items such as 'over the counter' painkillers or remedies, nappies for babies, sanitary protection or other toiletries some or all of the time. Single adults receiving section 4 support faced particular difficulties obtaining more expensive essential items as it was impossible to save for these when only £5 credit on the Azure card may be carried over from one week to the next. Adequate clothing to stay warm, clean or dry was also out of reach of most applicants (71%), with some respondents only owning one set of clothes. Social isolation, through being unable to remain in touch with friends, family or participate in community activities, was also a feature of the poverty experienced by survivors of torture, exacerbating mental health difficulties suffered as a result of torture.

UKBA support levels may undermine the ability of torture survivors to properly present their asylum claims

7.6. The level and nature of UKBA support also created insurmountable barriers to pursuing an asylum claim. A significant number (19%) of respondents supported by UKBA failed to meet reporting requirements due to being unable to cover travel costs, with the risk of punitive measures, such as fines or increased reporting, being imposed by UKBA staff who lacked sympathy or interest in explanations given. Most applicants (82%) were unable to make phone calls, fax or post documents or other correspondence relevant to their claim some or all of the time. Respondents described difficult choices in prioritising their resources, for example going without food in order to fax documents required urgently by their solicitor.

The poor administration of UKBA support exacerbates poverty and creates destitution

7.7. Problems in the administration of UKBA support exacerbate the level of poverty experienced by survivors of torture, with periods of destitution experienced during delays and errors in processing section 95 support, failures in the support delivery system, and problems receiving emergency support tokens. Clients supported under section 4 reported frequent difficulties with Azure cards failing to work correctly and payment being denied at checkouts to their intense humiliation.

Poor policy and administration of transition between welfare systems creates destitution

7.8. When a grant of refugee status or other leave is made, UKBA support and accommodation is terminated within 28 days, even when applicants have not yet received from UKBA the status papers required to apply for mainstream welfare provision, which were delayed by over a month in most cases (60%) and up to 6 months in some cases. Difficulties are compounded by delays in obtaining a National Insurance number, navigating the complexities of the benefits system without sufficient English language skills, ineligibility for local authority housing due to frequent changes of address whilst supported by UKBA, lack of deposit for private accommodation and a vicious circle where accommodation cannot be rented without benefits and national insurance being in place which similarly cannot be issued without a fixed address.

7.9. Most clinicians interviewed (61%) reported that destitution and homelessness *'frequently'* occurs for clients of Freedom from Torture during this period, with some clients being left destitute with no support for periods from 6 weeks to 4 months. Three clients granted leave to remain were destitute at the time of the research.

7.10. Though recognition as a refugee brings legal status and security, it is often also a time of psychological difficulty for our clients as they have to confront more directly the impact of the torture they have suffered and the losses they have experienced. A key finding of our research is that the experience of homelessness and destitution has a particularly harmful impact on the psychological vulnerability of survivors of torture at this transition stage.

[185] http://www.ukba.homeoffice.gov.uk/asylum/support/cashsupport/currentsupportamounts/.
[186] https://www.gov.uk/income-support/what-youll-get.

Accommodation is unsuitable for torture survivors

7.11. The accommodation provided to torture survivors by UKBA is also an issue of major concern to Freedom from Torture. Accommodation is offered on a no-choice basis and nearly half of respondents (45%) reported 4 or more accommodation moves in the last year with one torture survivor reporting 9 such moves. Not only do accommodation moves disrupt the safe recovery environment required for clients to address experiences of torture, but they are frequently combined with gaps in support provision due to administrative difficulties caused by changes in address.

7.12. Accommodation is frequently situated far from refugee communities (50%), shops and services (33%) and 50% of torture survivors supported by UKBA were placed in accommodation over an hour away from a Freedom from Torture treatment centre, with 3 clients travelling for 2 or more hours to access therapeutic support.

7.13. The nature of accommodation provision is unsuitable for torture survivors in a significant number of cases. All 15 single applicants in the sample accommodated by UKBA were placed in shared accommodation housing as many as 18 people in one case, more than 10 people in three cases and an average of seven people overall, with insufficient facilities for all those accommodated. A third of single applicants were additionally forced to share a bedroom with someone they did not know, a particular problem for torture survivors who may suffer from insomnia, disrupted sleep, nightmares and flashbacks on account of their torture experiences or be disturbed by others experiencing the same. Hostels where there are frequently significant difficulties with drug dealing and/or prostitution are often used to house torture survivors for extended periods of time with some clients choosing destitution rather than remaining. A third of clients did not feel safe in their accommodation due to those sharing it or its location. A place of safety as a 'home' is vital to enable torture survivors to begin to process their experiences of torture.

7.14. The quality of UKBA accommodation was extremely mixed, with torture survivors (including families with children) reporting issues such as pest infestation (38%), lack of heating or hot water due to system breakdown (33%), windows and external doors that could not be locked (21%), broken windows or glass (17%) and absence of smoke or fire alarms (13%) in the last year. Survivors reported that problems were persistent, occurred repeatedly and/or remained unresolved for lengthy periods with half of those reporting to accommodation providers receiving unhelpful or very unhelpful responses, with the issues being unresolved in most cases. These research findings indicate that UKBA may not be receiving adequate value for money from privately contracted accommodation providers or providing sufficient oversight of their provision.

Unsuitable section 4 accommodation is a factor in creating destitution

7.15. The research identified cases where torture survivors became ineligible for UKBA support after breaching conditions not to leave without permission in cases where they felt threatened or intimidated by those with whom they shared a bedroom or the dwelling. In a few cases, torture survivors refused support available where they were too unwell to tolerate the accommodation offered or where accepting no-choice accommodation meant separation from family members including their children.

The experience of poverty prevents the rehabilitation of torture survivors

7.16. Freedom from Torture is particularly concerned about the impact that such high levels of poverty have on the rehabilitation process for our clients. The experience of poverty in the UK reinforces the lack of control, sense of worthlessness, powerlessness and low self-esteem that our clients suffered as victims of torture. Treatment is also delayed because torture survivors are unable to deal with or process past traumatic events while their survival in the present poses immediate and critical problems. The difficulties in navigating the support system and dealing with urgent problems generates considerable case work for Freedom from Torture clinicians who also raised concerns about the levels of suicide risk among some clients at these times. We have made a number of recommendations relating to these matters in the section below on the prevalence of destitution amongst asylum applicants and refused asylum seekers.

8. The prevalence of destitution amongst asylum applicants and refused asylum seekers

8.1. Freedom from Torture's research described above reveals a high prevalence of destitution amongst torture survivors throughout the asylum process. As discussed above, many torture survivors experienced periods of destitution at various points during and immediately following the asylum process through problems in the administration of asylum support payments, difficulties faced in their UKBA accommodation or through the absence of support during the transition from asylum support to mainstream welfare provision or work.

8.2. In addition, at the time of the research, 40% (19) of the 47 clients in the sample who were asylum seekers or refused asylum seekers were receiving no support from the UK government and had not done so for extended periods of time. A small number of these applicants were awaiting a decision on their initial asylum claim (16%), but most were refused asylum seekers awaiting a decision on a fresh asylum application (63%) or preparing a fresh asylum application or trying to access legal advice to do so (21%).

8.3. Torture survivors report being unable to take up voluntary return options at the end of the asylum process because of their fear of torture on return, and Freedom of Torture is concerned that poor quality decision-making in cases involving torture and poor or absent legal representation make fresh claims necessary for

protection and lead to protracted journeys through the asylum system and the risk of destitution, only for claims to be eventually accepted once evidence is assembled and given proper consideration.

8.4. Once applicants are in a situation of destitution, it is extremely difficult to tackle this, with torture survivors experiencing real difficulty in 'proving' their destitution in order to access the support to which they would otherwise be eligible. Support and accommodation was routinely refused where torture survivors had been accommodated by family or friends, even if this involved temporary arrangements in different places or if those accommodating them were no longer able to do so. This leaves survivors of torture entirely dependent on others to meet all their needs and places them at risk of exploitation.

8.5. Destitution had a devastating impact on torture survivors' ability to access sufficient food or meet their essential living needs. One Freedom from Torture clinician identified that street homelessness is now a more common occurrence. Similarly, survivors were unable to communicate or keep appointments with legal representatives or access basic healthcare. Clinicians reported that destitute survivors of torture may have particular difficulties accessing basic medical care as a result of having no fixed address and reach crisis point as they run out of anti-depressants or medication. Survivors are also exposed to extreme danger during destitution and incidents of violence, rape (including multiple rapes in one case) and sexual exploitation were disclosed.

8.6. Several clinicians observed that destitution led to an increased risk of suicide or poorer mental health, whilst also having a long term impact on their clients' ability to recover, even after they are no longer in destitute circumstances.

8.7. It is clear that six years after the Joint Committee on Human Rights warned that '*institutional failure to address operational inefficiencies and to protect asylum seekers from destitution amounts in many cases to a failure to protect them from inhuman and degrading treatment under Article 3 ECHR*'[187], the UKBA is still failing to comply with its human rights obligations for the vulnerable people for whose welfare they are responsible.

8.8. Recommendations

- UKBA should urgently implement measures to improve the quality of decision-making in asylum applications involving allegations of torture to prevent the need for appeals or fresh claims by torture survivors and to reduce the risk of poverty, including destitution.
- The Committee should endorse the previous recommendation of the Joint Committee on Human Rights that '*a coherent unified, simplified and accessible system of support for asylum seekers, from arrival until voluntary departure or compulsory removal from the UK*'[188] be introduced such that section 4 support is abolished and section 95 support is transformed into an 'end to end' support system.
- Asylum support rates should be raised to provide a standard of living equivalent to mainstream support provision and which, if utilities are provided as part of the provision of accommodation, should be equivalent to at least 70% Income Support, as recommended by Still Human Still Here[189] and the report of the parliamentary inquiry into asylum support for children and young people[190].
- Systems should be put in place to ensure that asylum applicants' cases are immediately transferred to the mainstream welfare benefits system upon grant of refugee status, without the need for further applications, and asylum support continued until these are in place.
- An effective and responsive system of emergency payments and accommodation should be put in place to prevent destitution as a result of support system failings.
- An independent inspectorate should be appointed to monitor asylum support and accommodation provision with the power to conduct proactive and unannounced investigations and require problems identified to be remedied.
- Permission to work should be granted to asylum seekers who have not had their cases resolved in six months, or who have been refused but cannot be removed through no fault of their own.

[187] Joint Committee on Human Rights, Tenth Report of Session 2006-07, *The Treatment of Asylum Seekers,* HL Paper 81-1, HC 60-I, para 84. At para 120, the Committee stated its view that '*by refusing permission for most asylum seekers to work and operating a system of support which results in widespread destitution, the treatment of asylum seekers in a number of cases reaches the Article 3 ECHR threshold of inhuman and degrading treatment. This applies at all stages of the asylum process: when an individual is attempting to claim asylum, during the period of consideration of their claim and during the period after their claim is refused if they are unable to return to their country of origin'*.

[188] Joint Committee on Human Rights, Tenth Report of Session 2006-07, *The Treatment of Asylum Seekers,* HL Paper 81-1, HC 60-I, para 121.

[189] Freedom from Torture is a supporter of the Still Human Still Here campaign.

[190] Report of the parliamentary inquiry into asylum support for children and young people, January 2013, available at: http://www.childrenssociety.org.uk/what-we-do/policy-and-lobbying/parliamentary-work/parliamentary-inquiry-asylum-support-children-an-1

9. Whether the UKBA or third sector organisations should be able to highlight concerns regarding legal practitioners to the Law Society

9.1. Freedom from Torture currently sees 2–3 clients each week for whom we have concerns that poor quality legal representation, combined with poor quality UKBA decision-making, creates a risk of removal to countries where they may face torture or ill-treatment.

9.2. Despite the damage that poor quality advice may have caused to their claim, our clients, who are extremely vulnerable, are for various reasons extremely reluctant to make complaints against legal representatives even with our assistance. In the last four years, we have only had consent to assist eight clients to lodge complaints, which represents a small fraction of the cases about which we had serious concerns. Against this backdrop, we would welcome enhanced mechanisms to better enable our organisation to highlight concerns about particular legal practitioners gained through the regular contact we have with torture survivors whose cases are poorly handled. Such mechanisms should apply to any body regulating advisors providing immigration advice. We would also welcome consideration of how to enhance mechanisms for raising concerns in relation to poor practice by UKBA and the Treasury Solicitor's Department.

9.3. However, it is not sufficient to rely on individuals or other organisations to make complaints where practice has fallen significantly below acceptable standards and any such complaint system must be accompanied by measures aimed at strengthening quality control as part of the processes for awarding and monitoring asylum contracts under the legal aid scheme. For example, we understand that the Legal Services Commission planned to raise the minimum competence rating required to retain a legal aid immigration contract and implement an evaluated system of peer reviews to monitor the quality of advice provision, but abandoned these plans.[191]

9.4. Further, Freedom from Torture stresses that **efforts must be made to address the underlying causes of poor quality legal practice provision which flourishes in a context where there is a chronic lack of funding for high-quality advice on asylum and where the system of fees for reimbursing legal aid advice and representation incentivises and rewards poor quality advice**.

9.5. Under the Graduated Fixed Fee scheme for funding advice and representation in asylum cases under Legal Aid, the fee for advice and representation until an initial decision is made is capped at £413[192], on the basis that cost savings in more straightforward cases should offset those in more detailed cases. Whilst some complex cases, such as those of unaccompanied children are remunerated on an hourly basis according to the level of work required, those of survivors of torture are not. In practice, the fee system rewards those firms for 'cherry picking' more straightforward cases or for failing to undertake the more detailed work involved in complex cases. The level of work involved in properly representing survivors of torture, who may be traumatised and require several appointments to build the time and trust needed to facilitate disclosure of abuse and give a statement and whose cases involve expert medical evidence, is complex and time-consuming and in most cases cannot be undertaken adequately within the fixed fee.

9.6. It is already increasingly difficult for Freedom from Torture's clients to secure legal representation from a quality provider prepared to undertake the additional case preparation required beyond that envisaged by the fixed fee in order to properly represent survivors of torture in their asylum cases. This is exacerbated by the fact that many high quality practitioners and firms—including the two largest providers in this sector, Refugee and Migrant Justice and Immigration Advisory Service—have been forced to leave the sector or close due to funding difficulties or payment problems in this area, a situation we expect to deteriorate significantly in the wake of the entry into force of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on 1 April 2013.

9.7. Whilst these matters go beyond the specific terms of reference set for this inquiry, the Committee is urged to bear in mind that any proposed complaints mechanism will have a minimal impact on the quality of advice available to survivors of torture unless these vital concerns are addressed.

10. The prevalence of refused asylum seekers who are tortured upon return to their country of origin and how the UK Government can monitor this

10.1. There is arguably no more decisive indicator of the poor health of the UK asylum system than evidence of torture after forcible return of those denied protection. This is a fundamental issue given the UK's international legal obligations, including under the European Convention on Human Rights and the UN Convention Against Torture, but it is a difficult area to illuminate and Freedom from Torture commends the Committee for inquiring into the prevalence of such cases and the question of whether improved monitoring mechanisms are necessary.

10.2. The UKBA has previously revealed to the Committee that in the first two quarters of 2012, 13 people from nine countries were granted protection after previously being refused asylum and removed from the UK[193], and in the third quarter of that year four people from three countries were granted protection after previous

[191] J.Gibbs & D. Hughes-Roberts (2013) *Justice at risk: quality and value for money in asylum legal aid* (London, Asylum Aid), p.24-26.

[192] Legal Services Commission (2010), *2010 Standard Civil Contract Payment Annex 3 Oct 2011* (London, Legal Services Commission) at: http://ftp.legalservices.gov.uk/docs/civil_contracting/Civil_October_2011_Payment_Annex.pdf.

[193] Home Affairs Committee, Eighth Report of Session 2012-13, *The work of the UK Border Agency (April – June 2012)*, HC 603, para 62.

removal from the UK.[194] The number of these cases in which allegations of post-removal torture were made and found credible by the UKBA or the Tribunal is unclear.

10.3. Freedom from Torture operates torture rehabilitation centres in the UK only and evidence we have of torture following forcible or voluntary return from the UK comes from survivors who have managed to flee and make their way back to the UK once again. As discussed above (see our evidence above in the section on the use of Country of Origin Information and Operational Guidance Notes in determining the outcome of asylum applications), we have particular concerns based on research from our Country Reporting Programme that certain categories of Tamils are facing torture on return to Sri Lanka from the UK. For this reason we share the Committee's '*particular concern*' about the inclusion of 2–5 Sri Lankan cases in the UKBA data referred to above.[195] We set out our concerns and the bases for these below as a case study.

Case study: Freedom from Torture evidence of torture or ill-treatment on return of Sri Lankan Tamils

10.4. Freedom from Torture called for a suspension of removals of Sri Lankan Tamils on 25 February 2012, the same day Human Rights Watch published evidence that a number of refused Tamil asylum seekers removed from the UK had been subjected to arbitrary arrest and torture in Sri Lanka.[196] In our public statement, we cited the Human Rights Watch cases and their consistency with our own forensic evidence of ongoing torture in Sri Lanka, as the basis for our position.[197] **Now, for the first time, we are able to disclose to the Committee our additional reasons for calling at this juncture for a moratorium on removals of Sri Lankan Tamils**.

February 2012: Ill-treatment at Colombo airport of a Freedom from Torture client forcibly returned to Sri Lanka on a scheduled flight

10.5. On 20 February 2012, just five days before publication of the Human Rights Watch evidence, a Tamil man in treatment with Freedom from Torture was forcibly removed to Sri Lanka on a *scheduled* flight. On the assumption that it was standard procedure for the British High Commission to meet all forcible returnees from the UK at the airport in Colombo[198], we obtained our client's consent to contact the British High Commission prior to the removal to warn them that our client was a survivor of torture and that we had particular concerns about his vulnerability and safety.

10.6. Our client was held for some 20 hours on arrival at Colombo airport. During this time, reports reached us that he was being held by Sri Lanka's Criminal Investigation Department, that he had been beaten and that he was bleeding from his nose. With the consent of the family, obtained on the express basis that this information would not be shared with the Sri Lankan authorities, we informed the British High Commission. Only at this point did it become clear to us that the British High Commission was not planning to meet our client at the airport. Following requests from us, a member of staff from the British High Commission finally travelled to the airport and was there with the family when our client was released. The British High Commission subsequently arranged for our client to see a doctor and accompanied him to the appointment on 24 February.

10.7. This case was central to our decision on Saturday 25 February to issue a public statement calling for a suspension of Tamil removals to Sri Lanka, however, because of our acute concerns about the safety of our client, we omitted any reference to the case and instructed our staff in writing not to discuss the case outside the organisation.

10.8. On Monday 27 February we were surprised to learn that the Treasury Solicitor's Department had in legal proceedings relating to a Sri Lanka *charter flight* the following day filed a letter containing information which obviously related to our client including the precise date and time of his arrival, his present whereabouts and details of the doctor who examined him. The letter, which was referred to in open court, was a clear violation of confidentiality and in our view the identifying information it contained exposed our client to serious risk.[199] Our fears were realised when a version of the Treasury Solicitor's Department letter with only our client's name redacted entered the public domain and wound up on a Sri Lankan government website

[194] Home Affairs Committee, Fourteenth Report of Session 2012-13, *The work of the UK Border Agency (July – September 2012)*, HC 792, para 51.

[195] The Committee expressed this concern in relation to the data for the first two quarters of 2012 which included between 1-3 Sri Lankan nationals. See Home Affairs Committee, Eighth Report of Session 2012-13, *The work of the UK Border Agency (April – June 2012)*, HC 603, para 64. The UKBA declined the Committee's request for a detailed breakdown by nationality of this data on the basis that '*providing specific figures of less than three... could lead to an individual being identified and consequently breach data protection legislation*'. See email correspondence, *ibid.*, Ev 30. The data for the third quarter of 2012 includes 1-2 Sri Lankans.

[196] See Human Rights Watch, 'UK: Halt Deportations of Tamils to Sri Lanka' (25 February 2012) available at http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka.

[197] See Freedom from Torture, *'UK must stop removals of Tamils to Sri Lanka after damning new evidence of torture on return'* (25 February 2012) available at http://www.freedomfromtorture.org/news-blogs/6133.

[198] In a response to a letter from our Chief Executive seeking details of the monitoring arrangements for those forcibly removed to Sri Lanka (a request which was not limited to those removed by charter flight), the FCO Minister for South Asia advised Freedom from Torture in writing on 23 January 2012 that the British High Commission 'maintains oversight of the returns process. For the recent charter flight operations, UK Government officials were present at the airport and provided contact details of our High Commission in Colombo'. We assumed that the same arrangements applied for those forcibly returned on scheduled flights.

[199] Our Chief Executive complained about this in writing the following day to the Attorney-General, the Immigration Minister, and the FCO Minister for South Asia.

where it was used to denounce a '*well organized effort by pro-LTTE elements in the UK to prevent UKBA from carrying out deportation of Sri Lankans who have failed to qualify for asylum.*'[200]

10.9. This framing of the case by the Sri Lankan government was founded on another regrettable feature of the Treasury Solicitor's Department letter, namely entirely false claims that Freedom from Torture had alleged '*torture*' of our client at the airport and that he had been seen with '*a head wound that was bleeding*'.[201] Details of the medical examination arranged by the British High Commission were shared and the Treasury Solicitor's Department assured the Court in the letter that there was no evidence that our client had been '*beaten on the head*'. The letter reported evidence from the doctor of '*abrasions to the shins... consistent with his explanation that the officer interviewing him at the airport and facing him had kicked him*'[202], however the conclusion reached at the end of the letter was that '*UKBA does not find the allegations as made by the passenger to be credible and therefore this does not demonstrate that returnees face a real risk of ill treatment upon return*'.

