THE GOVERNMENT RESPONSE TO THE SEVENTH REPORT FROM THE HOME AFFAIRS COMMITTEE SESSION 2013-14 HC 71:

Asylum

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

December 2013

Cm 8769 £6.25

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ISBN: 9780101876926

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2608723 12/13 35231 19585

Printed on paper containing 75% recycled fibre content minimum

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.

We agree that nearly all initial decisions should be taken within 6 months. In 2012/13, 78% of initial decisions were taken within 6 months. In fact we aim to take initial decisions more quickly than 6 months. In 2012/13, we took 54% within 30 days, up from 47% in 2011/12.

Sometimes cases will take longer than 6 months for an initial decision for reasons beyond our control, e.g. when we await expert medical reports or where there are issues relating to national security. But we do accept that we should be taking well over 90% of initial decisions within 6 months. We are currently reviewing the customer service standards that apply in asylum cases as part of UK Visas and Immigration's (UKVI) more general review of its customer service standards. We accept our standards could be clearer for customers and will introduce revised ones as soon as possible. As noted in the response to recommendation 7 below, we are fully committed to ensuring that UKVI's ethos of customer service applies equally to asylum applicants as to other UKVI customers.

The position on the older Legacy cases is different. Nearly all of these applicants will have had a decision or several decisions, but have chosen to contest them with further applications, even after they have exhausted their appeal rights.

The Committee is right to say that the asylum system is under pressure. This is primarily because asylum intake is also rising. Intake in the year to June 2013 was 18% higher than year to June 2012 and in the year to September 2013 it was 14% higher. It is likely that by April 2014 intake will be around 30% higher than it was in 2010. Our European partners are also experiencing higher intake levels. In 2012, intake in Germany and France increased by 56% and 28% respectively on 2010, which is a larger increase than that seen by the UK.

This increased intake is bound to put pressure on casework processing times, given that staffing resources are not increasing. We are seeking to raise our productivity in order to deal with increased intake while meeting service standards.

For the UK, the rise is partly driven by global events, such as the Syrian crisis, but also by increasing numbers of claims from those who have been in the UK for some time. Only 12% of claims are currently being made at port by those arriving here. 46% are made at the Asylum Screening Unit and 42% are made by migrants at the point of arrest by Immigration Enforcement or the police in the UK or by those already in detention. We will look particularly carefully at the credibility of claims made by those who claim protection only when they have been here some time and who have run out of other options for prolonging their stay here, while accepting there may be legitimate reasons for not having claimed immediately on arrival.

We want to offer speedy protection to those who qualify for it. An obstacle to doing so lies in the fact that many claims are unfounded. While some of these claimants will have a genuine fear of persecution, others are simply seeking to use the system to stay in the UK. This is an issue not just at the initial decision stage but also after refusal and appeal. Much casework effort goes into dealing with further submissions, after appeal rights are exhausted, and in removing barriers to removal in the case of failed asylum seekers. This can impact on the time we take on initial decisions, to the detriment, potentially, of genuine asylum seekers.

Therefore, while we accept the Committee's call for timely and thorough processing of claims, there must also be a recognition of the context of rising intake and the resource taken with dealing with unfounded claims and the further representations of failed asylum seekers. We would welcome a clear message from the Committee and stakeholders that those who do not have a well founded fear of persecution should not make an asylum claim, and that those who have failed in their claim should leave the UK. This will help us provide a better service to genuine asylum seekers who must be our priority.

The Committee implied in its press release accompanying its report that the UK had granted asylum to terrorists, and named specifically Abu Anas al-Libi. As the Home Office informed the Committee in advance of the publication of its report, al-Libi applied for asylum in July 1997 but left the country before his case had been determined. His asylum claim lapsed when he left the UK.

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)

The Government does not accept there is a "culture of disbelief", meaning a prejudice on the part of caseworkers. All cases are considered on their merits in the light of the evidence and the law. Caseworkers do not aim to reject claims and there are no targets as regards an ideal refusal or grant rate. On average we are granting asylum in 30% of initial decisions.

