

The operation of the asylum determination process

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A legal history of asylum in the UK

The United Kingdom signed the UN Refugee Convention in 1954 and the Protocol in 1968. However, it was not until the 1993 Asylum and Immigration Appeals Act that the Convention was directly incorporated into domestic law. Until this point there was no specific asylum legislation and the asylum system had been governed by immigration laws.¹ Since the 1993 Act, the asylum process has been modified by successive governments. In 1996 the Asylum and Immigration Act was passed by the former Conservative government and the subsequent Labour government has implemented four further Acts of Parliament: the Immigration and Asylum Act 1999, the Nationality Immigration and Asylum Act 2002, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the Immigration Asylum and Nationality Act 2006. The key points of legislation from the Acts are summarised below:

Asylum and Immigration Appeals Act 1993

- Creation of a 'fast-track' procedure for dealing with applications that were judged to be 'without foundation'.
- Allowed detention of asylum seekers whilst their claim was being decided.
- Introduction of fingerprinting of all asylum seekers.

Asylum and Immigration Act 1996

- 'White list' of countries was introduced. These countries were deemed to be safe and their nationals at little risk of persecution.
- 'Fast track' appeals process extended to include more groups of people.
- Introduction of the 'safe third country' concept.

Immigration and Asylum Act 1999

- Existing offences of entering the country by deception were extended. Asylum seekers were able to use the defence that they had good cause for entering the country illegally if they presented themselves to the authorities without delay.
- One-stop procedures were introduced.
- Introduction of the National Asylum Support Service (NASS) to co-ordinate the arrangements for supporting asylum seekers and dispersing them to different areas of the UK.

Nationality Immigration and Asylum Act 2002

- Introduction of accommodation centres with educational and health services for asylum seekers.
- Introduction of regular reporting for all asylum seekers.
- Introduction of an 'asylum registration card' (ARC) containing the biometric data of the asylum applicant.
- Introduction of a list of 'safe countries' and the presumption that asylum applicants from these countries will have their applications certified as 'clearly unfounded'. Certification means that the asylum applicant is denied an in-country right of appeal (i.e. they can appeal against refusal of their application, but only after having departed from the UK).
- The decision to review the status and granting of 'exceptional leave to remain' (ELR).

¹ A number of additional measures were adopted in the 1980s to manage asylum and refugee entry. These included visa regimes, particularly targeted at arrivals from the civil conflict in Sri Lanka in the mid-1980s, and resettlement programmes for Vietnamese refugees from camps in Hong Kong.

Asylum and immigration (Treatment of Claimants, etc) Act 2004

- Entering UK without a passport - Unless the person can show s/he has a reasonable excuse, they are liable to be tried and given a prison sentence of up to two years and/or fined.
- Claimant's credibility - When an immigration officer or the immigration courts is determining whether to believe a statement made by an asylum claimant, they are required to take into account any behaviour by the claimant that they believe is designed to obstruct the handling of the claim, conceal information or to mislead.
- Failed asylum seekers: withdrawal of support - If the Home Secretary certifies that an unsuccessful asylum seeker with family has failed, without 'reasonable excuse', to leave the UK voluntarily, then their asylum support will be stopped.
- Community activities - The Home Secretary has the power to make regulations for the continuation of the provision of accommodation for an unsuccessful asylum seeker, who cannot return home immediately, to be conditional upon her/his performance of or participation in community activities.
- Electronic monitoring - Persons subject to immigration control can be required to cooperate with electronic monitoring.

Immigration, Asylum and Nationality Act 2006

- Employment - The employment clauses primarily focus on reinforcing existing government powers to penalise employers of illegal workers.
- Information - The new Act introduces measures to check individuals' identity, which involves detaining travel documents for inspection and introducing tighter deadlines for the provision of fingerprints – three days for asylum seekers.
- Accommodation of asylum seekers - the Act allows local authorities to provide accommodation under Section 4 of the Immigration and Asylum Act 1999, which was previously only available in areas served by private accommodation providers.
- Refugee integration loans - the Act enables loans to be made to refugees who have been given limited leave to enter or remain.
- Inspection of detention facilities - the Act regularises HM Chief Inspector of Prisons' existing voluntary oversight of immigration short-term holding facilities and escort arrangements by placing it on a statutory footing.

Description of the asylum determination process

Process and procedures

In a formal sense, the Home Secretary is responsible for the determination of asylum claims. However, it is the Asylum Directorate, part of the Immigration and Nationality Directorate at the Home Office, which has the practical task of actually administering the asylum process. Their main offices are based at Lunar House in Croydon; they also have offices in Liverpool, Leeds, Glasgow and Birmingham.

Application for asylum

A person is not officially described as a refugee in the UK until they have been awarded refugee status as a result of the determination of their case. However, technically speaking, the state does not make someone a refugee; rather it recognises them to be one by declaring that their circumstances meet the criteria of Article 1(A) of the Refugee Convention. Article 1(A) defines a refugee as someone who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. Asylum applications can be made either at a 'port of entry', for example at an airport, seaport or trainport (such as Waterloo International) or 'in-country' at the Asylum Screening Unit in Croydon or Liverpool.

Port application

If a person makes a 'port of entry' application then they will usually be given an asylum screening interview by an immigration officer shortly after arrival or asked to return for one at a later date. The purpose of this interview is to establish the identity and nationality of the asylum seeker, their travel route to the UK, the documentation used to travel to the UK and to take the fingerprints and photographs of the principal applicant and his/her dependants. All of this information is subsequently sent to the Home Office.

In-country application

If a person enters the country legally (i.e. by being granted leave on another basis, for example as a visitor or a student) or illegally (by evading immigration control on arrival, for example being concealed in the back of a lorry) and then makes an application for asylum then they are making their claim 'in-country'. Applications must be submitted in person at the Asylum Screening Unit (ASU) of the Home Office in Croydon or Liverpool. In-country applicants are also given a screening interview by the Home Office. They will also be photographed and fingerprinted.

Documentation

Under section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 an asylum applicant is liable to prosecution if they do not present an 'immigration document' at their interview and are not able to provide a reasonable excuse for not having the document.

Application registration card

Both in-country and port applicants will usually be given an identity document – an asylum registration card (ARC), after their screening interview. The ARC is the size of a credit card and contains important information about applicants such as their name, date of birth and nationality. There is also a picture of the applicant and their fingerprints are stored on the card. Fingerprints are checked against existing Home Office records and EURODAC².

² EURODAC is a system that enables EU states to compare fingerprints of asylum seekers, in order to determine which state is responsible for an asylum applicant.

Temporary admission

If the asylum application is made either at the port or in-country and the applicant is not being detained, then they will be given an IS96 paper which grants them 'temporary admission' (TA) into the UK. This allows them to remain in the country whilst their asylum application is being determined. It does not mean that a person has been given 'leave to enter' the UK (i.e. they have not been granted permission to stay in the UK, either on a temporary or permanent basis). Temporary admission is usually subject to certain conditions, such as residing at a particular address and the requirement to report to a designated immigration reporting centre, or police station at specified intervals; usually weekly or monthly.

Statement of evidence form

Applicants who are not processed under fast track procedures are likely to be given a 'statement of evidence form' (SEF) to complete. On this form the applicant is required to write down their reasons for claiming asylum. A more detailed account may also be provided on an accompanying statement. The SEF has to be returned within 10 working days (28 days for unaccompanied minors) and is usually used as the basis for a full (substantive) asylum interview which will be conducted at the immigration office at the port of entry or at the Home Office (in Croydon, Liverpool or Leeds). If the SEF is not returned within the 10 days then the claim is likely to be refused on non-compliance grounds. It remains to be seen whether the SEF will be completely removed under the New Asylum Model, as is currently the case for fast tracked applicants.