10.10. Freedom from Torture believes that a purpose of this letter was to ensure that information concerning the ill-treatment on arrival in Colombo of our client would not be used to disrupt the charter flight on 28 February and that our reports to the British High Commission about what had happened to our client were embellished to achieve this end.

10.11. Our Chief Executive wrote to the Immigration Minister on 28 February 2012 asking for steps to be taken to ensure the immediate return of our client to the UK. By letter dated 12 March 2012, the Minister declined this request. Following court action, our client was returned to the UK in late 2012. He has since been granted refugee status by the UK Border Agency. It is unclear to Freedom from Torture whether any steps have been taken by the UKBA, the British High Commission and/or the Treasury Solicitor's Department to ensure lessons from this case are learned.

Further Freedom from Torture evidence of torture or ill-treatment of Tamils returning (forcibly or voluntarily) to Sri Lanka

10.12. In addition to the case described above, Freedom from Torture is involved in two other cases of Tamils who allege torture or ill-treatment following *forcible return* from the UK on *charter flights* after the end of the conflict including one case that is the subject of proceedings in the European Court of Human Rights.[203]

10.13. We are also aware of a high number of cases of torture of Tamils following *voluntary return* to Sri Lanka in the post-conflict period. On 13 September 2012 we published a briefing entitled *'Sri Lankan Tamils tortured on return from the UK'* detailing 24 such cases.[204] Twelve of these cases involved individuals for whom we had prepared forensic medico-legal reports (six of these cases had already been reported on with a different focus in previous Freedom from Torture publications about post-conflict torture in Sri Lanka and six were new), and the other twelve involved individuals referred to us, mainly by health and social care professionals in the NHS or voluntary sector, for clinical treatment services. Following close analysis of these 24 cases, we concluded that:

> *'Sri Lankan Tamils who in the past had an actual or perceived association at any level with the LTTE but were able to leave Sri Lanka safely now face risk of torture on return. The cases demonstrate that the fact the individuals did not suffer adverse consequences because of this association in the past does not necessarily have a bearing on risk on return now. It is a combination of both residence in the UK and an actual or perceived association at any level with the LTTE which places individuals at risk of torture and inhuman and degrading treatment in Sri Lanka.'*[205]

10.14. In at least 12 of the 24 cases, ten of which were forensically documented by our MLR service and for which we therefore had fuller information, the individual reported that they were interrogated about their own

[200] *'False torture claims of failed UK asylum seekers exposed'* (29 February 2012) available at http://www.priu.gov.lk/news_update/Current_Affairs/ca201202/20120229false_claims_failed_uk_asylum_seekers.htm. On the same day, the Sri Lankan Ministry of Defence and Urban Development described Freedom from Torture as a '*proxy terror group*'. *See 'UK rejects US based HRW's cynical claims over deportation of bogus asylum seekers'* (29 February 2012) available at http://www.defence.lk/new.asp?fname=20120229_04. Despite a written request from our Chief Executive to the FCO Minister for South Asia on 22 March 2012, this claim was only publicly refuted by the UK government on 15 October 2012 via an answer to a parliamentary question from the shadow Immigration Minister, Chris Bryant MP. See HC Deb, 15 October 2012, c107W.

[201] Our Chief Executive pointed out these inaccuracies in his letters dated 28 February 2012 to the Attorney-General, the Immigration Minister, and the FCO Minister for South Asia. Note that the Treasury Solicitor's letter attributed similar claims to our client himself and his brother. Both deny ever having made these claims and certainly no such claims were made by either in any of their discussions with Freedom from Torture.

[202] The letter failed to mention that, according to the notes of the medical examination which both we and the British High Commission had a copy of, the doctor appeared to have advised our client to see an ENT doctor which is consistent with claims his nose bled following a beating at the airport. Our Chief Executive drew attention to this in his correspondence to various ministers on 28 February 2012.

[203] *N and Others v the United Kingdom*, Application no. 16458/12. Freedom from Torture's involvement in this case is limited to expert evidence we have provided on the phenomenon of late disclosure of rape which is a central issue in the case.

[204] Freedom from Torture, *'Sri Lankan Tamils tortured on return from the UK'* (13 September 2012) available at http://www.freedomfromtorture.org/sites/default/files/documents/Freedom%20from%20Torture%20briefing%20-%20Sri%20Lankan%20Tamils%20tortured%20on%20return%20from%20the%20UK_0.pdf.

[205] *Ibid*, p.2

activities or the activities of other Tamils in the UK. For example, individuals were interrogated about LTTE contacts, fundraising and/or protest activities in London.[206]

10.15. Based on this evidence, we repeated our calls in the briefing for the UK government to '*halt forcible removals of Tamils to Sri Lanka while the UK Border Agency's policy on removals to Sri Lanka is changed to properly reflect this mounting evidence.*'[207]

10.16. Since publication of this briefing, at least 6 additional cases involving torture following *voluntary return* to Sri Lanka have been referred to us for clinical treatment services.

UKBA FOI response confirming grants of refugee status to refused Sri Lankan asylum seekers previously removed from the UK

10.17. On 6 February 2013, UKBA responded to a Freedom of Information (FOI) Act request filed by Freedom from Torture on 15 November 2012 requesting details of Sri Lankan nationals granted protection by the UKBA or Tribunal after previously being refused and removed from the UK.[208] According to the response (provided at Appendix 1), there was a total of 15 such cases in the period between May 2009 and September 2012. The Treasury Solicitor's Department has since clarified that the precise number of these cases is 13, two of which were returns to a third country under the Dublin Convention and two of which were voluntary returns.[209] Notable features of the FOI response include:

— Confirmation that all of these cases involved allegations of torture or ill-treatment on return to Sri Lanka; and

— Failure, without explanation, to answer our specific question about the number of such cases in which allegations of post-removal torture or ill-treatment were found to be credible by either UKBA or the Tribunal.[210]

10.18. In a letter to the Administrative Court prior to the charter flight on 28 February 2013, the Treasury Solicitor's Department provided further details about these cases in a bid to challenge arguments that there might be '*a direct link between UKBA return and their subsequent and later successful application for asylum*'.[211] For example, evidence was shared about the length of time the individuals remained in Sri Lanka between their removal and return to the UK, but without disclosure of when and for how long the individual was detained by the Sri Lankan authorities such information is meaningless. Interestingly, however, and despite the additional analysis that had clearly been conducted of these cases, there was **still no disclosure of the number of these cases in which the post-return torture or ill-treatment allegations were found to be credible**. This important question, which is central to the issue of whether the UK has failed to comply with its obligations under international human rights and refugee law, remains unanswered to date.

Statements by Ministers and senior officials that there are no 'substantiated' allegations of torture or ill-treatment following forcible return to Sri Lanka

10.19. Ministers and senior officials in the Home Office and FCO have persistently assured Parliament and the general public that there are no 'substantiated' allegations of mistreatment of Tamils forcibly removed to Sri Lanka from the UK (see Appendix 2 for a selection of these statements together with commentary from Freedom from Torture). For example, on 1 March 2012, the Immigration Minister stated to Parliament that: '*The UK Border Agency has considered recent reports and at present has no substantiated evidence of mistreatment by the Sri Lankan authorities of enforced returnees from the UK*' (emphasis added). [212] On 26 March 2013 the

[206] We suggested that this interest in Tamils returning from the UK could be attributable to: (i) Evidence obtained by the Sri Lankan authorities or assumptions or suspicions about the activities of the particular individual in the UK connected with the LTTE or otherwise considered to be subversive; and/or; (ii) An attempt by the Sri Lanka in authorities to acquire intelligence about the activities of the Tamil diaspora community in the UK, including any activities that could facilitate a resurgence of the LTTE or which the authorities consider to be in any other way subversive; and/or (iii) Suspicions on the part of the Sri Lankan authorities about the Tamil community in the UK in particular, giving rise to additional scrutiny of those who enter Sri Lanka from the UK during routine security screening conducted at the airport or thereafter and a risk of subsequent detention and interrogation about the activities of the individual or other Tamils in the UK; and/or (iv) An attempt by the Sri Lankan authorities to terrorise the Tamil diaspora community in the UK as a means of punishing it for any past support for the LTTE and/or to discourage it from any efforts to revitalise the LTTE from the UK or otherwise organise opposition to the Sri Lankan government.

[207] Freedom from Torture, *'Sri Lankan Tamils tortured on return from the UK'*, *op cit.*

[208] The FOI response and Freedom from Torture's statement in response to this are available at http://www.freedomfromtorture.org/news-blogs/7104.

[209] Letter from the Treasury Solicitor's Department to the Administrative Court Office at the Royal Courts of Justice regarding 'Enforced returns to Sri Lanka by charter flight on Thursday 28 February 2013' (22 February 2013).

[210] Presumably, explicit findings on this point would have been made in all of the cases (up to 10) granted protection following an allowed appeal.

[211] Letter from the Treasury Solicitor's Department to the Administrative Court Office at the Royal Courts of Justice dated 22 February 2013 relating to *'Enforced returns to Sri Lanka by charter flight on Thursday 28 February 2013'*. Note that In light of all of the evidence in the public domain about the risk on return to certain categories of Tamils, the concerns voiced by Freedom from Torture, Human Rights Watch and others about the safety of the UKBA's Sri Lanka removals policy and the close scrutiny being given to these issues in the country guidance case, there are serious questions to be asked about the appropriateness of UKBA's decision to organise a further charter flight on 28 February with the intention of removing large numbers of Tamils among others. In the event, a general injunction was issued by the High Court against the removal of any refused Tamil asylum seekers, but it is concerning that the courts were compelled to restrain the government from proceeding with the removals.

[212] HC Deb, 1 March 2012, c461W.

Committee posed the following question to Rob Whiteman, Chief Executive of the UKBA, in relation to the FOI response to Freedom from Torture: '*Do you now accept that there is in fact substantiated evidence that Tamils forcibly removed to Sri Lanka have been mistreated, as evidenced by the fact we have taken 13 of them and said, 'Yes, you can come here because you were tortured'?*'. Mr Whiteman failed to answer this question, stating only that, '*The Home Office will continue to look at information that comes to light*'.[213]

10.20. **Freedom from Torture hopes that the Committee will use this inquiry to get to the bottom of what Ministers and senior officials in the Home Office and FCO knew about evidence of torture or ill-treatment of Tamils forcibly removed from the UK to Sri Lanka and why statements confirming that there was no 'substantiated' allegations continued to be made throughout 2012 and early 2013** despite the medical evidence obtained by the British High Commission regarding the ill-treatment of our client removed on a scheduled flight on 20 February 2012, a Tribunal determination which Human Rights Watch drew attention to in May 2012 confirming that the Tribunal had accepted post-removal torture allegations in the case of a woman who returned to the UK in 2010[214], and the strong suggestions in the FOI response dated 6 February 2013 that there are many other cases in which post-removal allegations of torture or ill-treatment of Sri Lankans have been accepted either by the UKBA or the Tribunal.

Monitoring the safety of forced returnees to Sri Lanka

10.21. For the reasons set out in this submission, Freedom from Torture strongly believes that there are certain categories of Tamils (those returning from the UK with a real or perceived LTTE association at any level) whose protection needs are not sufficiently addressed in the UKBA's country specific asylum policy on Sri Lanka and that the most appropriate means of ensuring their safety is to amend this policy to reflect the risks we have identified and for decisions on individual asylum claims to be taken accordingly.

10.22. However, in light of the dire human rights situation in Sri Lanka generally and the fact that Freedom from Torture only comes into contact with a small proportion of torture victims (those with the means and opportunity to flee to the UK who are successfully referred to us for clinical services), it is entirely possible that there are other groups of Sri Lankans, including other categories of Tamils, who are being denied protection according to current policy but who, in reality, face a real risk of torture on return. With this in mind, we accept the need for post-removal monitoring and support the Committee's consideration of whether the current monitoring arrangements are sufficient.

10.23. The government describes its position in relation to post-removal monitoring of refused asylum seekers as follows: '*They are, by definition, foreign nationals who have been found, as a matter of law, not to need the UK's protection, and it would be inconsistent with such a finding for the UK to assume an ongoing responsibility for them when they return to their own country.*'[215]

Monitoring on arrival at the airport

10.24. We are now aware that **British High Commission officials attend the airport in Colombo for the arrival of UKBA charter flights but not for those forcibly returning on scheduled flights. Given the ill-treatment on arrival of our client removed on a scheduled flight in February 2012 (see above), this discrepancy in reception arrangements is a source of considerable concern to Freedom from Torture**.

10.25. During a Westminster Hall debate on 22 February 2012, the Minister for South Asia acknowledged this discrepancy and stated that he had '*asked colleagues in Colombo to see what we can do to meet scheduled flights as well, where that is practicable*'.[216] However, by email dated 20 July 2012, an FCO official in the Migration Directorate advised Freedom from Torture that:

> *'HMG's consistent policy, has been that meeting charter flights is an exceptional practice due to the large scale logistics of removing several returnees collectively. As this continues to be the case the review findings were to maintain the status quo. [British High Commission] staff will continue to facilitate returnees on charter flights through the airport to ensure a quick process once the flight lands and UKBA will continue to have the option to request assistance, on an exceptional basis, on schedule [sic] flights.'*

10.26. The FCO also confirmed in this communication that between January and June 2012 the UKBA had not asked the British High Commission to attend the airport to meet any forced returnees arriving by scheduled flight. It is not clear to Freedom from Torture how many refused asylum seekers are removed to Sri Lanka on scheduled flights, however the reluctance of the government to alter its procedures suggests that the numbers are not negligible.[217]

[213] Home Affairs Committee, Uncorrected transcript of oral evidence to be published as HC 924-I available at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/uc924-i/uc92401.htm.
[214] Guardian, 'Stop Sri Lanka deportation flights, says Human Rights Watch' available at http://www.guardian.co.uk/world/2012/may/31/sri-lanka-deportation-torture?INTCMP=SRCH.
[215] HC Deb, 22 February 2012, c292WH.
[216] HC Deb, 22 February 2012, c293WH.
[217] Parliamentary questions designed to elicit this information have been unsuccessful. See for example HC Deb, 12 March 2012, c65W.

Proactive ongoing monitoring

10.27. Freedom from Torture's research on torture practices in Sri Lanka suggests that the risk of detention and torture may persist for many months after return to Sri Lanka.[218] In this context short- and long-term monitoring of the safety of forced returnees should be undertaken. As a torture treatment centre operating in the UK only, we are not well-placed to advise on effective methods of in-country monitoring in the longer term, however we consider that steps should be taken to confirm the safe arrival of each returnee at their final destination after leaving the airport; we are aware of cases in which both voluntary and forcible returnees were picked up at the airport by the Sri Lankan authorities and taken to detention facilities for interrogation and torture. Check-points, which some returnees may have to pass through *en route* from the airport, are another site at which people are vulnerable to arrest prior to detention and torture.

Reactive ongoing monitoring

10.28. We understand that all refused asylum seekers who are removed to Sri Lanka are given the contact details for the British High Commission and advised to make contact should they require assistance. It is unclear whether any victims of post-removal ill-treatment have attempted to contact the British High Commission but even those in a position to establish contact may not, following a forced removal, feel able to trust the British High Commission.[219] The handling of the case of our client who was ill-treated after removal on a scheduled flight in February 2012 suggests that the British High Commission may approach such investigations from a starting point of disbelief.

10.29. Ministers have confirmed that responsibility for investigating any allegation of ill-treatment on return to Sri Lanka rests with the Migration Delivery Officer at the British High Commission.[220] They have also confirmed that this post forms part of the overseas network of the FCO's Migration Directorate and that 97% of the funding[221] and 46% of the staffing[222] for this Directorate come from the UKBA.

10.30. Freedom from Torture believes that **it is inappropriate for Migration Delivery Officers, because of their close links to UKBA, to be tasked with investigating allegations of harm following forced removal**. We would strongly welcome scrutiny by the Committee of what appears to be a dual role for this post in arranging and ensuring the smooth operation of the charter flights and in investigating allegations of abuse on return and to consider whether this may give rise to a conflict of interest or perception of the same.

10.31. Recommendations

- The Immigration Minister should immediately:
  - disclose (i) the number of Sri Lankan cases in which allegations of torture or ill-treatment following removal from the UK in the post-conflict period have been found credible by the UKBA or Tribunal; and (ii) the number of these cases involving Tamils; and
  - correct any misleading statements to Parliament or the public that there are no 'substantiated allegations' of abuse on return of refused Sri Lankan Tamil asylum seekers and ensure that the UKBA's COI report and country specific asylum policy on Sri Lanka are immediately revised accordingly.
- Regardless of the outcome of the current country guidance, a **cross-departmental review** of the government's handling of evidence of torture of Tamils returning to Sri Lanka from the UK should be conducted jointly by the Home Office, the FCO and, because it is responsible for the conduct of the Treasury Solicitor's Department, the Attorney-General's Department. The review should be led at board management level in each department and should involve input from relevant NGOs. The terms of reference for this review should be agreed with the Home Affairs Committee and the Foreign Affairs Committee and the results delivered to these committees for scrutiny.
- The Committee should continue to require quarterly updates on the number of individuals granted asylum after previous refusal and removal from the UK and should additionally require data on the number of such cases in which post-removal torture or ill-treatment allegations were found credible by the UKBA or Tribunal. The Committee should reiterate its previous recommendation for UKBA to advise '*what review processes they have in place to examine why the applications in question were initially refused*'[223] to ensure there is learning for the purposes both of country specific asylum policies and quality control processes for asylum decision-making.

[218] Fourteen of the 35 cases in our report *Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka, 2009-2011*, involved torture following periods of residence or travel abroad. In five cases, the episode of detention and torture documented in our medico legal report occurred over a year and up to seven years after return. In the remaining nine cases, the individual was detained and tortured within days, weeks or a month of their return. See page 7 of the report which is available at http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture%20Report_for%20release%208%20Nov%20-%20with%20cover.pdf.

[219] Indeed it has been reported to us anecdotally that Tamil returnees are reluctant to contact the British High Commission.

[220] HC Deb, 30 April 2012, c1359W.

[221] HC Deb, 30 April 2012, c1348W.

[222] HC Deb, 30 April 2012, c1349W.

[223] Home Affairs Committee, Eighth Report of Session 2012-13, *The work of the UK Border Agency (April – June 2012)*, HC 603, para 66.

— British High Commission officials should be required to attend the airport in Colombo to meet all forced returnees arriving by scheduled flights and monitoring should be conducted to ensure that all returnees, whether arriving by scheduled or charter flight, arrive safely at their destination after leaving the airport. Long-term monitoring arrangements should also be put in place. Responsibility for investigating allegations of post-removal ill-treatment in Sri Lanka and elsewhere should be transferred from Migration Delivery Officers to a post or body that is wholly independent of the Home Office.

11. Appendix 1: Freedom of Information Request 25159, UKBA Response 06/02/2013

Dear Ms Sceats,

Thank you for your email of 15 November 2012, which has been handled as a request for information under the Freedom of Information Act 2000.

In your email you asked for information about Sri Lankan nationals granted refugee status, who had previously returned to Sri Lanka. For ease of reference your questions are listed below with answers beneath.

(a) *In how many cases was a Sri Lankan national granted refugee status by the UK having previously returned whether forcibly or voluntarily, to Sri Lanka from the UK from May 2009 onward.*

In the period from May 2009 to September 2012, a total of 15 Sri Lankan nationals were granted refugee status, who had previously been removed from the United Kingdom.

(1) All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols.

(2) Figures relate to main applicants only.

(3) Figures relate to asylum applicants granted refugee status between 1 May 2009 and 30 September 2012.

(4) Figures rounded to the nearest 5.

Figures on asylum grants by nationality for the period 1 October to 31 December 2012, will be available from 28 February 2013. Consequently, I have decided not to communicate this information to you pursuant to the exemption under section 36(2)(c) of the Freedom of Information Act 2000. This allows us to exempt information if it constitutes a subset of data that are intended for future publication.

The use of this exemption requires consideration of whether it is:

— Reasonable in all the circumstances not to produce the information until on or after 28 February 2013, and

— Whether in all the circumstances of the case the public interest in maintaining the exemption stated above outweighs the public interest in disclosing the information.

This is a two stage test but tie central Issue is whether in all the circumstances it is reasonable and in accordance with the public interest to require you to wait until 28 February 2013.

We recognise there may be a pubic interest in producing this information for you now and thai this may also weigh in favour of I being unreasonable to make you wait until 28 February 2013. We have considered the following:

— It is important that the public have access to immigration statistics. Home Office staff are required to handle requests made under the Freedom of Information Act 2000, not least to assure them that this legislation is being fully implemented.

But there are also public interest reasons for maintaining the exemption to the duty to communicate which weigh in favour of it being reasonable to require you to wait until 28 February 2013. We have considered the following:

— Publication would undermine Home Office established pre-publication procedures, which includes internal consultation about the final statistics being established on the Home Office website, and also being able to use its staff resources effectively in a planned way so that reasonable publication timetables are not affected.

After balancing these conflicting arguments, we have concluded not only that it is reasonable to require you to wait until 28 February 2013, but also that the balance of the public interests identified favours maintaining the exemption. This is not least because we believe that in this case the overall public interest lies In favour of ensuring that the Home Office is able to plan its publication of information in a managed and coherent way, and this would not be possible if immediate disclosure were made.

