



House of Lords
House of Commons
Joint Committee on
Human Rights

The Treatment of Asylum Seekers

Tenth Report of Session 2006-07

Volume II- Oral and written evidence

Ordered by The House of Commons to be printed

22 March 2007

Ordered by The House of Lords to be printed

22 March 2007

HL Paper 81-II
HC 60-II
Published on 30 March 2007
by authority of the House of Commons
London: The Stationery Office Limited
£35.00

Joint Committee on Human Rights

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Oral evidence

Taken before the Joint Committee on Human Rights

on Monday 20 November 2006

Members present:

Mr Andrew Dismore, in the Chair

Judd, L
Lester of Herne Hill, L
Plant of Highfield, L
Stern, B

Nia Griffith
Dr Evan Harris

Witnesses: **Ms Kathryn Cronin**, Garden Court Chambers, Immigration Law Practitioners' Association Executive Committee Member; **Mr Jago Russell**, Policy Officer, Liberty; and **Ms Sonia Omar**, Human Rights Training Officer, Education Action, examined.

Q1 Chairman: Good afternoon, everybody. This is the first of our formal evidence sessions in our inquiry into the treatment of asylum seekers. Welcome back to Jago, who is now the subject of scrutiny instead of being the scrutiniser. We are joined by Kathryn Cronin from Garden Court Chambers, and the Immigration Law Practitioners' Association; Jago Russell, who is a Policy Officer from Liberty; and Sonia Omar, who is a Human Rights Training Officer from Education Action. Welcome to you all. Does anybody want to make a short opening statement or comment before we begin? We have obviously had written evidence. I think we will perhaps start with Jago. What do you see are the key human rights obligations internationally which may be being breached in the way that asylum seekers are treated in the UK?

Mr Russell: I think the points that precedes that is a very obvious one but one which is often overlooked and that is the fact that the same basic set of human rights in the European Convention apply to asylum seekers within the UK's jurisdiction. The key point about human rights is that they are universal, that they apply to everybody. The kinds of human rights violations that we have seen in the context of asylum have actually been very extreme, severe violations. We are talking about violations of Article 3, for example, and that is what the House of Lords criticised in the case of *Limbuella*, which related to Section 55, and the denial of support to destitute asylum seekers who had not claimed asylum within what was considered to be a reasonable time. So we have had Article 3 violations. There is also a serious risk of Article 8 violations, violations of the right to family life, in terms of policies like Section 9, which is a policy which allows support to be taken away from asylum seekers with families where they are not considered to be making a reasonable attempt to return home. The result of that support being taken away is that the family could theoretically be separated because the local authority has an obligation to provide support to the children, so effectively children are taken into care. So we are talking about some very serious human rights violations.

Q2 Chairman: I should have said that we are being televised. This is a question to Kathryn. ILPA highlights a number of areas where asylum seekers have had difficulty in securing legal representation. Can you give us a bit more information about the availability of legal representation for asylum seekers, especially those in detention, and the consequences for those who cannot secure adequate representation?

Ms Cronin: I think that the provision of legal representation for asylum seekers is very patchy. There are whole areas of the country with very few specialist immigration practitioners at all. There are parts where people have enormous difficulties getting representation, and that is made more difficult when they are dispersed by NASS, so that they may well have a legal representative in London, and when they are dispersed to the north they lose that. The recent report by Refugee Action on failed asylum seekers and destitution made the point that of the people they interviewed, some had had at least two, but many of them had had in the order of five lawyers in the process. It is obviously a very important issue when you have people in detention, and one of the matters that ILPA would wish to stress very forcefully is the need for those, particularly those who are in a fast track system, to have legal representation throughout, because numbers of them may start with a lawyer but, because of the way in which the funding is structured and so forth, their lawyers take the view that there is little or no merit in their case—and that is often on fairly limited grounds—and so you have a person going through the system without legal representation. We would say that there should not be a merits test in fast track; there should be lawyers assisting those people throughout the process. There are also numbers of highly vulnerable categories of claimant, particularly children, and very often women who have been the victims of severe abuse, and under the proposed funding model for the LSC it is our great fear that not only will you lose many competent, experienced and highly ethical practitioners, but you will have a system where essentially what is left is largely discredited and

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rendered of less assistance, because the funding model is such that you really cannot possibly undertake the sort of preparation for advocacy that you need for an asylum or indeed an immigration case on the proposed fixed fee that the LSC is prepared to pay.

Q3 Chairman: Is it the principle of fixed fees that you object to or the level that they are set at?

Ms Cronin: We would swallow hard and accept that probably something equivalent to a fixed fee is likely to come in, and we can see from the point of view of the LSC why it is that that is attractive to them, because it certainly takes away a lot of the administrative costs of looking at how you deal with claims for exceptional payments. But if they are to have a fixed fee, it must be properly costed and evaluated as to the sort of funds that are required for cases, and there needs to be some mechanism for allowing for exceptional cases. At the moment, their model is premised on the notion that everyone is a fixed fee except if you are four times the cost of what they are proposing, and we say that there are lots of cases that are actually two times or maybe three times the cost, where you really cannot do them properly unless you have a mechanism for flicking yourself into an exceptional category. That applies particularly to those really vulnerable claimants whose story is not elicited from them with any ease or speed.

Q4 Chairman: What do you think a reasonable hourly rate for the work would be and how many hours would it take to do that sort of case?

Ms Cronin: I do not think there is any dispute between us on the hourly rate. It is the hours of preparation that they are prepared to fund. I think the two things that most worry us is firstly, that interpreting costs are not calculated separately, and we feel that lots of lawyers will begin to use family members as interpreters, and that is particularly bad, I must say, for women claimants. For example, I have had myself lots of cases, particularly from Kosovo, but similar countries, where women have been sexually abused and do not ever want that disclosed to their husband or other members of their family. So you have real dilemmas if your interpreting costs are not calculated separately. The other point that we are concerned about is the hours of preparation. It is calculated that you get one hour's preparation for an immigration case advocacy and two hours for asylum, and that is fanciful. It is literally a joke. I have had many years of experience doing these cases, and I have never been able to prepare an asylum case in under two hours. The other thing, of course, is that there is no calculation of payment at all for waiting and travelling and there are real inefficiencies in the tribunal process. You will often go there and find yourself forced to hang about all day because the wrong interpreter has been sent, the Home Office have lost their file, and there are lots of adjournments on the basis of Home Office omissions or inadequacies, and essentially, the applicant's lawyers will be paying for it, because we will not be

receiving any funds for the waiting and a very limited fee for when cases are adjourned. The effect of that will be to drive out many people. What is of great concern to ILPA is that the UK has one of the most ethical and competent sets of experienced immigration practitioners. Many of them have been in it for many years. They are highly dedicated. They do not earn a lot of money, but they have to make a living in these small specialist practices. We greatly fear that numbers of those will cease to be able to practise.

Q5 Lord Lester of Herne Hill: I must declare an interest because I am married to an asylum and immigration judge, but could I ask this: I am not sure we are going to take any evidence from asylum and immigration judges, but maybe we should. What I understand from my wife, and I would like you to tell me whether that is your perception is well . . . Firstly, I should say that when it is Garden Court Chambers, my wife comes back and beams and says how well represented asylum seekers are, but frequently, she comes back and says they are either not represented or extremely badly represented or the Home Office are not represented or are badly represented and the result of that, as you have just said, is constant adjournments and greater difficulty in deciding cases. What can one do, leaving aside the question of funding, which is crucial, to try to make sure that the quality of representation of asylum seekers is, if I can put it in this way, as good as Garden Court Chambers provides? It is not enough, is it, simply to have representation if those who come forward are badly prepared or incompetent?

Ms Cronin: I think the first thing is that you have to value what you have, and that means not just valuing Garden Court, but the array of people who the Legal Services Commission themselves know to be highly competent, highly experienced and very ethical practitioners. They are known. They are known to immigration judges and they are known to the LSC, and if they devise a mechanism for funding that drives those people out, even the most committed of them, that will be an incalculable loss, because you will lose people who are there to train the next generation, you will lose people who raise the bar for the whole of the practising profession. ILPA has consistently relied on that array of highly skilled and committed practitioners and has always done a great deal in terms of training and publishing best practice manuals, and that sort of thing. Again, you need a core of good practitioners to carry the baton, if you like, so that the whole of the practice begins to filter down. The first thing is to give it a value and to preserve it. Then I think there are lots of problems in the appeal system. I think the Home Office is one of the problems, and the quality of their representation is one of them. Can I go back to the question at the beginning about what human rights are engaged; I know there is some jurisprudence that makes the point that these administrative proceedings are not ones in which you capture Section 6, and the notion of equality of arms, but it is an important point to consider in immigration work.

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We have such disparity there. For example, there is no capacity at all for the tribunal to in any sense discipline the Home Office for a failure to abide by a practice direction or a direction that is given by an immigration judge, yet we can be penalised, and those sorts of rules that are drafted by one of the parties to favour that party and which have the effect of distorting the way in which the proceedings continue, I think, ultimately work against a system that ought to be seen to be fair.

Q6 Lord Plant of Highfield: In your comment, Jago Russell, to the Chairman in his first question, you mentioned, Section 55 of the Nationality, Immigration and Asylum Act and Section 9 of the Asylum and Immigration (Treatment of Claimants) Act. I would like to ask Kathryn Cronin to comment on these, but all three of you can pitch in if you want to. In the case of Section 55 of the Nationality, Immigration and Asylum Act ILPA has submitted evidence suggesting that since the *Limbuella* judgment Section 55 has not been abandoned and that the requirement to have made a timely asylum application is utilised to deny assistance to failed asylum seekers who remain in the UK. The Government say that since the judgment support is not refused to “anyone who does not have some alternative source of support available, including overnight shelter, adequate food and basic amenities.” Could you tell us a bit more about the circumstances in which that provision has been used since the *Limbuella* judgment?

Ms Cronin: I do not do a lot of these welfare cases so I am only able to talk about what I know from colleagues in chambers rather than from my own personal practice, but the sense that is out there is that the Home Office is waiting in the wings, as it were, particularly with these cases. So the policy that underpins Section 55 is very much alive and well. That is the biggest problem. It is not even so much how individual cases are being dealt with and whether or not you have a lull in the stacking of cases in the Administrative Court but that the policy that mandates privation, the policy that enforces destitution as a way of controlling and deterring immigration, that policy is extraordinarily clear and still has a real lease of life from within the Home Office, and it is there in terms of failed asylum seekers, it is there in terms of asylum claimants, and it is there in terms of policies that even approach children in the way that, for example, age disputes are dealt with. It is that sort of embedded scepticism about claimants and the notion that the only way that you can deal with them is through privation and punishment that I think is still very clear, very marked.

Q7 Lord Plant of Highfield: What about section 9 of the Asylum and Immigration (Treatment of Claimants) Act, which allows support to be withdrawn from a failed asylum seeker, even where there are dependent children? Can you tell us a bit more about the consequences of that?

Mr Russell: My understanding is that that is no longer being applied post the pilot, and in fact, after carrying out a number of pilots, it did not have the end that the Home Office desired. The idea was that, with the threat of having your family split up, people would opt to leave the country. People did not do that, and of the families that were considered for this pilot, 36 of them went underground and lost contact with the asylum services. So I think on the grounds of effectiveness, the policy has not been used more broadly. Of course, it put social workers in an impossible situation. They were trying to balance the human right to stay as part of a family with the child care needs of the children whose family had been denied very basic support. To my mind, it is not even just a question of whether these laws are being applied; we need to look at what message it sends that these laws are still on the statute book. It seems to me that, even within the scope of other powers and questions, people working within the National Asylum Support Service system are no doubt affected by this idea that basic support for asylum seekers is a legitimate tool of immigration and asylum control. That is not an acceptable policy, and for that reason those statutory provisions should not have been passed in the first place and should now be repealed.

Q8 Chairman: What you are saying is that Section 9 has effectively been dropped, but informally rather than formally?

Mr Russell: Again, I do not practise in this area and some of the people coming after me may clarify this further, but my understanding is that following the pilot it was decided that it was not effective in its aim.

Ms Cronin: Can I just add to that that one of the points made there is really one that it would be wonderful for the Committee to take up, and that is the blurring of functions between the Home Office and Social Services. The array of measures are effectively co-opting social workers into immigration control, and it comes back to a topic that I know this Committee has taken seriously in the past, and that is the Convention on the Rights of the Child and the reservation that we have to that Convention. You do get this sort of stark distinction between social workers who are being brought in to deal with these families who are, for example, denied support and you find them in the Family jurisdiction frequently, which is a jurisdiction I have quite a lot of experience in advising on these sorts of cases, where local authorities are really in a difficult situation, deciding whether or not they maintain illegal entrant mothers who may have a child, for example, and where they are uncertain as to whether or not they will rehabilitate the child with the mother. All of these issues are very problematic ones for social workers now, because they are being brought into a model that is actually dealing with an immigration function rather than a best interest function, which ought to be their sole brief.

Q9 Dr Harris: I want to ask you about the provision of health care, and in particular, I would like to ask the ILPA representative what scope there is, firstly,

following the judgment in the House of Lords, to take that issue further, which is the issue of the removal of people with health needs back to countries where they are not going to have those serious health needs met with the consequence of suffering and death. Is there any scope or has *N* settled it effectively?

Ms Cronin: The judgment itself makes clear that there are exceptional cases. It is locating them that is always the difficulty. In our submission, the points that we make is that *N*, which, at least according to Lord Justice Sedley, is explicable only as a case that is about HIV and the potential high-volume queue of HIV claimants who would stand to benefit from a generous interpretation of Article 3 in those cases. His view is that essentially removal of these people does breach Article 3, but we have jurisprudentially avoided the implications of that because of the consciousness of what it would involve the state in terms of cost, and so forth, but the problem of *N* is that it is applied much more generally, so it is applied to suicide and generally to other health cases where you may get a deprivation of treatment in other countries, but I think the principle is still there, that if you are denied all treatment, your removal would breach Article 3. It is not as if it has closed the door finally, but the crack that is left open is a very small one, and we would say an inappropriately small one, because the principle in that case has been applied to situations where the claimants do not impose a significant cost on the UK and therefore it is misapplication of the premise upon which the *N* case was reasoned.

Mr Russell: I just wonder whether sometimes we are making a bit too much of the health tourism question when you see the amount of political time that is spent talking about the risk of people flooding into the UK to use the NHS. Of course, the NHS is a wonderful service, and we have to hold it dear but there really is not the evidence to suggest that people are flooding into the UK to use the NHS. There has been some very irresponsible reporting, it has to be said, around the question of health tourism. There was the Tony Parsons' article that we referred to in the *Daily Mirror*, which was used at the time when the Human Rights Act was under such consistent attack, and he was arguing there that a Nigerian lady had been "shrieking", using human rights arguments, "for a replacement for her dodgy ticker". There is a kind of hysterical reporting about health tourism, which does not really exist. This was a very specific case and the woman died three days later. She was not fit to be shrieking for anything. She asked for a replacement heart because of a very serious disease. Of course, there is a question about the interpretation of these cases, but we should not allow ourselves to fall into the trap of thinking we are talking about hundreds of people wanting to come to the UK and take away our medicines and to take up the time of our nurses and doctors. I just do not think that is the case.

Dr Harris: It could be said that people are flooding here to staff the NHS.

Q10 Lord Lester of Herne Hill: There is a dilemma, which I think Kathryn Cronin's evidence recognised, that if you have a failed asylum seeker,

and you come before the immigration judge and you say "I am a failed asylum seeker, but look at the Convention", which is all that the asylum judge can look at, "and I cannot get proper medical treatment in the country I came from." There is the problem of proving too much because if you stretch that rather far, it is not a question of health tourism; it is simply inappropriate to try to use the Convention, which is for well-defined cases, for that much wider category of people. That is the dilemma, is it not? It is not all on one side; there is a countervailing problem, which I think Kathryn's evidence entirely recognises.

Ms Cronin: I can see how the case of *N* is reasoned but I think jurisprudentially it does not fit with the working assumptions about Article 3. I can see how pragmatically you can get to a point but can I also say, on the pragmatics of that, it does seem to me that we spend very little time actually trying to find a pragmatic solution to the problem. So even if these cases do not fit into Article 3, they are still there as pragmatic issues to be resolved. I know some of the European countries have made a point of trying to ensure that when they remove people, they remove them, for example, with some supply of medication, and all of these sorts of responses are ones that are humane responses, even to cases where you are contemplating removal. It seems to me that one of the pieces of mischief in the system as it has evolved is that at no point in the system do we bring in generosity, compassion and humanity, and at every stage that ought to be visible and palpable. Even at the stage of removal, where the very real scepticism is that these people are undeserving and therefore should be offered little or nothing, one ought to have regard to the reasons why people are reluctant to go home, and sometimes a humane response to removals may encourage people to go home, if indeed they do not have claims under either Convention.

Q11 Dr Harris: Both of you mention this in your evidence: a short question about the impact of the 2004 regulations restricting access to some healthcare services to failed asylum seekers and indeed others who have no status in the country and what impact that has had.

Ms Cronin: Read the reports by Refugee Action and Amnesty International. They are extraordinary reports, where they have done qualitative research, going out and interviewing failed asylum seekers, and getting a sense not only of their passage through the system and what they thought of it, particularly the Refugee Action report, but also their circumstances, living in destitution. They are really horrifying cases to read, because many of them are very young, many of them are 18 year olds who have been refused their variation of leave, many of them are ill. I have had two cases of clients who have set themselves on fire when they were refused. So there are very ill people, no capacity for them to earn a living, some of them involved in petty crime or prostitution as the only way to survive, sleeping rough, enormous health problems—it is a catalogue of horror really, and that research that Refugee Action did in nine centres around the country is

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replicated by other agencies that have done work in Newcastle, in the West of England and in Northern Ireland, and Amnesty did similar sort of work in London.