The Independent Chief Inspector in his recent report on Unaccompanied Asylum Seeking Children specifically checked for any evidence of a culture of disbelief amongst our caseworkers who make age assessments in disputed minors' cases. He clearly rebutted the view that there is a culture of disbelief and praised asylum staff for their cautious approach to age assessment and for giving the benefit of the doubt when appropriate:

> "Within this inspection, and contrary to the views held by some stakeholders, we did not find evidence of age dispute being a default position or of staff routinely disbelieving claims and failing to give the 'benefit of the doubt'. At all sites, we observed a focus on safeguarding with staff concerned to separate

children from adults and get them promptly into local authority care. Several staff described their approach as treating each child as they would wish their own child to be treated if alone in a foreign country." (paragraph 6.34)

We will strive to ensure that caseworkers always maintain an open mind, by reinforcing this culture through messages from senior management, our training and our quality assurance procedures.

It is of course true, as the Committee points out, that many if not most asylum claims hinge on credibility, in the sense of whether, often in the absence of independently verifiable evidence, the caseworker believes the facts as presented by the asylum seeker. It is right and proper in these circumstances that caseworkers apply a degree of rigour when testing claims, always while respecting the dignity of the claimant and the need for sensitive handling. This can lead to suggestions that the bar is sometimes set too high, or that a different view could have been taken, or that misunderstandings arise in some cases.

Some construe this as a culture of disbelief. However, we suggest that if there was a culture of disbelief, meaning refusal is the default mode, there would be a lower initial grant rate and more decisions would be overturned at appeal. As noted above, we grant asylum in 30% of cases and of those we refuse and which are appealed, we are currently winning 70%. Of the cases we lose at appeal, some are because new evidence has come to light since the original decision was taken, or the judge takes a different view – but we were entitled to take the decision we took. We are not complacent and accept that we must reduce the number of cases which we avoidably got wrong through misapplication of the law or facts or inadequate procedures.

3. The Committee are concerned that the length of time taken 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)

We agree. There are mechanisms in place to notify decision-making units of appeal outcomes, giving reasons for each outcome. Caseworkers are expected to read appeal determinations, particularly when their decisions have been overturned. In addition, as part of the Next Generation Quality Framework, since July 2013, 5% of

these appeal outcomes have been analysed, including the reasons given by the Immigration Judge for allowing an appeal. The results will be compared to the quality assessment of the initial decision and fed back to the decision-maker through their line manager. We agree that individual caseworkers' refusal and grant rates should be monitored for any signs suggesting wayward judgment as compared with the average.

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).

Screening is an important part of the asylum process because, as the Committee notes, it determines the subsequent process pathway. It is in the interests of applicants, particularly vulnerable ones, that screening is done consistently and to a high standard. This is why we aim to conduct screening interviews for those who have not claimed on arrival at port, through the Croydon Asylum Screening Unit (ASU), which has the facilities and expert staff to conduct the process effectively.

Home Office policy does ensure that regional screening is exceptionally available for those applicants where it would be unreasonable to expect them to travel to Croydon. Typically this will be at a local reporting centre or, in exceptional circumstances, an immigration officer can visit the applicant at their place of residence. Existing policy makes clear that applicants whose condition (documented or visually apparent) is such that they cannot reasonably be expected to travel to ASU Croydon will have their claim recorded locally. This includes Unaccompanied Asylum Seeking Children who are unable to travel to the ASU due to the distance involved. There is also provision for those who have a disability or severe illness and are physically unable to travel to submit written notification requesting the registration of an asylum application.

We agree that it is inappropriate for children to be present during an asylum interview given the nature of information that may be disclosed, particularly anything relating to traumatic events, incidents of torture or serious harm or sexual violence. For those who are unable to arrange childcare on the scheduled date of the interview, UKVI will be as accommodating as possible, either by rescheduling the interview for a day when the applicant is able to arrange childcare, if that is the parent's preference, or by the provision of childcare at or near Home Office premises, where this is available. We have amended our invitation letters to include information about childcare provision and have amended our policy guidance to staff to make it clear that such information must be provided when inviting applicants to

an interview. As part of the intention to improve the overall experience, the Croydon ASU has just been refurbished. The new facilities provide increased privacy, including the provision of separate booths for families, with separate space for children whilst their parents claims are being registered, thus reducing the potential stress of needing to take their children to an unfamiliar place and being separated from their children. Physical screens between the applicant and the screening officer have now been removed.