(b) *In how many of the cases in (a) was it alleged that the person suffered torture or inhuman or degrading treatment upon return to Sri Lankan from the UK.*

Of the 15 Sri Lankan nationals granted refugee status, all 15 claim to have been subject to torture or inhuman / degrading treatment either following their return to Sri Lanka.

(1) All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols.

(2) Figures relate to main applicants only.

(3) Figures relate to asylum applicants granted refugee status between 1 May 2009 and 30 September 2012.

(4) Figures rounded to the nearest 5.

(c) *In how many of the cases in (b) was the allegation of torture or inhuman or degrading treatment found credible by the:*

(i) UK Border Agency on initial consideration of the application;

(ii) First Tier Tribunal and/or the Upper Tribunal

(d) *Of the cases in (b) was refugee status granted:*

(i) On the basis of an initial application (upon their return to the UK)

(ii) On the basis of a successful appeal;

(iii) In response to further submissions following the refusal of an application or appeal.

Of the 15 Sri Lankan nationals granted refugee status, 5 were granted asylum following the initial consideration of their asylum claim by the UK Border Agency, and 10 were granted following the successful determination of their appeal. Of the 10 granted at appeal, 5 were granted by the immigration and Asylum Chamber of the First-tier Tribunal (IAC), and the remaining 5 were granted by the Immigration and Asylum Chamber of the Upper Tribunal (IAC).

(1) All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols.

(2) Figures relate to main applicants only.

(3) Figures relate to asylum applicants granted refugee status between 1 May 2009 and 30 September 2012.

(4) Figures rounded to the nearest 5.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference 25159, If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team
Home Office
Ground Floor
Seacole Building
2 Marsham Street
London SW1P 4DF
Email: FOIRequests@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely,

Fiona Larkin
Head of Central Performance Office
Performance & Compliance Unit

12. Appendix 2: Statements by Ministers and senior officials that there are no 'substantiated' allegations of torture or ill-treatment following forcible return to Sri Lanka

12.1. The following are examples of statements by Ministers and senior officials to the effect that there are no 'substantiated' allegations of torture or ill-treatment following forcible return to Sri Lanka from the UK, accompanied by commentary from Freedom from Torture.

12.2. 22 February 2012: Alistair Burt MP, Minister for South Asia, Foreign and Commonwealth Office: '*We are aware of media allegations that returnees are being abused. All have been investigated by the high commission, and no evidence has been found to substantiate any of them... I assure the hon. Gentleman and the House that the same information is given to everyone to allow people to contact us in private—not the Sri Lankan authorities—and so far we have not been able to substantiate allegations. However, we remain open to anything that would do that, because it is essential that those returned are safe*' (emphasis added).[224]

[224] HC Deb, 22 February 2012, c293WH.

This statement was made on the day following ill-treatment of a Freedom from Torture client at the airport in Colombo after forced return from the UK on a scheduled flight. As set out in the section of our submission on the prevalence of refused asylum seekers who are tortured upon return to their country of origin and how the UK Government can monitor this, the FCO was aware at this point of the ill-treatment allegations although the medical examination they arranged had not yet taken place.

12.3. 1 March 2012: Damian Green MP, then Immigration Minister: '*The UK Border Agency has considered recent reports and at present has no substantiated evidence of mistreatment by the Sri Lankan authorities of enforced returnees from the UK*' (emphasis added).[225]

This statement was made almost a week after the medical examination of our client and three days after the Treasury Solicitor Department's letter to the Administrative Court detailing the medical examination and confirming '*abrasions to the shins... consistent with his explanation that the officer interviewing him at the airport and facing him had kicked him*'.[226]

12.4. 30 April 2012: Jeremy Browne MP, then Minister of State, Foreign and Commonwealth Office: '*The Migration Delivery Officer (MDO) in Colombo is responsible for investigating any claims of ill-treatment of those forcibly returned to Sri Lanka. To date no allegation of mistreatment has been substantiated following these investigations*' (emphasis added). [227]

This statement is surprising in light of the Migration Delivery Officer's direct responsibility for investigating the allegations of ill-treatment of our client and his role in procuring the medical evidence referred to above.

12.5. 19 June 2012: Vijay Rangarajan, Director of Multilateral Policy at the FCO in oral evidence to the Foreign Affairs Committee: '*There is certainly a substantial amount of maltreatment and torture in Sri Lanka, but we do not yet have substantiated evidence that the people whom we have returned through the assurances have been maltreated*' (emphasis added).[228]

12.6. 16 October 2012: Alistair Burt MP, Minister for South Asia, Foreign and Commonwealth Office: '*We take all allegations of torture and mistreatment very seriously. However on the basis of allegations raised with the FCO we have not been able to identify any individuals as having been deported to Sri Lanka from the UK since 2010 and subsequently tortured*'' (emphasis added).[229]

This statement followed public disclosure by Human Rights Watch on 31 May 2012 that in one case in their research on torture following forcible return to Sri Lanka from the UK and elsewhere, the Tribunal had *accepted* evidence that a Tamil woman had been tortured following forcible return to Sri Lanka from the UK. Human Rights Watch had made clear that the woman had managed to return to the UK in late 2010.[230]

12.7. 8 December 2012: Mark Harper MP, Immigration Minister: when asked in oral evidence by the Committee whether he stood by the statement made by his predecessor to the effect that '*there is no substantial evidence of mistreatment by the Sri Lankan authorities of those who have been forcibly returned by the UK authorities to Sri Lanka?*', the Minister replied '*Yes.*'[231]

The Committee asked this question in connection with the data disclosed to it by UKBA confirming that between 1–3 Sri Lankans had been granted protection in quarters 1 and 2 2012 after previously having been removed from the UK.[232]

12.8. 1 February 2013: Alistair Burt MP, Minister for South Asia, Foreign and Commonwealth Office in an interview with the BBC referring to allegations of 'torture or ill-treatment on return' to Sri Lanka: '*We do not have the direct evidence of which you speak. We are aware of the allegations and we have sought to get confirmation. And certainly we are open to any information about those who have been returned and what has happened to them. So far we have not had those allegations substantiated... We have looked at cases which have been brought to us, I have to tell you because I look into this extremely carefully, I have just not seen this'*.[233]

This statement was made during the Minister's trip to Sri Lanka just five days before UKBA confirmed in a letter to Freedom from Torture that it had granted refugee status to up to 15 Sri Lankans who alleged that they had been tortured or ill-treated following forcible removal to Sri Lanka (see above).

[225] HC Deb, 1 March 2012, c461W.
[226] As pointed out above, the notes of the medical examination also indicate that the doctor advised our client to see an ENT doctor which is consistent with claims his nose bled following a beating at the airport.
[227] HC Deb, 30 April 2012, c1359W.
[228] Foreign Affairs Committee, Third Report of Session 2012-13, *The FCO's human rights work in 2011*, HC 116, Ev 26.
[229] HC Deb, 15 October 2012, c75W.
[230] Guardian, 'Stop Sri Lanka deportation flights, says Human Rights Watch' available at http://www.guardian.co.uk/world/2012/may/31/sri-lanka-deportation-torture?INTCMP=SRCH.
[231] Home Affairs Committee, Fourteenth Report of Session 2012-13, *The work of the UK Border Agency (July – September 2012)*, HC 792, Ev 23.
[232] Home Affairs Committee, Eighth Report of Session 2012-13, *The work of the UK Border Agency (April – June 2012)*, HC 603, para 62.
[233] The audio of this interview is available at http://audioboo.fm/boos/1203963-alistair-burt-bbc-interview-in-sri-lanka-comments-on-torture-allegations#t=0m39s.

12.9. On 26 March 2013 the Committee posed the following question to Rob Whiteman, Chief Executive of the UKBA, in relation to his Agency's response to the Freedom of Information Act request filed by Freedom from Torture: '*Do you now accept that there is in fact substantiated evidence that Tamils forcibly removed to Sri Lanka have been mistreated, as evidenced by the fact we have taken 13 of them and said, 'Yes, you can come here because you were tortured'?*'. Mr Whiteman failed to answer this question, stating only that '*The Home Office will continue to look at information that comes to light*'.[234]

Freedom from Torture

April 2013

Written evidence submitted by Survivors Speak OUT (ASY 57)

1. Executive Summary

1.1 This submission contains the views and experiences of the Survivors Speak OUT network, which is the UK's only torture survivor led activist group. Six survivors of torture, who are all members of the network, came together to provide direct evidence for the Inquiry. This paper was then shared with the rest of our members for comment and contributions.

1.2 As a network we have decades of first-hand experience of the asylum system between us and are at different stages of the asylum process: some of us were granted leave to remain relatively quickly, while others have been refused multiple times.

1.3 The evidence contained in this paper is drawn from our varied personal experiences, and is from the Survivors Speak OUT network. We have discussed four areas of the terms of reference that we felt were most important for torture survivors—the effectiveness of screening including eligibility for the Detained Fast Track; the assessment of the credibility of women and torture survivors; whether asylum support is sufficient and effective; and the prevalence of destitution—and identified problems with the asylum system and suggested improvements.

1.4 We found that the screening process was an intimidating and confusing experience, similar to an interrogation, which made disclosure of torture difficult. Problems included: lack of information and privacy provided to people; poorly informed screening officers who failed to ask about torture; inaccurate and partial interpretation; Detained Fast Track is not explained and several of us felt misled into detention.

1.5 We believe that the decision-making process is influenced by a culture of disbelief. Problems included: medico-legal evidence of torture was dismissed as was physical scarring; and clear mistrust prevents survivors of torture opening up and giving evidence and adds to distress.

1.6 Based on our first-hand experiences, asylum support is insufficient and results in poverty, insecurity and humiliation, all of which damage our recovery from past trauma. Accommodation is overcrowded and isolating, often uprooting individuals from established networks and placing them with untrustworthy strangers; section 95 support, at £36 per week, is simply not enough to cover basic needs such as clothes and food; whilst section 4 support provided through the Azure card is extremely limiting and has forced many of us to rely on charity hand-outs.

1.7 Personal experiences of destitution are distressing to recount and described as degrading and traumatising. Three out of six people had experienced destitution. One person spoke about attempting suicide several times.

1.8 We have put forward suggestions on improvements to the asylum system which include ensuring that the screening environment adopts a more customer-centred approach based on respect and dignity; the Detained Fast Track should be abolished so that no other human being faces this traumatic system; the Home Office must take meaningful action to tackle the culture of disbelief within the UK Border Agency; section 95 support should be increased to meet people's living needs; accommodation providers must be held to account for the poor conditions in which people are forced to live; section 4 support must be scrapped; safeguards must be established to prevent destitution; and asylum applicants with no other means of adequate support should be allowed the right to work.

2. Introduction

2.1 Survivors Speak OUT (SSO) is a UK-based network of survivors of torture and former clients of Freedom from Torture. We actively speak out against the use of torture and its impact. Our purpose is to spread the message to key decision-makers and other influential actors that torture persists and that they have a role in ensuring that survivors arriving in the UK are able to secure necessary protections through the asylum system. The issues that we speak to are based on our lived experience as torture survivors seeking protection in the UK.

2.2 All our members supported the drafting of this paper however six people (five men and one woman) provided direct evidence based on first-hand experiences of the asylum system.

[234] Home Affairs Committee, Uncorrected transcript of oral evidence to be published as HC 924-I available at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/uc924-i/uc92401.htm..

2.3 We came together on 4 April 2013 at Freedom from Torture's headquarters in London to collect evidence for our response. Discussion points covered issues in the terms of reference that our members identified as particularly important. The range of experiences was varied, from those who were granted leave to remain quickly at the initial decision stage to those who have waited years and received multiple refusals. One person waited for 15 years before being granted leave to remain, while another continues to await the outcome of his asylum application despite having applied eight years ago and submitting medical evidence to support his torture account.

2.4 In our advocacy and awareness-raising work, the Survivors Speak OUT network has made efforts to correct some of the poor practices highlighted in this paper. We have met with John Vine, the Independent Chief Inspector of Borders and Immigration, to feed into his 2012 Detained Fast Track Inspection and his 2009 asylum inspection. We have also worked with Freedom from Torture's Training and Capacity Building team to deliver awareness-raising sessions to Asylum Screening Unit (ASU) staff. These sessions, which have taken place in 2011 and 2012, are aimed at increasing the awareness of the issues facing survivors of torture seeking protection, and include recognising the indicators of vulnerability or trauma, which is essential for referrals, recommendations and routing decisions. Further sessions are expected to take place later this year.

2.5 As a network we welcome this inquiry into the asylum system and the opportunity to tell the Committee about our experiences of seeking asylum in the UK and the problems that we have faced, and many continue to face, along the way. We have also put forward suggestions for improvements to the system. We hope that our contributions will improve the system for all those that have no other choice but to rely on it.

3. The effectiveness of the UK Border Agency screening process including the methods of determining eligibility for the Detained Fast Track (DFT)

3.1 We discussed our experience of the screening process and there was consensus that 'getting it right' at this early stage in the asylum application was crucial for the path that our applications followed. To begin, as a group we felt that there is a **lack of information** available to people about this process and no individual at this early stage of their application knew anything about screening before attending the interview. None of us received written information about screening in advance, nor were we told what screening was, its purpose, or what would happen during the interview. This lack of information resulted in people (who were already deeply traumatised) being confused and unprepared for an interview that would significantly impact our applications and for some of us, lead to fast track detention. For example, of the six members who provided direct evidence for this paper, three of us were routed into the Detained Fast Track system. We were all survivors of torture and believe that our lack of understanding of this process from the outset contributed to fast track detention. One person felt that: 'they (the Border Agency) did not want you to be prepared; otherwise you would have a better chance of being believed'.

3.2 The **screening environment was hostile**, intimidating, chaotic and lacked privacy. As a group, we felt that the interview was similar to an interrogation; that the style of questioning attracted minimal answers; that there was no real opportunity or time to explain torture; and that questions asked about our health were not sufficient to identify torture, despite some of us implying that torture had taken place. There was little or no effort on the part of screening staff to build a "human relationship" despite the fact that we were seeking help. People said: "I felt they already had an opinion about me". "I didn't feel I could talk. I felt no trust. Nobody listened to me, nobody wanted to know. Being in the interview was the same as being in prison all over again". "You are a liar until you prove yourself innocent. The environment is hostile; this is the last thing you need."

3.3 One member said that he had been through so much before coming to the UK following months of torture and hiding that he arrived at the Home Office psychologically and physically traumatised. This distress was deepened by the chaos, long queues and lack of available help. He stood in one queue from early morning only to be told at 5pm that he had to go to another queue. When he eventually got to the other queue he was told to go away and come back the following day, despite the fact that he was homeless, spoke very little English and was very scared. When he arrived the next day and was eventually seen, he was interviewed by two men (including an interpreter). He was unable to speak properly, because he kept breaking down emotionally and other claimants were so close that he could hear what they were saying: "There is a lack of privacy", he said. "I had young children sat next to me, I could overhear their stories and at points they were looking at me. I was scared to talk and it had an impact on what I said. I didn't feel able to say what had happened to me". He went on to say "I think screening is deliberately meant to feel frightening, they don't want you to feel welcome".

3.4 Another member recalled a similar experience, "You can overhear people disclosing personal stories. For me, there is shame in doing that. I was struggling with myself, should I disclose or shouldn't I? There was no place for me to open up and be myself". One other spoke about the fear of the screening environment. He fled his home following torture only to arrive in the UK to be stripped and searched at the airport to then enter a screening environment which was chaotic, hostile and made him feel even more afraid.

3.5 A female member explained that when she first arrived at the screening interview she felt "very intimidated". She was interviewed by two men and was unable to say what had happened to her. She felt that she may have been able to speak differently had she been interviewed by a woman. She said that during the interview the officers stood up to interview her rather than stay seated. As a lawyer in her home country, she recognised this as an interrogation technique. She said that through their style of questioning, they were

"putting words into my mouth what he wanted to hear from me". She concluded by saying that she had been 'set up to fail' (see section 4 under Credibility of women and survivors of torture). There was a consensus in the room that this mirrored the experiences of many of us.

3.6 We also felt that the **content of the screening interview was problematic** as Asylum Screening Unit (ASU) officers had little or no knowledge or context of the countries we had fled and what was happening there. This made it difficult for many of us to disclose what we had been through. As one of our member's explained: "They have no knowledge about the country you've been forced to leave. You have to convince them about what is happening in your country. They don't want to believe it. Perhaps they cannot understand that these things have happened". Members also commented that questions were too general and were a "copy and paste." "Screening for me happened in 1994, so a long time ago but from what other people are saying, the asylum questions at screening are the same set of questions for everyone yet all out experiences are different. I was asked about Sudan yet I'm not even from there".

3.7 **Poor Interpretation** was repeatedly raised as an issue with concerns noted about the impartiality of interpreters. "The interpreter sat opposite me and next to the screening official. We spoke in French. I did not realise that the interpretation was wrong until a later interview when another official questioned something I had allegedly said at the screening interview. 'Oh now you are saying this, why did you say that at your screening interview?' Another member said, "If I had not been strong enough to challenge him my case would have collapsed", who went on to say that the interpreter misled him, assuring him, "don't worry, you are going to a safe place", disguising the fact that he was about to be taken into fast track detention. Another member also spoke of poor interpretation and lack of trust, "I did not trust the interpreter and knew that what they were saying was wrong as I understood a little English but I felt I couldn't fight the battle, it was too much for me".

3.8 Three of us spoke about our experience of being **routed into the Detained Fast Track**. We all spoke about the difficulty of disclosing torture, lack of effort from officials to find out what had happened to us as well as not being told as to why we were being detained. "The screening interview resulted in my detention but the officer didn't even try to find out what happened to me. There was no attempt to establish a relationship. It is easy for someone who has been tortured to end up in detention if this is the environment you find yourself in...I didn't know that I was being taken into detention, no one told me but there was so much security that I knew something was wrong...another guy with me was telling me that they are taking us to detention but I was thinking that he had done something wrong because he was in handcuffs. I hadn't done anything wrong".

3.9 "I was not encouraged to say what had happened to me at my screening interview instead I was asked 'Why did you not go to France?' I didn't understand. After the interview I waited for 3–4 hours before I was taken down a narrow corridor. An official speaking through an interpreter said 'don't worry, you are going to a safe place, they'll give you food, clothes, underwear, a phone card, a toothbrush and shower gel, they'll look after you'. I was happy to go and I signed the paper. I then saw the officials and it clicked. If I am going somewhere safe, why are they wearing uniforms?"

Improving the system:

- People seeking asylum should receive information about the screening process in advance of the screening interview that explains clearly what screening is, its purpose and consequences, what will happen in the interview and what rights individuals have;
- Questions asked at the screening interview should be adapted to each interviewee in order to take into account the different circumstances of people seeking protection;
- All staff at Asylum Screening Units, including interpreters should receive regular mandatory training on working with survivors of torture, including: identifying signs of trauma, improving reception conditions and ensuring respect for other human beings;
- Private facilities should be available for interviews so there is a safe environment for disclosure;
- Interpreters should be independent from the UK Border Agency and act in a professional and impartial manner;
- There should be an effective complaints procedure in place that clients are made aware of, is easy to navigate, and responds to concerns raised to improve the process;
- The Detained Fast Track should be abolished;
- People seeking asylum should have the opportunity to work with their solicitor to prepare and file their case *before* decisions are taken about who is fit or not for the Detained Fast Track system;
- People seeking asylum should be allowed to request the gender of the interviewer and interpreter including the screening stage.

4. The assessment of the credibility of women and victims of torture and within the decision-making process and whether this is reflected in appeal outcomes

4.1 "There is a **culture of not believing anybody** and it starts at screening" was the opening sentence from a member who despite being a survivor of torture found himself routed into the detained fast track. "A guy from Senegal was interpreting into French for me. I went through the details of my journey. 'Why didn't you stop in France?' I was following someone to safety. 'Do you have any documents?' No, because the person

took my passport and I was carrying the bags. The officer checked my face to see that it matched the picture. She (the officer) told me I was a liar and that nobody would believe me". Other members who were also routed into fast track detention spoke of similar experiences during screening interviews. "I wasn't believed because I was asked too many questions in an interrogative way and it was very difficult. They would ask lots of questions in one and they'd want you to answer quickly. 'What is your name, where do you come from?' Then 'why did you not go to France? Why did you come here?' It felt accusatory so from the start it felt like I was being discredited". Another member said, "they did not believe that I had health concerns back in Cameroon. I showed them my health book. They also asked me, 'why didn't you go to France?' My brain was not clear and I was too scared to answer them in case they did not believe me".

4.2 One of our female members also spoke of not being believed by male officials at interview, during which they stood up to interview her "looking in your eyes, like on top of you". She recounted that the interview style "was like an interrogation where they turn your yes to no and no to yes" and that at points during the interview they laughed at her, leaving her feeling "degraded". She explained, "my account of torture as a woman was not believed at all, I looked like I was wasting the time of the officers. I had nothing special to tell them, they looked like they already knew what I am going to tell them, from the start till the end. I felt very uncomfortable as if they could not believe a human being could be subject to a torture, it was like I was telling them something from a movie". Continuing, she spoke about showing scars of torture on her body to the male officials who responded by saying "Is that everything you've got?" "Whatever you say will be held against you, they are taking notes, collecting proof whilst you have nothing, no evidence". She explains that she was unable to disclose her experience to a GP as she was too emotionally distressed, "you are ashamed of yourself".

4.3 We all felt that time constraints and lack of trust during interviews with officials and non-specialist medical staff made disclosure of torture almost impossible and therefore hindered the gathering of evidence.