Ms Omar: Can I add to that? I am speaking on the half of Education Action. We work directly with refugees and asylum seekers, providing education and training. I just wanted to add that if there was a point, as well as reading the report, that the Committee felt they wanted to speak to individuals about these very experiences, Education Action would be delighted to facilitate that discussion. We train 18 people on a six-month training programme in human rights advocacy, helping them to raise awareness and advocate on the issues that made them refugees and asylum seekers or dealing with issues they are facing here. In the report we mention someone who was destitute for four years, who was given shelter by the Colombian fathers in Hampstead because he was sleeping rough in the churches. He is a survivor of torture, and has lots of psychiatric disorders because of that. If you actually want to meet the people concerned, which I imagine you do because all of these words and all of this secondary information can get a bit dry, we would be happy to set that up for you.

Q12 Chairman: Those of us who are elected do see a lot of these people in our constituency surgeries.

Ms Omar: In addition to those people.

Mr Russell: Can I just make another point on health care? Looking at what the law says about who is and who is not entitled to health care is one thing, and is a vital tool to working out what the situation is, but actually, there is a question too about whether or not the people delivering those services understand what the laws are. When you go into a doctor's surgery, does the person that decides whether or not to give you an appointment know what entitlement you have or do not have, do they know what stage of the asylum process you are at? So there is a question not only of what the law says, but whether the people delivering those vital services to these people really understand what the laws are. It is difficult to get a hold on those kinds of things.

Q13 Chairman: The answer is presumably that they do not.

Mr Russell: A lot of people will but a lot of people will not, and the more complicated it gets in terms of taking some people out of the entitlement to free health care, the more difficult it gets. What is emergency treatment and what is not emergency treatment? When is non-emergency treatment going to become emergency treatment in the near future? These are difficult questions, and it is not really surprising that in practice people do not always know the answers to those questions.

Q14 Lord Lester of Herne Hill: Could I ask about the treatment of children, bearing in mind that our Committee has again and again criticised the Government for its reservation to the Rights of the Child Convention? First of all, can you tell us more about age assessment and the problems about

assessing age in relation to children? What are the difficulties being experienced by asylum seekers where there is a dispute about age and what aspects of current policy and practice do you think need to be reviewed?

Ms Cronin: ILPA has, through the Nuffield Foundation, received some funding to sponsor an inquiry into age assessment of children, and that report will probably be published early next year. Hopefully, it will be a very useful and helpful report. It has certainly been a report in which the views of some 14 local authorities have been canvassed. There have been a number of interviews with children themselves who have been age-disputed and also interviews with an array of professionals who have dealings with it. Can I say that I am not in a position to forecast what that report is likely to say, so I will speak from my own experience and I anticipate that some of that experience will be reproduced in the report. I think one of the biggest problems about age disputes with children is that it leads to a sort of system's abuse of children because you get repeat interviewing of these very vulnerable claimants, so that children who are almost certainly the most vulnerable of any in the system are almost always going to be interviewed at least two more times than any other claimant if they have an age dispute. Those age assessment interviews are quite searching in many instances and do require them to go back and talk about their homes and what they have left and their experience and so forth. It is a revisiting of all of the factors that made for trauma. You do get repeat interviews of children, and I think the report will probably be quite telling in how many times children are interviewed. We know from professional assessments in the Family Division that you try and limit the number of times you get children to revisit their experiences of trauma. The other thing that has been quite distressing to some of us in ILPA who have attended Home Office meetings about age assessments is that the Home Office is now seeking to co-opt some of the high-volume local authorities, like Hillingdon and so forth, where they do get lots of child claimants because of closeness to the airport, and co-opt them into being the core assessors where there is an age dispute. Those social workers in various meetings that I have attended have indicated that one of the things they do in those assessments is to contact the child's home country, and very often, for example, their schools or other agencies the child has claimed to have been associated with. Now, these are asylum claimants, and the undertaking that is given to them as asylum seekers is that everything that they disclose will be kept confidential, and very often, in going back to the child's home country, even approaching an entity like the school, if the family is all at risk, or you have had some really traumatic separation of the child from the family, or the child has been trafficked by family members, that sort of disclosure can in fact be a disclosure of risk for the children. We have also had lots of examples of cases where there are disputes between the Home Office and local authorities about the age of children. Sometimes, the Home Office insists on an age

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assessment. I had a case recently where the local authority assessed two children as 13 and 12, and the Home Office was still demanding an age assessment and the local authority was saying, "We think it is inappropriate to interview them." We had to initiate a JR in order to get the Home Office to stop that assertion. There are other cases where the Home Office will decide that a claimant child is a child and the local authority will not accept it without doing an age assessment. There are no proper mechanisms for dialogue between the two agencies involved. You get co-option and distortion of their respective functions and you get an outcome for children that is potentially abusive, and you have no one in there to protect the child in these sorts of processes. Some of them are pretty gruelling processes for children. One child described it to me like being in a slave market, because at the airport she was taken to about six or seven different case officers and they were all told to view her and give their assessment of how old she might be.

Q15 Lord Lester of Herne Hill: Before I ask my question about detention, could you deal with one supplementary? Nadine Finch and Jacqueline Bhabha said at the launch in your chambers the other day of their report that separation of children to, say, the north part of England, away others, was a particular aspect of the problem and that there was evidence in at least one notorious case of a child being treated in a rather degrading way in the course of the assessment. I just wondered whether, from your own personal experience, you could tell us whether either of those occurred in practice, either separation has been a problem or that there have been instances of a rather humiliating, other than slave market form of interview.

Ms Cronin: Certainly, there are children who are very distressed by the scepticism that they encounter, and it can be scepticism from local authorities or the Home Office. Some of those interviews are highly distressing, because the scepticism of the interviewer is palpable and resonates very badly for the child. You do also get cases that are examples of what I think could be called degrading conduct by various of the people involved in the process. Can I also say that moving children around is really problematic. I know the Home Office, particularly in some of their recent disclosures, would indicate that they see many of these children as being sent here by parents who are seeking to get them a better life. My experience is that that is very the rare. I am not a particularly susceptible lawyer—I think I have an appropriate healthy scepticism—but if the children are brought here, more often than not they are brought by wider family members. However, a very large group who are sponsoring children's entry into the UK are church groups. I could not count the number of my child clients who have been brought here by priests or nuns, particularly from Africa, where they have rescued these children as street children, they have given them shelter and then have tried to move them out of the country. So it is not a family-sponsored migration. Many of my clients are enormously

distressed at family separation. One of the things that I think would be very helpful for us to do is to put more effort into the sort of tracing services that some of these children really want, to find out what has happened to the family that they have been separated from, if parents are still alive, siblings are still alive. Removing them from what is their first little space that they have been given that is some comfort in the UK and taking them away from that is really very traumatic when they have experienced in most cases that severe and stark family separation before they came here.

Chairman: We have limited time, so can you try and keep your answers brief.

Q16 Lord Lester of Herne Hill: It is probably my fault for asking a supplementary, but thank you. So far as detention is concerned, can you tell the Committee under what circumstances children are detained in immigration removal centres and what aspects of their treatment in detention give rise to the greatest concern?

Ms Cronin: Due to litigation in February of this year, the Home Office has actually become rather more vigilant about detention of children, so that now, happily—and it is telling that you needed litigation to get to this point—where you have an age-disputed applicant in detention, they are assumed to be children so they are not put through fast track. So at entry stage, it has improved greatly. You still get cases, and we are aware of them, where some children are detained even at that stage, but you certainly do get children detained after the process and you certainly get children detained who are accompanied by parents, and for any and all of them it is traumatic, particularly the detention just prior to removal, because in many of those cases the immigration officers come unannounced and the child is packed up very quickly, with no time to phone anyone, and their lives are completely changed in an instant. It is the fact of detention as well as what happens to them in detention.

Q17 Baroness Stern: Can we pursue the detention question for a moment? You may both want to answer or it may not be necessary. Both Liberty and ILPA have expressed concern about the conditions of detention and removal, as indeed have other commentators, and the failure to respect the rights of detainees. Can you tell us in what respects you consider that the treatment in detention, and the removal, breaches the human rights of the detainees and particularly what changes would you recommend?

Mr Russell: One of the things that might be particularly interesting to this Committee, considering its recent work on deaths in custody, and which really highlights the different standards of treatment between British citizens in British prisons and people in immigration removal centres, is the fact that in Ann Owers' recent report she commented that there was no safety assessment before cell sharing. In the light of events like Zahid Mubarek, there would be nothing to stop that kind of terrible situation happening in an immigration

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removal centre, a dangerous person being put in the same cell as somebody else. Also, of course, there has not been enough assessment of the mental health needs of people that are being put in centres, so there is more scope for self harm. In a prison, Article 2, as you well know, would require reasonable steps to be taken to make sure that people are supervised appropriately when there is a risk of suicide. Again, this is something Ann Owers' report highlighted, that that kind of assessment did not happen. That really highlights the different standards. I wonder perhaps whether there is also a temptation to think that the ECHR has decided in *Saadi* that detention in the context of the fast track system is acceptable. There may be a temptation to think that has happened, and we can now move on because there is no Article 5 problem there. Of course, when you look at that decision of the ECHR, you are talking about somebody detained for seven days there and I am sure, as Kathryn will be able to comment, a lot of people are detained for a lot longer now than seven days, so there is still a real risk that people are being detained arbitrarily and for periods of time which do violate Article 5.

Ms Omar: I think the suffering that people go through by not knowing when they will be released, if at all, is a huge issue. We have contact with people on our course who were detained for eight months or more. One person had been in detention for five years. He could not be returned, but they were not releasing him from detention. It is a mental torture. Even someone held in a British prison will have some idea of the length of their stay but this person has had no idea and is not a criminal.

Q18 Lord Judd: I know you are concerned about the dehumanising effect that so much media coverage of this issue brings about, and I know you are worried that the executive and Ministers have a share of direct responsibility for this by publicly criticising the judicial system, by specifically criticising individual judges, the wrong media take this up and exploit it to the full. Do you think, from your experience, there is anything that can be done about this to re-balance the media coverage? You do have, I believe, some examples of the media doing good work in this respect but, unfortunately, it is the exception rather than the rule.

Mr Russell: You say the exception rather than the rule, but I think there is a pattern between regional and national media. If you look at regional media you find that—apparently 60% of the public. I had not realised this, read local papers as opposed to national papers—the regional media quite often take up the personal interest stories; they tell the stories of children who have been taken out of schools after several years of getting a reasonable education. It is very easy and there is a temptation in a liberal society to “blame it all on the media”. I think that is too lazy. There is a lot of good media coverage out there too. I also worry slightly that we are focusing on the media and that this enquiry might focus on the media to the exclusion of focusing on the political debate. As you point out, the media cannot really be blamed for the fact that

for many, the idea of asylum is a rude word; it has incredibly negative implications, and that is not just about media coverage, although some of that has been awful. There is the *Daily Express* comment that “refugees are flooding into the United Kingdom like ants”. That kind of language reminds you of what happened in Rwanda, the Hutu Power and the Tutsis being described as cockroaches. There is a political aspect to this as well. The big political argument in favour of asylum is now a humanitarian one. During the Cold War there was a big incentive to take people, ballerinas fleeing from Russia and the like, because it showed us that we were right and that the Communists were wrong. There have also been times in history when it has been incredibly important to get cheap labour into the United Kingdom. Now that has gone, and the political response seems to be to blame the asylum seeker for all sorts of social ills. It must be very tempting when you are coming up with a counter-terrorism policy to choose something which targets a very few people—people who do not vote, as it happens—and to blame them for terrorism. We have the Anti-terrorism, Crime and Security Act 2001, which is a prime example, focusing on a tiny minority of people. So you are looking tough on terrorism without being tough on the voting population. Similarly, in response to 7/7, which, as you will know, was committed by British people—it was not asylum seekers—five or six of the Prime Minister's 12 points in his 12-point plan speech in the August following that incident focused on securing our borders. It is perhaps not surprising that the public have this perception of asylum seekers as in some way inextricably linked to terrorism or the cause of terrorism. Sonia was talking earlier about the responses that some of the children that she has been working within schools have had . . .

Ms Omar: One aspect of what Education Action does is school tours, where we take refugees and asylum seekers to speak to children about their experiences. I have a few evaluations from some 11 year olds from a school in Wolverhampton. “After the training, what are the main things you have learned about asylum seekers?” “That they are not terrorists”, “that they do not get free houses and actually they live in rubbish houses”, “that they are not criminals”, “that they get picked on”, “that they do not feel safe in their country”. These are young children; they are probably not really reading newspapers, and yet they have these terrible opinions about people who are actually fleeing dangerous countries and seeking safety. In terms of your question about what we would recommend is done, we are not saying you can silence the media. However, we need to be able to challenge with positive stories and truthful stories.

Q19 Lord Judd: Would it be possible for you to let us have some examples of this positive press media coverage which we could perhaps publish in an appendix demonstrating what the media can do to counteract the prejudice that is being peddled? One last question: while I am not suggesting this, is there not a responsibility on the part of politicians? Do

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you not think it is possible that politicians and the executive, unfortunately, say some of the things they say because they think that the media has created an environment in which, to curry favour, they must do this?

Mr Russell: I would personally hope that the executive and people in those positions of power would take on the responsibility to say “Yes, let us challenge some of these stories. Let us try and make sure that these people are really humanised in some way, that the positive stories get out there, that people understand what people are fleeing from.” It is lazy politics, really, is it not? You have a perception that the public think that all people claiming asylum are scroungers. As we know, with the kinds of benefits that asylum seekers get, it is incredibly unlikely that people would come to this country to scrounge £30 worth of vouchers, but that kind of thing is not challenged, and instead you get politics which focuses on destitution as a tool of asylum control. I think that needs to be challenged as much as the media representation.

Ms Omar: The asylum seekers themselves need to be empowered to take their stories to the press. One thing we offer as part of the human rights training programme is media training delivered by BBC journalists to help refugees and asylum seekers put together press releases, help asylum seekers know how to approach the local media, know how to find someone who will hear their story, and there are some hugely positive stories. We have a whole database of refugees and asylum seeker who are human rights activists, human rights defenders, they are inspiring individuals who, even in the face of adversity, are trying to help other vulnerable people in this country, not just other asylum seekers. We have those stories, we help those people get the stories out, but I would encourage some investment into by the government into empowering people to tell their own stories, to challenge the negative stereotypes that unfortunately they face.

Chairman: Thank you. Is there anything you wanted to add? We have finished our questions to you. Thank you very much.

Witnesses: **Mr Tauhid Pasha**, Legal, Policy and Information Director, JCWI, and **Ms Nancy Kelley**, Head of UK and International Policy, Refugee Council, examined.

Q20 Chairman: We now come to our second witness session of the afternoon and we are joined by Tauhid Pasha, who is the legal, Policy and Information Director of the Joint Council for the Welfare of Immigrants, and Nancy Kelley, who is Head of UK and International Policy at the Refugee Council. Welcome to you both. Do either of you want to say anything briefly before we start?

Ms Kelley: If I could briefly say, I recognise the Committee is looking at the treatment of asylum seekers but I think it is very important that this Committee in particular considers the way in which the right to seek and enjoy asylum in itself is under threat both from border controls, known as interception measures, but also from the practice of fast-tracking claims and the restrictions in access to legal advice. There is a real issue about the capacity of people to reach the UK and exercise that human right.

Mr Pasha: Just to add to the scope of your inquiry. I think a wider focus should be drawn upon the failed asylum seeker population who form part of a much larger irregular migrant population in the UK. Unless you try and grapple with that massive problem in itself then you will be dealing with various issues around breaches of human rights and a real politically involved measure must be taken to recognise the issue and to deal with it.

Q21 Chairman: We will try and do what we can but we are trying to have a focused inquiry because it is a huge subject and we could spend four years doing nothing else. What is important is we are trying to produce a pretty focused report. I think you were both here for the earlier evidence session. The first questions I was putting to our previous witnesses were what are the key international human rights

obligations which you think have been breached and, secondly, what impact have changes to the legal aid system had in terms of representation. Do either of you want to add anything to the information that we were given by the previous witnesses to those questions?

Ms Kelley: We see that the health rights are significantly at risk for the asylum seeking population, that is both in terms of the capacity to access healthcare that people want, primary and secondary, and particularly in terms of the restriction on secondary care for people whose claims have been refused.

Q22 Chairman: We will get to some more questions on health shortly.

Ms Kelley: Sure.

Mr Pasha: In terms of the health issue, the European Commission on Human Rights, given that is a Directive incorporated into the UK law you can then bring in a couple of other conventions and I think they are well-recognised by your scope, which is the International Convention on Economic, Social and Cultural Rights and obviously the UN Convention on the Rights of the Child. They are very, very relevant when it comes to considering these issues.

Q23 Chairman: Do you want to add anything to the answers we received about the changes to the legal aid system?

Ms Kelley: No, we would endorse what our colleagues from ILPA said in regard to that.

Q24 Dr Harris: I was going to ask you about health. You heard what was said before. You do not need to repeat what was said before but do you have

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anything to add first on the question of the removal of people with healthcare needs to places where they will suffer and potentially die because of an absence of healthcare?