With regards to pregnant women, we do not agree that all pregnant women should be allowed not to travel to Croydon, as most will be fit to do so. The Committee referred to a specific example of a pregnant asylum seeker based in Scotland being required to travel to the ASU in Croydon to be screened and going into labour on the steps of the ASU. We are not aware of any asylum seeker travelling from Scotland who went into labour at the ASU. The only case we are aware of where an asylum seeker went into labour at the ASU was a heavily pregnant woman based in Leicester. A request was made for local screening and that request was agreed under the exceptional criteria on the same day, but nevertheless the applicant decided to travel to Croydon. Soon after arriving, she was taken to hospital having experienced labour pains at the ASU.

We also note the comments made at paragraph 23 of the report, regarding access to the ASU appointment booking line and confirm that we have already improved access for those making an appointment for screening. The ASU appointment telephone line is now monitored via a computer system that allows us to monitor the peak periods and to allocate additional officers when the lines are busy. In the calendar year to date 79.3% of the calls made to the ASU line were answered in less than 3 minutes. The number of complaints received due to the inability to get through via the telephone line has dropped to zero as at week ending 11 October 2013, and is a clear indication of the much improved service that the ASU now provides.

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)

We agree. The Home Office Interpreter Operations Unit (IOU) has 2,481 interpreters currently on the database covering 199 languages and 47 dialects. All interviews of non-native English speakers are carried out through interpretation, unless applicants indicate that they are content to proceed in English. If at any time thereafter they decide they need an interpreter, the interview is stopped and rearranged with a

suitable interpreter at a later date. Furthermore, interpreters are allocated on the basis of qualification not nationality.

Applicants sometimes object to an interpreter being of a different nationality but we do not accept this should be a pre-condition. The issue of dialect has been raised a number of times over the years but without any evidence to support the contention that it is a real issue. Where there has been linguistic evidence to prove significant differences such as Indian Punjabi and Pakistani Punjabi these have been separated on the database and suitably qualified interpreters listed. In most cases however we do not accept that regional linguistic variations constitute a barrier to understanding.

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).

The Government introduced a requirement for failed asylum seekers to lodge further submissions in person in October 2009. Those who claimed asylum before 5 March 2007 are required to make further submissions by appointment and in person in Liverpool, but anyone who claimed asylum on or after March 2007 is able to make further submissions at a specified reporting centre in the region they reside. There are also specified exceptions for those unable to travel for medical reasons set out in our published policy on further submissions available on the Home Office website.

We believe it is appropriate for failed asylum seekers who have exhausted all avenues of appeal to be required to attend in person if they wish to make further submissions. This allows us to minimise the risk of fraud by checking the identity of those making further submissions and maintain contact with individuals at the end of the asylum process to ensure their return through voluntary or enforced measures where the additional information does not given rise to protection needs.

The requirement to attend in person also mitigates against the risk of individuals making further submissions purely to frustrate the system and to avoid removal. We believe such a requirement partially discourages that kind of abuse and helps the Home Office deliver a more efficient system so that those who are genuinely in need of our protection get it without unnecessary delay.

Applicants are given every opportunity to provide evidence in support of their claim throughout the asylum process. Whilst we recognise that it can sometimes be difficult to disclose traumatic events and that further evidence may come to light later, it is vital that all relevant information is provided as early as possible in the process so that caseworkers can properly consider it to reach an informed decision. Those who are found not to need international protection, who do not have any other basis to remain here and have exhausted any appeal rights are expected to leave the UK.

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)

We agree. Asylum Casework Directorate (ACD) is committed to improving its customer service as part of UK Visa and Immigration's (UKVI) commitment to a more customer focussed approach. We are committed first to getting the basics right; We will review how our customers are able to contact us; the quality of the standard information we give them; and the ease of making complaints and our handling of them. Beyond this, our North East Yorkshire Humber region has obtained Customer Service Excellence accreditation and we intend to seek CSE accreditation for the Asylum Screening Unit in 2014 as part of UKVI's commitment to customer service. We will roll this out to other teams as soon as possible.