4.4 Our female network member told us that she complained (through her solicitor) to the Home Office about her initial screening interview including that it was carried out without her consent. She subsequently received an apology and was allowed a new screening interview. Had she not been strong enough to challenge her initial interview, she could have found herself in a very different situation than she is in now, having been granted refugee status.

4.5 The **collection of evidence** was a concern for all of us, with reports of people being asked to provide evidence but then discredited when they tried or were able to produce it. One of our members who first applied for asylum in 2005 said that, "they officially don't believe I have been tortured even after two medical legal reports have been submitted. I've been asked about my political background in court and when I was able to respond to their questions they said, 'you have come well prepared'. They didn't consider all my evidence; they missed points and twisted information. Documentation was even sent to an expert in France to check whether it was legitimate. They accept I've been in trouble of some sort but do not accept that it is party political or that I have been tortured". The female member referred to above also said that though she eventually secured refugee status, earlier refusals from the Home Office said that "almost everything was false" but she believed they had no evidence for supporting their argument. A member who waited 15 years to eventually be granted Refugee Status spoke of, "junior Home Office staff dismissing medical evidence". "You are deemed to fail from the outset".

Improving the system:

- — Case owners should have an increased understanding of working with survivors of torture and the challenges survivors face in disclosure;
- — Case owners should adapt interviewing styles including body language so that the interview does not feel like an interrogation and is focused on making people feel at ease;
- — People seeking asylum should be given appropriate time to prepare for interviews and to gather evidence;
- — A more gender-sensitive approach should be adopted by officials working with male and female survivors of torture, so that same sex interviewers are offered to people;
- — Immigration officials and judges should avoid contradictory comments on evidence gathering, where too much preparedness is cause for suspicion and too little preparedness is cause for disbelief;
- — The UK Border Agency should consider employing former asylum applicants in advisory and other roles so that their service is informed by those with direct experience.

5. Whether the system of support to asylum applicants (including section 4 support) is sufficient and effective and possible improvements

5.1 In regard to **accommodation**, none of us were given an option about where we lived or the type of accommodation we were housed in: "They will send you to wherever they want taking you out of the community where you have a good network away from Freedom from Torture, your GP, your friends. This is very difficult for survivors of torture". Many members spoke about the challenges for survivors of torture of being placed in **shared rooms in overcrowded houses** with people from different countries who neither understood each other's cultures nor shared a common language. This made interaction difficult. However, the main concern was sharing with people who did not understand what we had been through and some of the

related problems associated with trauma. One member said that this was "another place of distress, not a place to rest or lay your head down". Others spoke about being scared and suspicious of new people and particular those who did not have similar experiences: "I felt safer around other survivors of torture, they understood what I was going through. You find yourself living with people who don't understand you. Some of them have criminal minds".

5.2 Another one of our members who had been moved around the country to different accommodation spoke about living in overcrowded houses with 14 other people sharing one kitchen and one toilet. He also witnessed **violence** including a fight between nine men who shared the house he was living in. "They were from Iran and Iraq and they had been drinking and things turned violent. I was scared. I could not understand what was happening. The owner of the house didn't care what happened. There were no locks on the door. You could not leave food in the fridge as it was stolen. I was robbed of my belongings so many times but I could not say anything to the four people who did it".

5.3 People felt that the **lack of hygiene** in shared accommodation was also a concern. "The place was dirty, there was no mop, no hoover, people had different habits and ways of doing things," reported one member whilst others spoke of foul smelling rooms, sores all over the body because of bed mites to filthy kitchens and bathrooms.

5.4 On **Section 95 financial support** everyone agreed that £36 a week is not sufficient to live on and that you cannot buy meals for all seven days of the week. Many members of the network have and continue to rely on charity hand-outs for clothes and have been restricted from travelling as transport costs are too expensive. This sometimes meant we missed medical and solicitor appointments. "When you are new in an area you can make mistakes at shops and on the transport not realising how much you have paid. There is no room for errors with just £36.00 a week".

5.5 There were other concerns, specific to survivors of torture, over restricted financial support. A member explained, "as a survivor of torture, when I am feeling scared I go to a public place, that way if anyone comes for me I will have witnesses. They will shout and help me. But I need money to get the transport there. That is freedom—to get from one place to another. But you don't have that when you have just £36 a week".

5.6 On **Section 4 financial support,** the Azure card was both a huge practical challenge for people whilst also being the source of mental distress. There is a loss of freedom in having to survive on cashless support, restricted to essential goods at selected stores. One member spoke of buying food in a shop in an area that he didn't live in. "They stopped my Azure card as I had bought food in a new area. They wanted to know how I had got the money to travel there. They said 'we don't give you money, so how are you able to travel?' I felt very upset by that. I didn't know I was being watched". Another member recalled his Azure card being stopped for 'misuse' after he bought shoes for his son. "They stop your card if they don't like your spending. The money you are given is policed. You have to watch how you spend your money and be careful to know what to buy and when. There is a list of things that you can and can't buy but when you get to the till point they might tell you that you cannot spend your money on a particular item."

5.7 People spoke about wanting to buy food from 'back home' that was not available in supermarkets and having to walk to places rather than spend the money on bus fares. Many of us have been forced to rely on charities for grants, food and other support. There was a shared concern that, with increasing spending cuts in the UK, some of the most vulnerable will have no other means of support.

5.8 The mental stress of **living in poverty "is an extra burden" for survivors of torture**. As one member put it, "The external obstacles make your recovery more difficult. It is difficult to blend into a community and learn to live again. One way to do this is to forget what is happening and speak to people but it is difficult to do that when your clothes aren't nice and you can't eat properly."

Improving the system:

- Survivors of torture must be housed in single occupancy accommodation that is not overcrowded;
- Managers of houses should be accountable in practice for accommodation making sure that it is safe and clean. Cleaning products and appliances should be provided;
- Accommodation should be checked on a regular basis, not just when people move in and move out, to ensure that it is fit for living ;
- There should be more than one fridge where there are many people sharing and people should have locks on their bedroom doors for safety and privacy;
- People seeking asylum should be allowed subsidised or free travel on local transport;
- Section 95 support should be increased to meet people's basic needs;
- Section 4 cashless support should be scrapped and replaced with cash support so that people have the money to buy food and other items or use the transport as they need.

6. The prevalence of destitution amongst asylum applicants and refused asylum seekers

6.1 Despite many of us knowing each other a long time, people found it very difficult to speak about this issue. Experiences of destitution have caused severe distress and unresolved trauma. People spoke of sleeping

on the streets, feeling scared, vulnerable and with suicidal thoughts. One member, who waited ten years before he was granted status, said "I had been refused five times. Each time, I was kicked out of my accommodation with nowhere to go. It was mental torture. I slept behind a pub where the bins were for a short time. The police would move me along sometimes. Maybe I would sleep in a cell some nights. The police were racist in Wales. They would keep you there until they had looked into any break-ins or other trouble in the area. Then they'd let you go. I would sometimes find help from a church or from someone who would let me stay in their house for a short time, but it was never long and I'd have to start again. Life became very difficult for me...I thought of and attempted suicide several times".

6.2 It is difficult to rely on homeless shelters or charity groups because most are over-crowded and unable to provide support. Relying on the help of others also risks creating further problems: "I had nowhere to go so I moved in with my partner; they stopped all her benefits as she let me stay there. I had nowhere else to turn and in the end it just caused more problems."

6.3 "It is a sad, sad situation," said one member who still awaits the outcome of his application. "I've slept behind wheelie bins, in train stations, on buses, it is too difficult for me to speak about right now. If it wasn't for Freedom from Torture or a friend who let me share food I don't know how I would have survived. Refused asylum applicants are pushed into very difficult situations. If they refuse you completely, at least support you until they return you".

6.4 "It is inhuman to sleep on a long route night bus as it is perceived better than sleeping rough. People should be assisted from the time they set foot in this country until they're removed. If people are denied basic needs, that is tantamount to mental torture. It is this that we need to fight. Organisations like Freedom from Torture do a fantastic job rehabilitating victims of torture but this is only reversed and made worse by the Home Office".

6.5 As someone explained, "You feel like a dog. Wherever you go they say go away. People want to know your story and it is embarrassing. People don't understand that you don't want to talk about it and how embarrassing it is".

Improving the system:

- — Establish safeguards which at the very least treat human beings with some dignity whilst arrangements are made to remove those that have been denied protection;
- — Provide basic help to the destitute including a bed for the night, one meal and a phone card;
- — Allow asylum applicants the right to work especially for those who have no access to adequate support to meet their living needs.

Survivors Speak OUT

April 2013

Written evidence submitted by the Refugee Council (ASY 60)

About the Refugee Council

The Refugee Council is a human rights charity, independent of government, working to ensure refugees are given the protection that they need, are treated with the respect and understanding that they are entitled to, and that they are assured the same rights, opportunities and responsibilities as other members of society.

We assist asylum seekers to access support under sections 4 and 95 of the 1999 Immigration and Asylum Act and much of the evidence in this document is taken from this direct work across four government regions of the country. It addresses the areas in which the Refugee Council can particularly assist the Committee in its scrutiny of the asylum process and the treatment of asylum seekers and refugees with whom we come into contact and in particular the impact of the asylum support system on women. We also comment here about the portrayal of asylum seekers in the media, based on our extensive monitoring of the accuracy of media coverage in recent years.

We would like here to state our endorsement of the submissions made by the Immigration Law Practitioners' Association, The Refugee Children's Consortium and Detention Forum.

Summary and list of recommendations

Our extensive work with people in the asylum process leads us to conclude that many problems arise from two interrelated key issues; the culture of the decision making body and the bureaucratic processes that have to be navigated in order to access asylum support. We publicly welcomed the acknowledgement by the Home Secretary that the disbanding of the UK Border Agency last month was necessary in part due to its culture[235] and hope that tangible change will result.

[235] http://www.refugeecouncil.org.uk/latest/news/3451_ukba_to_be_scrapped_-_our_response

Many of the difficulties identified in this submission arise out of an asylum support system that is extremely complex and has many layers of rigid bureaucracy. The unintended consequence of this, in our experience, is that the greatest impact is experienced by those most marginalised and/or with additional needs making them extremely vulnerable to harm and sometimes exposing them to danger.

1. The Home Office should recognise pregnancy in women seeking asylum as involving complex needs and reflect this in its policies and practices.

2. The Home Office should, in collaboration with health and refugee experts, develop dispersal policies for pregnant women and those who have recently delivered, which are compatible with NICE guidance on the maternity care of women with complex social factors.

3. Financial support should be provided in cash during pregnancy and until the end of the postnatal period for women on section 4 support.

4. Pregnant women and new mothers should always be accommodated in safe, suitable housing outside of Initial Accommodation.

5. The Home Office should take steps to create a single system of support for those in the asylum system or who satisfy the criteria for asylum support currently provided under section 4 of the Immigration and Asylum Act 1999. This would avoid the problems currently created by the movement of people from one type of asylum support to another and is likely to be more cost effective as well as efficient.

6. An applicant granted refugee or other leave should not have their asylum support terminated until an alternative means of income has been secured. It is not acceptable to provide international protection to an individual and leave them without the means to survive.

7. When new processes or documents are introduced in a phased manner, such as the Biometric Residence Permit, the Home Office should ensure that its related communication is accurate and does not disadvantage those yet to benefit from the change.

8. The Home Office should ensure that any time that an asylum seeker or refugee spends without adequate identity documents is kept to an absolute minimum.

9. The government should show responsible leadership and use sensible language in its rhetoric on asylum policy. Members of Parliament should reject racism and xenophobia in any debates on these issues and emphasise the importance of refugee protection, particularly in the run up to the general election in 2015.

Asylum Support

Maternity

We have serious concerns about how the asylum support system impacts on the health of pregnant women as outlined in our recent report, published jointly with Maternity Action in February 2013, *When maternity doesn't matter: dispersing pregnant asylum seeking women*. The report finds that both the process and the repercussions of dispersal and relocation can have a major impact on women's health and experiences of pregnancy, birth and becoming a new mother. We spoke to women who:

- Were moved away from midwives, GPs and specialist support that they trusted, against medical advice and too close to their due date. Two women were dispersed on the day before they gave birth.
- Were separated from their family and social network, and in some instances, the father of their baby, leaving them isolated in an unfamiliar city and suffering serious mental health problems before and after birth.
- Were moved multiple times during pregnancy, often to crowded and dirty accommodation where they felt unsafe and unable to care for their babies. Fourteen women were moved multiple times during their pregnancy or immediately after birth. One was moved six times during her pregnancy and once after delivery.
- Gave birth alone, without a birth partner (eight of the twenty women interviewed).
- Had no cash for basic amenities for their baby or for transport. Several of the women were forced to walk long distances after childbirth or caesarean section.

The full report is attached to this submission and is available at www.refugeecouncil.org.uk/maternity

The research phase was largely completed before a minor change in policy[236] in July 2012, a fact that the government has highlighted in its response to the report. However, the study took careful account of the efforts made by the UKBA to improve its guidance in this area and the report acknowledges that the recent policy change represents a step forward in providing guidance in continuity of care of people with complex healthcare needs. However, the report finds that the revised UKBA guidance is fundamentally flawed because it fails to recognise that ***all*** pregnancies of asylum seeking women should be regarded as complex given the extremely

[236] UK Border Agency, 2012, *Healthcare needs and pregnancy dispersal guidance*, available at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/healthcareguidance-.pdf?view=Binary

poor maternal health outcomes experienced by this group[237] and in accordance with National Institute for Clinical Excellence (NICE) guidance on this issue.[238] Nor does the guidance mention the range of issues known to affect vulnerable women during pregnancy, including their increased risk to post natal depression, or the need for social support during pregnancy.

Furthermore, it is clear from the research that the revised guidance which now allows for an eight week 'protected period' for women who are in their final month of pregnancy and first month of motherhood, will present additional problems for pregnant women and new mothers in the asylum system. The guidance advises against dispersal during this period and that women who are street homeless, or imminently street homeless, should be supported in Initial Accommodation, assuming that what is usually a full-board hostel is appropriate for women in advanced pregnancy. Twelve of the women interviewed as part of our research spent time in Initial Accommodation before being moved on and they described serious deprivation relating to privacy, safety, hygiene, as well as diet and nutrition. Under the new guidance, heavily pregnant women and women who have just delivered with their new-born babies are now likely to live for significantly longer periods in such conditions. Furthermore, given that there are only seven Initial Accommodation centres in the UK, women in the advanced stages of pregnancy are still likely to be separated from their healthcare and support network at this crucial time. This was clearly demonstrated by the case of Mimi, a woman interviewed for the research whose pregnancy fell under the new guidance and who was required to stay in Initial Accommodation. We spoke to her two days before her due date at which point she did not know the name or number of her nearest hospital where she would now be giving birth, despite having received antenatal care for 37 weeks in a hospital on the other side of London, which had all her records and where she felt secure. See page 74 of the attached report for the full case study.

At the Refugee Council we see cases every month that demonstrate that the asylum support system continues to fail pregnant women and new mothers, despite the revised guidance. See the attached appendix for case studies Aster and Azra, two heavily pregnant women accessing Refugee Council services last month.

Support under section 4 of the Immigration and Asylum Act 1999

Asylum seekers with little or no income encounter difficulties in accessing support to avoid further destitution. There are many reasons for this, including requests for further information by the UKBA on receipt of a completed ASF1 form. This is particularly likely to happen when an asylum seeker is not moving directly from section 95 support, as s/he may have been supported by friends who are no longer able to help. In our experience, applicants are frequently asked for information that they are unable to provide, causing further hardship and increasing the gaps in support.

Those moving from section 95 to section 4 support sometimes encounter difficulties caused solely by the bureaucracy of two support systems. Given that to access support under section 4 an individual has to satisfy criteria in addition to being destitute, the two separate systems are completely unnecessary. One system of support where relevant criteria continue to exist would be simpler, reduce cost and minimise destitution for individuals. Given the relatively low numbers of individuals in receipt of asylum support the Refugee Council believes that two separate systems cannot be justified in the current financial climate.

The Refugee Council is particularly concerned at the lack of access to cash by pregnant women and new mothers in receipt of section 4 support. The case studies in the appendix illustrate some of the severe difficulties encountered by women assisted or interviewed by the Refugee Council. In particular, pregnant women and new mothers struggle to attend medical appointments when they have no access to cash. They can apply for additional funds for this but that involves completing a form (the 'provision of services or facilities for section 4 users' application form) for each appointment and will not help a woman who needs to see a health professional at short notice. Refugee Council client advisers also report problems with how the system operates. Women should be able to apply for these expenses through their accommodation provider but this rarely seems to happen. They can come into a Refugee Council office to do this but this will most likely involve travel and they will be faced with the same problem; they cannot travel when they have no access to cash. Even when applications for travel expenses are made, it depends on the efficiency of the accommodation providers as to whether or not women receive the money in time; Refugee Council client advisers report that this can be a problem too. In practice, women borrow money from friends or ask for help from organisations supporting them, or they miss appointments (see case study 'Aster').

Pregnant women who do not have access to cash have problems getting to the hospital when in labour. They often assume they will be able to call an ambulance but will usually be told that this is not an appropriate use of ambulance services. One woman supported by the Refugee Council Leeds office ended up extremely distressed during labour when she was refused an ambulance. She eventually found someone who agreed to give her a lift but she gave birth 20 minutes after arriving in hospital. This meant the woman laboured without midwifery support and without the baby being monitored for foetal distress putting both the lives of mum and baby at risk.

[237] G. Lewis (ed.), 2007, *Saving mothers' lives: reviewing maternal deaths to make motherhood safer – 2003-2005*, Seventh Confidential Enquiry into Maternal and Child Health, London, CEMACH, available at http://www.publichealth.hscni.net/publications/saving-mothers-lives-2003-2005

[238] National Institute for Health and Clinical Excellence, 2010, *Clinical guideline 110 – Pregnancy and complex social factors: a model for service provision for pregnant women with complex social factors*, London, available at http://publications.nice.org.uk/pregnancy-and-complex-social-factors-cg110

Women who are heavily pregnant or new mothers who have recently given birth struggle to carry their shopping home from the supermarket. This is still more difficult if they have other small children who they need to look after. One woman told us how she was so exhausted trying to get home with her shopping that she gave up and started begging for £1 to take the bus. Other women explain that they have to go to the supermarket frequently due to limitations on how much they can carry. This is a particular problem as new mothers will be carrying bulkier items such as nappies and tins of formula milk (if they are HIV+ or not able to breastfeed for other reasons).

The impact on the health of a woman who has recently given birth of walking everywhere should not be underestimated. NHS information specifically recommends that women recovering from a caesarean section should get as much rest as possible and limit their exercise to gentle walks. It recommends that they do not carry anything heavy or exercise until they feel ready to do so, and to seek advice from their midwife if they are unsure.[239] If pregnant women and new mothers had access to cash at this time, they would be able to take public transport rather than walk.

A support system that does not give pregnant women and new mothers access to cash also leaves them isolated, making it more difficult for them to visit their friends as they cannot take public transport. They are also unable to attend antenatal classes, unless they find an organisation or individual willing to buy their travel tickets. Antenatal classes are a crucial source of support for expectant mothers, providing specialist information, provisions for the baby and the opportunity to meet other women in similar situations who may be able to provide support and friendship following the birth of the child. NICE Guidance on routine antenatal care recognises the negative effect of lack of social support and recommends additional care for women who are particularly vulnerable or lack social support.[240] Low social support is associated with postnatal depression.[241]

Gaps in support during the asylum process.

In the experience of the Refugee Council, gaps in support arise for a range of reasons including errors in identifying people as destitute and process delays resulting in one form of support ending before another has been secured. In addition, a person granted refugee or other leave should not have their support terminated until an alternative form of support has been secured.

One of the causes of a lack of support at the beginning of the process is a failure to identify someone as destitute at the point of first claiming asylum. Whilst it is reasonable to require someone to state that they are destitute it should be recognised that there will be limited evidence of their situation. The impact of mistakes being made that result in people becoming homeless and destitute should not be underestimated.

The government should also reconsider the process for refusing or terminating support to asylum seekers under section 57 of the Nationality, Immigration and Asylum Act 2002 (application for support: inaccurate or false information). The Refugee Council has encountered difficulties in attempts to help asylum seekers challenge decisions made under these criteria and as a result of credit agency checks which often result in eviction notices based on information that it is difficult to disprove. Two recent examples at the Refugee Council illustrate this.

1. Mr M fled his country of origin with the assistance of an agent who applied for a visa to facilitate Mr M's travel. The visa application had stated that Mr M had $6000 but Mr M explained that he did not have that money and had no access to cash or work. He was issued with an eviction notice from Initial Accommodation and denied access to asylum support. Once the Refugee Council intervened and spoke to the UKBA casework manager, Mr M was allowed access to asylum support.

2. Ms W was identified as a potential victim of trafficking (PVOT) but sent to Initial Accommodation by the UKBA. On her application form she declared that she had £800, so was refused asylum support and issued with an eviction notice for the Initial Accommodation. The Refugee Council staff tried to speak to her about her situation as she was a PVOT and may have had a related reason for being in possession of £800. Ms W left the Initial Accommodation on receipt of the eviction notice before anyone had the chance to speak to her. The police believe that she was being exploited and may be in danger.