Ms Kelley: The Refugee Council is extremely concerned about the practice of removing people who either have terminal illnesses or illnesses that can become terminal as a result of lack of healthcare. Whilst we understand the way in which the reasoning in “N” was arrived at, we feel it was a very sad day for human rights, and specifically the right to health and right to life, when it was decided in the way that it was. I think it is important to step back from making assumptions around floodgates arguments or numbers when looking particularly at these health cases both in terms of removal and treatment whilst in the UK.

Q25 Dr Harris: The other question was about the impact of the 2004 Regulations where the Refugee Council set out in its evidence its concerns. Do you want to briefly summarise those?

Ms Kelley: I think first and foremost our concern is that we really do not know the scope of the problem. There is no requirement for NHS Trusts to record the numbers of people being denied treatment or, indeed, to record what happens to them as a result, so everything that we know is based on our own casework. What we see is significant problems around terminal illnesses, including cancer, we have seen people in renal failure, we have seen women being forced to give birth at home alone. Our main concern is that the clients who are unable to reach us or reach other practitioners who can help them and help them access services are not counted, we have no idea what the scope of the problem is. It engages Article 3 and also the right to life, Article 2.

Mr Pasha: In relation to the 2004 rule changes to the secondary healthcare rules there was one very important point that has not been grappled with by the Department of Health and that is no race equality impact assessment was ever conducted.

Q26 Dr Harris: I was going to ask you about that.

Mr Pasha: If you want me to expand on that now. It is ever so important that such an assessment is conducted before any such changes to the primary healthcare rules are ever contemplated. We know that the Government has entered into a consultation process and may be changing the rules at any time. The Commission for Racial Equality guidance says that the race equality impact assessment should be conducted when changes are proposed. We would say that this is even more important given the types of people who are on our books who are currently being denied secondary healthcare. An example is a Portuguese woman of Angolan-African origin being given a bill after she had given birth in a maternity ward because the assumption was that she is a migrant and is not entitled to healthcare. That is one example. Also, given the prevalence of people carrying HIV amongst asylum seekers and the specific exclusion of HIV as a communicable disease from the types of treatment, apart from the initial diagnosis and the counselling that goes with it, the

African HIV Policy Network particularly feels that this is a real issue for the African community. There are race implications which have to be tackled by the Department of Health.

Q27 Lord Lester of Herne Hill: Can I just ask whether the CRE are in fact monitoring whether those impact assessments are carried out and whether you are doing so, or whether it is simply in the guidance but no-one really knows whether they are being produced or not?

Mr Pasha: I really would not want to comment on the CRE given that they are in a state of flux. Certainly we do monitor in relation to changes that affect migrants in the UK and we will continue to monitor that. We have put the question to the minister who is responsible for race equality impact assessments overall and we have not received a satisfactory answer.

Q28 Lord Lester of Herne Hill: Have you looked at the impact assessments yourselves in the schemes, in other words that have been put in under the Race Relations Amendment Act, in order to see whether those schemes have been made and are satisfactory?

Mr Pasha: Yes. Race equality impact assessments are conducted to a large extent by the Immigration and Nationality Directorate. In relation to the healthcare changes we are not aware of any specific assessment that has been done on race equality, one has to be conducted before we can assess it.

Q29 Dr Harris: What you are saying is that as far as you know the Government, the Department, did not do an impact assessment before promulgating these 2004 guidelines and that therefore it is possible that under the Race Relations Amendment Act the public authorities who are providing healthcare are outwith that because they are not aware of the impact of their policies.

Mr Pasha: Absolutely. As far as our knowledge is concerned, we have not been given any sight of a race equality impact assessment.

Q30 Dr Harris: In your evidence you referred to an opinion you have been given by Nadine Finch. Are you able to give us a copy of that?

Mr Pasha: Yes.

Q31 Dr Harris: You have got a copy. I just wanted to ask Nancy, what you are saying is that when the Government promulgated these regulations you do not think that they were based on any evidence of a problem or any evidence of the impact that they would have. Is that what you are suggesting?

Ms Kelley: The Health Select Committee report on HIV made it quite clear that there was absolutely no evidence that this was a problem that required policy change and specifically no evidence that people were coming here to claim asylum as a form of health tourism. It remains the case that there is no evidence that people come here and claim asylum in order to access health services. Nor is there any evidence of

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the economic impact of the group or what happens to those who are denied care, except that which can be provided by agencies such as ours.

Q32 Dr Harris: Such dangers exist. Would you say on the economic impact of these provisions that it is likely to be saving the NHS money by denying treatment, costing the NHS money because of the perverse consequences of making people get ill and becoming emergencies who then have to be treated, or is it just impossible to say what the economic and demand impact on the NHS is of these rules?

Ms Kelley: It is just impossible to say. There has never been any robust evidence gathering that would justify or, indeed, combat this policy. Also I would say that measuring the economic impact of denying necessary healthcare to someone who might die if they do not get healthcare is quite a complex thing and involves quite a lot more than costing just the health treatment or its denial.

Q33 Dr Harris: I am interested in the arbitrariness of this because my understanding is for some people it depends who you see in the healthcare system as to whether you get denied treatment or you get access to treatment and, therefore, as I understand it, even the regulations are not being implemented in a consistent manner. That is just what I have heard but I would be interested to know whether you are aware of any research that demonstrated that or denied that.

Ms Kelley: In our experience, and the experience of other agencies, it is quite clear that some NHS Trusts are choosing to make humanitarian decisions and not charge. For instance, there are certain trusts that are providing HIV care. Those trusts are acting outwith the regulation. The regulation requires charging and the regulation requires that debts be followed up. The difficulty of doing research into which hospitals are choosing on a humanitarian basis to act outwith the regulation is that by definition you would be identifying hospitals that are breaking the rules.

Mr Pasha: Also, in East London Medicine DuMonde have set up primary healthcare treatment facilities purely on a charitable basis because they are finding that people who attend are not getting that treatment. I would refer you to the very detailed evidence that they have collated since that surgery has been set up.

Q34 Nia Griffith: If we could turn to section 9. I believe in your evidence you talked about 166 families being affected by this. Could you give us a little bit more information about what you have found when you have been evaluating the effect of section 9 on these families and in particular any treatment which you feel is incompatible with human rights requirements?

Ms Kelley: There were 116 families involved in the pilot. Just to follow up on the previous evidence session, those families are still affected by section 9 and section 9 is, indeed, in force although it has not been rolled out. We were funded to do outreach work with some of the families involved in the pilot

as part of the evaluation process. We were funded by NASS. What we found was first and foremost that the families involved in the pilot were terrified and they were terrified to such an extent that they were not really able to engage with the question of return or non-return. In a sense, the policy had failed from the outset because people were not able to think about whether or not it was safe for them to go back to their countries of origin. There was a very high incidence of physical health problems amongst the parents in these families and certainly around 80% of the parents we saw had significant mental health problems. That would include people who had formal psychiatric diagnoses, such as Post-Traumatic Stress Disorder, and people who were simply unable to cope with the pressures that they were living with and the fear of their children being taken away from them. Our advisers reported that it was very common for people to weep throughout advice sessions when they were working with them. We found a lot of families that disappeared and those that did not are surviving in a very ad hoc way: one-off payments from local authorities, charitable contributions, contributions from churches, from community members. I personally met families who were being given £10 and a bag of rice to live on for a week, for instance. It has had a devastating impact on the people involved. It has had a devastating impact in some cases, as Kathryn noted, on the practitioners involved because it requires social work practitioners to act against their own ethical framework in many cases. Although one hesitates to say it, there is no real evidence that it worked in the way the Home Office intended it to work. We would very much like to see the Government exercise the power it has given to itself and repeal section 9. We are concerned that there has been no published evaluation to date and concerned that there is a possibility that it will simply be rolled out in a slightly modified form.

Q35 Nia Griffith: So you would feel that it is very much incompatible with the human rights requirements then?

Ms Kelley: Absolutely. The families that we saw were without a doubt experiencing inhuman and degrading treatment. From our perspective, it is impossible to see section 9 as in any way compatible with the right to family life.

Q36 Nia Griffith: Could you explain to us when you are dealing with families whose asylum claims have been refused, what is the welfare casework approach that you are proposing?

Ms Kelley: The Refugee Council supports the piloting of an approach used by a project called the Asylum Seeker Project in Melbourne, also known as the Hotham Mission, and they provide in a sense a wraparound service, they make sure that people are housed and supported but also they have access to proper legal advice so they are able to get their claims heard. It is a social work-based approach so from the start the families have access to a trusted caseworker they can build a relationship with, and trust is a huge issue in terms of working with asylum

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seeking families, particularly around return. Although it is a small project the evidence from that project is very positive both in terms of making sure that families that have protection needs have those needs met and in terms of supporting families who ultimately get a negative immigration decision to return home in a planned safe way.

Q37 Lord Lester of Herne Hill: The Refugee Council has raised five specific concerns about the treatment of children. I will not go through them all now. You heard the evidence before. What are the main problems faced by unaccompanied asylum seeking children and what are the areas where they are most in need of greater protection?

Ms Kelley: I think one of the key issues for unaccompanied children is around the way in which their claims are decided. The Committee will be familiar with the fact that most unaccompanied children get discretionary leave to 18 and there is very poor quality decision-making in relation to unaccompanied children's claims, so you are left with a cohort of care leavers who are vulnerable to return and removal to countries where they are unsafe. In addition to that, access to basic service, access to education in particular, is a huge challenge for unaccompanied children. The discretion that schools have over their own admissions can work significantly against asylum seeking children having their education rights realised. It has even been our experience that asylum seeking children can be placed in pupil referral units because no school in their area will take them. On a more specific note, we are extremely concerned about the detention of age disputed children. From our work in Oakington we have seen over 50% of age disputed children are subsequently found to be minors, which we regard as a salutary lesson and something that should be taken on by the Home Office. They should adopt the precautionary principle and not detain until there is a settled determination of age. It applies very much to a minority of children but we are also concerned about the way in which the Dublin II regulation applies to age disputed children. We work with children whose ages are disputed who are being returned to countries such as Greece where they have no access to the asylum system through the operation of the Dublin II regulation.

Q38 Lord Lester of Herne Hill: Can I just ask a supplementary. One of the specific concerns you raised was about guardianship for separated children, an issue which goes back in my memory 40 years when I tried to make someone a ward of court in this area and failed. You say in your evidence that current practice is contrary to European Council Directive 2004/83/EC. If that is right, is that going to be challenged in court? How are you going to deal with that?

Ms Kelley: Unfortunately, the perspective of the Government is that the provision of a social worker sufficiently satisfies the requirement of that regulation. The wording is somewhat unclear, it requires someone to represent the child's best interests, but it does not require that that person not

be involved in their care more generally. From our perspective there is a problem around independence that would be well-recognised in the looked-after population generally. It is recognised that a social worker is not a sufficient independent legal guardian for a looked-after child in the general meaning of the term. We would have the same concerns about the assumption that a social worker could provide that role for an unaccompanied child.

Q39 Baroness Stern: This is a question to JCWI about detention and removal. You expressed concern about the decision timetable set out in the current Home Office fast-track policy. In your experience of conducting casework, which I understand you do in Harmondsworth and Yarl's Wood, can you tell us is the Home Office policy applied consistently, and in what sort of cases are asylum seekers detained for longer than 14 days?

Mr Pasha: In terms of our participation, you are quite correct we participate in the Harmondsworth fast-track and we participate in an advice session at Yarl's Wood, which is a general advice session. There are a number of people on that rota so we have received only a handful of cases, but what we are doing is we are hoping to collate our evidence. We had a meeting with Bail for Immigration Detainees, they are going to be collating all this evidence even further so that we can get some type of findings out of it. Certainly we do find that cases are taking longer than the timetable that is set out. The problem is Des Browne, as we said in our submission, introduced a degree of width and flexibility in the detention process which gives the Home Office the power to detain for longer than 10 to 14 days and we are finding that in the majority of cases we are dealing with people are being held for that length of time or longer irrespective of the type of case it is. We find this particularly galling given the findings in *Saadi* this year in the European Court of Human Rights where they found that administrative detention can be legal but only on the premise of the facts in *Saadi*, which was premised on the facts prior to 2004 that you have a seven day timetable. If you find that people are going to be held for up to 10 to 14 days, or even longer, we believe that is susceptible to legal challenge and we have been in touch with counsel who have been representing in *Saadi* on this before the European Court of Human Rights. In relation to the numbers, it is very difficult to say but certainly in our experience people have been held for 60 days or longer. In the case of *Johnson* that we have quoted there an elderly gentleman was held for much longer than that period, he was held for up to 60 days, two months in detention, on the premise of it being administrative fast-track detention.

Q40 Lord Judd: I would like to raise, as we did with the first witnesses, the issue of the media and surrounding concerns. I understand that you have some real reservations about the easy deployment of "illegal" in terminology describing asylum seekers and you feel this helps, and may deliberately help, build up prejudice and that it would be more

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appropriate to use the term “irregular”. I think it would be helpful for the Committee if you could say a bit about that. Perhaps I could put all my questions together. That is the first question. The second question is, what do you feel we could be doing, or encouraging the media to do and others to do, to build up the self-respect and dignity of those who find themselves in this predicament? It seems from the previous witnesses that there are examples of positive work that can be done in this area and I wonder whether you have anything to say about how this might be developed more consistently so that the negative tide could not just be protested about but could actually be countered by a positive tide.

Mr Pasha: On the second part of your question I might defer to my colleague because I know the Refugee Council has done a lot of work around that. On the first part of your question, legally we have a definite problem with the term “illegal immigrant”. I know that it is not used to you or your Committee. There is no such legal definition of “illegal immigrant”, we have got an “illegal entrant”. That describes the method of entry. As we know, asylum seekers cannot get a visa to enter the UK for that purpose, by and large they will be illegal entrants. The terms “asylum seeker” and “illegal immigrant” are very easily fused together. Secondly, and interestingly enough, in the campaigns that we are running with various migrant groups around the UK, in the languages of the Indian sub-continent you cannot call someone an “illegal” person, you cannot do that, it does not exist in the language, and similarly in Spanish you cannot call someone an “illegal” person, a human being cannot be illegal, but the method by which they enter may be illegal. In our submission we have said that the media cannot be blamed wholeheartedly for this, politicians do have to take responsibility. We have noticed at JCWI, and we have mentioned in our submission, we do monitor the media on a daily basis and we have noticed government ministers recently, particularly this year, using the term “illegal immigrant” in debates. It was used fairly recently when the Home Affairs Committee report was being debated. We find that irresponsible on behalf of government. “Illegal immigrant” may be a term used in certain papers but it should not be used by politicians. I want to refer to two international sources to say why we recommend you should not use that term. Firstly we have mentioned the International Labour Convention and recently we made a presentation to the Council of Europe in Strasbourg and they came out with a specific recommendation around the human rights of irregular migrants and specifically have told their Member States that they should not use the term “illegal”, but use the term “irregular”, the reason being that illegal connotes or equates migrants with people who are committing serious criminal offences, for example. Migrants, as we have explained in our submission, will often commit an immigration offence, overstaying, illegal entry, et cetera, et cetera, by reason of their situation and we

argue we have such a complex system of laws that it is very, very easy for a migrant to fall outside the law and be committing an immigration offence.

Ms Kelley: I think I would just add in terms of terminology that we see a very broad social effect of that kind of slippage between different ways of describing migrant groups and it has become a very common term of racial abuse amongst young people to call other young people “asylum seekers”. That is very telling in terms of how much impact the terminology can have and it is not just an indulgent argument about media representation. It is right to say that there has been an awful lot of really good work done in the media and in some ways we can look to the way in which local communities and particularly local newspapers responded to policies like section 9, particularly in the North West where there was hugely positive family focused coverage of that policy. There are real lessons to learn about working at a local level to bring different community groups together and to mobilise around schools and bring journalists into those community-based initiatives. Shifting the tenor of the debate in the national press is always more of a challenge because, as the previous speakers have said, it is very tied into the way in which policy is talked about at a national level.

Q41 Chairman: Thank you very much. Is there anything that either of you would like to add to what you have said?

Mr Pasha: Just in terms of fast-track. The Government is implementing the new asylum model, and are hoping to bring it in by April of next year. Fast-track detention is one of the segments, as they call them. Currently 18% of asylum applicants are processed through fast-track and they want to push that to 30% under the new asylum model. We find that is unjustified given that the new asylum model is being developed and a lot of thought is going into it in terms of non-detained fast-track, in other words you have got people who are outside the detention system who are being provided with conjoined support and access to legal representation at the outset and are going to be accommodated near their reporting centres. Given that we have got those positive approaches being made, surely there is no case to extend the remit of detained fast-track, especially given the legal problems which we have got and the human rights problems.

Ms Kelley: If I could add something on detained fast-track and then maybe some clarification around section 55 from earlier. Just to add that the detained fast-track at Harmondsworth has a one% positive initial decision rate in comparison to the non-detained, the same process but non-detained, which has got a 22% positive initial decision rate. We would endorse a comment which has been made by our colleague about there being significant concerns about the expansion of the detained fast-track. In terms of section 55 post *Limbuela*, the *Limbuela* judgment only ever applied to those people who were in receipt of both accommodation and support, so it did not extend to those were able to live with family members or friends or were accommodated

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without help from NASS. To give an idea of the kinds of numbers involved, in the second quarter of this year there were 1,400 assessments under section 55 of the 2002 Act and 225 people denied support, so it remains a significant issue that is being applied exclusively to those who are asking for support only, known as subsistence only applicants.