Substantive interview

The purpose of the asylum interview is to establish whether or not an applicant is at risk of persecution for one of the five reasons outlined in the Refugee Convention and to assess their credibility. The interviewing officer will ask a range of questions relating to the applicant's history and reasons for flight. It is only in exceptional circumstances that representatives are funded by the Legal Services Commission to attend interviews.³ Applicants who are not entitled to have a funded representative at their interview can request to have the interview taped. Interpreters are provided for individuals by the Home Office. At the end of the interview applicants will be provided with a copy of the notes taken by the interviewing officer. This interview forms part of the evidence for the application and any subsequent appeals.

Induction

An asylum seeker who requires support through the National Asylum Support Service (NASS) may be signposted to an induction centre. This is distinct from the induction procedures which are part of the North West Project and Dover pilot. An induction centre is designed to accommodate asylum seekers until a decision on their NASS application is made and differs from a detention centre. Asylum seekers who are not in need or who are not eligible for NASS support will be given a day-long induction. Those eligible for NASS support will spend longer at an induction centre whilst dispersal arrangements are initiated. At induction centres applicants are provided with information on asylum procedures and on their rights and responsibilities. They are also given a health check and assistance with their NASS application. Following induction, an asylum applicant who is eligible for NASS accommodation is usually relocated to a dispersal region across the UK.

The one-stop procedure

Since October 2000, asylum applicants are required to submit any other grounds for

³ The NAM pilot project in Solihull is funded by the LSC and makes provision for lawyers to be present at the asylum interview.

permission to remain in the UK at the same time as submitting their asylum application. This is part of the 'one-stop procedure' and ensures that any human rights grounds are considered alongside a claim for asylum.

Initial decisions

An initial decision is made by caseworkers or immigration officers who assess the contents of the substantive interview and any other accompanying documents.

Country information

This information is assessed in light of country reports and other documentation compiled by the Country of Origin Information Service (COI Service) in the Research, Development and Statistics (RDS) section of the Home Office. The Country Specific Asylum Policy Team (CSAPT) of the Home Office Asylum and Appeals Policy Directorate produces Operational Guidance Notes (OGNs). These are brief summaries of the political and human rights situation of a particular country and aim to provide guidance on whether the main types of claim are likely to justify the grant of asylum, Humanitarian Protection or Discretionary Leave. Under the Nationality, Immigration and Asylum Act 2002 an Independent Advisory Panel on Country Information (APCI) was established with a remit 'to consider and make recommendations to the Secretary of State about the content of country information'. APCI is composed of individuals and organisations with expertise in country information and/or refugee issues.

Outcomes

There are three possible outcomes of an initial claim for asylum: the applicant will be recognised as a refugee and given five years limited leave to remain, be granted an alternative form of protection (Humanitarian Protection or Discretionary Leave) or their claim will be refused. It is possible to appeal a refused asylum application even if an alternative status is awarded.

Refugee status

Individuals awarded refugee status are able to work, apply for welfare benefits and educational grants and are eligible for domestic fees as students. They are also entitled to make applications to bring over family members under immigration rules. Until August 2005 individuals recognised as refugees were also awarded indefinite leave to remain in the UK. It is now the case that grants of refugee status are for five years and subject to review at the expiry of or during those five years where there is a 'significant' and non-temporary change in the country of origin making return possible. The burden of showing that a person is no longer a refugee is on the Home Office. If it is decided that a person is no longer a refugee then they may still qualify for humanitarian protection (HP) or discretionary leave (DL). If they do qualify, the time spent as a refugee should count in equal measure towards the time a person needs to spend with HP or DL in order to apply for indefinite leave to remain in the country. It is unclear how strictly the '5-year refugee status' rule will be applied as the first cases due for review will not arise until 2010.

Humanitarian Protection

Humanitarian protection (HP) granted before August 2005 was for up to three years and after this date is for five years. It is granted to people who have been refused refugee status, but cannot be returned to their country of origin as they face a serious risk to life or person for one or more of the following reasons: the death penalty, unlawful killing, torture, inhuman or degrading treatment or punishment. Returning people to face such treatment is contrary to the UK's obligations under Article 3 of the European Convention on Human Rights (ECHR). Serious criminals, including war criminals, terrorists or others who pose a threat to national

security and anyone who is considered to be of bad character, conduct or associations are excluded from these provisions. At the end of the period of HP granted, the case will be reviewed in essentially the same way as refugee status. Once an individual has completed five years with HP they can then apply for indefinite leave to remain in the UK.

Discretionary Leave

Discretionary leave (DL) is granted outside the immigration rules in very limited circumstances to people who have been refused refugee status but who do not fulfill the criteria for HP. DL may be granted when the applicant: has an Article 8 claim under the ECHR; has an Article 3 claim under the ECHR only on medical grounds or severe humanitarian cases; is an unaccompanied asylum-seeking child for whom adequate reception arrangements in their country are not available; would qualify for asylum or humanitarian protection but has been excluded; or is able to demonstrate particularly compelling reasons why removal would not be appropriate. DL is granted for up to three years and will be reviewed at the end of that period. At that point it can be extended for a further three years. After six years of DL, an application can be made for ILR. Unaccompanied asylum-seeking children are normally granted DL for three years or until their 18th birthday, whichever is earlier.

The New Asylum Model

As part of the Home Office's five-year strategy '*Controlling our borders: making migration work for Britain*' launched in February 2005, the government outlined a proposal to develop a New Asylum Model (NAM) that would focus on producing a faster and more streamlined asylum process⁴. The Home Office has been processing all claims under the new model since April 2007. The model has three distinct features: segmentation, fast-track processing and case ownership.

Segmentation

Upon an initial screening interview, asylum applicants will be assigned to one of five 'segments' that will determine the future pathway of their claim. The segment is chosen on the basis of the characteristics of their asylum claim. The main factors that will be affected by the segment a claimant is assigned are: speed of claim process; assistance in accessing legal advice; accommodation type; and frequency of reporting to the Immigration Service.

The following segments are proposed:

Segment	% of claims*	Description
1. Third country	7%	Applicants who claimed or could have claimed asylum in another EU country before arriving in the UK.
2. Children	12%	Unaccompanied or accompanied applicants under the age of 18
3. Potential 'non-suspensive appeal' (NSA)	7%	Applications from one of the designated 'safe countries'. The applicant's right of appeal has to be exercised from outside the UK. Such cases are certified as 'non-suspensive appeal' cases.
4. Late and opportunistic	18%	An over-stayer; a claim arising from an immigration refusal; an applicant with extant leave; an applicant who has been picked up by the police or IND; a 'swap-

⁴ Home Office (18 January 2006) Press Release - *The New Asylum Model: Swifter Decisions – Faster Removals*
<http://press.homeoffice.gov.uk/press-releases/new-asylum-model-swifter-decisio>

		over' claim made following the refusal of an earlier claim in which the applicant was a dependent.
5. General casework	56%	Covers all remaining asylum cases

*These figures are from Home Office sampling in 2004 and include dependents.