The Refugee Council believes that the gaps in support women experienced by women in the asylum system puts them at particular risk and frequently endangers their safety. Men and women facing destitution due to a gap in their asylum support are forced to find other survival strategies to survive. Some enter into transactional relationships for a place to stay and evidence shows that women are at a much greater risk than men of coercion,

[239] NHS Choices: Caesarean Section – Recovery, http://www.nhs.uk/Conditions/Caesarean-section/Pages/Recovery.aspx

[240] National Institute for Health and Clinical Excellence, 2008, *Antenatal care: routine care for the healthy pregnant woman*, available at http://www.nice.org.uk/CG62

[241] National Institute for Health and Clinical Excellence, 2006, *Routine postnatal care of women and their babies*, available at www.nice.org.uk/nicemedia/pdf/CG37NICEguideline.pdf

entrapment and violence in such situations.[242] A fifth of the women who attended our therapeutic services in 2011 had faced violence since arriving in the UK.[243]

Ending of asylum support on granting of leave

Many of our clients experience difficulties and delays in accessing support after a grant of leave. There are a range of reasons for these difficulties, including inadequate documents to show evidence of leave and/or the lack of a National Insurance number as a result of the UKBA caseowner not having properly processed the application.

Since the end of Home Office funding for the Refugee Integration and Employment Service the Refugee Council has limited capacity to provide advice to adult refugees and/or those with a grant of leave. However, through our small housing and employment projects we have encountered significant numbers of people who are unable to access housing and financial support. Whilst the local authority is usually able to provide interim support under the Children Act 1989 for families with dependent children, this helps a limited number of people. Most of the individuals and couples we see are not eligible for priority housing by statutory housing providers or social landlords and encounter significant difficulties in accessing housing in the private sector.

On receiving his notification of refugee status Mr G had 28 days to move from asylum support to work or mainstream benefits. Only then would his housing benefit application be considered.

Despite applying for a National Insurance number immediately it took five weeks for one to be issued; his benefit application took a further week to be processed. He had two weeks with no income at all. This is a common occurrence with many clients unable to make a smooth transition from asylum support to mainstream welfare support. This represents a significant period of destitution risk for newly recognised refugees.

Despite health issues which mean that he is claiming Employment Support Allowance and receiving medial treatment, Mr G is not considered a priority for local authority housing and his only realistic option is to find private rental accommodation. However, he has no savings and can therefore not afford to pay for a deposit or any rent in advance. As a result of changes to Department for Work and Pensions policy he has no access to a Crisis Loan or Community Care grant through the Social Fund.

Like so many refugees unfamiliar with UK society and without adequate language skills, Mr G is struggling to understand how the housing market works and to date has been unable to identify a private rental property willing consider those on welfare benefits as prospective tenants. This is also particularly difficult for those under 35 who will only receive housing benefit for a room in a shared house. Most of those new to the country do not have established friends or networks that may allow them to easily find people to share with. Mr G, like many newly recognised refugees, is homeless.

Additional difficulties related to Biometric Residence Permits

The Refugee Council has helped some of its clients to apply for travel documents. Their status was granted prior to the introduction of Biometric Residence Permits (BRP) so their application is done jointly for the two documents. Applicants must send their original status documents with their application; these are not returned to the applicant. The application for the Biometric Residence Permit is processed but not sent to the refugee until their application for the travel document has been completed. This leaves refugees with no proof of their status for many months, which could easily be resolved by sending the BRP to the refugee separately from the travel document.

The introduction of the BRP as the identity document has caused difficulties, as only a minority of refugees and people with other forms of leave are in possession of a BRP, yet the government has informed other departments and agencies to expect that someone with refugee status or other leave will be in possession of one. For example, the Disclosure and Barring Service has the BRP as a requisite form of identification for those without a passport or UK birth certificate. However, most people whose application for asylum or other leave was made after 29th February 2012 will have had the opportunity to receive a BRP.

Media coverage of asylum issues and portrayal of asylum seekers and refugees

As well as the Refugee Council's close monitoring of the press over the last decade, there is an abundance of research to show that reporting on immigration and asylum issues has often been inflammatory, inaccurate, and unbalanced in certain national media outlets. Articles about refugees and asylum seekers can be particularly vitriolic, and have a negative effect on public and political attitudes towards them. In the Refugee Council's submission to the Leveson Inquiry[244] in February 2012 we highlighted this evidence, and recognised that while the 2003 Press Complaints Commission Guidance Note on asylum and refugees has helped improve some areas of reporting, particularly in terms of terminology used, misleading, discriminatory and inflammatory language

[242] Crawley, Heaven et al., 2011, *Coping with destitution, survival and livelihood strategies of refused asylum seekers living in the UK*, available at http://policy-practice.oxfam.org.uk/publications/coping-with-destitution-survival-and-livelihood-strategies-of-refused-asylum-se-121667

[243] Refugee Council, 2012, *The experiences of refugee women in the UK – a briefing*, available at http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/briefings/Briefing%20 -%20experiences%20of%20refugee%20women%20in%20the%20UK.pdf

[244] http://www.levesoninquiry.org.uk/witness/refugee-council/

is still used, and there is a lack of balance of topics covered by some sections of the media. Certain sections of the press regularly mention an individual's immigration status in prejudicial or pejorative terms, or where the person's immigration status bears little relevance to the story.

For example, in a simple search for the term 'asylum seeker' on the Daily Mail website, the majority of stories regarding asylum seekers were about individuals who had committed crimes in the UK, were receiving benefits and large court payouts, or living in 'luxury' housing. Very few made any reference to the reasons people fled, or the difficulties many face when they arrive in the UK. A search on the Guardian and Independent websites showed articles highlighting these points. It is extremely important to have this balance to ensure that 'asylum seeker' is a neutral term, and is not used only as a way of enhancing the negative connotations of articles. The effect is that individuals are further 'demonised', and that negative attitudes to migrants and refugees on the whole are encouraged. Opinion polls show that the general public associate negative terms such as 'scrounger' and 'illegal' with asylum seekers and refugees.

We recognise this is a complex issue, in which the media, the public and politicians are embroiled, and that newspapers have political and commercial agendas to fulfil. It is, however, unacceptable that refugees and asylum seekers are so widely discriminated against by the media. The government should ensure they make every possible effort to minimise the effect of this.

APPENDIX 1

Case studies to support the Refugee Council submission to the Home Affairs Select Committee April 2013

Aster, accessing Refugee Council services in Yorkshire and Humberside in March 2013

Aster is a refused asylum seeker from Eritrea living in Leeds. She applied for section 4 at 32 weeks pregnant. She was notified that her application was successful but that she would be dispersed to Sheffield at 37 weeks pregnant despite being in the 'protected period'. She was extremely distressed at the prospect of moving to Sheffield. After a strong intervention by both Refugee Council staff and her midwife, she has been provided with accommodation in Leeds five days before her due date (24th March).

Part of the reason she was so distressed about moving to Sheffield was because she would no longer have been able to attend a specialist antenatal group for refugee and asylum seeking women. This provides her with crucial support including access to specialist information to increase her chances of having a healthy birth. Through this group she has been provided with clothing and equipment for her baby as well as a doula, a birth partner, so that she will not give birth alone.

However, she would not be able to access the class at all if Refugee Council were not covering her travel expenses to get to and from the class. If she were not a Refugee Council client, cashless support may well have prevented her from attending this group.

At 39 weeks pregnant, Aster is still waiting for her Azure card to be issued. She is currently surviving on £70 of Tesco vouchers (to last her two weeks). Tesco is a 40 minute walk away. She says that as she does not have access to cash, she cannot pay for public transport to get home from the supermarket. This means she has to go to the supermarket three or four times a week as she cannot carry much shopping home when she is very heavily pregnant.

She also says she feels lonely as she cannot visit friends as they are too far away for her to get to on foot. She waits and hopes that they will visit her. Low social support is associated with postnatal depression (NICE, Postnatal care CG37).

We spoke to Aster two days before her due date. She was extremely anxious about how she was going to get to the hospital to give birth with no cash to pay for a taxi. On this occasion, we provided her with £15—this is not something we would routinely do due to lack of resources.

We spoke to her earlier this week and she told us she has had a baby girl. She explained that her labour started with her waters breaking and she was told to go to the hospital. She used a taxi to get there but as she was not having contractions, they sent her home (taxi number 2). Later in her labour, she took a third taxi to hospital and then a fourth taxi to get home after giving birth. Sadly the birth was complicated and she needed forceps and stiches: Two days after returning home the midwife visiting her sent her back to hospital as she had an infection (via taxi number 5). She used a sixth taxi to return home again. The £15 provided by the Refugee Council was clearly not sufficient to cover all these taxi journeys and she borrowed money from a friend. This case clearly illustrates the problems pregnant women on cashless support experience getting to and from hospital.

Azra, accessing Refugee Council services in London in March 2013

Azra, a 32 year old Iranian woman, is 37 weeks pregnant with her first child. She fled Iran fearing her own life when her father and aunt were killed. She has serious mental health issues after an extended period of street homelessness during which time she was assaulted and raped several times by different men. Refugee Council advisers helped her apply for section 4 support when she came into the office to ask for help as she was heavily pregnant and sleeping rough in Heathrow Terminal 3.

Although Azra was receiving antenatal care from West Middlesex hospital and accessing other services in the Hounslow area, she was provided with section 4 accommodation in Enfield, approximately 20 miles away. Friends give her money so that she can take the bus to her medical appointments at West Middlesex hospital however she complains of sometimes having to walk up to 2 hours to get to appointments.

She says she wants to buy baby clothes from second hand shops, the pound shop or Primark but she cannot on the Azure card. She bought some clothes from Tesco and was left with only £5 for the rest of her shopping. She says that most nights that week she went to bed hungry.

The Refugee Council provides her with travel expenses to enable her to meet with her health befriending mentor, support she is receiving from the Refugee Council Health Befriending Project. However, on occasions, she has asked if she can use this cash to attend last minute appointments with her midwife or to go to antenatal classes instead. This has meant that she has been unable to access the support of her health befriending mentor.

She does not know how she will get to West Middlesex hospital when she goes into labour nor how she will return to her accommodation in Enfield after giving birth. She is anxious about how she will look after her baby when she has no access to cash.

The Refugee Council

April 2013

Written evidence submitted by British Red Cross (ASY 72)

Executive Summary

The British Red Cross (BRC) sees serious problems with the asylum system as it stands. Vulnerable people fleeing conflict and oppression are unable to claim their rights as refugees and are left distressed and destitute. We often find ourselves as the final port of call across the UK for these desperate people in crisis seeking the basic essentials of life, such as food and clothes.

The British Red Cross wants to see a fair, effective and efficient asylum system that treats people with respect and dignity and upholds the UK's responsibilities to provide safety for refugees. We believe this commonly shared goal is some way off.

The removal of uncertainty, confusion and errors in asylum processes would hugely improve people's humanitarian situation.

Specifically we call on the government to address: widespread problems with the administration of section 4 support, the massive backlog of applications for asylum especially within the former Case Assurance and Audit Unit (now OLCU), the poorly administered transition from asylum benefits to mainstream benefits and the associated problems of widespread destitution for people both within and outside the asylum system.

The management of the UK asylum system must be brought into line with basic standards of good governance and thereby the government could hugely reduce vulnerability and especially destitution amongst some of the most at-risk people in the UK.

Many of these people are already legally entitled to these services and standards, some could be and those left are still entitled to basic humanitarian protection. This is a fundamental principle of the Red Cross Red Crescent movement whether we encounter people in Darfur or Derby.

We call on the government to treat those who come to our shores seeking sanctuary as people first and foremost and address the very real failings in the asylum system which leaves 56% of our clients without state assistance even though they are entitled to it.

Key Recommendations

- The British Red Cross believes that the scale of the UKBA backlogs is extremely grave and needs extra resource to be addressed.
- The Committee should consider the policy recommendations of the recent British Red Cross roundtable (below) to address the lack of an ethos of accountability at UKBA..
- Both UKBA and DWP must address the structural issues involved in the "move on" period and transition as a matter of priority.
- We believe that Section 4 should be abolished and all asylum seekers bought on to cash support through Section 95 until they have left the country or have been granted status.
- The British Red Cross also believes that the level of Asylum Support Rates should be uprated in line with other benefits
- UKBA must ensure that all "fresh submissions" are decided within the relevant 5/2 days timeframe in line with the recent Kanyemba judgement. 5 days should be an absolute maximum for an assessment according to the "fresh submission" test.

— Where representations are found to meet the test for "fresh submissions" quality decision making from the UKBA on the asylum application itself must be ensured despite a live S. 4 claim.

— We maintain that all support should be in cash and not in the form of a parallel currency.

— The British Red Cross encourages the Committee to press the government to allow asylum seekers the right to work in the UK if their claim takes over 6 months through no fault of their own.

— Good quality legal advice should also be provided as soon as possible in the asylum process.

The British Red Cross thanks the Committee for the opportunity to submit evidence to the inquiry.

Introduction

The British Red Cross welcomes the Home Affairs Select Committee inquiry into asylum and the opportunity to respond to it.

Our response will focus on issues in which the British Red Cross has the most experience of in light of our work in supporting refugees and asylum seekers.

The British Red Cross (BRC) operates in 48 towns and cities across the whole of the United Kingdom working with destitute asylum seekers and vulnerable migrants. Consequently, we often find ourselves as the final port of call across the UK for these desperate people in crisis seeking the basic essentials of life such as food and clothes.

In 2012 BRC Refugee Services supported 10,000 refugees and asylum seekers, with some 6,000 being destitute with no access to support or the right to work. We spend £3 million of funds on this work each year. We do this as part of our humanitarian mission to help individuals who are in a crisis no matter who or where they are.

The British Red Cross provides emergency help, such as food parcels and vouchers, warm clothing and sleeping bags to destitute asylum seekers either directly or with partner agencies across England, Northern Ireland, Scotland and Wales. We also help through signposting to other services and providing much needed empathy and understanding by treating clients with dignity.

As such we have a comprehensive understanding of the asylum system, its shortcomings and the resulting human suffering across the whole of the United Kingdom.

(Throughout this document "clients" refers to asylum seekers, refugees and refused asylum seekers who have accessed BRC services.)

1 *Who we are*

1.1 The British Red Cross helps people in crisis, whoever and wherever they are and is a part of the world's leading and oldest humanitarian movement.

1.2 We are part of the International Red Cross and Red Crescent Movement, which comprises:

— The International Committee of the Red Cross (ICRC)

— The International Federation of Red Cross and Red Crescent Societies (IFRC), and

— 187 national Red Cross and Red Crescent societies worldwide.

1.3 As a part of a global network that responds to conflicts, natural disasters and individual emergencies, we enable vulnerable people in the UK and abroad to prepare for and withstand emergencies in their own communities, and when the crisis is over we help them to recover and move on with their lives.

1.4 As a member of the Red Cross and Red Crescent Movement, the British Red Cross is committed to, and bound by, the Movement's Fundamental Principles. These are: humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

1.5 As an auxiliary to government across the UK, we help the emergency services, public authorities and other voluntary agencies in any way we can to meet the needs of our clients.

1.6 Our interest in the consultation stems from our work in the UK with asylum seekers, refugees, asylum applicants at end-of-process and vulnerable migrants across the whole of the UK.

The Asylum System

2 *Destitution amongst asylum seekers and refugees.*

2.1 The majority of our refugee clients in the U.K. are destitute refugees and asylum seekers.

2.2 We help around 6000 destitute clients a year. The number of clients we assist who are destitute is increasing. With no means to support themselves, many have nowhere else other than the British Red Cross to turn to for help.

2.3 In the last 6 months 25% of destitute clients were Appeal Rights Exhausted with no further action being taken on their case.

2.4 However, 56% of clients were destitute due to a variety of administrative failings and delays within the asylum system (which are discussed below).

2.5 The BRC has a humanitarian duty to provide help impartially and according to need, regardless of nationality or immigration status, and to protect human life and dignity. We find ourselves picking up the pieces from an asylum system that is leaving people destitute and in crisis.

3 *The process of claiming asylum: general concerns about inefficiency in UKBA's CAAU.*

3.1 BRC are extremely concerned with ensuring all current UKBA backlogs are tackled as a priority to give dignity and justice to those within them who have been waiting for unacceptable amounts of time.

3.2 Not only do the backlogs fail basic tests of fair treatment and legitimate expectation in relation to public service standards, we know that the clients experience huge anxiety as a result of the uncertainty of their claim.

3.3 This is further compounded by the fact that they will be on a low level of support for that time (with many on the extremely low-level of Section 4 support). Clients will be unable to work during this period.

3.4 The primary issue we would like to see addressed is the maladministration of CAAU/OLCU.

3.5 As the Committee has noted in their Fourteenth Report of Session 2012–13, there are serious, chronic and systemic problems with the UK Border Agency's handling of asylum claims, especially in relation to clients within the various backlogs.

3.6 Our experience working with clients across the UK substantiates the Chief Inspector of Borders and Immigration's report into the legacy programme and the transition into CAAU (see "An inspection of the UK Border Agency's handling of legacy asylum and migration cases".)

3.7 We are concerned that a significant number of BRC clients have cases that are placed within the CAAU (mostly older cases) including clients who have made further submissions.

3.8 Those with "live" claims within this unit have, in some cases, been waiting for years to have their claim assessed. Some asylum seekers are not even recorded as having a "live" case in the CAAU even though they believed their case was still being processed. For example, BRC have had reports from clients who have been signing at a police station regularly only to discover that their claim is in the archives.

3.9 As such, BRC echoes the concerns of the Chief Inspector that there may be some cases in the CAAU archives that should be classified as live cases.

3.10 A high percentage of these claims will be end-of-process but importantly "unconcluded" and therefore may potentially be entitled to S.4 support.

3.11 Furthermore, some BRC clients (not just those who have further submissions but people who are still waiting for an initial decision on their case) will be entitled to asylum. They are currently without status. We are currently supporting such people as part of our humanitarian mandate.

3.12 We maintain that it is unacceptable that important correspondence from these groups has been found to go missing. We think that transparency within the UKBA's relationship to Parliament is absolutely paramount in this area.

3.13 These problems add up to a large-scale failing in administration by the UKBA that has a serious impact on a significant cohort of asylum seekers in the UK.

Case Study: CAAU Client

> Mr B Karim is an Afghan national who entered the UK in July 2003 and claimed asylum on the same day at port of entry.
>
> He was detained; his claim was fast tracked and refused a week later. He exhausted his appeal rights in September 2003. He failed to submit fresh representations as he did not have legal representative (as he could not afford the cost).
>
> He turned to his community for support and assistance moving back and forth between London and Birmingham in search of friends and religious organisations to accommodate him.
>
> In 2010, through word of mouth, he heard about the legacy programme and sought advice from an immigration solicitor who approached the Home Office asking Mr Karim's case to be reviewed as part of the Legacy cases.
>
> In June 2010, the CRD informed him that his case was in the backlog and that they were in the process of concluding it.
>
> In January 2011, Mr Karim approached his local MP to enquire about the progress of his case.

In reply, in April 2012 the CAAU contacted him (via email) to let him know that he did not have any outstanding applications and so had no basis to stay in the UK and hence should make arrangements to leave the country as soon as possible.

However, the CAAU informed the MP that his case had been put into a controlled archive as Mr Karim failed to get in touch with them.

He has since taken the matter to the European Court of Human Rights and awaits an outcome.

(Applicants name has been altered).

BRC believe that the scale of the backlogs is extremely grave and needs extra resource to be addressed. The system is beyond breaking point. Even when cases are "cleared", there are more cases coming into the unit's "live" cases workstream from the archive all the time.

3.14 We believe that the existing structure of performance management are inadequate and only deep reform of the Agency can improve the humanitarian situation for thousands of the people we help each week.

3.15 There also appears to be a serious lack of resource within the unit.

3.16 There needs to be more staff and resources in the CAAU/OLCU to prevent the growing of a further backlog. The Chief Inspector's forthcoming investigation into the UKBA's progress to conclude the reopened and "live" cases should provide a template for effective casework and management processes. These should be fully implemented and the committee should ensure that guidance is consistent and effective.

3.17 As the Chief Inspector himself has acknowledged some of the decision-making on asylum applications at UKBA has been inconsistent in recent times whether relating to the CAAU or not.

3.18 We see the problems as being systemic and mainly threefold: administrative delays, a "culture of disbelief" and a need to instil a better public service ethos of accountability at all levels within UKBA.

3.19 With regards to the above, BRC held a recent Chatham House roundtable on refused asylum seekers unable to return to their country of origin. Held with sectoral and government representatives, we set out to find realistic ways to achieve positive outcomes for this group in light of current political obstacles especially in regards to UKBA. The group produced the following key recommendations:

- Caseworkers/officers should be encouraged, or even obliged, to visit refugee organisations and interact with asylum seekers in a less hostile environment outside of their workplace.
- Case workers need a much higher level of expertise when assessing individual asylum applications to establish credibility; with better cultural understanding and knowledge of Country of Origin.
- Case workers should be provided with better training and guidance
- Introducing better operational leadership and management (perhaps by recruiting committed and business-minded managers and by introducing business plans as is done in other parts of the civil service).
- Although the Red Cross movement is strictly impartial we are concerned that operational culture at UKBA seems to be lacking in accountability. (It is unacceptable that 35% of complaints about UKBA are repeat complaints).
- Identifying incompetent caseworkers and removing them should also be considered.

3.20 Until root and branch reform of the UKBA takes place along these lines, we still believe the problems will remain systemic

3.21 In the interim, the British Red Cross encourages the Committee to press the government to allow asylum seekers the right to work in the UK if their claim takes over 6 months.

3.22 At a minimum, we believe that Section 4 should be abolished and all asylum seekers bought on to cash support through Section 95 until they have left the country or have been granted status.