Q42 Chairman: What is the explanation for the difference between one and 22% in terms of the decision-making?

Ms Kelley: Difficulties of accessing legal advice from inside detention.

Q43 Chairman: We have heard of that before.

Mr Pasha: The Committee are well aware of the Baker Report that was released earlier this year on their own findings. They found that with access to legal representation and the timetable itself there are real problems and they found that 100% of legal

representatives they interviewed said that there was insufficient time to prepare asylum applications and on top of that, and more worryingly, insufficient time to prepare bail applications. We feel that without the automatic right to bail being a positive right for detainees to apply for bail and given the opportunity, the bail is simply not being applied for. In the research, only in a minority of cases, an application bail was made at the appeal hearing in only one of 22 cases. Three of the seven legal representatives interviewed said that they were unable to prepare a bail application alongside the preparation of an appeal. It shows how tight the system is and how it definitely affects the success rate of an applicant.

Chairman: Thank you very much. I think we have had a very good start to our inquiry which will be rolling on over the next two or three months while we hear from other witnesses. Thank you very much for coming.

Monday 4 December 2006

Members present:

Mr Andrew Dismore, in the Chair

Judd, L
Plant of Highfield, L
Stern, B

Mr Douglas Carswell
Nia Griffith
Dr Evan Harris

In the absence of the Chairman, Lord Plant of Highfield was called to the Chair

Witnesses: **Mr Richard Dunstan**, Policy Officer, Citizens Advice, **Ms Renae Mann**, Co-ordinator, Inter-Agency Partnership, **Ms Sally Daghlian**, Chief Executive, The Scottish Refugee Council and **Ms Twimukye Mushaka**, The Scottish Refugee Policy Forum, examined.

Q44 Lord Plant of Highfield: Good afternoon. First of all, I would like to explain that Andrew Dismore, a Member of the House of Commons, is the Chair of this Committee but is involved in a debate in the House of Commons. He has some amendments to a Bill and he is obliged to be down in the House of Commons at this time, I am afraid. We would like to proceed reasonably quickly to the evidence. Could you say who you are and which organisation each of you represents, and then if one of you wants to make some short general statement, that is fine, but please make it reasonably brief. If not, we will go straight into the specific questions that we have to ask you. If we can start with Mr Dunstan.

Mr Dunstan: My name is Richard Dunstan. I am a Policy Officer for Citizens Advice, which is the national body for the Citizens Advice Bureaux in England, Wales and Northern Ireland.

Ms Mann: My name is Renae Mann. I am the Co-ordinator of the Inter-Agency Partnership, which includes six voluntary sector agencies that provide independent advice and support to asylum seekers and refugees across the UK.

Ms Daghlian: My name is Sally Daghlian. I am Chief Executive of the Scottish Refugee Council. We are a national charity providing advice and support to refugees and asylum seekers in Scotland and seeking to ensure that Government meets its obligations, legal, moral and humanitarian, to refugees in Scotland.

Ms Mushaka: My name is Twimukye Mushaka. I represent the Refugee Policy Forum which is a consortium of refugee community organisations in Scotland. The majority of our members are asylum seekers, so I represent the people that the subject of the matter is all about. Thank you.

Q45 Lord Plant of Highfield: Thank you very much. Do you have a general statement that you would like to make or shall we go straight into questioning?

Ms Mushaka: As asylum seekers and refugees in Scotland, we recognise that this is an historic opportunity for us to be heard directly by the Committee because it is not common for our voices to be heard in high circles like this. We represent torture victims, rape victims and families torn apart by persecution and harassment. We welcome the opportunity to be able to share what our experiences have been of living in the UK as an asylum seeker.

Our members tell us that they have not had access to justice because they believe the asylum system is very complex and it does not take into account some of the barriers that we encounter, like access to legal representation, lack of respect to gender-based persecution, language barriers and the quality of new country information that the Home Office uses to determine our cases. We believe we are able to make a contribution to this process and we welcome the opportunity to respond to other committees by request in the future.

Q46 Lord Plant of Highfield: Thank you very much. Perhaps I could start the discussion with a question to the Inter-Agency Partnership. You suggested that there is a growing number of refused asylum seekers who are completely destitute, can you give us any kind of estimate as to how many asylum seekers are homeless in the parts of the United Kingdom where you are working?

Ms Mann: Certainly. I will start by saying it is very difficult to ascertain conclusively the total number of destitute refused asylum seekers or, indeed, the total number of destitute asylum seekers regardless of whether they are in the system or not. Neither the Home Office nor other agencies collect this data on a day-to-day basis. I would say the most recent and most reliable estimate at this stage is in Refugee Action's recent report on destitution. In that they extrapolate data collected by a number of local surveys and estimate that at least 20,000 destitute refused asylum seekers are in the UK today. The IAP agencies have also documented the number of asylum seekers who they have supported between April and June this year who were destitute due to bureaucratic weaknesses in the way the Home Office administers the asylum support system. That includes both people who are currently in the system and those who are outside of the system. The total number was 3,170 people for that quarter alone.

Q47 Lord Plant of Highfield: Does anyone wish to add to that?

Mr Dunstan: I would certainly endorse what Renae says about the difficulty of getting hard and fast statistics in this area. I would add that there is also a constantly changing situation in that someone who is destitute one week may not be destitute the following week but may become destitute again.

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People are moving in and out of employment in many cases so that employment is frequently of an informal and temporary nature. Someone may have work for several weeks and have an income of some kind, even if work is extremely lowly paid, and then they also have accommodation for a short period perhaps provided by a friend or another asylum seeker but, again, that may come to an end. It is constantly changing. People are moving in and out of accommodation, in and out of employment and that makes it doubly difficult to come up with hard and fast figures.

Ms Daghlian: The Scottish Refugee Council carried out a small snapshot survey in February this year and identified at least 154 asylum seekers and their dependants who were destitute at that time. Again, it is very difficult to research what is known to be a hidden and shifting population, but this data was compiled from our own experience and that of other agencies and groups supporting people who are destitute. That group included 24 asylum seeking children from 16 families. I think that is particularly shocking. Children are not meant to be destitute within the system but often find themselves destitute, for example, because a child had been born after their parents had refusal on their asylum claim, so they are not then within the system. What we are very aware of from our staff and from the refugee community is that it is a growing problem that people are living in a twilight world without access to any form of support or entitlement to work, and that very understandably pushes people right to the margins to survive.

Q48 Lord Plant of Highfield: Again, a question I think primarily to Renae Mann, but do come in if you have something to add. In your evidence, you say that since the *Limbuella* case many asylum seekers have been refused assistance under section 55 if they have accommodation and that this may be inhumane and degrading treatment under Article 3. What changes would you suggest to avoid these potential human rights breaches?

Ms Mann: We would argue that all asylum seekers, including people who are appeal rights exhausted, should have access to section 95 support until their case is fully determined. That is where the person needs their case reviewed, whether they are integrated into the system following a positive decision or where they decide to voluntarily return. Such a test should not be applied to anybody because the reasons why a person might not apply within what is deemed to be a reasonable time might not be within their control.

Mr Dunstan: As agencies, we have never understood, and we still fail to understand, the linkage the Government makes between any time delay between arriving in the country and making an asylum application and the needs of that person in terms of welfare support when they do come and make their asylum claim. We simply fail to understand why section 55 is still applied even though, I think it is fair to recognise, it is applied in relatively small numbers compared with how it was initially.

Q49 Lord Plant of Highfield: Richard Dunstan, if I can ask you primarily, you told us that there is a large number of refused asylum seekers including disabled and mentally ill people who are completely destitute. The Government may argue that they could avoid destitution by leaving the UK, as it did with the section 9 provisions. Can you elaborate on how to balance respect for human rights with an effective asylum system?

Mr Dunstan: That is the \$64 million question, of course. I would certainly like to be able to hold up a blueprint for an asylum system for you today and I am sure you would like me to also but it is not that simple. I think organisations such as ourselves can do little more than set out some fundamental principles that we would like to see reflected in a properly fair and efficient asylum system and those are relatively easily stated. I would suggest there are five. The first is early access to good quality legal advice and representation. The second is high quality decision-making, and by that I would include a good dose of both humanity and pragmatism. The third is swift and effective integration of those granted status. The fourth is a proactive imaginative and well resourced approach to voluntary assisted return and other alternatives to enforced return, which I think everyone, including the Government agrees, is the least favourable option. The last, but by no means the least important, is adequate welfare support throughout that process, right up until the point of departure in the case of a negative decision. We would say that destitution as a coercive tool of policy has no place in a properly fair and efficient asylum system.

Q50 Lord Plant of Highfield: Has anybody got anything to add to that?

Ms Mann: We fully support everything that Richard has just said.

Ms Daghlian: There are particular groups who have been refused but, for example, who cannot return and cannot go back to their countries even if they wanted to. We think it is unacceptable that they should be left effectively without status and without any means of support and be denied the opportunity to legally support themselves.

Ms Mushaka: Our perception is that Britain is a democratic society, one which takes the issues of human rights very seriously, and to deny somebody the basic right, to shelter, food and clothing in an environment like this where we have not had any experience of it in the past is to undermine the very principles of protection. Voluntary return to many of us is not an option, it can only be an option if your life is not in danger. If your life is in danger and you face the prospect of death, then there is no way you can accept voluntary return. That is the difficult position we face.

Q51 Lord Plant of Highfield: To Sally Daghlian, we have been told about the suffering of asylum seekers' children in relation to measures such as the section 9 pilot and detention which have been introduced to encourage refused asylum seekers to leave the United Kingdom. Can you suggest what measures

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IND could take to encourage refused asylum seekers to leave the UK without interfering with their human rights?

Ms Daghlian: I think the very first thing that needs to be done is to understand why people are reluctant to leave and consider whether they have been well served by the system. There are many people who at the moment have got to the end of the asylum process but have not been well represented legally. For example, the recent Refugee Action research on destitution looks specifically at the legal cases of people who had been refused asylum and gone through the process and had identified some very serious weaknesses in the way their cases had been dealt with and presented. I think there is no doubt in our experience from the people who we work with that only very genuine fears of persecution allows people to continue living in the UK in what are very difficult and very distressing circumstances. However, we agree entirely that the integrity of any asylum system means that those who do not need protection from persecution or who do not have other humanitarian grounds on which to stay should return to their countries of origin. We think what is needed is much more individual casework support to explore with families and individuals the issues which are preventing them from returning home or the things which they fear. For example, there are many people who have been in the UK for a number of years who will have genuine worries about how they will reintegrate into the communities they have come from, who will worry about where they are going to live, what is going to happen to their children, indeed people coming from some countries face persecution when they return because they have left. I think government has to understand that people are not just being difficult but have a lot of concerns which need to be addressed. We would support a model which allowed people to do some research, to have some support from caseworkers which would help them to go back with dignity. However, we have to make sure that before that happens we have really filtered out the people who have got protection needs. That is the big problem at the moment, there is no confidence in the system. All of us who are working with asylum seekers and refugees hear and see cases on a regular basis which cause us real concern. We are pleased that the Government is improving decision-making. At the moment we have a situation, for example in Glasgow, where the Home Office estimates that 80% of NASS accommodation is full of families who are, in technical jargon, appeal rights exhausted. That means there are 1,000 families who are in absolute fear of the knock on the door, who are terrified of being removed from their houses early in the morning or, in compliance with the requirements to register at the immigration service on a regular basis, they are in fear that when they go they may be detained. These things are happening, and I am sure Twimukye will want to talk to you about the experience of those whole communities living in fear and the effects, in particular, on children and on schools, including the indigenous community who have taken asylum seekers to their hearts and are

now engaged in trying to support people and prevent them from being wrenched from the communities. There are two things Government needs to do: make sure that it is not going to try and return anybody who is going to face possible persecution, so there needs to be an independent review of cases.

Ms Mushaka: I want to reiterate the voice of mothers who are fearful of their children returning to countries which they have no memory of, especially children who were brought into this country when they were still very young and children who were born here. Returning them to their parents' country of origin means, in effect, they are essentially being exiled because they know the UK as their country of birth. To return them to an environment which they have no knowledge of is something that mothers fear. Whether these children will be expected to adapt to the environment back home, to live in insecure situations, to live in the fear of persecution and harassment and face the abuse that their parents may have encountered is something that any mother would not want to subject their children to if they had the chance to avoid it. We have also had the experience where mothers and children are not sleeping in their houses even though it has been properly given to them because they fear that the Home Office is going to come at any time. This creates a lot of insecurity in the community because your life is not the same, you are always on the run but, at the same time, the security of you staying in the country is not guaranteed and that is a dilemma which many of our members face.

Q52 Baroness Stern: My questions are about accommodation. The first question is to Mushaka, if you would be happy to answer this. You told us in your evidence that asylum seekers on NASS support are moved around and given housing which is due to be demolished. You say there are unannounced inspections of NASS accommodation. Can you tell us what effect this has on the asylum seeker's family and private life?

Ms Mushaka: We live in houses which are due to be demolished and what it means is the investment in this accommodation is non-existent. Most of our houses are damp, most have facilities that are not up to the qualified standard one would expect to be comfortable, but because we are asylum seekers we are given this accommodation on a no-choice basis so we have no negotiation. I will give a case in point in Glasgow. One accommodation provider, the YMCA, for instance, cannot install washing machines in all the rooms because the water supply is poor and they see no value in investing money in a building which is going to be demolished soon. The contradiction of this is we have been living in this accommodation for the last five years and with the new NASS contract it is possible that people are going to stay for another five years. How long can we continue to live in these conditions that they, as housing planners, deem sub-standard and unsuitable for habitation for the long-term? We have cases also where children are beginning to get asthma and they had no asthma when they went into

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this accommodation. We have had cases where people have mental illnesses because of the fear of being confined in one area because the security and environment around is not conducive for people to just go out and participate in other things. The problems we face are many, but the excuse of saying, "The house is going to be demolished so we cannot invest in it" is unacceptable, in our view. If this is going to be demolished, why can we not be rehoused in places that are going to be more suitable for human habitation? Back to your question of unannounced visits, this is common practice. The ideal situation would be where the project officer writes a letter and says, "I am going to come on this day at this time for this reason", but that does not happen in most of the cases. People are confused, sometimes thinking "the Home Office is coming to take me instead of the normal routine visits". What we also find uncomfortable is the intrusive nature of these house checks. Somebody will come and go to the bedroom and inspect the wardrobes. We have had questions being asked about how you got the computer, for instance and, in my view, in today's world the computer is a necessity and not a luxury. Why we are subjected to these kinds of questions, they are very distressing and it also sends out the message that we are expected to live below a certain standard which is unacceptable.

Ms Mann: I would like to say something about the quality of section 4 accommodation in particular. The Inter-Agency Partnership has no comment at this stage about section 95 accommodation quality, but section 4 accommodation quality as it currently exists, before the move to target contract provision, is generally of a very low and variable standard. We have received many case examples demonstrating this low quality. One example involved a woman who lived in accommodation where the ceiling had fallen through and we could not find anybody in the Home Office who would take responsibility for resolving that problem. We have had many case studies where people have not had the support or had any inspection whatsoever while they had been staying at accommodation for a significant period of time. While we are hopeful about the move to the section 4 accommodation provision by target contract providers, there is a very strong view within the Home Office, particularly amongst bureaucrats, that section 4 support recipients, clients, do not have the same rights, or should not expect the same standards, as people in section 95 accommodation. We would be very concerned if the same issues were to continue under the new accommodation regime.

Q53 Baroness Stern: Can I move on to a question to Richard. You said in your evidence that refused asylum seekers now receive section 4 accommodation for lengthy periods, which was not what was intended when the scheme was introduced. Can you give us some idea how long asylum seekers experience these conditions? Can you comment on the impact of this on their human rights?

Mr Dunstan: That is absolutely right. The section 4 regime, or "hard case" regime as it was then known, was certainly not designed for the kind of case and

the length of support which is now happening. I cannot remember whether it was in our written submission or in the report we published in June, certainly in one or other we published some Home Office figures on the length of time that people are spending on section 4 support from, I think, February this year. That showed that of those then on section 4 support something like 60% have been on section 4 support for more than six months and almost one-third have been on section 4 support for more than a year, which is an extremely long period to spend on a very much reduced level of support, in particular with no cash which causes all sorts of problems of its own. I have not seen any more recent figures from the Home Office since the foreign national prisoners' fiasco. The Home Office has become extremely reluctant to give out any kind of management information or statistical information of any kind. I have not seen any more recent figures but I also have not been given any reason to believe that those time periods have reduced or changed at all significantly.

Q54 Baroness Stern: Could you say something specific about the impact of this on people's human rights?

Mr Dunstan: Section 4 support is set at a much lower level than even section 95 support, which itself is set at a lower level than income support. I think the figures are income support is £57.45 a week, section 95 is £44.22 a week and section 4 is £35 a week. That might be manageable for a very short period of time, as I say, which was the original intention, but for long periods that leaves individuals in particular unable to purchase replacement clothing. Over such periods of time clothing wears out. They may not start off with appropriate clothing if they arrive in the summer and are on section 4 support, by the time winter comes they may not even have a winter coat. On that level of support, particularly where that support is provided in vouchers rather than cash, and they cannot use vouchers in many places to buy clothes at all, it makes it extremely difficult. I am no lawyer but that to me seems like a fairly clear breach of human rights.