Fast-track processing

Asylum applicants are fast tracked through the asylum determination process within two weeks if they are from a designated 'safe country', a third country or if their application is considered to fall under the NAM segment for 'late and opportunistic' claims. Fast track processing takes place in three detention centres (Oakington, Yarl's Wood and Harmondsworth). Non-detained fast-track cases are currently being processed in Liverpool, Croydon and Dover.

Segment 1 - Third country cases (fast track)

Applicants identified as 'third country cases' are likely to be detained and, where possible, removed to the appropriate country. The Asylum and Immigration Act 1996 introduced the concept of a 'safe third country' into British law. In 1990, European Union (EU) countries signed the Dublin Convention, which came into force in 1997. This Convention provides an agreed framework to determine which member state is responsible for consideration of asylum claims made in the EU by non-EU nationals. It states that asylum seekers should have their applications considered in the first EU country they reach. In February 2003, a regulation was issued by the EU which establishes the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national. This regulation is known as the Dublin II Regulation and determines the state responsible for processing an asylum application. The EURODAC system of fingerprinting was established as part of this regulation.

As a result of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, a new third country regime came into force in October 2004. Under this regime the Home Office does not have to determine the substance of a claim if they are removing an individual to an EU member state (including the twelve accession countries) or Norway and Iceland. In such situations there is no in-country right of appeal and these countries are deemed safe under the Refugee Convention and European Convention on Human Rights. The Home Office is also able to remove applicants to other third countries that are identified as safe in relation to the Refugee Convention although this is open to challenge by Judicial Review.

Segment 2 - Children

The segment responsible for asylum applications from children came into operation in April 2007 following an intensive training programme for case workers. It is expected that under the NAM unaccompanied asylum seeking children will, for the first time, undergo a similar application process to asylum seeking adults. For example they will be interviewed by a case owner about the substance of their claim if they are 12 years old or over. In theory, a child who has not been identified as one (i.e. an age-disputed case) could be assigned to the fast track process under the 'late and opportunistic' segment. This has been of concern to organisations working with unaccompanied refugee children, including the Refugee Council, who have stated that placing such children in the fast track process will not ensure their interests and rights are protected.

Segment 3 - Potential non-suspensive appeals (fast track)

Applicants who are nationals of one of the countries designated as 'safe' under the Nationality Immigration and Asylum Act 2002 will not have the right to appeal a negative decision on their

case from within the UK if it is certified as 'clearly unfounded'. It is up to the applicant to rebut the presumption that their case is 'clearly unfounded'. If a case is not certified then the applicant will have the right of appeal and if detained, should be released. Such cases are known as 'non-suspensive appeals' (or NSA) cases. There are currently 24 designated NSA countries: Albania, Bolivia, Bosnia-Herzegovina, Brazil, Ecuador, India, Jamaica, Macedonia, Mauritius, Moldova, Mongolia, Montenegro, Peru, South Africa, Serbia and Ukraine. The following countries apply to male applicants only: Ghana, Nigeria, Gambia, Kenya, Liberia, Malawi, Mali and Sierra Leone.⁵ Applicants under this segment are either detained or processed by NAM teams, for example in Liverpool. In general, non-detained cases are normally interviewed on the fifth day after the date of application. If the claim is certified as 'clearly unfounded' then a decision and removal directions will be served by the eleventh working day. These timescales are significantly faster for detained cases, with decisions being made within 3-5 working days.

Segment 4 - Late and opportunistic (fast track)

If the Home Office decides that a claim is late or opportunistic then the applicant can be detained at Harmondsworth or Yarl's Wood on the basis that the case can be decided quickly and processed under the fast track system. Examples of late and opportunistic claims are where an asylum claim is made at the end of an individual's leave to remain in the country or after an application for leave has been refused. The time scales for this segment are the same as the segment for potential NSA cases, i.e. an initial decision is made by the eleventh working day.

Non-detained fast track process

At the North-West Project asylum applicants who made their claim in the Liverpool and Manchester areas are put through an induction process and their claims are decided under fast track procedures. There is also a Dover pilot which covers applications made at the port of Dover or at the Dover Enforcement Unit. Applicants are also put through an induction process and their claims fall under the accelerated process.

Segment 5 - General casework

All remaining asylum cases under the NAM will be interviewed within two weeks of an application, with the initial decision served in person within twenty working days.

Case ownership

A single case owner will have responsibility for a claimant throughout the asylum process from their application to the consequent granting of status or removal. This will mean more face-to-face contact with the applicant and will include an individually tailored 'case management plan'.

The Home Office has recently recruited 25 Asylum Teams to cover the major dispersal areas. There will be four teams in both Central and West London (covering the South East), four in Solihull (Midlands), five in Leeds (North East), four in Liverpool (North West), and two teams each in Glasgow and Cardiff.

⁵ <http://press.homeoffice.gov.uk/press-releases/asylum-apps-continue-to-fall>

Key issues

Home Office decision making: issues of quality, accuracy and consistency

The initial decisions made by the Home Office on asylum applications have been criticised by refugee agencies, legal practitioners and a range of agencies for a number of reasons. What follows is an overview of the main issues identified by observers of the decision making process.

Current initiatives

In 2003, UNHCR was invited to assist the Home Office in improving the overall quality of initial decision making, by auditing the Home Office's procedures and providing recommendations. The first phase of the Quality Initiative Project was implemented in spring 2004 and a needs assessment was carried out which focused on training programmes and the interpretation and application of the Convention. The second phase of the project involved the sampling of around 50 first instance decisions per month. UNHCR also met with Asylum Casework Directorate (ACD) staff including caseworkers. Phase 3 of the project (which ran from February to August 2005) saw the establishment of three Working Groups on the use of 'standard paragraphs' in decision making, the use of testable evidence and establishing the facts of a claim. During this period UNHCR continued to sample decisions and also began a review of interviews. In Phase 4 of the project, which ran from September 2005 to February 2006, the main focus of the work was an audit of interviews which involved the observation of substantive ACD interviews, mainly in Croydon and Liverpool. An 'implementation panel' was also created from Home Office and UNHCR staff to oversee the implementation of recommendations from UNHCR that have been accepted by the Home Office.

Four detailed 'Reports to the Minister' which provide an overview of the findings and recommendations of the Quality Initiative Project have been submitted by UNHCR, which have been published on the Home Office website.⁶ UNHCR has also produced three reports summarising their key observations and recommendations.

Since March 2006, UNHCR has focused on advising the Home Office on the implementation of recommendations they have accepted. UNHCR is also evaluating the decisions that are coming out of the Solihull pilot project and have worked with the Home Office on the Asylum Policy Instruction for caseworkers on the issues of determining credibility. Although the Quality Initiative Project is not open-ended it is likely to continue until at least the end of this year.

In addition to participation in the UNHCR project the Home Office continues to carry out internal quality assurance checks on first decisions and the Treasury Solicitor's also carries out an external assessment of the quality of decisions. Feedback is given to senior caseworkers on the outcomes of sampling and monitoring takes place when it is noted that a 'significant gap' exists between the decisions made by caseworkers and the outcome of appeals.⁷

Much of the evidence detailed below has been taken from UNHCR reports to the Minister. However, organisations and agencies such as the Medical Foundation for the Care of Victims of Torture, The National Audit Office, South London Citizens and the Independent Race

⁶ <http://www.ind.homeoffice.gov.uk/aboutus/reports/unhcr>

⁷ Cousse, M. (2006) *Annual Report 2005/6 of the Independent Race Monitor*
<http://www.ind.homeoffice.gov.uk/6353/aboutus/fourthreportofindependentra1.pdf>

Monitor have also carried out research on the asylum determination process and the findings from these reports will also be included where appropriate.