3.23 Good quality legal advice should also be provided as soon as possible in the asylum process until reform happens.

4 *Use of Country of Origin Information guidance and Operational Guidance Notes*

4.1 The British Red Cross notes with concern the recent Refugee Council report "Between a Rock and Hard Place". The report indicates the CoI guidance system is not robust enough to correctly assess the claims for Humanitarian Protection or Discretionary Leave for people arriving in the UK from Countries of Origin where systemic human rights abuses take place. This "protection gap" is a key area of concern for us as a humanitarian organisation.

4.2 The report finds that there is overwhelming independent evidence of human rights abuses within Zimbabwe, Eritrea, Somalia, Democratic Republic of Congo and Sudan. It also reports, however, that few asylum seekers from these countries are granted Humanitarian Protection or Discretionary Leave to Remain. In 2011, only 0.7% of 2,863 initial decisions from these countries were granted Humanitarian Protection and only 6.5% were granted Discretionary Leave to Remain.

4.3 Consequently, many people who originate from these countries are left destitute despite having a well-founded fear of return.

4.4 We are concerned that only 5% of asylum seekers who failed to gain refugee status were granted Humanitarian Protection or Discretionary Leave last year, leaving many destitute.

4.5 We believe that an expansive, inclusive and progressive interpretation of Humanitarian Protection and Discretionary Leave to Remain regimes are needed in line with CoI guidance and Operational Guidance Notes.

4.6 We further note with interest the recent Asylum Aid report concerning gender-related asylum claims in Europe[245].

4.7 There appears to be little consistency between the actions of the Foreign and Commonwealth Office and the UK Border Agency. Whilst the UK Foreign Secretary sees reducing sexual violence in conflict towards women in the Democratic Republic of Congo as a priority, the UKBA is refusing 62% of women from the same place on the grounds that their stories are not credible.

4.8 Although we welcome the initial work done in liaison with the voluntary sector by government in this area gender sensitivity should be improved.

5 *Effectiveness of the 5 year Review System*

5.1 The granting of definite leave (DL) instead of indefinite leave is creating a new backlog in the system which the UKBA will have to deal with later.

5.2 A system where the DL applications, running into the many thousands, will have to be revisited and then possibly deferred until another arbitrary, future date, is inefficient and represents an unnecessary bureaucratic hurdle.

5.3 However, if the system is not scrapped applications should be dealt with in a timely manner and there should be published target times to allow for increased accountability of UKBA.

THE SUPPORT SYSTEM.

6 *Asylum Support.*

6.1 Although not technically destitute, we maintain that Asylum Support Rates are now so low as to create serious problems around sustaining even a basic existence.

6.2 As such BRC also believes that the level of Asylum Support Rates should be uprated in line with other benefits to make sure that even this most basic level of support is not being eroded by inflation at the very least.

6.3 As there are serious problems with the current UK asylum system, there should be an end-to-end support system for asylum seekers in the UK.

7 *Section 4.*

7.1 70% of income support is the basic level of benefits that we see as meeting essential living needs for people living in the UK.

7.2 As it falls below this, Section 4 should be abolished and replaced with a benefit that at least meets this threshold or replaced with Section 95/98.

7.3 Any new benefit that would replace Section 4 should be cash-based and could be administered via the Post Office network to avoid some of the problems that asylum seekers have with bank administrative processes.

7.4 We are concerned at the operation of the Azure payment card and regularly see people who are suffering because of this inflexible payment system. We maintain that all support should be in cash and not in the form of a parallel currency. This would ultimately be a more efficiently administered system without the complexity of the card system.

8 *Destitution among asylum seekers and refugees in relation to Section 4 (S4).*

8.1 1 in 4 of our destitute clients are at the end-of-process and have exhausted their appeal rights but remain in the UK without access to Section 4. We see this as a key humanitarian concern as they are left marginalised and destitute.

8.2 That noted, the main issue we see for our clients is the lengthy administrative delays and problems they experience in dealing with UKBA (with the caveat that we see "transition" to DWP benefits as critical, discussed further below) with regards to accessing Section 4 when they are entitled to.

[245] http://www.asylumaid.org.uk/data/files/publications/187/Gender_related_asylum_claims_in_Europe.pdf

8.3 Our concerns are reflected in our evidence base. Currently we can show that in the last 6 months, 33% of our destitute clients had submitted fresh representations and/or Section 4 applications but were experiencing delays in obtaining Section 4 support.

8.4 Furthermore, in the recent BRC-funded report "Trapped: Destitution in Scotland" BRC evidence showed that roughly 1 in 4 cases of destitution in Scotland are caused by delays in Section 4 grants.

8.5 Destitution resulting from delays in administering Section 4 has been highlighted by the voluntary sector for many years. This will typically be the only form of support they are entitled to as, if at end-of-process, they have no entitlement to work and have no recourse to public funds.

8.6 The main support delay within the granting of Section 4 (S.4) is in relation to clients who are destitute but who have made further submissions in relation to their asylum application.

8.7 In general, although a claim for Section 4 can be made at any point by a refused asylum seeker, these claims are most commonly submitted alongside further "fresh" submissions.

8.8 Since October 2009 it has been necessary to make further representations in person at the Liverpool Further Submissions Unit. UKBA examine whether any further representations do indeed meet the criteria of a fresh submission.

8.9 This creates an additional practical barrier for clients to exercise their rights as they will often encounter difficulty attending. UKBA should consider other options to enter further representations that do not incur a cost to people who may already be destitute.

8.10 This issue is complicated by the joint submission of Section 4 applications *and* further representations as part of an applicant's refused asylum claim.

8.11 At this point it was common for clients to experience a delay when UKBA were assessing whether their submission met the test for "fresh submissions" contained in paragraph 353 of the Immigration Rules 1999. We witnessed significant destitution and suffering as a result of this delay.

8.12 In the Judicial Review case of *MK and AH v SSHD* this delay was found to be unlawful because such a "blanket delay" involves a significant risk that the Article 3 rights of an applicant will be breached.

8.13 To comply with the judgment, the Home Office has now indicated that a Section 4 application for clients meeting the test of further submissions ought to be processed within 2 days if the client is in severe need/destitute (ie are actually physically street homeless) and 5 days for those who are imminently at risk "where possible". However, we believe that this is still not happening in *every* case.

8.14 This is corroborated in a recent letter from Rob Whiteman, Chief Executive of UKBA, to Director of UK Services, BRC, Margaret Lally. It states:

> "We have made some changes to procedures in light of the court judgement you mention and now try to ensure that where possible cases are decided (in 5/2 days). It is not always possible to commit to these target times, given the complexity of some cases or because of the need to make further enquiries." In the same letter Mr Whiteman states that the average waiting time is just over 6 days.

8.15 We would encourage UKBA not to use average statistics which may obfuscate the longer lengths that destitute/at-risk people are waiting to access Section 4.

8.16 We remain concerned that a significant proportion of our destitute clients are destitute such administrative delays in Section 4.

8.17 Despite some emerging evidence that Section 4 is being granted more efficiently in more cases than in the recent past, UKBA must ensure that all cases are decided within the relevant 5/2 days timeframe in line with the judgement. 5 days should be an absolute maximum for assessment according to the "fresh submission" test.

8.18 In light of the mixed evidence cited above we encourage the Home Affairs Select Committee to seek assurances that claims will be assessed within 2/5days and Section 4 be granted immediately after that.

8.19 Where the representation is found to meet the test for "fresh submissions" quality decision making from the UKBA *on the asylum application itself* must be ensured despite a live S. 4 claim.

9 *Transition: Asylum Support and Section 4, Section 95 (& 98) and mainstream DWP benefits.*

9.1 The transition between the two different types of support is a major contributing factor to destitution amongst asylum seekers. In nearly 1 in 5 cases of destitution that we see the client has status but has not yet received welfare benefits or housing support. This is particularly common when Asylum Support ends after 28 days but normal benefits have yet to begin through no fault of the client.

9.2 As It is striking to note how many people at any BRC project will have status and yet will still be without support due to a breakdown in administration at this point. Where clients lose support to which they are legally entitled it is a particularly acute injustice.

9.3 The transition between the two systems often results in actual homelessness and the transition from UKBA housing providers to new accommodation is particularly problematic.

9.4 Outside of the main issue of the level of support *per se* we see it as a fundamental role of government to take action to improve "transition" and the 28 day grace period; the "move on" period.

9.5 There should be seamless transition between DWP and UKBA support for people granted status. We know that this is currently not happening and is forcing many people into destitution. This is fundamentally unacceptable for people who have been recognised as refugees.

9.6 BRC would like to draw the Committee's attention to the recent Asylum Support Appeals Project's briefing on the importance of the First Tier Tribunal Asylum Support's judgements on principles of law relating to the administration of Section 95 support and Section 4 support once UKBA states their intention to award Leave.

9.7 Those who are awarded leave to remain should continue to receive asylum support until *after they receive their status documents* from UKBA for 28 days as only these documents will serve as evidence for entitlement to benefits, not a letter of grant.

9.8 As the First Tier judgements indicate: the Asylum Support grace period of 28 days should be counted from the day a person receives their status documents and not from the day they receive a letter from UKBA stating their intention to award leave.

9.9 There is currently no flexibility in the 28 day grace period. If mainstream benefits have not been processed or a client has been unable to access them through their local Job Centre Plus then the client will become destitute. And then they have to come to the British Red Cross for support, even though they are entitled to benefit support.

9.10 Furthermore, the system is supposed to be in place to ensure that it does not take more than 28 days for someone granted status (from the point of receipt of their status bundle) to access mainstream benefits (when UKBA Asylum Support stops). We know from our experience that this is manifestly not happening in a large proportion of cases.[246]

9.11 The delays are due to a complex system of administrative issues involving UKBA and DWP systems; as was summarised by a BRC frontline worker: "The main problems as I see it is that there's no continuity of support if you come off one thing you have to go through a whole application process for the next bit, there is no bridge."

9.12 The recent case of Child EG illustrates this point well (around the death of a mother and her child in London). It is worth emphasising that the Serious Case Review from the Westminster local safeguarding children board stated that the transition from UKBA to DWP benefits was a contributing factor to the tragic outcome of that particular case[247].

9.13 Both departments must address the structural issues involved in the "move on" period and transition as a matter of priority. There is currently a grave mismatch between guidance and practice at all stages of the transition.

9.14 Primarily, problems with national insurance numbers (NINO) cause delay in accessing benefits. The point at which the client will get issued with a NINO is inconsistent.

Case study. Transition Delays.

> Mr Khan and his family (wife and two children) approached the British Red Cross in February 2013 to seek help in regards to the issue they were facing with Job Centre Plus.
>
> They were granted Refugee Status on 17/11/2012; their Biometric Residence Permits were apparently issued on this date but only received by the client (through their solicitors) in January 2013.
>
> On 23/11/2012, Mr Khan visited their local Job Centre Plus for the first time and when trying to make a JSA claim (over the phone) but were told that he should apply for a NINo first. As a result he was sent the CA5400 form to complete.
>
> On 5/12/2012 our clients sent the form back. A letter dated 11/12/2013 from NINo National Centre informed client that their NINo application was refused because they had "failed to provide sufficient evidence of identity". At that time they had not yet received their Biometric Residence Permits.
>
> On 11/01/2013, having finally received their Biometric Residence Permit, Mr Khan and his family invited to attend an appointment at Job Centre Plus to complete the CA5400 form. On 13/01/2013, our client tried to complete a JSA claim on-line but, not having a NINo, could not proceed.
>
> On 21/01/2013, advised by a friend, Mr Khan contacted the JCP New Claim line and applied for JSA, with the interview on 24/01/2013 at their local Job Centre Plus. At the interview, they handed in all

[246] UKBA and DWP have been tracking 2 sample cohorts of new grants made in January to asylum seekers in London and Leeds in order to add to the evidence base on move-on problems. Their findings substantiate the point made here.

[247] Although the serious case review of EG found that there was not simply a causal relationship between the two.

his Home Office documents in their possession, including their Biometric Residence Permits (which were photocopied by JCP officials), Home Office letters and NASS35.

On the first week of February, Mr Khan received a telephone call from the Benefit Delivery Centre asking to provide his Home Office documents. As per instructions, Mr Khan client sent these again, this time using the free post envelope collected at the local Job Centre Plus. On 14th February, not having heard any news from the Benefit Centre, Mr Khan came to the Red Cross for help.

In the presence of our advisors, Mr Khan contacted the Job Centre Plus Contact Centre to chase his (and his wife's joint) Job Seeker's Allowance claim.The adviser insisted that without NINo the claim could not proceed and blamed Mr Khan for not having one. BRC advisors suggested to the adviser to send an internal e-mail to the competent Benefit Delivery Centre for clarification, requesting an Urdu interpreter for the call back.

On 15th February, our client received a follow-up call from the Benefit Delivery Centre (without interpreter). He was told that they could not proceed with the claim as they could not find their Home Office documents. Our client tried to explain that these documents had already been provided twice. He was finally advised that someone would have called him again with more information.

No more information was then received by Mr Khan.

On 27th February, following a detailed letter from the Red Cross to the Benefit Delivery Centre and to the JCP District Manager, Mr Khan and his wife finally received their full Job Seeker's Allowance payment. A few weeks later, Mr Khan and his wife were also finally allocated a National Insurance Number.

(Applicants name has been altered).

9.15 Key solutions should include:

— Better explanation of the grace period, preferably in language of origin, for refugees on reward of status to ensure that people understand their applications should be received as soon as possible in the grace period, not when that period has expired. If not in language of origin then any communication should meet a basic plain English test.
— Consistency in respect of the point at which the refugee will get issued with a NINO, moving towards the ideal of having *all* NINOs issued in the status bundle by UKBA.
— Guaranteeing UKBA case-owner awareness of the NINO "fast-path process" and the issues around transitioning to mainstream benefits.
— Clear and consistent lines of responsibility for NINO dissemination between the two departments.
— That UBKA be allowed to liaise with DWP for sharing of data on refugees moving to mainstream benefits. This includes a procedure for JCP staff to contact UKBA for evidence of identity without the NINO.
— Better training and dissemination of current policy on claims for JCP staff to allow a JSA claim (or Universal Credit claim) for refugees without a National Insurance Number. This includes comprehensive training of DWP staff on the "clerical procedure" for allowing refugees to receive benefits without NINO.
— Interpreters should be provided and/or allowed at every critical interview with JCP.
— Finally, consideration of an extension of the grace period from 28 days to 6–8 weeks or, in a best-case scenario, 3 months. This is approaching revenue neutrality as the funds are both ultimately obtained from the Treasury. This could be partly achieved by DWP funding existing UKBA accommodation for an interim period until housing support has been allocated.

9.16 Not only are these problems in transition also often causing destitution and denying funds to refugees that they are legally entitled to but the system is building in a series of unnecessary costs to the taxpayer.

9.17 It must be impressed upon Ministers and government that this is an urgent issue to be addressed and resources provided to Home Office/UKBA to solve the administrative issues causing destitution to people who have received status.

10 *Other potential humanitarian issues for refugees and asylum seekers: Trafficking.*

10.1 Whilst most of our work is with refugees and asylum seekers we also work with other vulnerable migrants.

10.2 We work with individuals who have been trafficked into the UK. We can be called upon by the police, UKBA, SOCA (NCA) and the Gangmasters' Licensing Authority to provide humanitarian assistance to those individuals who are identified as trafficking victims during raids.

10.3 These individuals have been severely traumatised with long-lasting emotional, as well as physical, scars.

10.4 We welcome any commitment from government to provide UKBA with greater training in how they would work with vulnerable migrants in this situation.

10.5 The British Red Cross would, however, like to see a commitment to ensuring that there are appropriate aftercare arrangements in place for these individuals which can be accessed irrespective of their migration status. These should include:

- People should be treated primarily as victims
- Appropriate cultural sensitive counselling
- Safe accommodation
- Ability to contact family and friends
- Particularly if the individual is to be returned to their own country, support to develop the skills which they will need to avoid being caught up in similar situations again
- Resettlement grants.

10.6 For example, people who have been trafficked may have been required to participate in criminal enterprises such as cannabis farms, which may mean they are subsequently investigated and prosecuted for drugs offences.

10.7 The difficulties they experience in communicating and understanding the formal processes of claiming asylum also apply to the formal processes of prosecution for crimes: it also hardly aids their claim for asylum if they are being prosecuted for drugs offences, even if the criminal acts were coerced.

10.8 Robust identification of such people as victims rather than agents of criminality is needed in UKBA and Home Office systems.

10.9 A comprehensive approach, involving the police and prosecutors and the third sector, that is more sensitive to these factors, would improve outcomes and increase protection.

11 *Key Recommendations*

11.1 The British Red Cross believes that the scale of the UKBA backlogs is extremely grave and needs extra resource to be addressed.

11.2 The Committee should consider the policy recommendations of the recent British Red Cross roundtable (below) to address the lack of an ethos of accountability at UKBA.

11.3 Both UKBA and DWP must address the structural issues involved in the "move on" period and transition as a matter of priority.

11.4 We believe that Section 4 should be abolished and all asylum seekers bought on to cash support through Section 95 until they have left the country or have been granted status.

11.5 The British Red Cross also believes that the level of Asylum Support Rates should be uprated in line with other benefits

11.6 UKBA must ensure that all "fresh submissions" are decided within the relevant 5/2 days timeframe in line with the recent Kanyemba judgement. 5 days should be an absolute maximum for an assessment according to the "fresh submission" test.

11.7 Where representations are found to meet the test for "fresh submissions" quality decision making from the UKBA on the asylum application itself must be ensured despite a live S. 4 claim.

11.8 We maintain that all support should be in cash and not in the form of a parallel currency.

11.9 The British Red Cross encourages the Committee to press the government to allow asylum seekers the right to work in the UK if their claim takes over 6 months through no fault of their own.

11.10 Good quality legal advice should also be provided as soon as possible in the asylum process.

British Red Cross

April 2013

Supplementary written evidence submitted by British Red Cross (ASY 72a)

The complexity of the Refugee Family Reunion process

1 Introduction

The aim of this short submission is to highlight the unnecessary legal and other complexities embedded within the Refugee Family Reunion application process. The paper will examine the need for funding for specialist guidance and support throughout this often complex application process. The paper will conclude

with suggestions on how this process could be improved and simplified for applicants, sponsors and decision makers. This may result in significantly less costly and lengthy appeals.

Throughout this paper the term "refugee" will be used to refer to people granted refugee status and Humanitarian Protection. The term "applicant" will refer to the family member overseas wishing to enter the UK under the Family Reunion provisions and the term "sponsor" will refer to the refugee, resident in the UK wishing to bring in and be reunited with what are normally pre-flight family members.

2 The Application Process

Finding the form and necessary guidance

The application for Refugee Family Reunion must be submitted online and in English. A great deal of information about the sponsor is required. The vast majority of applications are instigated and completed in the UK by the sponsor because the applicants may live in precarious circumstances including:

- Living in refugee camps or in hiding.
- Living in very rural areas with no internet access.
- Little or no understanding of English.
- Low levels of computer literacy or prohibited from using internet cafes through cost or security fears.
- Restricted or no access to advice or support overseas regarding the application process.

Refugee Family Reunion is a complicated process because of the amount of documentation and evidence required. Documents are often sent from the UK to remote parts of the world and back again, and applicants must often travel a vast distance to attend interviews. It is clearly a highly emotive process and one that applicants often need a great deal of practical and emotional support to get through.

Legal Aid

In order to undertake Refugee Family Reunion casework, a professional must be an LSC accredited solicitor or a caseworker registered at least at Level 2 with the OISC. To conduct any appeals related work, the caseworker must be registered at Level 3. In their lobbying paper seeking an amendment to the Legal Aid, Sentencing and Punishment of Offenders Bill as it progressed, through the House of Lords, the UNHCR stated that:

……"*reunification of the family unit plays an important role in ensuring the protection and well-being of individual members of a refugee family. Respect to the right of family unity requires not only that States refrain from action which would result in family separations, but also that all States pro-actively and in a humanitarian spirit, take measures to maintain the unity of the family and reunite members who have been separated.*

UNHCR remains concerned that the withdrawal of legal aid for family reunion cases could prohibit access to family unity, as without legal aid, refugees in the UK may not be able to afford legal representation. Legal aid is an important way of ensuring that refugees who would not be able to act as litigants in person due to restrictions of language and literacy , as well as an inability to navigate the complex procedures, rules and regulations, might access their right"[248]

The British Red Cross thoroughly endorses the UNHCR's position and is extremely concerned that the withdrawal of Legal Aid funding for this work is forcing families to remain apart. This has a devastating impact on all members of the family, especially children, who have a fundamental right under the UNCRC to reside with their parents.

3 The Application Form

There is no specific form upon which Refugee Family Reunion applications may be made. The form used to make such applications is an Entry Clearance form known as Visa Application Form 4A (VAF4A) and it is found on the visa4uk website. A hard copy of the form is still available but is very difficult to find and is frustratingly different to the online version, rendering it useless as a guiding tool. The hard copy version of the form is accepted in very few overseas posts. Unfortunately, another website, the official Home Office website, must be accessed to compete part two of the application. Official guidance and policy instruction is very difficult to find and applicants and sponsors without professional support may easily fall prey to erroneous and misleading advice. Unfortunately, this advice is readily available on unofficial websites and chat room forums. The first two questions on the on-line form are crucial yet complex. Answering them incorrectly leads to an incorrect form, a great deal of confusion and a likely refusal.