In October, UKVI held a week dedicated to customer service, to understand better the needs of our customers and partners and to help us provide the best service we can. This was part of our National Customer Service Week. During that week, ACD carried out a variety of activities including a number of customer satisfaction surveys in its various business locations. We also invited stakeholders including Freedom from Torture's 'Survivors Speak Out' network, Refugee Action and Clearel to come and speak to us about the work they do and how we can better work with one another and provide a better service to clients. The findings from that week's activities are being fed into our asylum change programme.

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)

A new Asylum model was announced by UKBA earlier this year but has not been implemented since the change from UKBA to UK Visas and Immigration. A major part of the model was the replacement of Higher Executive Officer (HEO) grade caseworkers with Executive Officer (EO) ones, to be achieved through a formal restructuring process. In September, the new director of Asylum announced, in the light of staff departures and uncertainty caused by the restructuring announcement, that his priority was to stabilise the operation. He said that the formal restructuring process would not be commenced and that we wanted to retain our current staff in post and to recruit replacements for those who had left. New staff, at EO grade, are being recruited. In future caseworking will be carried out at both EO and HEO grades, with the concept of junior and senior caseworkers.

Going forward, UKVI's asylum business model will be based on four main elements. First, we are replacing the regional structures inherited from UKBA with a national system. For example, asylum support and post appeal rights exhausted decision-making will be run through national not regional commands, to increase consistency of approach and outcomes.

Second, we shall seek to move away from the approach of asylum case ownership by a single caseworker located in the same region as the applicant. We shall route interviews and decisions to wherever we have capacity and expertise to do them, and shall create centres of thematic expertise. For example, all English National Referral Mechanism trafficking conclusive grounds decisions are now being taken in Leeds (the Cardiff and Glasgow teams will carry out Welsh and Scottish decisions), though the interview may have taken place elsewhere. Furthermore, our Newcastle asylum office has completed Early Legal Advice (ELAP) decisions, where the interview was taken in Solihull.

Third, we shall seek to streamline decision-making, e.g. by writing more concise, user-friendly refusal letters and keeping interviews as short as possible. Straightforward grants should be made very quickly. At the same time we shall keep a strong focus on the quality of decisions made through quality framework and training.

Fourth, we shall use continuous improvement techniques and modernise office practice. For example, we want to reduce the large quantities of paper in the system which militate against prompt retrieval and movement of files.

We agree that cases may need to be moved between pathways or appropriately skilled staff as necessary as a decision proceeds.

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)

The Sri Lanka Country Policy Bulletin, which the Committee refers to, was published on 30 November 2012, three weeks before the UNHCR Eligibility Guidelines for "Assessing the International Protection Needs of Asylum Seekers from Sri Lanka" were released, on 22 December 2012. It was the Country of Origin Information (COI) Bulletin: "Treatment of Returns", which was released on 20 December 2012. This is an information document, not a guidance product.

The UNHCR guidelines, as well as material being submitted to the courts for a new country guidance case, were fully considered but a decision was taken not to alter the existing policy before the courts had taken a view on the issue of returns to Sri Lanka. On 5 July 2013 the Immigration & Asylum Upper Tribunal promulgated its findings in the Sri Lankan country guidance case of *GJ & Others (post civil war: returnees) Sri Lanka [2013] UKUT 00319 (IAC)*, heard between February and April. On 31 July the Home Office published a new Operational Guidance Note (OGN) for Sri Lanka reflecting the Tribunal's findings in the case of *GJ & Others*, which considered a range of evidence including the UNHCR eligibility guidelines. Our updated OGN makes extensive reference to the UNHCR Eligibility Guidelines.

We already ensure that all our products contain reference to the latest UNHCR publications on the relevant country where appropriate and we are considering if there is a way to do this more quickly in future when there is an important new publication, such as UNHCR guidelines. In our current review of the country information and policy product range, we are considering whether we can provide a more up to date service to decision makers when there is an important new publication, such as UNHCR guidelines. Decision makers also have access to an information request service which provides responses to specific country-based enquiries.

Regarding the second aspect of the recommendation, we already liaise with UNHCR and are aware of new guidelines being produced. However, UNHCR do not provide us or other countries with planned publication dates in advance.

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).