Ms Daghlian: In our experience, not only is the level of vouchers very low but people are unable to access what I think we would regard as fairly basic requirements. We have had examples of people with children being unable to buy nappies for their children, that the supermarkets and outlets have refused to allow them to use the vouchers for those purposes. I am not sure whether it is enshrined in legislation, but I am sure that most of us would consider that it is a human right to be able to clothe our newborn babies in nappies. We have many examples of people, for example heavily pregnant women, having to walk very, very long distances to access either medical care because they cannot use these vouchers for transport and for other circumstances, for example walking to get to the shops where you can exchange your vouchers.

Ms Mushaka: Can I also add to this submission that section 4 support is stigmatising to the user, the fact that you have no access to cash while others do

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already makes a distinction of who you are and what your position is in society. Part of the problem that our members have shared with us includes the inability to buy the culturally appropriate food that we are used to and this is not commonly available in the major supermarkets where these vouchers are supposed to be used. We have had experiences where people have had, as a matter of making ends meet, to exchange their vouchers for less value. For instance, if you have a £35 voucher someone will give you £20 cash and you lose the £15 just to try and get around and buy what you want to eat rather than just subjecting yourself to a life which is very difficult. We have also had women complaining that they are not able to purchase feminine hygiene materials that they may need. We do not know how true that is. Some supermarkets are quite open but others may not be, it depends on who the provider is. If there was one principle that applied to everybody and would possibly make their lives more bearable, we want to suggest and recommend that the voucher system is abolished—when I first came we were on vouchers—why is it being reintroduced at this point in time? That is something we want the Government to reconsider. The second point is about making sure that people are able to continue to live a meaningful life even though they have reached the end of the process.

Q55 Baroness Stern: I wonder if I can ask my last question to Renae. In your evidence, you have highlighted some details about section 4 accommodation, no heating or facilities for new babies, disrepair and no locks in shared accommodation, for example. What action do you think should be taken to ensure that accommodation does not result in human rights' breaches?

Ms Mann: We believe section 4 should be abolished. The Inter-Agency Partnership agrees that section 95 should be provided to everybody until their case is fully determined, in that they have been moved onto alternative mainstream support if granted status until they leave the country if their claim is successful. To reiterate the points that Sally made earlier, that support should be provided based on an understanding and recognition that perhaps sometimes the asylum determination system does not always make the right decision and so before making a decision about whether or not somebody should be returning or leaving the system they should be filtering the cohort of people who are at the end of the process, provide a legal review of their asylum claim and if the person then should be returning, give them independent intensive casework support that does a risk assessment for the entire family or individual and identifies the safety and sustainability of voluntary return for them. We have submitted this in response to section 9 earlier this year and we would be very happy to share that with you.

Lord Plant of Highfield: Nia Griffith, MP for Llanelli, has the next question on financial support.

Q56 Nia Griffith: Can I thank you for the comments you have made already about financial support because I think you have told us quite a lot already. I think this question is particularly for Richard. You say that when an asylum seeker's claim ends they will lose their NASS support and be evicted, even if it is clear that they have qualified for section 4 support as in the case of a pregnant woman. To what extent do you think a move to the new asylum model would solve this and other administrative problems with support?

Mr Dunstan: The new asylum model clearly offers the potential to close that gap which exists under the current arrangements. The Home Office has itself said that under the new asylum model it intends to align negative decision-making with departure from the UK, whether that is enforced or voluntary. We would hope that would eradicate the situation where people fall into this trap of destitution in between. That is all well and good and, of course, at this stage it remains to be seen to what extent that will be achieved under the new asylum model, but that will not address the position of the existing population of failed asylum seekers who are not going to be dealt with under NAM. Therefore, as well as proceeding with NAM, the Government needs to consider the position of that population.

Q57 Lord Judd: We understand that if the National Asylum Support Service refuses support an asylum seeker has the right to appeal to the Asylum Support Adjudicators in Croydon, down there on the outskirts of London. In your experience, does this arrangement provide destitute asylum seekers with a fair hearing in accordance with Article 6 of the European Convention on Human Rights or does it not?

Ms Mann: I think I would refer to the earlier evidence given by the Immigration and Legal Practitioners Association a couple of weeks ago. We do not have any conclusive evidence on this but anecdotally in case studies I have received, particularly through the Asylum Support Appeals Project, it is that often people are attending their adjudicator hearings without representation and that is one of the key problems and barriers to receiving an appropriate hearing when they are presenting to appeals. Anecdotally, no, we do not feel that people are getting the treatment they deserve because they are not getting the legal representation they need to be able to present their case appropriately.

Q58 Lord Judd: Do you think they can get access, I mean physically is it possible for them wherever they are?

Ms Mann: It is very difficult. The Asylum Support Appeals Project attempts to fill some of those gaps by providing people with legal representation on the day, but their resources are very limited and there are many, many holes in terms of where there is availability or access to legal practitioners across the UK.

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Q59 Lord Judd: I meant physical access?

Ms Mann: No.

Mr Dunstan: I want to be careful what I say because I do not want to say anything which implies a criticism of the Asylum Support Adjudicators themselves. I have to say, whilst we may not always agree with the individual decisions that they reach, in many ways the ASA is a model of a tribunal system, except for two things and I think these are really important. The only hearing centre is in Croydon, whereas appellants are distributed throughout the country and that is clearly a barrier to justice. There is the option to claim travel expenses but they do not, for example, include food. I have seen cases where people have had to travel from Hull, for example, to hearings in Croydon early in the morning. They had to travel overnight and were put up in accommodation somewhere but the accommodation did not include food, so they had to go to the appeal hearing without having eaten either dinner the night before or breakfast that morning. It seems quite incredible to me. The second major barrier to justice within the system is the absence of Legal Aid for advice and representation at the hearings. There is now the ASAP which provides free representation to a relatively small number of appellants. That is a voluntary sector project and the representation is provided on a pro bono basis by solicitors and barristers. There is no justification for there not being Legal Aid in this area of law. Whatever the Government says about it having started off as a relatively straightforward area of law, that is no longer the case. It is an extremely complex area of law interacting as it does with the responsibilities of local authorities. There is clearly a very strong case for introducing Legal Aid here.

Q60 Lord Judd: Twimukye, I gather you want to come in on this point, but could you also tell us, because I understand you have some real anxieties about this, a bit about your feelings on the negative impact of the media on this whole situation?

Ms Mushaka: Speaking from an asylum seeker's point of view, when you have reached the end of the process and your support has been stopped the next thing you think about is where is my meal going to come from the next time round, where am I going to sleep, I am not going to appeal against a system which has already put me in this position, that is the first point. The second point relates to the fact that we assume that all asylum seekers have access to this information. It may be a problem that people do not know they have the right to appeal. Also, the other thing we must bear in mind is if the hearing centre is in Croydon, that is really close to going home. You must be in the position of an asylum seeker to understand the fear attributed to Croydon. I would never put myself there if I could avoid it

Q61 Lord Judd: Twimukye, I understand you have some views you want to share with us on the impact of the media on all this?

Ms Mushaka: Public perception of us is 90% fed by the media. The media has labelled us as illegal, as scroungers even when we do not have that choice because many of us would be willing to earn our own living if we were given the chance to do so. When we are picked on as people who just want to be dependent on the state, that is one negative image. It affects our social standing in society, it affects our self-esteem, it devalues our confidence, it devalues our skills which we believe could contribute to this country, and that is very, very unfortunate.

Q62 Dr Harris: I want to ask about the vouchers. You mentioned already, Twimukye, the stigma associated, so you do not have to restate that, but I want to ask you, and possibly Richard, what actual problems the provision of support in the form of luncheon vouchers or supermarket vouchers provides in terms of your needs?

Ms Mushaka: I have already mentioned that the vouchers stigmatise the users, so I am not going to speak anymore about that, but the fact that you have no access to money, there are a lot of other things that one can only buy with money and not vouchers. I will give an example of traditional appropriate food. If one wants to buy Halal meat, for example, and it is not available in the supermarket, then if you have a voucher you have no option but to exchange your voucher for less value. The other problem people often face is the fact that they have no money for other things which may not necessarily be present in the supermarket. For example, if I want to buy a phonecard to contact some friends which may be cheaper and the supermarket does not have a phonecard, it is only there at the corner shop. Those are some of the challenges people face in not having access to money. While the voucher is valued in terms of money, it is not hard cash and that makes it a limitation.

Ms Daghlian: May I add to that because I think sometimes people think things like telephones and telephone cards are luxuries and for asylum seekers they are absolutely essential. People are often in situations where they are separated from their families, they need to try and keep in touch with their legal advisers, they have to keep in touch with the Home Office and they have to be able to do all of the normal things which we do by telephone these days. I want to emphasise the point that it is very much a practical issue and does create hardship for people not being able to access things like telephone cards and not being able to buy cleaning materials or goods, as I mentioned earlier, like nappies.

Q63 Lord Plant of Highfield: That is a good answer.

Ms Mushaka: The other thing also is that somebody on section 4 support may not have a landline so they have no access to a telephone line of their own. Buying a card allows you to go into a telephone booth and make any contacts you need to make at that point in time.

Mr Dunstan: I endorse everything which is being said about the difficulties of not being able to access certain goods and services without cash, such as transport, not being able to use telephones, not

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being able to use a laundrette, but I want to introduce another side of it which is as well as being very inhumane, it is also incredibly inefficient. The Home Office is currently going through a rather bizarre process of drafting regulations under the most recent Act to specify in what situations the accommodation providers can provide additional support for making journeys to see legal advisers, to see doctors and to make telephone calls. The bureaucracy that is going to be established simply to enable people to undertake extremely basic activity is really quite mind-blowing. From everyone's point of view, it would be so much easier to give people cash. I really do not understand the Government's intransigence on this point.

Q64 Lord Plant of Highfield: Do you think making a section 95 sum available would solve that problem?

Mr Dunstan: I think all support should be in the form of cash. As I think has already been said, section 4 support should disappear in the sense that its terms and level of support should be exactly the same as section 95. What it is called is irrelevant and if the Home Office wants to call it something else for accounting purposes, that is fine.

Q65 Lord Plant of Highfield: I did not mean that, I meant is the level of support you get on section 95, low though it is, sufficient to meet some of these problems which you think are specifically to do with section 4?

Mr Dunstan: It is not sufficient. I think I gave the figures earlier, section 95 is £44.22 and section 4 is £35. The only reason I have been able to unearth for that is that since people started getting cash or voucher payments in 2002 or 2003 no-one in the Home Office has thought to uprate the level of section 4 support in contrast to section 95, which is pegged to income support levels and is uprated automatically every April.

Ms Mushaka: Can I also share one limitation I know about from our members on section 4 support. It is the fact that it places a requirement on the claimant that they must agree to go back home. It goes back to what I said at the beginning, people will only agree to section 4 support if they know their lives are not in danger, therefore they would be willing to return home when the time came. That is a limitation. A lot of people do not even give themselves up for the option of section 4 support because it creates that limitation of wanting you to go home at the end of the day.

Q66 Lord Plant of Highfield: Are there any final comments you want to make? I think we have gone through all the questions we need to ask.

Ms Daghlian: I would like to raise, because it has not come up, the issue of people with special care needs who are experiencing particularly distressing circumstances, especially when they are living on section 4 support. We have had a particular problem in Scotland because of the devolved legislation and the Home Office not always recognising that the system is different in Scotland, so NASS policy papers are based on English systems in English legislation. We have had particular difficulties in securing social work support for some clients who are deemed to have needs greater than those which can be met by NASS. One very tragic example of that recently was a section 4 client who had been refused support and assistance by social work services and tragically, and very publicly, committed suicide, jumping from a tower block. Obviously that is very extreme, but I think it illustrates the distress that many people are facing. When on top of the distress and difficulty you experience trying to eke out a living under section 4, you add to that physical or mental health difficulties, then it leads people to increasingly desperate courses of action. That is something all the advice agencies in the UK are experiencing, that increasingly the people who come to see us are in very, very desperate circumstances and are very, very distressed.

Lord Plant of Highfield: Thank you very much indeed.

Witnesses: **Dr Angela Burnett**, Medact, **Ms Karen McColl**, Director, Medecins du Monde, and **Dr Yusef Azad**, Director of Policy and Campaigns, National AIDS Trust, examined.

Q67 Lord Plant of Highfield: Good afternoon. Perhaps I should explain to begin with that the normal Chairman of this Committee, Mr Andrew Dismore, who is the MP for Hendon, is involved in the report stage of a Bill going through the House of Commons on corporate manslaughter. He has an amendment which is currently being debated, so he is in the Chamber and I am standing in for him. First of all, perhaps you can identify which organisation you represent, starting with Dr Burnett.

Dr Burnett: My name is Angela Burnett, and I am representing Medact. Do you want me to say something about Medact?

Q68 Lord Plant of Highfield: Let us go to the individuals first.

Ms McColl: My name is Karen McColl. I am the Director of Medecins du Monde, UK. It is the UK branch of an international medical and humanitarian organisation. Since January this year we have been running a health project in London called Project London to improve access to healthcare for vulnerable migrants.

Dr Azad: My name is Yusef Azad. I am Director of Policy at the National AIDS Trust.

Q69 Lord Plant of Highfield: I do not know whether you would like to make some sort of general comment at the beginning of your evidence, either individually or collectively? If you do, we would be

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grateful if it could be reasonably brief because we have got quite a large number of questions to ask, but do feel free if you would like to say something.

Dr Burnett: I am happy to leave time for questions.

Q70 Lord Plant of Highfield: Are all of you?

Ms McColl: Yes.

Dr Azad: Yes.

Q71 Lord Plant of Highfield: If I can ask the first couple of questions. This is to Medecins du Monde. You stated that the regulations prevented refused asylum seekers from accessing hospital treatment and that may interfere with their human rights, particularly to the right to life under Article 2. Can you expand on that claim a bit?

Ms McColl: Medecins du Monde has been concerned with other interested groups for some time about access to secondary care since the regulations were changed in 2004 in terms of charges for overseas visitors. What we are concerned about is the impact on people who are already living here. Through the work of other agencies and of our own Project London we have case studies of people who have been refused access to secondary care even when they are quite seriously ill or even if they are in particular risk groups, such as pregnant women. We think that infringes their right to health or the right to the highest attainable standard of health under Article 12 of the International Covenant on Economic, Social and Cultural Rights and possibly, in some cases, the right to life or the right to freedom from inhumane or degrading treatment.

Dr Azad: We would certainly agree and, obviously, as the Committee will know, HIV without treatment ultimately results in death, so Article 2 is involved, but also Article 3 because without treatment the individual suffers an increasing range of really severe and distressing opportunistic infections, so both of those Articles apply. We should obviously concentrate on the human rights of the asylum seeker, but there is another aspect I would briefly like to mention around public health. If you look at Article 12 of the International Covenant on Economic, Social and Cultural Rights, one thing that state parties should do is take steps necessary for 'the prevention, treatment and control of epidemic diseases'. One of our concerns also is that there are human rights for vulnerable communities and the general population which are being undermined by untreated HIV and untreated TB being allowed to occur in the community.

Dr Burnett: I would certainly echo what my colleagues have said. I know of several cases where people have been suffering from cancer, from multiple sclerosis and other serious degenerative diseases. Obviously withholding treatment will definitely lead to deterioration and ultimately death. I also support the fact that it is not just the individual, but also it is an important public health issue.

Ms McColl: If I could add one other point, it is important to add that there is no safety net, there is no alternative, for people if they are able to access NHS care and they are unable to pay for it privately.

It is precisely because the NHS has operated with this principle of universal access that we have never until now needed a safety net. In other European countries where they have different systems they may have an alternative system in place to act as a kind of safety net but we have never needed one and now find we do need one.

Q72 Lord Plant of Highfield: And there is not a predictable safety net? Is there anything by and large and on the whole informal that people do even though there is no statutory free safety net? What does happen? Are people with TB and AIDS just not treated at all or are there informal ways in which treatment is given?

Dr Azad: Certainly with regard to HIV, it is a highly complex and specialist treatment. There is no informal system other than that provided by the NHS. What happens is that people disappear from care and we are getting an increasing number of cases where that is happening, often when they are co-infected with TB, so there are implications, obviously, both for their own health and for wider society. The Department of Health will say that they meet the point about Articles 3 and 2 through the requirement that where the clinician deems treatment to be immediately necessary it should be given. The person nevertheless is not free of charges. The person is allowed to access the treatment but the bill comes at a later date. I suppose our fundamental contention is that this does not meet the requirements of the European Convention because, whether it is a pregnant mother living with HIV or someone with another serious and life-threatening disease, the prospect of a bill for thousands of pounds when they are, as we have just heard, very often destitute and without any funds or resources is enough to deter people from accessing the life-saving treatment they need or to end accessing treatment they were accessing previously.

Dr Burnett: As well as being technically impossible to treat complex illnesses outside a properly structured health service, the care needs to be co-ordinated, and if we are thinking about infection and infectious diseases people need to be completing the course of treatment; otherwise that leads to resistance of the infections and we already have that in certain cases with TB. We certainly do not want to increase that. There is an important requirement on the Department of Health to carry out both a public health impact assessment and a race impact assessment of these policies, and neither of those has happened.

Q73 Lord Plant of Highfield: In a sense you have brought me on to my next question which is that from several organisations there have been suggestions of widespread confusion about the rules for access to free secondary healthcare. In the case of Médecins du Monde, in your evidence you refer to cases where patients are being discriminated against, refused treatment and charged in error, and we have heard about discrimination in another sense just now from Dr Burnett. How widespread do you think these problems are?