Application of legal concepts

Research carried out by the Medical Foundation in 2004, which involved the examination of Reasons for Refusal letters from the Home Office and Interview records, concluded that Home Office caseworkers lacked an understanding of the Refugee Convention, and applied law and policy in a selective manner.⁸ In the third report to the Minister by UNCHR a 'slight improvement' between Phase 3 and 4 of the Quality Initiative Project (QIP) in the number of decisions that involve the correct application of the concepts of 'internal relocation' and 'sufficiency of protection' is noted. However, UNHCR observe that the 'misapprehension of key refugee and human rights law and principles remain a concern' (particularly the concept of persecution), as does the failure to distinguish between the Refugee Convention and the European Convention on Human Rights (ECHR).⁹

The application of an incorrect standard of proof when assessing asylum claims is also highlighted as a problematic area of decision making. UNCHR has observed that caseworkers often tend to place unreasonable expectations on applicants and expect them to prove certain aspects of their claim when there is in fact a shared duty between the caseworker and applicant to ascertain the facts of a case.¹⁰

Approaches to evidence

Credibility and plausibility issues

The way in which Home Office caseworkers determine credibility has been subject to much criticism. It has been observed that there are three main ways in which an asylum claim can be found to be lacking in credibility. The first is through the identification of internal inconsistencies in the account of the claimant, the second involves the observation of contradictions between objective evidence and the claimant's factual account and thirdly, the plausibility, reasonableness or truthfulness of the claim may be doubted.¹¹

Legislators have also increasingly sought to guide the decision maker's assessment of credibility¹² and under section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 decision makers are required to take into account certain circumstances when deciding upon the credibility of an applicant. The circumstances include:

- Failure to claim before being notified of an immigration decision
- Concealing information, providing misleading information or causing delay (including failure to produce a valid travel document)
- Failure to claim asylum in a safe country
- Failure to claim before arrest

Research by the Immigration Asylum Service into the assumptions that underpin Section 8 has found that there are a number of 'reasonable explanations' for the behaviour described

⁸ Smith, E. (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.

⁹ UNHCR, (March 2006) *Quality Initiative Project - Third report to the Minister*
http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

¹⁰ UNHCR, *Quality Initiative Project - Second report to the Minister*
<http://www.ind.homeoffice.gov.uk/6353/aboutus/unhcrreport2.pdf>

¹¹ Thomas, R. (2006) *Assessing the credibility of asylum claims: EU and UK approaches examined*. European Journal of Migration and Law 8: 79-96.

¹² Ibid

above.¹³ For example, applicants who have been victims of torture, rape, sexual violence or persecution may be reluctant to disclose their experiences at the earliest opportunity.¹⁴

The 2004 Medical Foundation report notes that inferences drawn from the course and conduct of the applicant's journey to the UK and application for asylum were deemed to be inconsistent and speculative, to have assumed knowledge that the applicant may not possess and to be inconsistent with the guidelines that caseworkers are meant to follow. The report also identified a failure to seek further information and use minor or irrelevant inconsistencies to justify the rejection of whole claims.¹⁵

The use of speculative arguments in Home Office Reasons for Refusal letters often involves the caseworker trying to guess the thought processes of the asylum applicant and deem what is plausible. However, these decisions are usually made on the basis of little or no evidence and without taking into consideration the impact of different political, social and cultural contexts.¹⁶

UNHCR observed a fall in the proportion of decisions that were problematic due to a flawed assessment of credibility between phases 3 and 4 of the QIP. Nevertheless, it was also noted in the third report to the Minister that a significant proportion of decision makers continue to make problematic assessments of the credibility of applicants.¹⁷ There appears to be a tendency amongst some caseworkers to identify a single statement made by the applicant as untrue (usually on weak grounds) and then dismiss the credibility of the rest of the claim as a result.¹⁸ This approach does not take into consideration the fact that UK case law has established a precedent for taking into account uncertain aspects of a claim when considering the overall basis of the case. In other words, decision makers do not have to come to a decision on the validity of *every* aspect of a case and yet caseworkers rarely express uncertainty in their decision making. UNHCR have highlighted this as an area of particular concern when an asylum applicant is not given the opportunity to address what has been flagged as an inconsistency in their case.¹⁹

Research into the recall in the testimony of asylum seekers has questioned what can be regarded as a reasonable degree of error or omission and explored the impact of sleep loss, depression, pain, post traumatic stress disorder and other factors on accurate recall.²⁰ It has been observed that the decision maker is faced with a difficult task when determining whether inconsistencies in the accounts of claimants are the result of misrepresentation and

¹³ Ensor, J. (2006) *Credibility under the 2004 Immigration Act*, Abstracts from a paper given at the Conference 'On Asylum, Migration and Human Rights' of the University of Durham & The Medical Foundation for the Care of Victims of Torture <http://www.ein.org.uk/resources/printfriendly2.shtml?x=214056>

¹⁴ Refugee Women's Resource Project, *Asylum Aid* (March 2006) 'Lip Service' or Implementation? *The Home Office Gender Guidance and women's asylum claims in the UK*, p.84 http://www.asylumaid.org.uk/New%20RWRP/RWRP%20Publications/Gender_GuidanceFeb06.pdf

¹⁵ Smith, E. (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.

¹⁶ UNHCR, *Quality Initiative Project - Second report to the Minister* <http://www.ind.homeoffice.gov.uk/6353/aboutus/unhcreport2.pdf>

¹⁷ UNHCR, (March 2006) *Quality Initiative Project - Third report to the Minister* http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

¹⁸ Ibid

¹⁹ UNHCR, *Quality Initiative Project - Second report to the Minister* <http://www.ind.homeoffice.gov.uk/6353/aboutus/unhcreport2.pdf>

²⁰ Cohen, J (2002) Questions of credibility: Omissions, discrepancies and errors of recall in the testimony of asylum seekers. *International Journal of Refugee Law* 13:3 293-309.

exaggeration or whether they can be explained by other factors.²¹ The Refugee Protection Division in Canada has developed some guidelines for the assessment of credibility in refugee claims to assist decision makers and many of the issues raised in these guidelines are also addressed by the UNHCR reports to the Minister.²²

The use of speculative arguments are not only a reflection of flawed credibility assessments but may also result from the application of an incorrect standard of proof, a failure to use country of origin information correctly and the adoption of a 'refusal mindset'.²³ Observers have commented on a 'culture of disbelief' or 'culture of refusal' that is perceived as prevalent in the Home Office decision making environment and encouraged by legislation such as section 8 of the 2004 Act.²⁴ The Independent Race Monitor has noted that the negative public discourse on immigration and asylum can impact decision makers by encouraging caution and suspicion.²⁵ In the second report to the Minister, UNHCR suggested that a culture of disbelief could also result from 'stress in the form of compassion fatigue and disillusionment'.²⁶

Inconsistency in decision making

A report by the National Audit Office in 2004 observed that the rate of successful appeals is much higher for some nationalities than for others. Examples include Somali and Sudanese nationals where a 38% successful appeal rate was recorded in 2003.²⁷ Reasons for this discrepancy offered by the Home Office are that 'appeal rates are influenced by a complex interplay of factors, including: the country situation; case law; resourcefulness of applicants (for example in producing expert reports); and the ease with which caseworkers can disprove the key issues of claims'. An additional factor has been identified by the National Audit Office who question how reliably caseworkers are able to assess the credibility of applicants where, on the face of it, their claim is well-founded.