It is most likely to be the sponsor or advocate who builds the application. It is therefore likely that the sponsor or advocate's e-mail address and password will be inputted at the registration stage of the form. This immediately makes it seem that it is the sponsor rather than the person's overseas application; in fact the actual applicant may not see the application—particularly if there is no representative or supporting agency involved. The entire form is written in the third person which is a challenge in itself. Advocates and caseworkers

[248] http://www.unhcr.org.uk/fileadmin/user_upload/pdf/Legal_Aid_Bill_Lords_Second_Reading.pdf

experienced in Refugee Family Reunion work will normally construct detailed covering letters and submissions which add crucial information that is not asked for by the general application form. Representatives will explain areas of complexity, such as explaining why a specific document may not be available. They will also provide witness statements or alternative evidence when it's required. Furthermore, advocates and caseworkers will often cross check paperwork with the initial asylum application, highlighting and explaining any anomalies. This attention to detail often assists the decision maker to make a well-reasoned decision and prevent costly refusals and appeals.

Throughout the general application form, there are constant references to adequate maintenance and accommodation testing, as well as references to sponsorship undertaking. This causes a great deal of confusion as there is no such testing under Refugee Family Reunion provisions. This often leads sponsors to assume that they must have an adequate sized house and have a salary that is commensurate with the given thresholds before applying for their family. This often adds to the already existent distress and pressure.

Below there are just a few examples of where the on-line application form causes confusion and contention:

Date of birth	The guidance, if found, invites applicants to "fudge" dates where necessary, for example, if dates are not known, by inputting 01/01/1900. Very often, the applicant is asked for precise dates at interview and there is still huge negative credibility finding when dates are mis-matched or simply not known. An enormous number of children in 2000—an estimated 50 million babies—more than two-fifths of those born were unregistered around the world[1]. Culturally, birthdays may simply not be acknowledged. All too often there is still an over emphasis on the need for precise dates of birth and credibility concerns are raised when these cannot be given. It is therefore imperative that a detailed covering letter with representations is included in the application pack.
Have you ever been involved in' supported' or encouraged terrorist activities in any country or have you ever been a member of or given support to an organisation that has been concerned in terrorism? ☐ Yes ☐ No	It is worth noting that applicants might well have been involved in political movements that are deemed terrorist in a given country and as outlined in one of the case studies below, a child may have been forced to commit terrorist acts. Although the sponsor may naturally baulk at the question, it needs to be explored to avoid any negative credibility findings. The sponsor may simply not know what has happened to his/her family after they fled, or the family may feel they cannot reveal the truth for fear of rejection by both the British authorities and the family member.

Will this child be travelling to the UK with you?	Children's cases are very often complicated. Again, it must be remembered that the sponsor is writing on behalf of the applicant. Some cases can become complicated when the dependant child also has a child/ren of their own. There are also cases where the wife/female partner has endured rape after her partner has fled and has had a baby as a result of this. In more straightforward cases, the female partner has found out that she is pregnant after her partner has fled. Though the child is the biological child of the sponsor, this often needs to be tested and confirmed through expensive and lengthy DNA testing. There have been several cases where the mother has been granted a visa but the child has not through not being part of a pre-flight family. De–facto adoption cases are particularly difficult, especially as there is no clear guidance available. The children's' names will often be different to that of the adoptive family and it may be difficult to provide evidence of the child living within the family unit, despite often being adopted shortly after birth. Again, it is important that material written as part of the asylum claim is cross checked with what is written in the FR application and that representations and submissions are written in a child focussed manner. Some children will be interviewed at the Visa Application Centre and need to be made aware; through easy to read and understand paperwork, of what has been submitted as part of the Family Reunion application. They then need the opportunity to make any amendments. The complexity in children's cases mean that families arrive in a fragmented way. This causes profound difficultly in the family's recovery and healing as a family unit

Your Sponsor

You stated that your sponsor is in the UK. Please provide the following details. When did they first arrive? dd MMM yyyy	Given the nature of asylum applications, the sponsor may not know the exact date of arrival or was forced to give a false date of arrival when applying for asylum. In trafficking related cases, the date of arrival may very well not be known. If an exact date is inserted here and is later found not to match what was written on a screening interview or SEF form there could be a negative credibility finding.
Sponsor's permission to live in the UK	This question can cause confusion because there isn't a drop down menu and limited options. If the applicants are completing it without assistance, it is very easy to input incorrect answers which may cause delays and potentially refusal

Your Sponsor > Passport Detail

Sponsor's current passport or travel document number 	The sponsor may not have a passport. Travel documents can take up to 6 months to arrive and are very often difficult to obtain in the first place. What would be useful is if the form invited the sponsor to insert his/her Home Office reference number at this juncture.

4 Summary

Refugee Family Reunion applications are often complex, time consuming and can be costly when they become appeals. Much of this cost can be avoided if the applications are supported by specialist caseworkers and are "front loaded" with all necessary documentation and translated material submitted in a well ordered manner. Tiny errors in the forms can lead to refusal and lengthy waits for appeals to be heard in the UK. The fact that advisers must be accredited or regulated suggests there is acceptance that the process is complicated. Applicants are very often vulnerable to poor advice that can lead to very serious and distressing ramifications.

5 Solutions and suggested actions

Improving the application form

We submit that a dedicated, focussed application form is required to enable Refugee Family Reunion applications to be completed competently. This will result in decisions being made more swiftly and effectively and will reduce the amount of mandatory refusals, review and appeal work. We believe that such a form could be constructed with very little impact on resources and would be highly effective, making it very welcome in the sector.

A dedicated form would reduce the unintended pitfalls and ambiguity inherent in the general form. This would ensure that decision makers had all the information required in an easily digestible manner, making the entire process more efficient and humane. All relevant guidance and a relevant sponsorship undertaking form could easily be linked to a focussed application form, immediately making the process more effective, transparent and fair.

Custom made Refugee Family Reunion application forms asking relevant questions will assist all parties involved and reduce lengthy and costly delays. This will reduce anxiety and stress on separated families.

Improving the overall process

We submit that allowing the entire application process to be conducted in the UK and under the asylum umbrella would simplify this process and allow greater control. This would enable swift cross checking with the asylum and refugee documents, and would allow advisers to contact case workers when necessary. Although documents, records, DNA and health testing would still need to be sourced, sent and undertaken from abroad, processing all material in the UK would allow greater control and efficiency. If public funding is available to enable specialist advisers to assist sponsors with their initial application, the resulting reduction of traffic flowing through the courts will also provide a cost saving.

Creating an end to end, one stop service would counter further costs as sponsors know where to seek advice and not "shop around". This means that they will be more likely to submit competent applications in the first instance.

British Red Cross

July 2013

K, a Somali national, wanted to apply for his wife and three children to enter the UK under Family Reunion provisions.

K had been assisted by members of the community to complete the form online but had completed the form incorrectly - dates of birth did not match and one of the children's names was spelt incorrectly. Furthermore, he had, in various sections completed the form as though he himself was the applicant having become confused by the fact that he was completing the form on behalf of a third party (his wife and children).

K had not known to send the requisite documents to his wife and was told there was no need to send proof of his status as the British authorities would be able to trace him on their databases. The applications were refused, his wife reported she felt humiliated at the interview and she and the children had had to stay in a hotel at great cost in Mombasa while the decision was processed.

It was clear from the refusal letter that the form had been incorrectly completed and K was advised that the appeal process could take up to six months. K was advised that working with an experienced advisor on a fresh application may well be the best remedy.

K's family's case was carefully prepared, furnished with expertly translated documents and all necessary documentation and the form was completed on K's behalf. The specialist worker knew to carefully check and cross check all information - that where there was disparity, they did not have to provide an exact date of birth or make up a date of birth to satisfy the on-line form and was able to advise K that he would need to make a formal submission regarding the lack of consistency in the child's recorded date of birth.

K's family were successful in their second application and entered the UK within twelve weeks.

R wished to apply for his family to join him; the application was refused because his wife's middle name was incorrectly spelt on the form. R waited for 9 months for the appeal to be listed.

B, female from Somalia, was granted refugee status and had one child with her, her three older children remained with a maternal grandmother in Kenya.

Once traced, B wished to apply for all three children (one of whom was disabled) and her mother, with whom she had lived for her entire life, to enter the UK under Family Reunion. One child was about to reach 18, the application therefore became urgent.

Unable to gather documentation quickly enough for the youngest child and grandmother, B instructed her adviser to make applications for her eldest two children. The eldest child turned 18 whilst she was waiting for her interview and in the interim the application for the youngest child, aged 7, was started.

A throw away remark prompted the disclosure that the youngest child was not her biological child but was her late husband's daughter who B had looked after as her own shortly after the child's birth. There were no birth, adoption or identity documents but there were photos in existence though they could not be found. A very detailed submission including a witness statement was required. The eldest child was refused, the Entry Clearance Officer advising that the young person knew little or nothing about her mother's current whereabouts and that the evidence of telephone contact was not compelling or accepted.

The second child was accepted and granted a visa; the youngest child's application was refused. The grandmother's claim was dropped in order that she could care and protect the eldest and youngest child.

B was not able to be allocated suitable accommodation for the incoming disabled child until the child arrived and consequently the child was virtually housebound for the first few weeks. B struggled with caring for her children whilst making applications and appeals and trying to apply for suitable accommodation.

The family were reunited at different stages over the following year but there had been three court appearances at enormous financial, resource and emotional cost.

Having made a successful claim to asylum, L instructed his solicitor to make Family Reunion applications. His solicitor advised L that he would not be able to seek Legal Aid for these applications and that he would be charged around £500 legal fees.

Though the case was found later to be relatively straight forward the solicitor advised it was highly complicated. L attempted to borrow the money from friends and community members however, when he could not gather enough money, he turned to door step lenders and borrowed around £300.

The solicitor, who had no experience of Family Reunion applications, made several mistakes on the online form, the form "allowed" these mistakes to be made, for example the date of birth of L's wife was mixed up with that of a young child and went unnoticed. The solicitor made no mention of the health test requirement or what that entailed and an incomplete bundle of evidence was sent, the family were not given guidance on what they should gather overseas.

At the interview the ECO advised that he had no option but to refuse the application, however, advised that the family made a fresh application rather than wait for the appeals process.

L sought the advice and assistance of a dedicated worker with an NGO agency and the second application was successful. L felt he had greatly benefitted from being supported consistently by an experienced worker who knew the system well and was able to cross check data and know which supporting evidence he required and was able to order this in a coherent manner, making the application much stronger.

C from Burundi had no children of her own but three step children whom she had brought up from when they were 2, 5 and 7.

C 's partner had been killed in Burundi through involvement with politics, having become forcibly estranged from him for fear of their lives, C and the children unofficially changed their names.

Having left them with her mother when she fled, she immediately wanted them to come to the UK once she had been granted HP. C had no paperwork regarding the name change and was fearful of explaining why they had had to change names and could not see a way of obtaining any official documentation safely in Burundi. C knew all the children's details and had photos and proof she was in almost daily contact with them. The children had travelled for three days to get to the interview but were refused purely on the basis that there was a lack of documentation and proof of the adoption, it had been made very clear in the application that a formal adoption had not taken place. However, everything else had been accepted.

The adviser asked that the decision be reviewed and that C be allowed to send further statements. The adviser was told that this would automatically be undertaken as part of the appeal process; however no further evidence would be submitted.

The case did not appear to have been reviewed but instead sent into the court system and took over five months to be listed. The case was undefended in court and was won by C in less than twenty minutes.

M started an online form without any advice and struggled with understanding what the form was looking for, having had several false starts he managed to find a drop down menu that included a Family Reunion option but clicked the wrong sub category, the wrong type of Family Reunion. When the application was finally refused the solicitor found much of it had been completed incorrectly, dates were incorrectly inputted and K thought it best to input what he and his wife thought his wife's parents details were, these proved to be incorrect and damaged his wife's credibility to a great degree. All applications were refused and the family were forced apart for a further nine months while the appeal process was ongoing.

Written evidence submitted by the Law Society of England and Wales (ASY 99)

INTRODUCTION

1. The Law Society of England and Wales ('the Society') is the independent professional body, established for solicitors in 1825, that works globally to support and represent its 166,000 members, promoting the highest professional standards and the rule of law. Our evidence has been formulated by the Society's Immigration Law Committee, comprising of expert practitioners with significant experience of all aspects of asylum related legal work.

2. The recent announcement on the future of the UK Border Agency provides a valuable opportunity for Government to consider a new approach to asylum generally and to avert purely cosmetic changes to existing structures and processes. The Society hopes that the Committee's final recommendations will convey to Government the need for significant review of refugee status determination procedures in the UK , ranging from reception arrangements to the quality of decision making and the adequacy of the current approach to returns.

3. Asylum is an area of practice that is heavily characterised by 'challenge', whether it be appeals against indefensibly poor quality first decisions or judicial reviews questioning the legality of often knee-jerk legislation and policy. Whether this level of challenge can be sustained in the face of debilitating cuts in funding for asylum work (of which the recently proposed limits on fees for appeal and judicial review work are just one example) is now highly questionable, leaving some of the most vulnerable in our society with little prospect of access to a reasonable standard of justice or the ability to scrutinise the legitimacy of executive decisions.

4. In recent years the Society has strengthened its links with the former UK Border Agency to provide constructive advice to improve the asylum process and avert the need for our members to engage in unnecessary and costly challenges. Notably, the Society has worked with the UK Border Agency's Asylum Improvement Project and the Asylum Screening Unit (ASU) in Croydon to inform Agency staff of the many problems encountered at all stages of the process by asylum seekers and those who represent their interests.

5. In some instances this has resulted in progress (for instance, the end of child detention except in limited circumstances, and the improvement of the physical environment at the ASU), but this has gone little way to addressing deep systemic flaws that hamper fairness and efficiency, and lead to delay, hardship and an unnecessary drain on heavily strained public finances.

6. This view has been endorsed by authoritative reports by the Independent Commission on Asylum and the Centre for Social Justice[249]. In our and their view what is necessary is a new blueprint for the asylum process

[249] http://www.independentasylumcommission.org.uk/files/Saving%20Sanctuary.pdf
http://www.independentasylumcommission.org.uk/files/Safe%20Return%20final.pdf
http://www.independentasylumcommission.org.uk/files/10.07.08.pdf
http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/AsylumMatters.pdf

which ensures fairness, accountability and the humane treatment of asylum seekers—attributes which are in no way inconsistent with robust public policy, indeed they would lead to safer decision-making and fewer challenges. There are countries with similar demography and financial resources to the UK who appear to be able to develop asylum determination processes which go further in achieving the aims of the UN Convention whilst limiting the opportunities for abuse. The Society believes that the creation of a separate and distinct asylum determination body separate from the 'enforcement' responsibilities of the UK Border Agency's successor would be a step in the right direction.

The effectiveness of the UKBA screening process, including the method of determining eligibility for the 'Detained Fast Track' procedure

7. The Society considers the Detained Fast Track Procedure (DFT) to be fundamentally flawed, such that it places applicants at an unacceptable risk of unfairness in the processing of their claims. The extent of our concerns leave only one possible conclusion about the future of the DFT: that it be abolished.

8. In March 2000, when the DFT was introduced, Parliament was informed by the then Minister for Immigration that:

> *'….[asylum] applicants will be detained where it appears that their asylum applications can be decided quickly, including those which may be certified as manifestly unfounded….Detention will initially be for a period of about seven days to enable applicants to be interviewed and an initial decision to be made. Legal advice will be available onsite'*[250]

9. Notably, in the case of Saadi[251], the UK Government made clear that nationality was an important factor in deciding whether a claim was suitable for the DFT and that there was a list of nationalities approved for detention at the Oakington Detention Centre. However, even within that list of nationalities some claims were not suitable for a decision within the DFT process because the applicant was a torture survivor or an unaccompanied child. The importance of the screening procedure was emphasised at this time to ensure that unsuitable or complicated cases were not routed into the DFT process.

10. On 23 May 2005, The Immigration and Nationality Directorate (as it was then known) wrote to the Refugee Legal Centre notifying it of various changes to the DFT process and attached a 'Detained Fast Track Process Suitability List' which stated:

> '*Any claim, whatever the nationality or country of origin of the Claimant may be fast tracked where it appears after screening to be one that may be decided quickly i.e within the indicative process timescale…'*

11. The consequence of this is that , unlike the process described in Saadi and the Refugee Legal Centre cases[252] (i.e selection for fast-tracking on the basis of nationality), the general presumption now is that are ones on which a quick decision can be made in the majority of asylum applications.

> *'…unless there is evidence to suggest otherwise (or the case is one already recognised as not generally being suitable for DFT/DNSA in the Detained Fast Track Suitability Exclusion Criteria), there is a general presumption that the majority of asylum applications are ones on which a quick decision may be made.'* (paragraph 2.2 of the Detained Fast Track Guidance).

12. As a matter of principle and logic it cannot be right that the majority of cases fall within an accelerated procedure.

13. The pro-forma for screening cases for the Detained Fast Track is the standard pro-forma used for all asylum claims: there are no questions specific to the appropriateness of a claim being routed into the DFT. (see the highly critical report of the UK Border Agency's Chief Inspector[253]). Following this report, section 3.1.1 of the Detained Fast Track Guidance[254] now states that at the screening interview an applicant must be asked if they have documents, statements or other evidence relevant to their claim which they wish to submit, and that 'follow-up questions must be asked and documented' where relevant to suitability, but no new screening form has to date been produced and the requirement to ask these questions is not reflected in the form used by interviewers.

14. The requirement to produce evidence to show that an individual is not suitable for the fast-track, in a system in which the timescales are so short, makes it all but impossible to dislodge this presumption.

DFT Screening Process

15. The decision to detain an applicant on the basis that their claim is suitable for determination within the DFT process is made at the screening stage. Crucially, in the vast majority of cases, little work, if any, can be undertaken at this stage by immigration practitioners by way of fact-gathering about the applicant. Therefore,

[250] Hansard Col.263W
[251] [2002] UKHL 41 and Saadi v UK (application No. 13229/03)
[252] R (Refugee Legal Centre) v SSHD [2004] EWCA Civ 1481
[253] http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Asylum_A-thematic-inspection-of-Detained-Fast-Track.pdf
[254] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/detained_fast_processes?view=Binary

there is insufficient material available to the UK Border Agency on which to make a fact –sensitive decision. The reality is that decisions to detain applicants for their cases to be processed within the accelerated process are more often based on UK Border Agency operational considerations, particularly the availability of bed space and whether the applicant has a valid travel document, or is from a country where it would be relatively easy to obtain travel documentation.

Delays within the DFT process

16. While the timetable is rarely extended to allow people more time to submit representations, there are often delays between detention on the basis that the claim is suitable for the DFT process, and the appointment of a legal representative (see the report of the Independent Chief Inspector of the UK Border Agency referred to above and the report by Detention Action—'Fast Track to Despair'[255]). The timing of the appointment of a legal representative is within the sole control of the UK Border Agency. Until a legal representative is appointed, the fast-track process is effectively put on hold and no action can be taken on the asylum application. The consequence is that individuals are being held in detention for long periods of time on the basis that their claims are suitable for the Detained Fast Track process without any action being taken on the fast-track processing of their claims, and without any regard to the fairness of the process.

Post-decision Fast-Tracking

17. Once the decision on an asylum claim is served, a decision which is in approximately 98% of cases a refusal (see report of Sir John Vine at 6.4–6.5), the Secretary of State's published policy is that detention can only be justified in accordance with the general detention criteria ie not on the basis that the application for asylum (which has now been decided) can be decided quickly. However, it appears that many UK Border Agency officials are confused about this policy and interpret it wrongly. Perversely, the result is that many claimants whose asylum applications have been decided under fast-track procedures continue to be detained after that decision has been served Reasons for detention forms (IS91~R) relating to the decision to detain after the claim has been refused routinely cite the risk of absconding as an additional reason for continued detention even though those detained have the right of appeal. It should be noted that the Secretary of State's policy states that a right of appeal is a factor counting against detention (see Chapter 55 EIG).

18. The consequence of continued detention is that any appeal lodged against the Secretary of State's refusal of the asylum application automatically enters the fast-track appeals process (see Rule 5 of the Fast Track Procedure Rules[256]). That process is so fast (six working days) that the gathering and submission of evidence in response to the refusal letter is almost impossible, particularly given that the appellant is in detention and, in a large proportion of cases, unrepresented (see Detention Action's report—'Fast Track to Despair').

Concerns regarding the Detained Fast Track Process

19. In addition to the report by Sir John Vine, a range of organisations have produced reports that the Detained Fast Track process in Harmondsworth and Yarl's Wood Detention Centres operates unfairly and unjustly[257]

20. The UNHCR, in its Quality Initiative Project and Quality Integration Project reports, subjected the DFT process to detailed scrutiny and reached highly critical conclusions in its report of June 2008[258], including:

— Decisions often failed to focus on the individual merits of the claim;
— There was an incorrect approach to credibility assessment;
— A high prevalence of speculative arguments;
— A lack of focus on material elements of the claim;
— There was evidence that an excessively high burden of proof was being placed on applicants;
— Some case owners demonstrated a limited understanding of refugee law concepts;
— There was limited understanding of the purpose of medical evidence in decision making, evidenced by frequent use of standard working to the effect that medical evidence would not assist the applicant in substantiating a claim of ill-treatment;
— Some case owners did not appear to possess the necessary skills and expertise to ensure that the full range of gender related claims are recognised in asylum decisions;
— The screening of asylum applicants and the removal of unsuitable cases from the DFT were often not operating effectively to identify complex claims and vulnerable applicants, so that inappropriate cases were being routed to and remaining within the DFT; and

[255] http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/FastTracktoDespair-printed-version.pdf
[256] http://www.justice.gov.uk/downloads/tribunals/general/Consolidated_AI_FastTrackRule2005.pdf
[257] Bail for Immigration Detainees (BID): 'Working against the clock: Inadequacy and injustice in the fast track system' (March 2006); BID: 'Refusal factory: Women's experiences of the DFT asylum process at Yarl's Wood Immigration Removal Centre' (September 2007); Human Rights Watch (HRW): 'Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK' (February 2010); and Detention Action: 'Fast Track to Despair' (May 2011)
[258] http://www.unhcr.org.uk/what-we-do-in-the-uk/quality-initiative-and-integration.html

— The number of refusals of refugee status produced within the DFT indicated that there was a danger of decision makers becoming 'case hardened'

21. This 2008 report was followed by a further report in August 2010. At paragraph 2 of the 2010 report it is noted that although there had been some improvement, the great majority of the concerns expressed in the 2008 report remained prevalent.