Ms McColl: Our findings from Project London can only really be seen as a small snapshot because it has only been running for 10 months and it is a relatively small project. The worry is that they represent a much wider picture. The rules on access to secondary care are now very complex and we are seeing a lot of confusion on the ground, particularly about what constitutes immediately necessary treatment and how to define that, in particular around the area of maternity care which the Department of Health has said should always be considered as immediately necessary and women should not be refused treatment on the basis that they are unable to pay, but we and other organisations have come across women who are being asked to pay 100% deposit for an antenatal package before they can have any care at all.

Q74 Lord Plant of Highfield: Do you have anything to add, Dr Azad?

Dr Azad: Simply to agree. We have a number of cases where people with a live and legitimate asylum claim have been charged. We have a number of cases of pregnant women with HIV being told that they have to pay up front, which is contrary to the directive from the Department of Health on immediately necessary treatment in those cases.

Q75 Lord Plant of Highfield: Dr Burnett?

Dr Burnett: As well as being extremely traumatic for the individuals involved, it is very cost inefficient to the Health Service to let conditions deteriorate. There are several examples, and perhaps I may pick out one which was mentioned by the Refugee Council in their report of a woman who was pregnant, who was presented with a bill, was unable to pay it and did not access further antenatal care, delivered her baby by herself at home and the baby then required intensive care on a specialist baby care unit, which obviously cost thousands of pounds. This, I would suggest, might have been avoided had she had properly attended antenatal care and delivery.

Q76 Nia Griffith: Dr Azad, you mentioned in particular clients who have HIV who are not asylum seekers but have applied for the right to stay in the UK under Article 3 of the Human Rights Convention. You say they have been refused secondary care because they are not defined as asylum seekers. In the case of HIV is it possible to refuse treatment without breaching human rights?

Dr Azad: In our view it is not because we know that HIV is a life-threatening condition and so we think, both in terms of the International Covenant and indeed the European Convention, to deny treatment that is available to someone which would save their life is inhumane and contrary to their human rights. The strange thing about Article 3, and this applies also to people on section 4 NASS support, is that these are people who are receiving state funding, albeit it may not be enough (and we have heard something of that), in terms of accommodation, in terms of welfare, and so I think they must be deemed to be lawfully resident while their claims are being

considered and yet they are being denied secondary care. There is nowhere else for them to go. There is no safety net, as we have heard, so they are put in an impossible position. We have written to the Minister asking that the guidance be clarified so that the assumption that we had all had until a recent Department of Health communication, that Article 3 applicants were deemed to be in the same position as asylum seekers, was correct and that that might be the guidance that is disseminated and these people are brought within the system.

Dr Burnett: I want to point out another anomaly, which is that DFID is very actively campaigning for universal global access to anti-retroviral treatment and yet here in the UK a group of people who are extremely vulnerable are being denied treatment.

Dr Azad: I was talking to the World Health Organisation in Europe who have a responsibility for monitoring universal access to treatment, and they have made it quite clear that according to the WHO rules the UK has not complied with universal access to HIV treatment which, given the G8 Gleneagles commitments, is a sad state of affairs and we hope it can be put right soon.

Q77 Nia Griffith: Dr Burnett, you have already mentioned a good number of the difficulties. Is there anything else that you would like to add about the effect that the restrictions on hospital treatment care are having on those asylum seekers who are entitled to treatment and what difficulties you face in ensuring that asylum seekers receive adequate medical treatment?

Dr Burnett: The first part of your question was about the effect on people who do have access?

Q78 Nia Griffith: The effect the restrictions are having on those asylum seekers who are entitled to treatment and the difficulties that you face in ensuring that asylum seekers receive adequate medical treatment.

Dr Burnett: In answer to the first part, I think it is leading to a huge amount of confusion and there are many examples where people who still have an active asylum case and therefore are entitled to treatment are being denied care. In answer to the second part, it is taking an increasing amount of health workers' time in advocating to ensure that people who are vulnerable can receive care. As you are well aware, health workers are extremely pressed and I think it is time which would be better spent providing care, not only for this group but also for all the other patients who are registered with us, and I think it is leading to many problems.

Q79 Dr Harris: I should say that I am a member of the British Medical Association and specifically a member of the Medical Ethics Committee that gives advice to doctors on ethical areas. I want to ask Dr Burnett first about primary care and the discretion that you have as a GP and your colleagues have as GPs whether or not to register as a patient a refused asylum seeker or other migrant who does not have legal status in this country. How in your experience is this discretion applied in practice, both in your

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own area and from your organisation in other areas of the country, where seeing people present for primary care might not be quite so common as in your area, and, secondly, what do you think the quality of professional advice or guidance is, for example, from the BMA or indeed the Department of Health?

Dr Burnett: First I should say that I myself am a practising GP. I work in Hackney at the Sanctuary practice, which was set up specifically to cater for refugees and asylum seekers, and I also work at the Medical Foundation for the Care of Victims of Torture. Certainly in the Sanctuary, which is part of the NHS, we do use our discretion to register people but I know that there are other practices which also are able to refuse to register and that is in the guidance. I think that Karen from *Médécins du Monde* will talk a lot about the difficulties of registering people and often we will register someone who has been rejected by several other practices. The clarity of the guidance I think leaves something to be desired. The actual wording from the Department of Health appears to be directly contradictory, where they advise GPs not to register people who have failed in their claim but subsequently they say, “You do have discretion to do that”. I think that the guidance should be made clearer and I think that GPs should be encouraged to register people because, as I have said before, I think it makes no public health sense and also no sense for the individual.

Q80 Dr Harris: So, in terms of the discretion being applied, how many practices are doing this in your experience? Do they lose out financially if on an individual case they are simply unable to claim for that and does that have a significant impact on their budget?

Dr Burnett: Yes, I think it would have a significant impact on their budget because more and more GP income is dependent on reaching targets and for this group of people it is quite hard to achieve those targets, partly because they are very mobile, partly because the sorts of illnesses that they present with are not reflected in the Quality and Outcomes Framework which forms a very significant part of general practice.

Q81 Dr Harris: But if they have 100 on the list they get funded on the list so they do get funding for those 100 even if they are not—or do they not?

Dr Burnett: They would get some funding, but I think the funding is inadequate for the amount of work which is needed. The amount of work includes, as I have said, the amount of advocacy that is needed, which is not the individual person’s fault, and also the issue of interpreting, the fact that consultations take longer. I think this needs to be valued. At the moment it is penalised.

Q82 Dr Harris: I am going to come on to the project in a later question so we can hold off that, but is it your view that any medication given in primary care that is not immediately necessary or urgent, for

example, treating a diabetic to control their blood sugar, is something that is immediately necessary or urgent or would you consider that to be non-urgent?

Dr Burnett: No, I would consider that completely essential.

Q83 Dr Harris: I mean with tablets.

Dr Burnett: Yes, because if diabetes is untreated that leads to short-term, often emergency situations, and also long term complications. Asthma is another example.

Q84 Dr Harris: What about HIV from a clinical point of view because in some countries they do not treat until they are symptomatic or they have a CD4 count that is low enough but in some countries they treat anyway?

Dr Burnett: I think treating HIV promptly reduces the incidence of complications and also reduces infectivity.

Q85 Dr Harris: I would like to ask Yusef, you state in your evidence that if the restrictions on secondary healthcare were extended to primary healthcare there would be “obvious implications for public health”, with more people attending A&E departments as well, and particularly human rights concerns in relation to children. Can you expand on what you mean by those consequences or concerns?

Dr Azad: It is apparent even at the moment that there are real difficulties, even for asylum seekers and even more so for failed asylum seekers, in accessing primary care, and that includes families and it includes families with children. I do not think we are totally clear what the rights of children are in this context but even if in theory for children their care would not be charged under a charging regime the problem is registering with a GP in the first place and getting the children to be seen by a GP and getting their healthcare monitored. The Health Protection Agency produced a report on migrant health last week where they wrote, “Primary care practitioners may be ideally placed to consider HIV risk in their assessment of a patient’s health needs as a new entrant to the UK and need to be supported in this role”. One problem is that the more barriers you put up for primary care the less likely it is that children who may have health needs will be identified. Another loss is the key opportunity to identify people with possible life-threatening symptoms, be it HIV or some other very serious condition. Care in Accident & Emergency remains free of charge. The more you create barriers for people to access a GP the more they are simply going to present, if they really feel ill or concerned about their health, at the one place where they know they can get free healthcare, so all the achievements and successes there have recently been in terms of reducing Accident & Emergency times are going to be undermined by that being, as it were, the place of last resort to which people go, often with conditions and issues that really are not appropriate for Accident & Emergency settings. Those are all issues around primary care access at present and the possible further harmful effect of charging.

Q86 Dr Harris: Do you think there is already evidence, and maybe there is no evidence or it has never been looked for, that people are not being diagnosed with an infectious disease like HIV and TB and therefore as a consequence not only are there, because you have covered this, implications for them in terms of treatment, but there are also further infections from that primary case? Has that been looked for and is there any evidence?

Dr Azad: The evidence suggests that 33–50% of people diagnosed with HIV have previously presented in a GP surgery with HIV-related symptoms and they have not been noticed or identified.

Q87 Dr Harris: Can you give us a reference for that at a later date?

Dr Azad: Yes, certainly. It is in a document called *Treat with Respect* by a number of HIV clinicians¹. Primary care is already, in terms of infectious disease, too often (certainly in terms of HIV) a serious lost opportunity. The Government, quite rightly, is trying to reverse that process, up-skill GPs and make primary care a place where HIV symptoms can be identified, where people can be referred for tests or indeed be tested. The problem is that at the same time many of the people living with HIV from the relevant community are being denied access to primary care settings and so there are two policies at cross purposes here. Another problem is that the way HIV services are designed is being reconfigured. To date most people living with HIV have been able effectively to get a one-stop-shop health service at their HIV clinic. Given the way the NHS is changing that is no longer the case and it is increasingly the case that someone living with HIV will just get their very specialist care in the HIV clinic and will need to go for all ancillary care to a GP. People living with HIV who find it difficult to register with a GP are suddenly going to find a loss of care that they were enjoying access to in an HIV clinic. They will no longer be able to access this care because they are having difficulty registering with a GP.

Q88 Dr Harris: My question is also whether you think it is possible or likely that third parties are being infected with infectious diseases as a result of the policy that causes delay in diagnosis and treatment?

Dr Azad: I think that is both possible and likely. People are at their most infectious in the early stages of HIV infection around seroconversion. Often people will present in GP surgeries with very severe ‘flu-like symptoms which are actually signs of seroconversion illness and at that point the person is at their most infectious. If GP surgeries could be used to pick up the relevant risk factors, identify the possibility of HIV seroconversion and test and treat then there could be a very significant impact on HIV transmission in this country.

Q89 Dr Harris: If I may turn to *Médécins du Monde*, with regard to your project you give examples in your evidence of people having difficulty registering because of the need to provide ID. What could be done to remedy that? You have already mentioned there is no racial impact assessment from some of these measures which might have picked up that potential problem but could you say what you think ought to happen to remedy that problem?

Ms McColl: First of all, as you mentioned, there are no regulations limiting access entitlement to primary care and it remains at the discretion of the GP but, as we have heard, there is a certain lack of clarity in terms of the guidance on that. We think the Government should make it clear that there is a return to the basic principle of the NHS that healthcare should be available to everybody living in this country and that that should extend to primary care. We would also like to see more flexibility on the part of practices in terms of the documents that they accept as proof of address or enable someone to be able to register with a practice. For the clients who come to our project it is just out of the question for them to have access to a bank statement or a utility bill to be able to prove their address, and for some practices those are the kinds of documents that they require and there is a real lack of flexibility about accepting other documents. For people who are in unstable accommodation, who may have lost all their documents during their flight or have had them kept by former employees it is just impossible to have all those documents, so we would really like to see more flexibility and we reinforce what Yusef said, that the Health Protection Agency’s report on migrant health really emphasised the importance of primary care, not just in HIV but in supporting the health needs of migrants.

Q90 Dr Harris: Your examples cover what could be described indirect discrimination but do you have any evidence, and could this be tested, about whether there is direct discrimination, that people who look foreign in certain places are being told the list is closed, whereas if you or I, if I could number you as a transgressor, were to seek entry to the list you might be told that there was not a problem? Is there any evidence of that?

Ms McColl: We do not have direct evidence of that. It could be tested. You could set up some way to test it but all we are reporting is the findings of our clients who come to our project, so we do not have direct evidence of that.

Q91 Dr Harris: In your examples you give a series of excuses that are provided around, “We do not have interpreters”, when in fact they do have access to interpreters.

Ms McColl: That is right. We have cases where the excuses have changed. As we try to overcome one barrier, such as the lack of interpreters and we have said, “The PCT is providing interpreter support”, then the excuse became, “The list is full”, and then

¹ Footnote from witness: “Treat with respect: HIV, Public Health and Immigration”, Professor Brian Gazzard, Dr Jane Anderson, Dr Jonathan Ainsworth, Dr Chris Wood—available at www.ukcoalition.org

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the excuse became, “We do not have enough staff”. It was quite clear that that particular practice did not want to register that particular person. We can say that.

Q92 Baroness Stern: I would like to come back to maternity care. We have talked about it but there may be a bit more to say in the light of this. We have been told that hospitals are demanding payment and sending debt collectors to visit pregnant women before or after they give birth. We have been told this so I believe it, but I find it hard to believe. Do you know of any cases where maternity treatment has been refused to those who cannot pay and can you comment on the effects of such actions on the health of the mothers and children? This is different from the case we discussed earlier.

Dr Burnett: There are many other cases; I just picked out one which did have an obvious very detrimental effect on the health of both mother and baby. I also have someone registered with me currently who I saw today, where not only is the effect apparent in the fact that she delivered a low birth weight baby but also now, because the mother cannot afford to eat properly, she is breast-feeding but her milk supply is diminished and the baby is not putting on the weight that we would expect. That is a very graphic example. She is somebody who is able to access healthcare but the other social aspects of her life are not being properly supported, and we heard about those earlier. If she was not able to access healthcare I think the effect on the health of both her and her baby would be even more dramatic than it is already. Those are some cases and I know that Karen has others.

Ms McColl: At Project London we have seen women who have been refused maternity care unless they could pay a deposit in advance for their care, and the Refugee Council in their recent report *First Do No Harm* also had cases of pregnant women who had been refused care. Those are the lucky women because they are the women who came to see us or who came to the Refugee Council and then we were able to advocate on their behalf and say, “Government policy is that the risks are so high to mother and child that you really should not be refusing care even if she cannot pay”. They were the lucky women and the worry is that this policy spreads by word of mouth as well and that there are women who are too afraid to go forward for any care. We have seen women who were so terrified by the prospect of accruing a debt that they really did not want to go back to having any care at all and we have had to persuade them of the importance of having antenatal check-ups and assisted delivery. It is a very concerning situation.

Dr Azad: Obviously, there is a real HIV issue here because of the real public health success there has been in the last three or four years in the HIV antenatal screening which has reduced undiagnosed HIV, particularly amongst pregnant women in the African community. At the moment women have to pay a bill, if they fall into, as it were, the wrong

immigration categories, for the drugs needed to stop their unborn child getting infected with HIV. As soon as I tell people this they find it extraordinary and I certainly find it extraordinary and I question the human rights issues there. We have real concerns both around a possible decline in the level of antenatal HIV screening and around a possible increase in mother-to-child transmission of HIV. This is just one case that was rung into us two days ago, to give you a little bit of detail because it illustrates the problem so powerfully. This was a pregnant woman living with HIV who was an Article 3 claimant but her claim was refused in December 2005. She continued to get HIV treatment from her clinic, as she should, but when she went for an antenatal screen that part of the hospital spoke to the overseas payment visitor and the next thing she knew she got a letter telling her that she could not enter the hospital either for maternity care or for HIV care unless she paid up front for her treatment. The result of that was that she disappeared from care for three to four weeks and her HIV nurses were very worried, obviously, about her health and that of her unborn child. She was found through voluntary sector organisations. The HIV clinic wrote a counteracting letter to the other letter from the trust saying, “You must come in and keep on getting the HIV treatment you need to survive and for the good of your baby”. There was then an argument in the trust and the trust eventually reluctantly accepted that she could continue her HIV treatment for free but insisted that she would still have to pay for her maternity care. Now the HIV clinic are arguing that they should take out the HIV-related bit of the maternity charge. The woman is terrified and has no money. This is a cruel charade. The bottom line is that whatever bill she gets she will not be able to pay and everyone knows that. Going back to what Angela said earlier, so much time is being spent by healthcare workers on what we know economically is a pointless exercise and we know medically is a harmful exercise, and that is what I find distressing about these sorts of cases that are coming to our attention.

Q93 Lord Judd: Does anyone cost this in terms of what the administration spends on fighting these battles internally?

Dr Azad: Some PCTs seem to realise that actually there is no point spending so much time billing people who have no resources. It comes back to the cost/benefit argument, that we are charging people for very cost effective, preventive interventions. Anti-retroviral therapy is one of the most cost effective medical interventions there is. If we deny them that cost effective intervention they will simply present in Accident & Emergency and then in intensive care with greater and greater frequency and in a matter of a couple of days cost the NHS as much as a year’s anti-retroviral treatment. The Government really has not had an answer to that cost/benefit point and the same must be said for the amount of staff time that is being spent on these sorts of cases.