The most recent report by the Independent Race Monitor notes that there continues to be a high appeal success rate for applicants originating from African countries. There is some evidence that caseworkers believe that applicants from the same region give similar stories because they have been coached and refusals of initial claims are based on relatively small discrepancies or plausibility issues.²⁸ However, the Home Office has responded to these criticisms by observing that there is not always a direct correlation between the quality of an initial decision and the outcome of an appeal as changing case law and country situations can

²¹ Thomas, R. (2006) *Assessing the credibility of asylum claims: EU and UK approaches examined*. European Journal of Migration and Law 8: 79-96.

²² Immigration and Refugee Board of Canada (January 2004) *Assessment of Credibility in Claims for Refugee Protection*

http://www.irb-cisr.gc.ca/en/references/legal/rpd/assesscred/index_e.htm

²³ UNHCR, (March 2006) *Quality Initiative Project - Third report to the Minister*

http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

²⁴ Ensor, J. (2006) *Credibility under the 2004 Immigration Act*, Abstracts from a paper given at the Conference 'On Asylum, Migration and Human Rights' of the University of Durham & The Medical Foundation for the Care of Victims of Torture <http://www.ein.org.uk/resources/printfriendly2.shtml?x=214056>

²⁵ Cousse, M. (2005) *Annual Report 2004/5 of the Independent Race Monitor*

<http://www.ind.homeoffice.gov.uk/6353/aboutus/independantracemonitor.pdf>

²⁶ UNHCR, *Quality Initiative Project - Second report to the Minister*

<http://www.ind.homeoffice.gov.uk/6353/aboutus/unhcrreport2.pdf>

²⁷ National Audit Office (June 2004) *Improving the speed and quality of asylum decisions*. London: Audit Office. Available at http://www.nao.org.uk/publications/nao_reports/03-04/0304535.pdf

²⁸ Cousse, M. (2006) *Annual Report 2005/6 of the Independent Race Monitor*
<http://www.ind.homeoffice.gov.uk/6353/aboutus/fourthreportofindependentra1.pdf>

have an impact. The 2% difference between the allowed appeal rates for African and European countries is also underlined as being relatively small.²⁹

Use of Country of Origin Information

The Medical Foundation research identified frequent inconsistencies between the country of origin reports and the reasons for refusal given on a case³⁰ and The Independent Race Monitor has observed examples of an overly rigid interpretation of country information being used to refuse claims.³¹ These findings have been corroborated by UNHCR's assessment of the application of country information by decision makers and the agency makes a recommendation that caseworkers should be given proper training in research methodology so that they can learn how to apply country evidence properly.³² It has also been observed that there is an over-reliance on standard paragraphs (both in relation to country information and legal principles), rather than tailoring the reasoning of a decision to individual cases.³³

Use of expert evidence

Failure to give expert evidence (such as medical and country expert reports) due consideration has also been noted as an important issue impacting the quality of decision making.³⁴ UNHCR found that one in five of the initial decisions made by caseworkers during Phase 4 of the QIP failed to take into account relevant evidence presented by the applicant, or their representative, before a decision on the case was made.³⁵

Alternative approaches

Recommendations have been made for the introduction of a determination process that follows an exploratory approach to evidence rather than the more adversarial approach that defined the current system; the Canadian model of using an independent board to determine asylum applications has been cited as an alternative model.³⁶ UNHCR has argued that the process of asylum decision making should be fact-finding and inquisitorial rather than adversarial so that the applicant is given the opportunity to address inconsistencies and contradictions.³⁷

Interviewing practice and technique

The interviewing skills of caseworkers have been criticised by both the Medical Foundation and UNHCR.³⁸ Of particular concern is the lack of preparation by caseworkers before they interview applicants including an insufficient knowledge of country information, lack of familiarity with the key issues and facts of the case or those of related cases.³⁹

²⁹ Home Office (November 2006) *Response to Race Monitor's Annual Report 2005-2006*

<http://www.ind.homeoffice.gov.uk/6353/aboutus/hsracemonitorsannualreport01.pdf>

³⁰ Smith, E. (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.

³¹ Coussey, M. (2006) *Annual Report 2005/6 of the Independent Race Monitor*

<http://www.ind.homeoffice.gov.uk/6353/aboutus/fourthreportofindependentra1.pdf>

³² UNHCR, *Quality Initiative Project - Second report to the Minister*

<http://www.ind.homeoffice.gov.uk/6353/aboutus/unhcrreport2.pdf>

³³ <http://www.ind.homeoffice.gov.uk/6353/aboutus/unhcrreport2.pdf> and Smith, E. (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.

³⁴ Smith, E. (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.

³⁵ http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

³⁶ South London Citizens (2005) 'A humane service for global citizens', *Report on the Enquiry into the service provision by the Immigration and Nationality Directorate at Lunar House.*

http://www.londoncitizens.org.uk/files/Lunar%20House%20Final_Small.pdf

³⁷ http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

³⁸ Smith, E. (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.

http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

³⁹ UNHCR, (March 2006) *Quality Initiative Project - Third report to the Minister*

http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

In phase 4 of the QIP UNHCR observed a number of non-gender appropriate interviews taking place when it would have been appropriate to have a trained interviewer of the same gender conducting the interview. While some caseworkers created a neutral and professional interview environment using appropriate eye contact and responding to the distress of applicants, others adopted a brusque and abrupt tone, displaying expressions of disbelief and appearing distracted. A number of caseworkers were unable to demonstrate the ability to ask open and closed questions effectively and the use of leading questions was widespread. Additionally, in a quarter of all interviews the applicant was not given an opportunity to address apparent inconsistencies or contradictions and this often resulted in speculative arguments in refusal letters. On the whole, more good practice was observed than bad but there are enough instances of poor interviewing technique for it to remain a cause of concern.⁴⁰

The importance of interpreters in interviews has also been emphasised and in around half of the interviews observed by UNHCR the interpreter engaged in exchanges with the applicant that were not translated. A number of instances were also observed where the interviewer's disruptive behaviour had a negative impact on the interview.⁴¹

Training and supervision needs

A need for improvements in the training and supervision of caseworkers has been identified by a number of reports.⁴² The 2004 National Audit Office report recommended the expansion of training programmes to address techniques for avoiding unconscious bias and cross-cultural communication. A need for the provision of on-going specialist training for caseworkers was also identified so that knowledge and skills can be continually updated.⁴³ UNHCR has observed that post-induction training and supervision is essential to ensuring that bad interviewing practice does not become engrained, refugee law is applied correctly and a 'refusal mindset' is countered. It is also identified as an important way of caseworkers keeping up to date with case law and legal developments.⁴⁴ Finally, UNHCR has observed that interpreters also need better training and assessment of their skills and suitability.⁴⁵

Country information

Objective country evidence plays an important role in the determination of asylum claims and particularly in the assessment of credibility as it can provide context and understanding to a claim.⁴⁶ However, a number of concerns have been raised in recent years over the quality and bias of country information. As a result of debates during the progression of the Nationality,

⁴⁰ UNHCR, (March 2006) *Quality Initiative Project - Third report to the Minister*

http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

⁴¹ Ibid

⁴² Cousse, M. (July 2005) *Annual Report 2004/5 of the Independent Race Monitor*

<http://www.ind.homeoffice.gov.uk/6353/aboutus/independantracemonitor.pdf>

South London Citizens (2005) 'A humane service for global citizens', *Report on the Enquiry into the service provision by the Immigration and Nationality Directorate at Lunar House.*

http://www.londoncitizens.org.uk/files/Lunar%20House%20Final_Small.pdf

⁴³ National Audit Office (June 2004) *Improving the speed and quality of asylum decisions.* London: Audit Office.