We accept the recommendation. We are considering how to ensure that the work on country information and country policy is aligned to provide readily accessible, up to date guidance, that supports caseworkers in making the right decision. We aim to be able to produce and test guidance in a new format next year.

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)

The Government is committed to making the asylum system more gender-sensitive and has made significant progress in recent years, including putting in place new enhanced guidance, supported by high quality training for all decision-makers.

The Home Office is working on a number of other initiatives in light of the far reaching commitments it made in the Government's Violence Against Women and Girls Action Plan, including a pilot of referrals of victims of sexual and gender based violence to the appropriate services, and regular audits of decisions in gender-based cases. These initiatives reflect the fact that the Home Office takes very seriously the needs of women who have been the victims of sexual and domestic violence. The Government does not, however, accept that it is unfair and inappropriate to apply the same probative criteria in cases involving persecution by state and non-state actors. An asylum seeker is required only to demonstrate that there is a reasonable degree of likelihood of their being at risk of persecution. The Government will continue to work, however, to ensure that its decision-makers are supported in making high quality decisions in gender – and all other – cases.

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)

Asylum caseworkers are required to carefully consider every asylum claim on its individual merits to decide whether there is a need for international protection. It is for an applicant to establish that there is a real risk of persecution, inhumane or degrading treatment on return and evidence is provided primarily through oral testimony at interview. In LGBTI cases, caseworkers are expected to explore an applicant's realisation and experience of their sexual orientation, development of their identity and experiences in their own country and in the United Kingdom.

The Home Office does not permit caseworkers to ask prurient questions about sexual matters or require applicants to produce sexually explicit material in support of their claim. An asylum seeker is required only to demonstrate that there is a reasonable degree of likelihood of their being at risk of persecution. However, if they are claiming to be at risk on the grounds of sexual orientation, it follows that they will need to establish that they are, or are perceived to be, of the orientation in question. We try to do this as sensitively as possible.

We provide comprehensive guidance to caseworkers on how to properly assess credibility in asylum claims. This is supported by supplementary instructions on gender issues, sexual orientation and victims of torture or serious harm. All caseworkers undertake extensive foundation training, which includes training on the assessment of credibility and have received dedicated training on gender issues and sexual orientation (this has now been incorporated into the foundation training). The guidance and training were produced in conjunction with corporate partners who include (in the case of sexual orientation) Stonewall, the UK Lesbian and Gay Immigration Group and the UNHCR.

The Government recognises that assessing credibility is a challenging area for caseworkers and we continue to work closely with our corporate partners to drive continuous improvement. We are already in the process of developing revised guidance and training to caseworkers on credibility assessment and we are committed to ensuring our policy is reflected in practice through the Next Generation Quality Framework and robust performance management where caseworkers fail to properly apply guidance.

We have changed our guidance in this area to ensure that we do not remove individuals who have demonstrated a proven risk of persecution on grounds of sexual orientation.

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 protect the rights of LGBTI asylum seekers. (Paragraph 63).

We agree. With specific reference to LGBTI related claims, there are further instructions relating to claims from some of the States designated under section 94(4) of the Nationality Immigration and Asylum Act 2002. Where there is strong objective evidence that members of the LGBTI community would be at risk of persecution in these countries, a grant of asylum would be appropriate. This is in addition to the normal safeguards, as follows.

All countries designated under section 94(4) of the Nationality Immigration and Asylum Act 2002 must meet the two part test in section 94(5). Firstly, that there is in general no serious risk of persecution of those entitled to reside in that State or part of it and secondly that removal to that State or part will not in general contravene our obligations under the European Convention on Human Rights. Asylum and human rights claims from nationals of a State designated under section 94(4) are always considered on their individual merits and would only be certified if the claim is clearly unfounded. Special consideration is given to all cases based on sexuality or any other of the Convention reasons, in accordance with leading case law, whether the country is designated under section 94(4) or not.

Clearly unfounded asylum claims from the countries designated under section 94(4) of the Nationality Immigration and Asylum Act are bound by legislation to the non suspensive appeals (NSA) process. Those from States that have not been designated may be certified as clearly unfounded on a case by case basis having considered the individual merits of the claim. The definition of “clearly unfounded” is based on a House of Lords Judgment in 2002. A “clearly unfounded” claim is one that is so clearly without substance that it is bound to fail because even when we accept all aspects of a person’s claim they would not qualify as a refugee.