Q94 Baroness Stern: I would like to know what you actually do when you are confronted with a hospital taking such action and a person who clearly cannot pay and needs to be helped. Do you ring someone up or do you go and stand outside with a notice? What do you do?

Ms McColl: If I can answer for Médecins du Monde, in terms of when people are being refused secondary care, when it is maternity care it is more straightforward because we can advocate very clearly on their behalf using the Department of Health guidance to argue.

Q95 Baroness Stern: So you ring up?

Ms McColl: We argue. We accompany the woman to her next appointment usually. We then have to refer the woman to an agency that can help her with debt advice and she can be supported through the process, which is usually terrifying for her, of having that debt, knowing that she will never be able to pay it or that it will take her a very long time. With some cases of other essential secondary care we have not yet been able to find a solution. We have some people who are very seriously ill, who need hospital treatment, and we continue to advocate on their behalf but it is very difficult.

Q96 Baroness Stern: At what level do you advocate?

Ms McColl: At every level we can.

Q97 Lord Judd: Dr Burnett, you argue that the right to the highest attainable standard of health under Article 12 of the ICESCR should be incorporated into UK domestic law. This obviously has resource implications. Have you made any calculations as to what those resource implications would be?

Dr Burnett: The resource implications, as we have heard, are likely not to exceed hugely the amount of time spent in administering the current system. The change in policy which the Government brought forward seems to have been based on a hunch that medical tourism is present to a really excessive degree. When we are talking about people who have failed in their asylum claim, they are not medical tourists under any guise at all. They do not come here simply to access medical care and we would argue that, certainly for this group of people, the cost implications are not huge. We are talking about people for whom as individuals it is a very significant issue, but the financial problems of the NHS are not due to the health requirements of people who have failed in their claim. It is a very small drop in the ocean. There is some work that has not been made public as yet, so I would have to not give too much detail about it, but what I would say is that I do not think there is anything that would contradict what we are saying, that basically the exact figures are not there. The Government has not done a well-thought-through cost implication. They have just brought this policy in.

Q98 Lord Judd: Can I ask on that whether, if the work to which you refer reaches a conclusion while we are still undertaking the inquiry, you could take steps to persuade those involved to let us have the outcome of that?

Dr Burnett: Yes, certainly.

Q99 Lord Judd: The second point is that while you may argue that it is up to Government to make these calculations, and while it is obvious that you are all heavily burdened with your front-line work, do you not agree that if the NGOs could produce some figures in terms of the things we have been discussing this evening it could give tremendous ammunition to the cause?

Dr Burnett: Yes, I certainly agree, and I think that is why this piece of work was undertaken.

Q100 Lord Judd: Yusef Azad, in your evidence you have referred to a woman whose HIV status was made public because of a lack of privacy, and it is obviously true that people on section 4 accommodation are not infrequently in shared accommodation. Can you comment on the importance of Article 8 as you see it and the right to a private life for people with HIV?

Dr Azad: It has been a frequent problem in the dispersal process for asylum seekers that asylum seekers living with HIV are sent to inappropriate accommodation, and there are a couple of aspects to that. One is in terms of the quality of the accommodation and in particular problems of damp, for example, which for those living with HIV with a compromised immune system can have severe respiratory implications, so there is that basic health problem. The other is around privacy. Medication, for example, often needs refrigeration, requires special diets and there is quite a lot of it, and if you do not have the privacy essential to take your medication people come to conclusions, sadly, often very quickly. You have read one example; we have plenty of others. We produced a report with Crusaid on World AIDS Day last Friday on poverty and HIV, and this issue of accommodation and the dispersal process and the undermining of privacy and family life that came with that is certainly one of the main conclusions that came out of the data from the Hardship Fund which Crusaid administers to give special support to people in real need.

Q101 Lord Judd: You said in your evidence that there is no evidence that people arriving in the UK with HIV are “health tourists”. Is there any evidence to disprove this, such as evidence that HIV is diagnosed at a later stage after they have arrived, and how do we establish this?

Dr Azad: One of the great problems around HIV in the UK is the fact that one in three people living with HIV do not know it; they are undiagnosed. Another serious problem is the fact that people are getting diagnosed late, and by “late” that means with a CD4

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count below 200, which is the point at which you should start treatment. 34% of people diagnose late. The only bit of research that has been conducted to our knowledge is that by the Terrence Higgins Trust and George House Trust about migrants who were accessing HIV care as to the point at which they were diagnosed². They tend to be diagnosed a significant time after they have arrived in the country. If you were coming here cynically to exploit the NHS the sensible thing would be to start accessing it pretty soon after you arrive. It is certainly very odd to put in an asylum claim, wait till the claim has failed and then access it when you are no longer entitled to treatment, so in terms of when particularly the people from sub-Saharan Africa are being diagnosed, often late, often with an opportunistic infection which takes them into A&E, and in terms of the logic of the claim they are health tourists, the evidence simply does not stack up. If you look at where people are coming from in the asylum and immigration statistics from the Home Office, the epidemiology cannot explain it in terms of any condition, nor can access to healthcare in the countries of origin. We know why people move. It is because of conflict, it is because of cataclysmic drops in living standards, it is because of persecution, it is because of state failure. One of the main countries of origin of people living with HIV in the last three years has been Zimbabwe. I can think of a lot of reasons why people would want to leave Zimbabwe other than or in addition to the fact of HIV infection. We see no evidence for it and I think this is a very important point. These charges have no relation to why people come to the country, nor do they have any relation to encouraging people to leave. The charges do not encourage people to leave the country. People do not leave; they die or they become ill. I think it is a very important opportunity for us to reassert the fact that there is no evidence as to the value and impact of these charges on immigration, either in terms of people arriving or in terms of people leaving.

Q102 Dr Harris: I want to ask any of you if you know of any instances where doctors or other care workers were being co-opted by the authorities to aid either in removal and being put under pressure to reveal information, or indeed being put under pressure to provide information about non-legal people as to where they might or when they might next be in or divulge information that was obtained during the consultation.

Ms McColl: We do not have any evidence of doctors being co-opted in that way but it is a real issue of concern and it is one of the reasons why we do not think there should be a link between immigration and entitlement to healthcare because we do not think that health professionals should be asked to do immigration checks on people.

² *Footnote from witness:* "Recent Migrants using HIV Services in England", Terrence Higgins Trust and George House Trust, 2003.

Dr Burnett: I have been asked for information in the past but not recently. What I would say is that there is very clear guidance for all health workers about issues of confidentiality and I think that most health workers would feel that in this instance those issues of confidentiality would be paramount.

Q103 Dr Harris: What about the overseas patient accountant-type person in a hospital? They do not know, or maybe they are supposed to or are permitted to divulge information about who they have recently seen or billed. You do not know?

Dr Burnett: I would not be able to speak on their behalf about what sort of information they are being asked about.

Ms McColl: We have heard of administrative staff making calls sometimes to report people because of their immigration status and it is a great fear amongst the group that we are working with.

Q104 Dr Harris: And it is inappropriate in your view?

Ms McColl: Absolutely.

Dr Azad: We have one case of breached confidentiality which we can certainly send to you, so it does happen³. The other problem with these charges is that the vast majority of healthcare workers act really professionally and well but the charges are introducing a culture of permitted hostility to certain categories of migrant and for those who may have that view it is allowing some really quite tendentious and upsetting things to be said to very vulnerable people. That is an issue.

Q105 Lord Plant of Highfield: Thank you very much. Thank you, all of you, for the evidence and, since I think most members of the previous group are still here, thank you also. It has been very interesting and worthwhile from our point of view and I hope from yours.

Dr Burnett: Are we able to make any small additional summing up or not?

³ *Footnote from witness:* The examples of breaches of confidentiality have been provided by Terrence Higgins Trust (THT), as follows:

THT had a client (English regional centre outside London) whose details of their debts and HIV status were passed to debt collectors, who then took it upon themselves to pursue the patient to Malawi and inform the High Commission there. This subsequently led to refusal of a further visa to return to the UK.

THT has had two clients (one in London, one elsewhere in England) who were told that their details had been faxed to the Home Office by the Payments Officer for confirmation of their residency status, although they had never been asked for permission to disclose anything.

THT has been informed recently by an African community organisation of a client who tried to access services at a London Hospital and was told that they would automatically send all her details to the Home Office. It was unclear to THT whether this was a genuine process, or whether the hospital was trying to "weed out" ineligible patients by frightening them off.

These breaches are not confined to immigration issues; THT has recently dealt with a client who applied for DLA, stating that both she and her son were living with HIV, only to find that benefits staff had contacted her son's school for confirmation of his details, including HIV status (the school had been unaware of this).

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Q106 Lord Plant of Highfield: Because we are scheduled to finish at six I do not want us to become inquorate. If it is very brief please do.

Dr Burnett: I just wish to raise two points. One is about mental health and to say that refugees and asylum seekers are in a very high risk group for suicide, particularly around the threat of deportation. The second is around child protection

issues because I think that pushing people out of the system and underground raises very serious implications for the protection of children.

Lord Plant of Highfield: I should say, both to you and the previous group, that if there are further bits of information you would like to convey to the Committee, please do feel free to do so in writing. Thank you very much indeed.

Monday 8 January 2007

Members present:

Mr Andrew Dismore, in the Chair

Judd, L
Onslow, E
Plant of Highfield, L
Stern, B

Nia Griffith
Dr Evan Harris

Witnesses: **Ms Claire Phillips**, Director of Policy, **Mr Adrian Matthews**, Policy Adviser, Office of the Children's Commissioner, **Ms Lisa Nandy**, Policy Adviser, The Children's Society, and **Ms Rona Blackwood**, Assistant Programme Director for Refugees, Save the Children, examined.

Q107 Chairman: Good afternoon, everybody. Welcome to our next evidence session in our ongoing inquiry into the treatment of asylum seekers. We are being televised this afternoon. Can I welcome, from the Children's Commissioner's Office, Claire Phillips, Director of Policy, and Adrian Matthews, Policy Adviser; Lisa Nandy, who is the Policy Adviser to The Children's Society; and Rona Blackwood, who is the Assistant Programme Director for Refugees at Save the Children. Good afternoon to you all. Perhaps we could start off by asking Claire about the UK's reservation on the UN Convention on the Rights of the Child. Can you tell us why you are concerned about the reservation, and what difference you think it would make if the Government no longer had that reservation, and other comments you would therefore apply?

Ms Phillips: We have been concerned about it and, as you know, the commissioners have now come together to express their desire that the reservation is withdrawn. It depends partly on whether one takes a wide or a narrow interpretation of the reservation. Some people choose to take a narrow interpretation and look at the impacts specifically on immigration decisions affecting a child. However, under another interpretation it could mean that the provisions of the UN Convention on the Rights of the Child and the best interests test generally are not relevant to the making of any decision about a child whose immigration status is still not determined. To some extent it does depend on which interpretation one takes. The UN Committee and then our study of policy in the United Kingdom took the view that the reservation was intended to be cast quite widely, however the Government's view is that a narrow application applies and that it is not intended to interfere with the rights of the child under the Convention or under domestic law. Our concerns about the impact it has are that it undermines the universality of rights under the Convention and domestic legislation which enables the Government to have excluded immigration authorities under Section 11 of the Children Act 2004, which means that none of those authorities are bound to safeguard and promote the welfare of the children. It also means that UASC are treated differently in some ways from citizen children, and we are very concerned that this is discriminatory. One of the issues we would like to draw to your attention today is an example of that in one particular local

authority which is de-accommodating children in the asylum system, and perhaps we can come back to that later on in this session.

Q108 Chairman: Which one?

Ms Phillips: I think I am able to say that it is Hillingdon local authority. We have written today to the chief executive to express our extreme concern about that in the way in which children are being treated.

Q109 Chairman: We may want to follow that up ourselves now. Following on from what you have just said, can I ask The Children's Society if we look at the implications of excluding the immigration agencies from Section 11, what do you think the practical implications are of that? Have you got some examples of the consequences of it in terms of how asylum seeking children are treated?

Ms Nandy: We have got a number of practical examples of the impacts of that. What we see is that it filters through the way children are treated when they come into contact with those agencies. For example, in removals practices—I expect the Committee knows a great deal about removals practices because I know it has been the subject of quite a lot of media attention in other inquiries about how children are treated during those removals—we have got some real concerns about examples that were reported to us of mistreatment of children, for example, when they are being taken either to immigration removal centres or literally to be put on to planes. We have got serious concerns about what happens to children in immigration removal centres, about opportunities to play. We talked in our written evidence about the ability to access things like medicine, and sometimes when children are moved between different estates we also have really serious concerns about how far the best interests of children are taken into account within those different activities. We talked a lot in the written evidence about it and we also put in some supporting evidence with some practical examples about child protection measures and how they are put into place at things like ports of entry to detect things like trafficking and also filtering right through to things like placements by the National Asylum Support Service. We have got frequent examples of children being moved with no regard to the disruption to their lives or their education. One of

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the really concerning things about this exclusion clause is that it sends out quite a powerful signal about the two-tier system which seems to exist for asylum seeking or refugee children in this country compared with their UK-born peers. That goes very much back to what Claire Phillips was saying about the reservation to the Convention on the Rights of the Child. Sometimes it is not so much about what children are entitled to in law but how they are treated in practice. It is very much our view that if the Immigration Service and the National Asylum Support Service were bound by the Section 11 duty then it would not stop them from carrying out their duties, but it would at least give the staff within those services pause for thought before they carried out actions concerning children. That is all Section 11 does, but we think it is really important that you set up a system with the best interest of children in mind so that some thought is given before actions are taken about children's best interests.

Q110 Earl of Onslow: I apologise, I am a very new Member of the Committee, so I have an awful lot of catching up to do. You touched on some examples where you said we would be aware of those examples of misuse, could you enlighten us as to examples of what you imply are horror stories which ought to be addressed?

Ms Nandy: I suppose one of the ones you are probably thinking of is—

Q111 Earl of Onslow: I do not know, that is why I am asking, sorry. I am a seeker after the truth.

Ms Nandy: For example, the first thing I talked about was removals practices. We worked with one family last year where there was a suggestion by the child, who was eight years old at the time, that he had been hit across the head when the family were picked up to be removed from the UK. It is very difficult with removals, and I do not want to start talking about removals per se, because often what you find is by the time a complaint has been brought the family has been removed from the United Kingdom, so it is very difficult then to follow that through. That is one of the examples where we have serious concerns about the ability of the people who are carrying out removals to take into account the best interest of the child. We are well aware that some of the staff in those situations are in a really difficult position in that they are working to targets, they are working in a very politically charged atmosphere, and are under enormous pressures to do things like meet removals targets. The problem is when you have these services excluded from the Section 11 duty there is nothing to counter that, the system is set up in one way and it is not in terms of the best interest of children.

Q112 Chairman: Could I ask Rona a question now. We have heard a lot of evidence about the problems of identifying children who are or are not children effectively, disputes over age. What do you think could be done to try and improve the identification of people who are children or are not, and how can they do that better?

Ms Blackwood: The first thing I would advocate for is not to universally age-dispute new young arrivals, we are seeing larger numbers of children having their age disputed and this gets relationships between new arrivals and immigration off on a wrong footing. The vast majority, I think I can say, of unaccompanied children coming here are being age-assessed by immigration and also by social services. This is negative in two ways: the first is the impact that interviewing and re-interviewing has on children is disturbing and traumatising for the children and young people themselves, but also it gets the relationship with the immigration officer and with social services off on a footing of mistrust. I would also say that the onus to prove age is on the child, they have to say, "No, I am 16 or 15 or 17", and the pressure is on the child to prove their age and that is wrong. What we think would be the most appropriate way forward is to have an independent age assessment panel to assess age which would consist of social services and other practitioners including a guardian and specialist medical practitioners. We are concerned about the independence of the current system where social services, who are now having to work more closely with immigration and also who have got funding problems, are making the decisions on age as well. We would like to see an independent panel process set up so that the onus is not individually on the child, that there is more of an independent process, and also that age assessments take place where they are necessary, not just as a matter of course.

Q113 Dr Harris: Can I ask one follow-up on that? I understand that since you submitted your evidence there has been a proposal to subject all people who are marginal—I do not know if this has been picked up—to x-rays in an attempt, whether it is evidence-based or not, to establish age and that this was said by some NGOs to raise human rights' concerns. Do any of you have any comment on that?

Mr Matthews: Yes, I certainly do. We do not know for certain whether this is going to happen but it was certainly one of the ideas that was kicked around very early when the Home Office was initially consulting on the Unaccompanied Minors Reform Programme. We have yet to see that full consultation, so we do not know if it is going to be in the final proposal. We have very big concerns if that is going to become what we fear may be a proxy measure for determining age, because all scientific evidence and medical evidence shows that x-rays are not accurate to within one or two years. If you are trying to determine the age of a 16 year old, typically, it is not going to be very helpful. Medical evidence surely is helpful but it has to be part of a holistic process of assessing people's age. Our fear is that it does not add very much to the process. Much better is to look at the whole composition of the child's family, their history, their background, and so on and so forth, which takes detailed and sensitive interview. There are other issues specifically to do with x-ray. What opportunity does the child have really to consent to such a process? It is being used for non-medical reasons. We really feel it is not a

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solution to the problem, which we accept is a problem, in identifying whether people are children or not.

Q114 Baroness Stern: This is a question to Claire or Adrian. You say in your written evidence, you have already mentioned this, that some local authorities are “de-accommodating”—which is not a word I am familiar with but presumably it means throwing out in some way—separated asylum seeking children in order to save the money that would otherwise have to be spent on costs associated with them leaving care. Could you tell us a bit more about this? What exactly does it mean, and what exactly happens, because I cannot quite envisage it, and what are its implications are for children and young people who have claimed asylum? Then perhaps you could go on and tell us—you did already tell us the name of one local authority that you had written to—if you have any more evidence about this “de-accommodation” phenomenon?