Available at http://www.nao.org.uk/publications/nao_reports/03-04/0304535.pdf

⁴⁴ UNHCR, (March 2006) *Quality Initiative Project - Third report to the Minister*

http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

UNHCR, *Quality Initiative Project - Second report to the Minister*

<http://www.ind.homeoffice.gov.uk/6353/aboutus/unhcrreport2.pdf>

⁴⁵ UNHCR, (March 2006) *Quality Initiative Project - Third report to the Minister*

http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

⁴⁶ Thomas, R. (2006) *Assessing the credibility of asylum claims: EU and UK approaches examined.* European Journal of Migration and Law 8: 79-96.

Immigration and Asylum Act 2002 the Advisory Panel on Country Information (APCI) was established to revise and make recommendations to the Home Secretary on the content of Home Office produced country of origin information.

In response to recommendations made by the Advisory Panel, responsibility for the production of country reports was transferred to the Country of Origin Information Service (COI Service) in the Research, Development and Statistics (RDS) section of the Home Office in June 2005. It was felt that this department would be seen as more impartial as it does not engage in the development of country specific policy and it also has expertise in research.

The Advisory Panel prepares detailed comments on the content of country information reports. Particular attention is paid to how accurate, balanced, impartial and up-to-date the reports are. Analyses of country reports over the last three years can be obtained from the APCI website. These evaluations highlight issues such as selective or misrepresentative use of source material, exclusion of relevant material and lack of commentary or analysis, relevance of material, out-of-date information, inaccuracy and inconsistency, poor referencing, citation problems and editorial problems. The Immigration Advisory Service (IAS) has produced four detailed reviews of the Home Office country information reports between October 2003 and April 2005. The most recent focuses on the April 2005 country reports and was presented as a submission to the Advisory Panel. IAS observed that the 2005 Country reports were of a much higher standard than those produced in 2003 and 2004 but that concerns remained in relation to basic inaccuracies, poor referencing and the occasional instance of an unbalanced approach to source selection.⁴⁷ The Home Office responded to this report by accepting some of the suggested amendments in relation to examples of 'selective inclusion of material' but observed that most of the objections raised in the report were minor errors that will be rectified.⁴⁸

In the minutes of a recent APCI meeting (31st October 2006) it is observed that many of APCI's concerns about the content of country information have been addressed by the COI service but that additional work needs to be done to ensure that there are more regular updates and that the reports have additional commentary and a greater number of sections.⁴⁹

There is an ongoing debate about the establishment of an independent documentation centre for the provision of country of origin information. Many NGO observers feel that such a centre would increase the actual (and perceived) objectivity of the country information made available to decision makers. They have also argued that there would be fewer disputes at the appeal stage about the reliability and accuracy of information between the appellant and the respondent. However, the establishment of an independent documentation centre would be challenging because the centre would need sufficient resources to produce good quality products. If the government was to provide this funding, then the centre would be open to criticisms of bias.

Quality of legal advice and issues of access

Access to legal advice

Concerns have been expressed over asylum seekers' lack of access to good quality legal advice and representation for a number of reasons. It has been observed in evidence to the

⁴⁷ Immigration Advisory Service (August 2005) *Submission to APCI: An analysis of Home Office country reports* http://www.iasuk.org/module_images/CIPU%20Analysis%20Final%20August%202005.pdf

⁴⁸ Advisory Panel on Country Information (October 2006) *Minutes of 7th APCI meeting* http://www.apci.org.uk/PDF/APCI_7_minutes.pdf

⁴⁹ Ibid

Joint Committee on Human Rights that the dispersal of asylum seekers to various parts of the UK can impact their case because they are unable to locate quality advisers in the area that they are dispersed to and their representation is interrupted.⁵⁰ Asylum seekers may also have difficulties determining which firms are reliable and have the expertise to help prepare a good case.

Unaccompanied children have been highlighted as a group that can be particularly disadvantaged in terms of securing adequate legal representation because they do not have the necessary support or resources.⁵¹ Women can also face barriers to securing appropriate advice because they are often dependents on their partner's claims and may have experiences that could form the basis to a separate claim but they do not feel comfortable disclosing.⁵² Poor, or no, representation will obviously place an applicant at a disadvantage and can result in a case being refused. A Home Office publication⁵³ on the role of early legal advice in asylum applications found that competent legal representation in the initial stages can contribute to good quality decision making.

Regulation

The Immigration and Asylum Act 1999 established an independent public body, the Office of Immigration Services Commissioner (OISC), to regulate immigration advisers and to promote good practice. Immigration advisers do not have to be trained solicitors, although many are. Since 1 April 2005 the LSC has required that all advisers are accredited through the LSC/Law Society accreditation scheme if they wish to provide legally aided immigration advice. Three levels of caseworker have been implemented: Level 1 – Accredited; 2 – Senior; 3 – Advanced. There is also a supervisor standard. The level of advice that an adviser can give is determined by the level of accreditation they have achieved. Nevertheless, it has been observed that the quality of asylum advice varies enormously and although there are some excellent practitioners, poor quality advice is still a major issue.⁵⁴

Publicly funded work

Publicly-funded legal advice and representation is available for asylum cases, as it is for other areas of the law. In England and Wales the legal aid fund is called the Community Legal Service Fund and is administered by the Legal Services Commission (LSC). Free assistance is available throughout the asylum process, for asylum seekers who either have no income, or a very low income. The LSC will only fund advisers that they have a contract with to provide specialist immigration advice.

On 1 April 2004, the Community Legal Service (Scope) Regulations 2004⁵⁵ came into force and the following changes were made:

- A new five-hour threshold was implemented for preparing asylum cases up to the initial Home Office decision [this is 24 hours if claimants are in detention]. Solicitors are only

⁵⁰ Hansard (20 November 2006) *Uncorrected transcript of oral evidence for Joint Committee on Human Rights on the Treatment of Asylum Seekers*

<http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/uc60-i/uc6002.htm>

⁵¹ Ibid

⁵² Refugee Women's Resource Project, *Asylum Aid* (March 2006) 'Lip Service' or Implementation? *The Home Office Gender Guidance and women's asylum claims in the UK*

http://www.asylumaid.org.uk/New%20RWRP/RWRP%20Publications/Gender_GuidanceFeb06.pdf

⁵³ Home Office (June 2005) *The role of early legal advice in asylum applications*, Immigration Research and Statistics Service. <http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr0605.pdf>

⁵⁴ Mayor of London (2005) *Into the Labyrinth: Legal advice for asylum seekers in London*, (Greater London Authority) http://www.london.gov.uk/mayor/refugees/docs/labyrinth_report.pdf

⁵⁵ <http://www.legislation.hmso.gov.uk/si/si2004/draft/20048947.htm>

able to exceed the threshold with prior permission of the LSC on a case-by-case basis, (this provision was implemented in May 2004);

- Legal advisers are required to obtain permission from the LSC to carry out any appeal work. Decisions are made on an individual basis, and a financial threshold is awarded if the LSC approves funding;
- All lawyers and caseworkers doing legally aided asylum work have to be accredited, (this became compulsory in April 2005);
- A unique client number⁵⁶ was introduced in April 2004 with the intention of reducing duplication of work by different advisers;
- The withdrawal of funding for representation at Home Office interviews (except for cases relating to individuals who are minors; suffer from a 'mental incapacity'; are going through fast-track decision making processes at Harmondsworth, Yarl's Wood and Oakington; are being interviewed with the anticipation of a possible criminal charge; or who are alleged to pose a threat to national security).⁵⁷

The Refugee Legal Centre produced a briefing⁵⁸ on these regulations, which includes examples of formal complaints and/or further representations made by the RLC following an Home Office asylum interview, which 'could not have been made but for representation at the interview'.