Particular care is taken to ensure that initial decisions on claims made by those from designated states are correct. All such decisions are undertaken by staff who have undergone specific additional training on NSA certification and have been accredited to make decisions on NSA claims. Each and every decision is approved by a trained and fully NSA accredited Senior Caseworker before being served.

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)

The Home Office takes care to ensure that cases are accepted into the Detained Fast Track process (DFT) only after careful scrutiny against its set criteria. Where

sufficiently reliable information is available that indicates an applicant is unsuitable for the process, they will not be entered into it.

Once entered into DFT, all cases are subject to regular reviews, at which suitability continues to be considered. If information showing that an individual is not suitable comes to light only after entry, it is right that the Home Office should release them from the process. Most of those released pre-decision or during an appeal process are released on the basis of new information coming to light either just before or on the decision or hearing day. This is not indicative of a flaw in the selection process, but of the active scrutiny given to the question of suitability.

A regular feedback process is in place between the DFT operational team and the National Asylum Intake Unit (NAIU), the unit which makes the decisions to enter cases into DFT. If a case is released from DFT because it is unsuitable for the process, the Home Office will seek to learn from the case, and to improve its selection decisions and processes, to better protect those who may be particularly vulnerable, and to ensure that the DFT process is operated more efficiently.

The Home Office will continue to make every effort to ensure that only appropriate cases as per the selection criteria are entered into the DFT process and that once in detention all cases are regularly reviewed, but we will always release in cases where, following an ongoing review, detention is no longer considered the appropriate recommendation.

The HASC's comment that "a third of those allocated to the DFT are wrongly allocated" appears to be based on the Independent Chief Inspector's Thematic Inspection of DFT of 23 February 2012. Although he reported that 30% of cases had been released from the process, he did not attribute this total to incorrect allocations to the process. His data provided a breakdown of reasons for release, including some unconnected to suitability considerations and so also not indicative of flaws in the selection process. These cases included those who were released from detention due to protracted judicial review proceedings once they had exhausted their statutory appeal rights, or where they were released due to delays in obtaining a travel document for their removal.

John Vine's Report accepted that "the screening process, however tailored to the specifics of the DFT, cannot fully prevent unsuitable people from being placed in the DFT. Inevitably there will be unforeseen circumstances that result in the vulnerability of a person once in detention (e.g. health deterioration) and no amount of attention paid at the start of the process to help identify unsuitability could prevent these instances".

As a result, we do not believe a service standard, per se, is appropriate. However, we will publish the number of subsequent releases per year.

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)

A joint project sponsored by the Home Office, Ministry of Justice and the Legal Aid Agency, had been running since November 2010 in the Midlands and East of England. This has now concluded.

The project was undertaken to test whether front loading the asylum system, allowing greater time and opportunity for applicants to obtain legal advice and gather supporting evidence, would reduce the overall costs of the process across government (including legal aid). The proposition was that these savings could be realised through identifying individuals who should be granted protection earlier in the process and thereby reducing appeals and the associated costs to Legal Aid, Tribunals and Home Office. The intention was also to improve the quality of the decision making process, whilst also developing a cultural change from an adversarial system to one of greater collaboration.

The report containing the outcomes and findings has been published on the UK.gov site and reviewed by Ministers and considered along with the recommendations of the Early Legal Advice Project (ELAP) Board. The majority view of the ELAP Board (which included representatives from the Ministry of Justice (MoJ), Legal Aid Agency (LAA), HM Courts and Tribunals Service, UNHCR and Refugee Council) was that the process did not have the significant impact on key indicators that was expected and it agreed that it was not feasible to roll-out the ELAP format nationally or to further test its principles. In particular, there was no reduction in the number of appeals against refusals, the allowed appeal rate or onward appeal rate.

However, it was agreed that there is positive qualitative evidence of cultural change in the working relationships between asylum decision-makers and legal representatives. Most notable is the effective collaboration of these parties when dealing with more complex cases. We are committed to investigate further how this aspect, and the issue of triaging more complex cases so they are appropriately dealt with, can be implemented into the Asylum Operating Model.