22. The statistics set out in Detention Action's report 'Fast Track to Despair' show a significant disparity between the recognition rates for refugee status within the DFT compared to that in the non-detained system. Around 99% of applications are refused by the UKBA in Harmondsworth compared with 70% refusal rate at the same stage of overall claims decided in both fast-track and a non-detention setting (which means that the refusal figure for non-fast-track cases must be even lower). Around 92% of appeals in the DFT in Harmondsworth are dismissed, compared with around 72% of all appeals determined in both fast-track and a non-detention setting. Given the concerns expressed by UNHCR, one explanation for this disparity may be that case owners working in the DFT/DNSA processes approach the applications differently to their colleagues dealing with claims in the non-detained setting. The impression given by the UNHCR report is that DFT/NSA case owners are generally of the view that the overwhelming majority of the applicants in the DFT/DNSA process have poor credibility so that discretion should be exercised to support negative decisions. The low rate of success at the appeal stage is likely to be due to lack of time to properly prepare for the appeal hearing, lack of time to obtain all the relevant evidence, and, in a significant number of cases, lack of legal representation. This means that appellants have considerable difficulty rebutting negative credibility assessments and positive assessments of country conditions made by the SSHD in the decision-letter.

23. The difficulties in adequately preparing for an appeal under these severe time constraints are exacerbated by the unsatisfactory arrangements for taking instructions from the detained clients at the hearing itself. There is no privacy in taking instructions, which must be done through a glass partition in a room in which other representatives and clients are present. In addition clients are brought to court only about 45 minutes before the hearing, meaning there is not enough time to complete the conference before the hearing begins.

Conclusions on the DFT

— The conditions in detention cannot be described as comparable to those that pertained in the *Saadi* litigation in Oakington Detention Centre.

— The change, notified in May 2005, that any claim can be suitable for the Detained Fast Track means that the screening process cannot operate to effectively identify claims which are and which are not suitable for the Detained Fast Track process.

— The experience of practitioners is that the UK Border Agency does not exercise flexibility in terms of taking claims out of the Detained Fast Track process prior to a decision being made.

— UK Border Agency officials are confused about the policy to detain after the initial decision has been made on the asylum claim and/or interpret it wrongly with the consequence that most asylum seekers continue to be detained after a decision has been taken on their claim and their appeals are therefore determined within the accelerated process.

— The very fast timescales within which appeals are determined within this process means that gathering and submission of evidence in response to the refusal letter is very difficult given that the appellant is in detention and, in a large proportion of cases, unrepresented.

— Many organisations including UNHCR have expressed serious concern about the unjust and unfair nature of this process.

— The conclusion must be that the Detained Fast Track process is so fundamentally flawed that it places applicants at an unacceptable risk of unfairness in the processing of their claims.

THE USE OF COUNTRY OF ORIGIN INFORMATION (COI) AND OPERATIONAL GUIDANCE NOTES IN DETERMINING THE OUTCOME OF ASYLUM APPLICATIONS

24. Proper use and analysis of a wide range of country information is crucial to sound determination of refugee status. There continue to be significant problems in the manner in which the UK Border Agency uses country specific information and manages access to sources by case workers. These problems are quite capable of resolution with effective training and accreditation for caseworkers, improved information management, reduced timeliness targets and increased flexibility for decision making.

25. Legal representatives consistently cite the following headline concerns in this area of decision making which directly affect the quality of decisions and the ultimate protection of those seeking asylum:

— Failure of UKBA COIS to keep up-to-date and thorough country information.

— Use of COI in decision letters which are either irrelevant to the instant claim or fail to acknowledge the specific context of the claim

— Manipulation of COI targeted only at undermining the credibility of applicants

— Highly selective use of information/speculative argument and standard paragraphs

— Failure to properly address COI provided by applicants and their representatives in decisions

— Failure to access COI from a range of sources with an unhealthy reliance upon a small number of established sources e.g US State Department or UK Border Agency's in-house COIS

26. In late 2011, the Chief Inspector of the UK Border Agency reported on the '*Use of Country of Origin Information in Deciding Asylum Cases*' by way of a thematic inspection[259]. The Society cannot usefully add to the Chief Inspector's thorough analysis and objective findings on the current state of COI use in decision making but highlight his view that failure to properly investigate available sources of country information and to use these appropriately has the very real potential to lead to injustice and danger for applicants. Poor quality use and interpretation of COI contributes to what the UK Border Agency's successor should regard as the unacceptably high rate of successful appeals in asylum cases.

27. The Society is unaware of any steps taken by the UK Border Agency to address the 12 recommendations made by the Chief Inspector in his report. There has been little, if any improvement in this aspect of decision making.

The assessment of credibility of women, the mentally ill, victims of torture and specific nationalities within the decision making process and whether this is reflected in appeal outcomes

28. The quality of credibility assessment at the level of first decisions remains of serious concern as its bold use in terminating claims without proper regard to the entirety of the claim. This applies to all applications and not just those from the particularly vulnerable groups or specific nationalities identified in this inquiry reference term. This conclusion cannot be better evidenced than by what is contained in Amnesty International's recent and focused study entitled 'A ? of Credibility'[260]. This document makes for very disturbing reading indeed giving recent specific examples of decision letters.

29. The Society also commends to the Committee the recent and highly authoritative guidance issued by the IARLJ in association with the European CREDO project[261]. This comprehensive guidance emphasises the complex and robust nature of sound credibility assessment, and the need for a clearly defined assessment process. It rightly emphasises the unique nature of asylum determination in contrast to 'privilege' based immigration control and the potentially dire consequences of poor credibility assessment—further persecution leading to serious harm, injury and/or death. This guidance is should be essential training material for any Home Office asylum caseworker or later decision maker in the asylum process and should be a template for the methodology necessary for a proper assessment of credibility in asylum cases.

30. In 2002 UNHCR London Branch Office commenced the Quality Initiative Project (QIP)[262] in partnership with the then Immigration and Nationality Directorate. A crucial area of the project's focus was the widely acknowledged poor quality of first decisions made by Home Office caseworkers in asylum cases. UNHCR's yearly reports which culminated in its sixth report of 2008 outlined a number of specific concerns about the quality of decision making in the IND/UK Border Agency:

— Failure by caseworkers to understand the basics of human rights law
— A lack of understanding by caseworkers of the role of credibility
— Frequent use of speculative arguments to undermine credibility
— Failure to apply the correct methodology to credibility assessment
— Lack of consideration of relevant evidence and the placing of unreasonable burdens on applicants to provide supporting evidence

31. In our members' experience these problems continue to persist despite UNHCR led efforts to tailor recruitment, training and accreditation for caseworkers. More worryingly, commentators now talk openly of a 'culture of disbelief' that permeates first instance asylum decision making and which undermines any efforts to resolve the problems outlined above.

32. A manifestation of this culture of disbelief is a reliance on increasingly crude, unreliable and intrusive tools for assessing credibility. These methods include DNA and language analysis for determining nationality and the ill-fated suggestion that those who continue to maintain that they are minors be asked to consent to dental x-rays to assist in age assessment. Thankfully, in the case of dental x-rays in age dispute cases the Chief Medical Officer, Sir Liam Donaldson outlined his view to the UK Border Agency that the medical profession could not rely on the veracity of consent provided by young asylum seekers and urged a more holistic approach to this issue.

33. Although not specifically addressed in this Inquiry, the Society wishes to highlight the treatment of LGBT asylum seekers as a case in point about the extraordinary obstacles to establishing credibility that now exist in this jurisdiction. In 2010 in the case of *HJ(Iran) and HT(Cameroon*[263]*)* the Supreme Court set out a clear test for decision makers in determining status for LGBT asylum seekers, the first limb of which requires

[259] http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/Use-of-country-of-origin-information-in-deciding-asylum-applications.pdf
[260] http://www.amnesty.org.uk/uploads/documents/doc_23149.pdf
[261] International Association of Refugee Law Judges: Assessment of Refugee and Subsidiary Protection claims under the EU Qualification Directive http://www.iarlj.org/general/images/stories/Credo/Credo_Paper_March2013-rev1.pdf
[262] http://www.unhcr.org.uk/what-we-do-in-the-uk/quality-initiative-and-integration.html
[263] [2010] UKSC 31, [2011] 1 AC 596

them to find whether the individual is gay or may be perceived to be gay. Prior to the judgement in *HJ (Iran) and HT(Cameroon)* the vast majority of refusals in this area concentrated upon 'voluntary discretion' as an option for claimants to avoid persecution and therefore forego Convention or humanitarian protection. This has in practice led to a disturbing shift in focus by UK Border Agency caseworkers on disproving or undermining claims to personal identification as lesbian or gay. In turn, this has led to claimants going to extreme lengths to try and meet the new demands of credibility assessment in this area, including the submission of photographic and video evidence of highly personal sexual activity to caseworkers, presenting officers and the judiciary. Such desperate measures by claimants arguably contravene Article 3 & 8 ECHR rights and reflect the arbitrary attitude to credibility that is experienced by this and other groups seeking protection. The Society is aware that detailed evidence on this specific issue has been placed before the Committee by S Chelvan (Barrister, No 5 Chambers). The Society endorses this evidence in totality.

The effectiveness of the 5 year review system introduced in 2005

34. The Society questions the need for a 5-year review system once a claimant has been found to be in need of international protection. As far as the Society is aware the great majority of individuals subject to the review are approved for indefinite leave to remain and therefore, the 5-year delay in this grant only serves to increase feelings of insecurity and 'difference' and to delay full integration. The resources devoted to this policy should be put to better use.

Whether the system of support to asylum applicants (including section 4 support) is sufficient and effective and possible improvements

35. The expectation that an individual asylum seeker or those with dependents should be able to support themselves on the equivalent of approximately 70% of the income support payment made to British residents is wholly unrealistic and inhumane. This also applies to the current levels of Section 4 support available to failed asylum seekers who agree to engage with voluntary return schemes.

36. The Society endorses the views expressed by Refugee Action who have the experience and information to comment authoritatively on this area. In particular, the Society wishes to highlight their view that Section 4 support is wholly counter-productive in that it fails to enable individuals to look after their daily needs yet expects them to be able to make crucial decisions in respect of return, which may entail life or death. It is no surprise therefore that the level of take-up for voluntary return programmes remains so low. The UK experience should be contrasted with the experiences of countries such as Sweden and Canada where voluntary returns account for upwards of 80% of returns. It is clear that forced destitution by way of inadequate support contributes heavily to instances of illegal working and other clandestine activity, making locating and returning individuals time consuming and expensive.

The prevalence of destitution amongst asylum applicants and refused asylum seekers

37. Distrust and a lack of confidence in the quality of asylum determination promotes destitution which continues to be a serious problem. Clearly, the number of Section 4 payments made does not come anywhere near the number of failed asylum seekers who exist in the UK without support and who rely on the 3rd sector or illegal work for their most basic needs. The Society also believe that the real potential for destitution exists at all stages of the process and not just once a claim has been refused. The path to destitution is also accelerated by inexcusable administrative delays in payment of what are barely subsistence living costs.

Whether the UKBA or third sector organisations should be able to highlight concerns regarding legal practitioners to the SRA

38. Organisations and individuals other than clients are already able to inform the SRA of any concerns relating to solicitors carrying out immigration work. More detailed information on the complaints process is on the SRA website:

http://sra.org.uk/consumers/problems/report-solicitor.page

39. Immigration practitioners who are not solicitors are accredited and regulated by the Office of the Immigration Services Commissioner (OISC) who also have a complaints process which UKBA or third sector organisations can access:

http://oisc.homeoffice.gov.uk/complaints_about_immigration_advice/

Law Society of England and Wales

April 2013

Written evidence submitted by Serco (ASY 104)

North-West Region—Cost of Accommodation

Background

In the Committee hearing on 25th July 2013 Mr Stafford gave the Committee the rate per day per person received from the Home Office for the Scotland/NI Region, and the amount Serco paid out to sub-contractors for the service in that region for dispersed accommodation. Following the hearing the Inquiry Manager requested comparable data for the NW Region if possible.

Scotland & NI—Dispersed Accommodation

As noted to the Committee, in Scotland and Northern Ireland we sub-contract the provision of all dispersed accommodation hence we can clearly breakdown, as Mr Stafford did for the Committee, what we receive per person and the amount we pay out to our sub-contractor. The amount we pay them includes maintenance, utilities bills, council tax, the support services provided and other associated costs.

NW Region—Dispersed Accommodation

In the NW Region we do not subcontract to a single entity in the same way. Serco manages the properties directly, and negotiates rental deals with a range of providers (landlords). It is not possible therefore to provide directly comparable figures showing amount received and total amount paid out.

We can, however, supply the following analysis which demonstrates broad averages of the amount we receive per person per day in that region, and the rental cost per property per Service User for dispersed accommodation.

1. On average Serco is paid £9.14 per Service User per day by the Home Office;

2. Across our property portfolio we pay, on average, £8.29 per day per Service User;

3. We also have other costs on top of this £8.29/day rental cost including cleaning, utilities and Service User support.

Caveats

We would caution however that this is not an exact comparator with the figures given for the Scotland and NI Region as a number of caveats apply:

1) As noted in the commentary, unlike the Scotland/NI figures, the NW England figure only covers the cost of rent. This does not include such things as maintenance, utilities bills, the support services provided and other associated costs, all of which are additional costs which Serco meets out of the amount per person received from government. We are unable to provide the breakdown of all of these and thus the total expenditure per person per day.

2) Therefore it is not possible to calculate the precise per person

Serco

July 2013

Joint written evidence submitted by Refugee Action, Freedom from Torture, Amnesty International UK, Asylum Aid, Women for Refugee Women and the Scottish Refugee Council (ASY 105)

We are writing to request an investigation by the Home Affairs Select Committee into recent public-facing activities on the part of the Home Office which we believe provoke negative and misleading representations of asylum seekers and migrants, and risk inciting racial hatred in our communities. Whether as an addendum to the existing inquiry into asylum or as a standalone investigation, we urge the Committee to examine this issue and its implications for the delivery of a robust and efficient asylum system.

There has been a series of activities that we believe are of interest to the Committee. The controversial advertising campaign delivered on the side of vans driven through selected London boroughs[264] has generated displeasure at the use of public money for such an exercise, and has been condemned by members of the coalition Government[265] and the Opposition.[266] The 'stop and search' activity outside London tube stations raises concern about racial profiling and arbitrary immigration control.[267] The @ukhomeoffice twitter feed currently provides a stream of blunt updates on the arrest of as yet untried 'immigration offenders' accompanied by provocative images, while Home Office press releases refer to 'would-be illegal immigrants'—in fact, Syrian

[264] Hounslow, Barking & Dagenham, Ealing, Barnet, Brent and Redbridge
[265] http://www.huffingtonpost.co.uk/2013/07/28/cable-immigration_n_3666286.html
[266] http://www.huffingtonpost.co.uk/2013/08/09/home-office-racist-van_n_3730414.html
[267] http://www.independent.co.uk/news/uk/politics/exclusive-doreen-lawrence-pledges-to-condemn-racial-profiling-spot-checks-in-the-house-of-lords-8742754.html#1

nationals who may have been attempting to seek safety in Europe.[268] We believe that these actions risk creating an atmosphere of hostility and fear and, quite possibly, breach equalities legislation[269] and advertising rules.

The message declared from the side of the poster vans seek to inform 'illegal' immigrants that they are committing a criminal act and that they will imminently be arrested if they do not go "home". The same message seeks to convey to local non-migrant residents that there is a very real and criminal threat in their neighbourhoods. These communications are aggressive, hostile and dishonest and, as such, may constitute breach of the Advertising Code, in particular Section 01 Compliance and Section 04 Harm and Offence. Asylum seekers frequently arrive in the UK without documentation or find themselves in an irregular situation despite having a legitimate claim for asylum which they are too afraid to bring to the attention of the authorities. There are clear procedures for the treatment of asylum applications and it is indecent and untrue to suggest that arrest and deportation would be the immediate and automatic consequence of identification. Such a message is likely to deter asylum seekers from contacting the Home Office for the purpose of making a claim for asylum, and contravenes the spirit of the Refugee Convention and EU Qualification Directive 2011/95. It is apparent that this communication is designed to generate fear amongst migrants and members of the public with little consideration of the possible consequences for access to protection and public order and, as such, it is irresponsible and misguided. It also calls into question whether it is appropriate to have one government department responsible for both asylum decision making and immigration enforcement.

The use of the term 'illegal immigrant' in the context of the press release described above is offensive, inaccurate and misleading and fails to distinguish between the various individuals caught within its net, including asylum seekers, victims of trafficking, and survivors of torture. This group often also includes children and young people for whom the Secretary of State has a positive duty to safeguard and promote their welfare. In a very positive step towards more accurate media coverage, the Associated Press removed the term 'illegal immigrant' from its style guide last year on the basis that 'illegal' can refer only to an action, not to a person.[270] By persisting in the use of this term, as well as similarly hostile terminology and images, the Home Office fails to uphold the prevailing standards in society—established under the Equality Act 2010 and Human Rights Act 1998—and ignores the risk of causing harm or serious or widespread offence. In fact, there is no evidence that an impact assessment was conducted prior to authorisation of the poster van initiative.

We would be very interested to know under what legal powers the Home Office considers it is acting when its enforcement officers stop members of the public to demand proof of identification and immigration status as they have done recently at tube stations in Walthamstow, Kensal Green, Stratford, and Cricklewood, as well as in the Manchester area. The Home Office's own enforcement guidance clarifies that immigration enforcement street operations must be intelligence-led, and only target individuals who are known immigration offenders, where intelligence has shown they are gathered at specific locations at specific times.[271] The guidance further states that the Home Office has made a commitment to Parliament not to carry out speculative immigration visits, which means that immigration officers should not stop and question people randomly in public places. An immigration officer is only allowed to examine someone for the purpose of determining immigration status if they have 'reasonable suspicion' that the individual is an immigration offender, and must never stop an individual based on their 'race-linked features/appearance and/or race'. Any efforts to stop or examine individuals on the basis of racial profiling would constitute a breach of the Equality Act 2010. Even in joint operations led by, for example, the British Transport Police, the rules regarding 'reasonable suspicion' and non-discrimination still apply, alongside strict guidelines concerning referral from the lead agency to the immigration officer. In addition to creating a general atmosphere of fear, there is a real risk that such stop and search activities will deter refugees and asylum seekers from accessing vital services, including therapeutic support, because they are afraid they will be detained.

We appreciate that the Home Office bears a responsibility for delivering the Government's immigration policy, but it is also bound by a positive duty under the Equality Act 2010 to eliminate discrimination, advance equality of opportunity and foster good relations. It has recently been exposed that this policy is operated with a view to creating a 'hostile environment' for immigrants in the UK which raises concerns about compliance with this duty. We consider that recent high profile Home Office activities—designed to communicate a message to the public rather than deliver a policy objective—will have a negative impact on community cohesion and generate hostility towards asylum seekers and migrants. As the department responsible for policing, it is the Home Office that will have to deal with the consequences of increased tensions.

We are pleased that the Equality and Human Rights Commission is now examining the powers used to deliver the poster van and stop and search campaigns, to see if unlawful discrimination has taken place and the extent to which the Home Office has complied with its public sector equality duty. However, we believe that there is an urgent need for greater public scrutiny of the way in which the Home Office carries out its enforcement and communications activities and we call on the Home Affairs Select Committee to conduct its own examination of the issues and activities raised in this letter. The recent Home Affairs Select Committee inquiry into asylum

[268] Home Office news story: Immigration Minister sees Border Force in action, 26 July 2013, available at: https://www.gov.uk/government/news/immigration-minister-sees-border-force-in-action

[269] http://www.theguardian.com/uk-news/2013/jul/26/go-home-ad-campaign-court-challenge

[270] The Associated Press Stylebook and Briefing on media law, 2013. Available at: http://www.ap.org/content/press-release/2013/ap-stylebook-marks-60th-anniversary-with-new-print-edition

[271] Home Office Enforcement Instructions and Guidance, Chapter 31. As available at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/chapter31?view=Binary

had within its remit, consideration of whether the media is balanced in its reporting of asylum issues. We believe that Home Office communications, whether through direct statements or through actions designed to deliver a message, must be relevant to treatment of this issue by the media.

Yours sincerely

Dave Garratt, Chief Executive, Refugee Action

Co-signatories:

Keith Best, Chief Executive, Freedom from Torture
Jan Shaw, Refugee Programme Director, Amnesty International UK
Wayne Myslik, Chief Executive, Asylum Aid
Kate Nustedt, Interim Director, Women for Refugee Women
Gary Christie, Head of Policy & Communications, Scottish Refugee Council

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