The effect of legal aid restriction

Restrictions on legal aid have forced many law firms to withdraw from offering advice on asylum claims as they do not believe they can operate effectively within the new restriction of only being able to claim for five hours work. As a result it has been observed that many asylum seekers are unable to continue with their asylum application or mount a successful appeal against a decision that could be overturned, leading to the withdrawal of NASS support and impending destitution.⁵⁹

A Greater London Authority report⁶⁰ into the effects of the legal aid restrictions found that 'lack of access to competent legal advice has caused or contributed to the refusal of asylum claims where protection should have been granted and this, in turn, has contributed to:

- an increasing number of asylum seekers who face destitution at the end of the asylum process with implications for health, for refugee communities who try to support them and for community safety;
- the risk of asylum seekers being removed to situations where they are in danger of persecution.'

Bail for Immigration Detainees (BID) and Asylum Aid produced a joint research report in April 2005 on the effect of the cuts to legal aid.⁶¹ According to the report the key impacts include:

- many asylum seekers being unable to access legal representation;

⁵⁶ http://www.legalservices.gov.uk/docs/immigration_docs/FAQs1stIssue.pdf

⁵⁷ The pilot legal project in Solihull introduced in October 2006 as part of the New Asylum Model provides for a lawyer to attend an asylum interview.

⁵⁸ Refugee Legal Centre (March 2004) *Briefing on the Community Legal Service (scope) Regulations 2004* <http://www.refugee-legal-centre.org.uk/representation250304.doc>

⁵⁹ Refugee Action (June 2005) *Leicester Refugee and Asylum Seekers' Voluntary Forum, A report of destitution in the asylum system in Leicester.* <http://www.refugee-action.org.uk/campaigns/documents/LVSFDestitutionreport.doc>

⁶⁰ Mayor of London (2005) *Into the Labyrinth: Legal advice for asylum seekers in London*, (Greater London Authority) http://www.london.gov.uk/mayor/refugees/docs/labyrinth_report.pdf

⁶¹ Bail for Immigration Detainees (BID) and Asylum Aid (April 2005) *Justice Denied – Asylum and Immigration Legal Aid – a System in Crisis.* <http://www.asylumaid.org.uk/Publications/Justicedenied.pdf>

- legal representation being restricted by bureaucracy resulting in quality being driven down;
- the LSC effectively becoming 'gatekeepers of justice';
- voluntary organisations not being able to absorb the consequences.

Current proposals

In July 2006 the Department for Constitutional Affairs and the Legal Services Commission launched a consultation on the recommendations of Lord Carter's independent review into legal aid procurement. The consultation paper is entitled 'Legal Aid: a sustainable future'⁶² and a summary of the responses received from stakeholders has been produced.⁶³ Proposed changes to the current system include:

- the introduction of 'fixed fees' for immigration and asylum work;
- the incorporation of translation and interpretation costs into the fixed fee;
- the introduction of an enhanced rate for 'complex cases' that require four times the value of fees.

A number of concerns have been raised by legal practitioners and advocacy organisations in relation to the proposals. It is felt that fixed fees and an enhanced rate will deter advisors from taking on cases that are too complex and encourage practitioners to cut corners. There are concerns that the costs of interpreters and translators will not be adequately covered by the fee and representatives will be tempted to rely on untrained interpreters, such as the friends and family of the client, which could impact cases negatively. Finally, it is feared that these proposed reforms will mean that small specialist practices will find that it is no longer viable to work within the LSC funding model and there will be even less quality advisers in the field.⁶⁴

⁶² Legal Services Commission and Department for Constitutional Affairs (July 2006) *Consultation paper - Legal Aid: a sustainable future*

<http://www.dca.gov.uk/consult/legal-aidsf/legal-aid-consultation1.pdf>

⁶³ Legal Services Commission and Department for Constitutional Affairs (November 2006)

Consultation paper - Legal Aid: a sustainable future – analysis of responses

<http://www.dca.gov.uk/consult/legal-aidsf/legal-aid281106.pdf>

⁶⁴ Children's Society (2006) *Response to Legal Aid: A Sustainable Future*

<http://www.childrenssociety.org.uk/NR/rdonlyres/628B577A-C980-4022-9CE4-0822BFB5051A/0/LegalAdvice.pdf>

Immigration Law Practitioners' Association (October 2006) *Response to Legal Aid: A Sustainable Future*

<http://www.ilpa.org.uk/submissions/ILPA%20submission%20to%20DCA%20LSC%20consultation%20on%20Legal%20Aid%20A%20Sustainable%20future.pdf>

Asylum Aid (2006) *Response to Legal Aid: A Sustainable Future*

www.asylumaid.org.uk/Press%20statements/AA%20response%20to%20DCA%20on%20Legal%20Aid%20Reform%20ms_june06.doc

Hansard (20 November 2006) *Uncorrected transcript of oral evidence for Joint Committee on Human Rights on the Treatment of Asylum Seekers*

<http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/uc60-i/uc6002.htm>

Emerging issues under the New Asylum Model

At present, there is a dearth of research and literature on the impact of the New Asylum Model (NAM), mainly due to the fact that the model has only recently been fully implemented and therefore properly evaluated. The issues raised in this section are by organisations and individuals working with asylum seekers who are being processed under the new system. They are predominantly emerging issues and have not been formally documented, researched or evaluated on a national scale.

Some aspects of the New Asylum Model have been welcomed by refugee organisations⁶⁵. The introduction of single case owners, for example, will foster better levels of contact between applicants and the Home Office. It is also believed that accountability for decision making will improve if case owners are responsible for asylum cases throughout the process and with the establishment of a formal programme of staff training and accreditation⁶⁶. In her latest report, the Independent Race Monitor, Mary Coussey, states that it remains to be seen whether the higher level of accreditation and training for case owners will actually improve the quality of decision making⁶⁷.

The introduction of a pilot legal project in Solihull is an additional positive aspect of the NAM. Implemented in October 2006 and funded by the LSC, the legal pilot project offers an asylum applicant pre-interview legal advice and allows a designated solicitor to be present during the asylum interview. This helps to ensure that all the case details and evidence are provided. Refugee advocacy groups would like the Solihull pilot to be replicated and expanded to all NAM teams across the UK.

Despite these positive aspects, refugee organisations have also expressed a number of concerns in relation to the new model. The first is that the implementation of segments will result in claims being pre-determined before they have been given substantive consideration. There are five proposed segment under the NAM: third country cases, children, potential 'non-suspensive appeal' cases, late and opportunistic cases and general casework. The segment an applicant is placed in cannot be challenged and it is unlikely that an applicant is aware of the process and varying experiences associated with each segment. One interviewee stated that segmentation seems to be for the purpose of removal only, adding that segments relating to a particular expertise would have been more appropriate. For example, case owners specifically trained on issues pertaining to asylum seeking women.