We agree that the provision of timely and accurate advice to asylum seekers is important both for the customer and the Home Office in terms of securing good outcomes and avoiding unnecessary errors and misunderstanding. This is why we have reviewed the advisory services we currently fund to ensure that asylum seekers have good information about how to access the system and are aware of their responsibilities and entitlements. Following the review, we have carried out a competitive procurement for the advisory services for children, asylum support

applications and general advice for adults. We have announced that the British Refugee Council has been awarded a grant to operate a Children's Panel (in England) in support of unaccompanied asylum seeking children, and that Migrant Helpline Ltd has been awarded a grant to provide independent advice and guidance about the asylum process to adult asylum seekers and their dependants throughout the UK. A procurement exercise to facilitate access to asylum support remains ongoing and a further announcement will be made in due course. The new grants will take effect from 1 April 2014.

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).

Legal aid is a fundamental part of our justice system but resources are not limitless. Legal aid is paid for by the taxpayer and at all times we must strive to ensure that public confidence is maintained in the system. As with any other public service, legal aid must be fair to the people who use it but also fair for the taxpayer who pays for it.

The Government has carefully considered the responses to the consultation. We continue to believe that in principle, individuals should have a strong connection to the UK in order to benefit from the civil legal aid scheme and that the residence test we have proposed is a fair and appropriate way to demonstrate that connection.

Therefore we will proceed with our proposal that applicants for civil legal aid will need to be lawfully resident in the UK, Crown Dependencies or British Overseas Territories at the time they apply and have resided there lawfully for at least 12 months in the past.

We have proposed that asylum seekers, children, and victims of domestic violence or human trafficking will be exempt from the residence test for all civil proceedings. This is because, by virtue of their circumstances, they tend to be amongst the most vulnerable in society. By an asylum seeker we mean a person seeking refuge from their country of origin and claiming rights described in paragraph 30(1) of Part 1, Schedule 1, Legal Aid Sentencing and Punishment of Offenders Act 2012. This includes rights to enter and to remain in the United Kingdom arising from the Refugee Convention.

The Legal Aid Agency (LAA) is committed to ensuring a good quality service. Quality is assured through various strands of work that we undertake with legal aid

suppliers. The quality of processes is ensured through the requirement of all bidders for legal aid contracts to hold the relevant Specialist Quality Mark or the Lexel standard. The standards must be held prior to award of contract and throughout the lifetime of a contract.

The quality of advice is ensured through certain accreditation standards, where set. In the immigration and asylum category, accreditation is one of the most stringent standards and must be obtained by all supervisors and all caseworkers. This requirement has helped to improve quality, by testing directly the competence of individuals in Immigration and Asylum law, rather than relying on their possession of a more general professional qualification. Once a provider holds a contract, quality of work undertaken can be checked through audits.

Legal aid work undertaken must meet a number of contractual key performance indicators, which include criteria such as beneficial outcomes for clients at appeal and cost of work not falling significantly below the fixed or graduated fee. We also set additional contractual service features which include quality levels such as a minimum supervisor ratio of one supervisor for every four caseworkers.

We believe this combination of quality controls enables effective monitoring of quality. Where the work is not of an appropriate quality, this is taken seriously by the LAA and sanctions may be applied, including the possibility of ending the contract.

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)

The Government notes this recommendation which is directed at independent authorities. We will draw it to their attention.

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.

We do not agree with the suggestion that failed asylum seekers should be treated, for the purposes of asylum support, in the same way as those who have yet to

receive an initial decision. Failed asylum seekers can reasonably be expected to avoid the consequences of destitution by returning to their own countries. The Home Office meets the cost of the flight and provides generous reintegration assistance. Section 4 support is an appropriate safety net for the minority that encounter a temporarily barrier to voluntary return, for example, because they need time to obtain the necessary travel documents from their national embassy. We make an exception for failed asylum seekers where there are children in the household. Section 95 support continues even if the claim is rejected in order to safeguard the welfare of the children. The Government does not believe that support should routinely continue in other cases.

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.