Concerns about the speed in which the NAM has been implemented have been raised, particularly in light of wider Home Office restructuring. The Home Office stated that all new asylum applications would be processed under the new model by April 2007. In December 2006, 50% of asylum claims were being processed under the new system. It is not entirely clear how NAM case owners will manage the workload of new asylum cases, whilst incorporating the estimated 400,000 - 450,000 legacy cases from the current system, which the Home Secretary intends to have cleared within five years⁶⁸. Furthermore, it is argued that

⁶⁵ Refugee Council (2006) *Briefing: New Asylum Model*

<http://www.refugeecouncil.org.uk/downloads/briefings/NewasylummodelMar06.pdf>

⁶⁶ UNHCR, (March 2006) *Quality Initiative Project - Third report to the Minister*

http://www.ind.homeoffice.gov.uk/6353/aboutus/QI_Third_Report.pdf

⁶⁷ Coussey, M. (2006) *Annual Report 2005/6 of the Independent Race Monitor*

<http://www.ind.homeoffice.gov.uk/6353/aboutus/fourthreportofindependentra1.pdf>

⁶⁸ Hansard (19 July 2006) *Home Office reform action plan announced by the Home Secretary*

<http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060719/debtext/60719-1012.htm#06071967001673>

some asylum cases are far more complex and complicated than the NAM timescales are designed for.

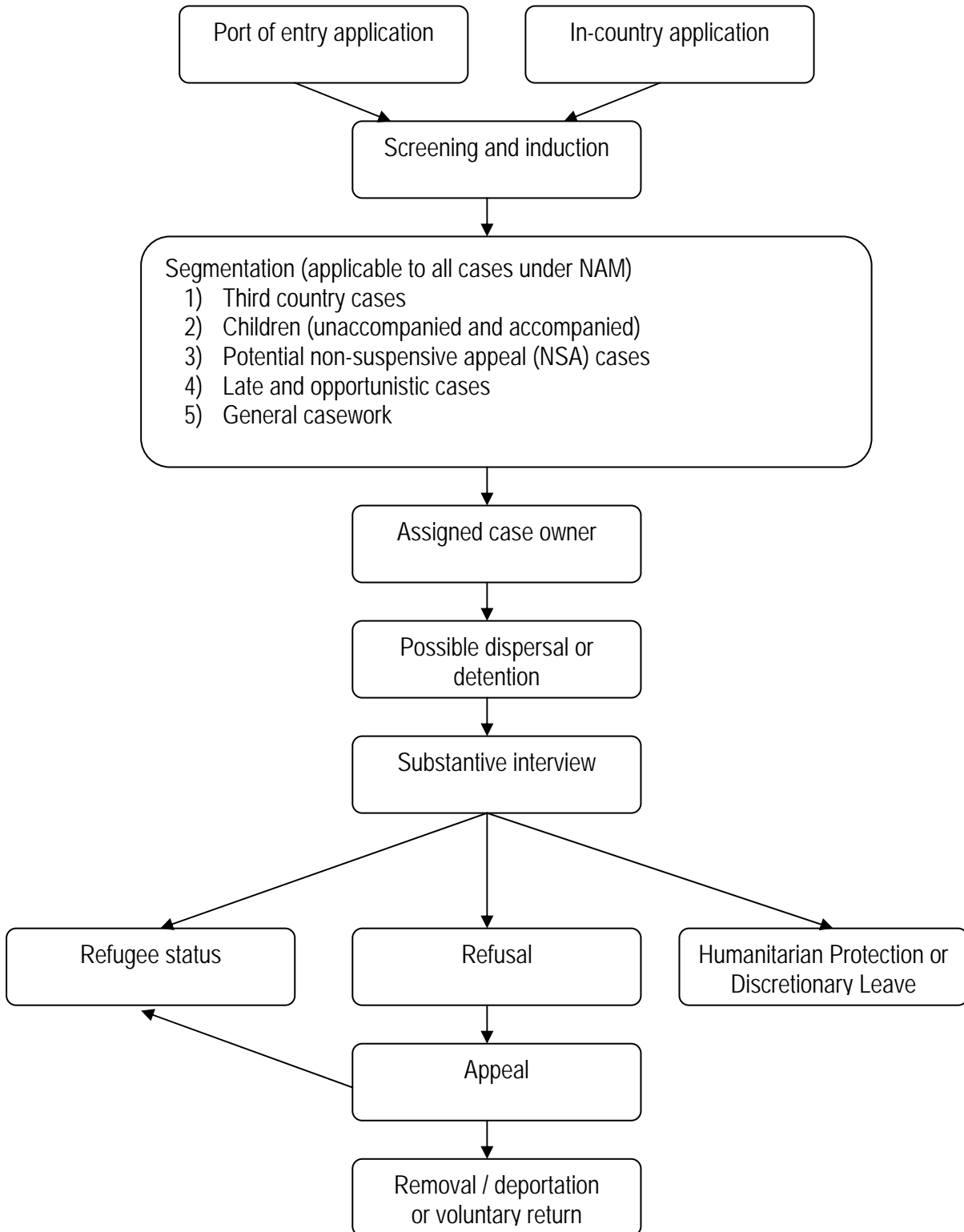
Whilst the pilot legal project in Solihull is largely regarded as a positive aspect of the NAM by service providers, it has emerged that the referral system is not functioning properly, as up to 1 in 10 asylum applicants are not turning up to pre-interview legal appointments with designated lawyers. Applicants, believing that the lawyers are working on behalf of the Home Office, are tending to appoint alternative solicitors through friends and informal networks.

Under the NAM, all asylum applicants are supposed to meet their case owners in person. According to one interviewee, in many cases asylum applicants do not know who their case owners are and it is expected that this will increase as the new model is implemented more widely. Reporting arrangements under the NAM are particularly strict for some segments. In Liverpool, non-detained applicants under the 'non-suspensive appeal' segment are required to report daily to their case owners. If applicants are accommodated within three miles of a reporting centre, they are not given funds for transport. This has proved difficult for claimants with special needs including the elderly, disabled and pregnant women. In addition, the same interviewee observed that no proof is taken that an applicant has presented themselves at a reporting centre. Applicants are not given a receipt and their presence is not formally logged electronically. Refugee groups have stressed that this creates an added vulnerability for asylum applicants, particularly when non-reporting is perceived to equate to non-compliance.

The NAM has added implications for vulnerable groups, in particular women, children and victims of torture. The Medical Foundation has expressed concerns that the speed of the fast track process under the NAM may mean that allegations of torture are not dealt with appropriately, stating that "...we have found cases where allegations of torture have been made and no one has referred them to us. We have been told that the process was just 'too quick' for a referral."⁶⁹ Similarly, it has been argued that asylum seeking women in particular may find it hard to fully express the details of their case within the short timescales. They may also not have adequate time to seek advice about making an application independently of their husband. Under NAM, it is possible that a child could be processed in the fast track system under the 'late and opportunistic' segment. This concerns organisations working with unaccompanied refugee children, including the Refugee Council, who have stated that placing such children in the fast track process will not ensure their interests and rights are fully protected.

⁶⁹ **Bail for Immigration Detainees** (July 2006) *Working against the clock: inadequacy and injustice in the fast track system* <http://www.biduk.org/pdf/Fast%20track/BIDFasttrackReportFINAL.pdf> p.15

Diagram of the asylum determination process



NB: This diagram does not include the appeals process. There will be a separate briefing on the asylum appeals process in September 2007.

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