We would welcome any investigation by the Independent Chief Inspector of this issue. Statistics on appeal outcomes are collected by the Asylum Support Tribunal. The latest statistics, which cover the period 29 October 2012 to 16 September 2013, show that 41% of the appeals decided were allowed (not 82% as suggested in paragraph 81 of the report). We are already looking at the reasons why appeals are allowed. In some cases this is because the person only provides the information needed to prove they are entitled to support after the negative decision.

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.

The Home Office already has in place a policy that support is not discontinued until a refugee has been given the opportunity to enrol for and receive a Biometric Residence Permit (BRP). A BRP is the key document needed to apply for mainstream benefits. In most cases, this will mean that support is not discontinued until the BRP has been issued to the Refugee. However, we will not continue support indefinitely those who fail to comply with our instructions and do not enrol

their biometrics when advised to do so. A further 28 days' notice is then provided before asylum support actually ceases.

Further work is being done to ensure that officials who consider applications for benefits understand and accept the documents issued by the Home Office, and to ensure applicants have access to the right information to prevent any unnecessary and avoidable delays. DWP has confirmed its intention to undertake continuous improvement work in this area with the Home Office to ensure the transition from asylum support to mainstream benefits operates as smoothly as possible and a DWP lead contact is now in place. The changes are being carefully monitored in partnership with the main voluntary sector groups working with refugees. We prefer to review the outcome of this work before considering any further changes.

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.

There have been some changes to access to language classes by other groups, but the changes have not significantly affected refugees. Refugees are still provided with funding to attend classes if they can demonstrate that learning English will help them obtain work.

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).

We agree that sub-standard housing should not be provided to asylum applicants and that COMPASS service users should receive a timely response to problems raised.

The COMPASS contract lays down requirements for accommodation standards and for the receipt of enquiries and complaints from service users. The providers are contractually required to provide safe, habitable, fit for purpose and correctly equipped accommodation to comply with relevant mandatory and statutory requirements in relation to housing, including the Housing Act 2004 and the Decent Homes Standard. All contracts include detailed guidelines on the process which the provider must follow when they receive a complaint or when an accommodation

issue is brought to their attention. This includes the following specific performance measures in terms of response times:

- Defects classified as immediate require remedy within 2 hours of notification.
- Defects requiring emergency action must be dealt with within 24 hours.
- Urgent defects must be dealt with within 7 days and
- Routine defects must be dealt with within 28 days.

In response to concerns raised by service users and Local Authorities, the Home Office implemented its own inspection programme. Approximately 40% of accommodation provided to asylum seekers under the contract has been inspected, including properties that Clearel, G4S and Serco took on from previous providers. The aggregated results of the inspection programme to date show that the majority of properties were found to be safe, hospitable and fit for purpose, and that a third of properties were found to be compliant with the requirements of the contract. Approximately 2% of properties were found to have defects requiring immediate rectification, 21% required remedy within 24 hours and 45% of properties had defects that required attention within seven days.

To put this in perspective, many of these defects would not adversely affect the health or safety of the occupants, although we absolutely require defects to be remedied in accordance with the contractual standards. Comparison of aggregated findings since the start of our inspection programme indicates that standards overall have improved, the numbers of compliant properties is increasing and there has been a reduction in the number of properties in the immediate, emergency and urgent categories.

Where property standards fell below those required under the contract, the providers have taken the appropriate action to remedy the defects.

Where providers fail to meet contractual standards the Home Office will take appropriate action. Where necessary, this includes applying service credits in accordance with the agreed contractual arrangements. This amounts to a financial rebate to the Department and can be up to 15% of monthly invoice value.

The National Audit Office is reviewing aspects of the COMPASS contracts and the Home Office will review carefully any findings on quality of provision and arrangements for ensuring accommodation meets the contractual standards. This report will be based on evidence from the providers, the Department, key stakeholders and a representative sample of service users.

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)

We agree. Providers are required by contract to ensure that their staff (including volunteers and sub-contractor agents) are adequately trained in customer care and cultural awareness and that they conduct themselves in a polite, sensitive, respectful, and professional manner.

We will discuss the Committee's recommendation with the suppliers.

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).

The Home Office is cooperating fully with the National Audit Office's inspectors and will take all necessary steps based on their findings.

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ISBN 978-0-10-187692-6