Mr Matthews: Perhaps I could start by amending slightly the evidence that we put in our written submission. At the time the best evidence was that the local authority we were looking at was—I will explain the process—de-accommodating before 13 weeks. Thirteen weeks is a crucial time because it is the amount of time under The Children Act 1989 after which the person is entitled to a leaving care service. What we have subsequently discovered is that what Hillingdon are doing is de-accommodating just *after* 13 weeks. I will explain the process to you. When a child comes into Hillingdon, normally at Heathrow Airport, they will be referred either by the immigration service or the out-of-duties team to the Asylum Intake Team. Within seven days the young person will have what is called an “initial assessment” which is a fairly brief fact-finding exercise, mainly information from the child, possibly with a bit of additional medical information. Normally what happens then, outside of that context, is that within 28 days there would be a statutory review of how the child is being dealt with. That is happening in Hillingdon, it is often happening well before that 28 day period, and that review is presided over by an independent reviewing officer. What we have uncovered is that in Hillingdon, as routine, as policy, children are being de-accommodated at that point, or a decision is being made to de-accommodate them. What that means is effectively they are initially in the care system but after 13 weeks has expired a date is set at which point they will no longer be in the care system, instead services continue to be provided but they are provided under far less protection under the leaving care aspects of the legislation. It has significant implications. It means, for example, they will not have allocated social workers, they will not have continuous reviews of their situation, they will not necessarily be helped with continuance of their education and so on and so forth. The thing is children, as far as we are aware, are not having the differences between continuing to be accommodated and being de-accommodated explained to them, and they do not have access, as far as we understand, to

advocacy services or anyone who could explain what the difference and the implications of that decision are. We feel quite strongly that it is probably an unlawful practice, and we also feel it engages with various articles of the European Convention, notably Article 8, and also, because it seems to be a practice that is only used in respect of unaccompanied asylum seeking children rather than indigenous children, it is discriminatory as well.

Ms Phillips: We would like to present the Committee with some written evidence on this and, if it is acceptable to you, we will send you a note on this within the next day or two, if that is okay?

Q115 Chairman: You can send a copy of your exchange of correspondence with Hillingdon, what you have sent already and any response you get.

Ms Phillips: Indeed, we will.

Q116 Chairman: I think, bearing in mind what you have said, we ought to give them the opportunity to respond to that.

Ms Phillips: Indeed, yes.

Q117 Baroness Stern: Can I follow that up? Is it just Hillingdon we are talking about at the moment?

Mr Matthews: We have not looked in detail at other authorities but we understand that there are other authorities which are employing the same practice, but it would be unfair to name them because we do not have evidence for that at the moment. Perhaps the other important thing to say is Hillingdon is a very influential authority in terms of local authorities and particularly when it comes to UASC because of their vast experience in dealing with them.

Q118 Baroness Stern: Sorry, you are using initials that I do not understand.

Mr Matthews: Sorry, unaccompanied asylum seeking children. One of our main fears is, because of the forthcoming changes under the Unaccompanied Asylum Seeking Children’s Reform Programme, if this system becomes entrenched it may become a model for the care of unaccompanied minors for the rest of the country very shortly.

Q119 Baroness Stern: Can I make sure I have got this? De-accommodating does not mean what I would have thought it meant, that you cease care?

Mr Matthews: It means taking them out of the care system, they are no longer looked-after children.

Q120 Baroness Stern: It means reducing their eligibility to all sorts of services?

Mr Matthews: It does. It means, for example, the recent paper on looked-after children will not apply to people who are not looked after. They will not be looked after, therefore all the very good changes which we support that are coming through there will not apply to these children if they are no longer looked after.

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Q121 Earl of Onslow: Under those circumstances, would it not be a very good idea to change the use of the word “de-accommodating”, with which I completely agree with Lady Stern, it is a word which Shakespeare, Macaulay or Gibbon would never dream of using or looking at, that English which buffoons like myself cannot stand?

Mr Matthews: Indeed, my Lord. It is just that “accommodated” has a specific meaning within the Children Act 1989 and that is why it is used in a technical sense.

Q122 Baroness Stern: We are grateful for your explanation. Can I go on to ask a question to Lisa but it is to you all really. We have had evidence suggesting that separated asylum seeking children should be given a legal guardian. Do you have any evidence that the lack of legal guardianship has led to separated asylum seeking children having their rights left unprotected?

Ms Nandy: Yes, The Children’s Society certainly has had examples of where that has happened. Perhaps if I can talk quite specifically about the asylum process to start with because I think the ability of children to articulate their claim for protection and to have what we would consider a fair hearing are seriously in question under current arrangements. I think we alluded in our written evidence to the fact that children need to be treated very differently when they are trying to put forward a claim for international protection. They do not, for example, always know the details surrounding their claim, they may tell a story in a very different way, so not in a chronological way, there may be serious inconsistencies in their evidence and they do not always understand, as some adults do not, the implications of some of the things they may do as part of their asylum claim. Without somebody who can explain the system to them, who can lead them through that system and help them to access all of the support they need in order to feel comfortable enough to sit down and tell a complete stranger some really serious events which have occurred to them, they really do need somebody who is there. The panel may be aware of the Refugee Council’s Children’s Panel which does an absolutely fantastic job in terms of supporting unaccompanied children, but there are a number of things about the Children’s Panel. First of all, the Children’s Panel does not always see every unaccompanied child; secondly, they are under-resourced to the extent that they cannot always deal with all of the circumstances surrounding an unaccompanied child’s journey through the UK and; thirdly, the Children’s Panel advisers do not have a statutory remit, so there is no legal obligation on other people, for example social services, to talk to the Children’s Panel or deal with the Children’s Panel. In terms of a very specific example at The Children’s Society, we see enormous numbers of children either with no legal representation or with very poor quality legal representation, and without somebody to advocate on their behalf, who their lawyer, if they have one, is obliged to talk to, they can sometimes go through the system without being able to put forward a fair

asylum claim. Sometimes we see children whose supporting statements on their asylum claims are literally two lines long. More often than not, the unaccompanied children we are working with do not have adequate legal representation, particularly at the most critical stages, for example at appeal stages where some of the most crucial information may come to light. Without a statutory guardian they are really at a disadvantage and, we would say, probably unlikely to be able to have a fair hearing in their asylum claim. That is well evidenced by the fact that only 5% of unaccompanied children in 2005 got full refugee status.

Ms Blackwood: It really is a lottery in terms of the services an unaccompanied child gets, whether they get a qualified social worker or an unqualified social worker, whether they have a named social worker or not, whether they are informed of the asylum and support systems they are going through or whether they do not and, as Lisa says, accessing quality legal advice is difficult, if they get any at all, as is access to education and health services. We are seeing a huge deterioration in children’s mental health in some of the projects that we are working in, cases of self-harm and issues like that. A legal guardian would ensure that it is not a lottery but that somebody has got their best interest at heart and make sure they have a social worker, a lawyer, community and NGO support. Guardians would be on an independent and statutory footing. In the case for guardianship, the important point is who has got legal responsibility for these children? Who has got the parental right? Who is going to act as their parent? It is not social services. In a vast majority of cases social services do not have parental responsibility and nobody is filling that gap. Also the discussion we have just had—about de-accommodating—where children are being supported under Leaving Care provisions when they are 17 rather than under the Children’s Act, that would not happen if they had a guardian, they would have someone to advocate for their rights. I am a big champion; I think it is the way forward.

Q123 Chairman: Is there a difference of approach between children who are 14, 15, 16 and much younger children or is it across the piece?

Mr Matthews: Possibly the big difference is at 16, and part of the reason for that is the grant which is used to support the under 16s, which is provided through NASS by the Home Office, is considerably more than the grant which is provided for the over 16s. A very, very common situation that we all meet is, for example, with children who are under 16, who are quite rightly put into foster care and become settled, attend a local school, and so on and so forth, but at the age of 16 there is enormous pressure to move them out and it is the subject of quite a large number of complaints for those children who wish to stay with their foster parents. The Green Paper has recommended that children should be allowed to stay in their placements and even suggested the possibility of a veto over that until 18. Our concern

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is that none of that is going to apply to this group of children and that is added to by the current grant arrangements.

Ms Phillips: We have received reassurances from the Secretary of State, following the publication of the Green Paper, that unaccompanied asylum seeking children will have all of the benefits put forward in that Green Paper but, of course, because it just referred to the forthcoming reform programme which is going to be published for consultation fairly soon, we will wait to see what happens.

Ms Nandy: I think there are particular problems for 16s to 18s, and I do not think there is any question that we are seeing the more harsh end of the process for those children. There are still huge problems for under 16s as well, both in terms of things that I was talking about, like putting in an asylum claim, but also what Rona was saying about the lottery of whether you can get into school, for example, or not. One of the things we often see, partly because of the reservation to the CRC and partly because of the differential entitlements in law that that translates into, there is huge confusion about what these children are entitled to to the extent that, for example, we are sometimes approached by schools asking if under 16 year old asylum seekers are entitled to a school place. They are things you would hope schools would be aware of but, in practice, people are not aware of those things. If you have just arrived in this country, you are on your own, you do not speak the language, and you are trying to get access to a school, your chances of doing that are pretty slim unless you have got somebody to advocate on your behalf. Some children have it but, as Rona was saying, some children do not.

Q124 Chairman: Do you have the figures of the differential at 16?

Mr Matthews: I think the grant is £650 for the under 16s.

Ms Blackwood: It is less than half.

Mr Matthews: And it is £350 for—

Chairman: Perhaps you would let us have a note with the figures, it might be easier.

Q125 Earl of Onslow: If a child has come here aged 14, its age has been established, and it is saying it wants political asylum, it is then placed by the local authority in foster care, is that right?

Mr Matthews: Normally if they are under 16 they would be placed in foster care or a children's home, yes.

Q126 Earl of Onslow: On their 16th birthday, are they then removed from that foster care?

Mr Matthews: That is what I am saying is the huge pressure on local authorities, yes.

Q127 Earl of Onslow: Because the cost—

Mr Matthews:—is not given back to them by the Home Office grant.

Q128 Earl of Onslow: Where do they go on their 16th birthday?

Mr Matthews: Usually into semi-independent shared accommodation with other asylum seeking children.

Q129 Earl of Onslow: Where they are then exposed to all sorts of things?

Mr Matthews: Yes.

Ms Phillips: Including trafficking.

Q130 Lord Judd: Chair, I am finding this session very helpful, if a bit alarming. In your global experience, what is the culture which prevails in the whole operation? Is the culture one of, these children should go home unless there is a very good reason why they should not, or is it here we have a child in a terrible predicament, what should we be doing responsibly in the interest of this child?

Ms Blackwood: I am afraid to say that I think we are working in a massive culture of disbelief. I have been five years with Save the Children and I feel that it is getting worse. There are increasing age disputes. The current reform, whilst it has only been out for consultation, is clearly saying that these children should not be entitled to the same services as citizen children in that they are here for a better life. Essentially they are economic migrants. We are not seeing these children as children first. We are not looking and saying, "Here is a child. Let us support them as a citizen child. Let us work out what is the most durable solution for them, whether in this country or their country of origin". We are not taking that approach. Some individuals are trying really hard but collectively, no. The culture is a culture of disbelief and a culture of immigration first and child second.

Q131 Baroness Stern: Could we have a rough idea of the sorts of numbers we are talking about of these 16-year olds that on their birthday get removed from a happy foster home where they are doing well and get put somewhere else?

Mr Matthews: It is very hard to put a precise number on that. What we do know is that it has been fairly consistent for the last few years. There have been about 3,000 asylum seeking children per year recognised as such by the Home Office. In addition to that there are just over 2,500 age disputed cases, which is almost as many.

Ms Blackwood: We have approximately 10,000 children being supported in some way by social services and it breaks down as about 3,000 under 16, some 3,000 between 16 and 18 and the rest are over 18. Going back to the issue of guardians, I think it would be wrong to shut the door at 18 in terms of support because so much does close down for these children at 18 in immigration. At the moment support is often until 18 and in terms and although I support the argument for a guardian for the younger age groups it is important that the door does not shut on their 18th birthday.

Ms Phillips: May I add one brief example of the culture? One of the things that I find most shocking is the number of children who are incarcerated for documentation offences. These are not young people who are in immigration removal centres; they are in

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prison. We are trying to get some data on that but it is of enormous concern to the Commissioner that children are in prison for that reason. They have not done anything wrong other than being undocumented or improperly documented.

Q132 Chairman: You do not know how many are de-accommodated?

Ms Phillips: Not at this stage. The Home Office is working with us to provide information on the number of children on the juvenile justice estate, which would include children in secure accommodation.

Q133 Chairman: Do you think these figures actually exist? If we were to put a PQ down, for example, would we get the answer, "We do not know. It would take too long to find the information"?

Ms Blackwood: We (in the Refugee Children's Consortium) have put a request into the Youth Justice Board for the number of charges under section 2 on the lack of documentation and if we do not get it I think we will follow up with a PQ.

Ms Nandy: I think that somebody has already put in a PQ about this. I think I am right in saying that Neil Gerrard might have asked a question about it.

Ms Phillips: And IND in the Home Office have been very helpful in saying that they would bring us that information. It is fair to say that they are trying to get that information for us.

Mr Matthews: We will, of course, be asking Hillingdon for figures on accommodation.

Q134 Lord Plant of Highfield: This is for Claire and Adrian. In your written evidence you suggest that local authorities who withhold support and accommodation from asylum seeking families and effectively render those families destitute may be breaching Article 3 of the European Convention and that this treatment in addition is thought to be breaking the Convention on the Rights of the Child and the Children Act, so can you tell us more about these concerns and what you consider to be the minimum level of care that should be provided to asylum seeking children and families, including cases where the family's application for asylum has been unsuccessful?

Mr Matthews: I think what you are referring to particularly is what is called section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act. So far this has only been piloted in three local authority areas; it has not been rolled out nationally. Nevertheless, the influence is pervasive. I think you have taken evidence on this already but within those three areas we understand that the impact has been quite serious on the families concerned. Many have disappeared from sight, so it has not achieved the Government's objectives. Many are suffering severe mental distress and are concerned that their children are going to be taken into care, which, of course, is a possibility because there is an ongoing expectation that the local authority would look after any children under section 20 of the Children Act, but they cannot accommodate the parents under that section so it implies separating the children from the

parents and looking after them. We are really hopeful that the Government is not going to roll this programme out and will abandon it. The other thing to mention at this point is that there is a growing problem of mothers who have children once their asylum claims have finished and the provision for them is absolutely dire. Let me give you an example. There was a recent case decided in the High Court that considered that the voucher that was given, £35 a week for the mother and £35 a week for the child, could only provide for food and toiletries, so there is no legal provision for baby clothes or for the mother to attend by transport antenatal or postnatal appointments. We really think that this is putting small children at risk because they cannot use those vouchers to buy clothes. The Government can introduce regulations and it has said that it may do so in April, but we have yet to have that confirmed and clearly, even if the regulations do come in, which will ameliorate the situation, it is not very satisfactory because cash payments are really a far more suitable way of dealing with this problem. It is not going to go away. People are here for very good reasons after their asylum claims are finished, often not because of their own fault. It is simply because the routes are not available for them to return home, they need to be documented and that takes a long time, the country of origin will not accept them back, they will not accept that they are a national of those countries, so to leave people in this limbo on vouchers is quite unacceptable.

Q135 Lord Plant of Highfield: So what sort of local provision would you think would be appropriate, relative to what the Government's benchmark elsewhere is?

Mr Matthews: First of all, although we do not necessarily expect it, it should be in cash rather than in vouchers because vouchers are degrading and they create all sorts of problems. If it were to be cash we cannot see any reason for it to be any different from the cash payments that get paid to ordinary asylum seekers who are still within the asylum seeking system as a minimum, and even that is below income support rates. That is manageable but only just.

Q136 Earl of Onslow: May I ask again what is the actual legal position vis-à-vis citizenship for the child whose parents have been refused asylum and the mother then gives birth to a child? What nationality is that child? Is it by its nature, because it is born here, British?

Mr Matthews: No, they are not. It makes no difference. They are the nationality of their parents.

Q137 Lord Plant of Highfield: I now have a question for Rona. Some solutions have suggested that local authorities discriminate against children in terms of the financial support they provide. Do you have any evidence that local authority provision to children in asylum seeking families is in fact discriminatory, looking at the financial aspect rather than the provision of other kinds of services?

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Ms Blackwood: The benefits that asylum seeking families receive, not child benefit but the benefits that the parents receive, is 70% of the citizen level, so that in itself is the current situation. Asylum seeking families are on 30% less income benefit than citizen families.¹

Q138 Lord Judd: My question is for Lisa. I want to get this absolutely clear for the Committee. You believe that the detention of asylum seeking children and families constitutes a breach of the UK's human rights obligations, and you, Claire, and your colleagues, have particular anxieties about all this in the context of the fast track procedure. I wonder if you could confirm that this is first of all how you see it, as a breach, and, secondly, what the implications are. Are there any circumstances in which the detention of children can be justified in your view?

Ms Phillips: Perhaps I can come back on that. Certainly it is our view, and Sir Al made this very clear following his visit to Yarl's Wood just over a year ago, which was the first real test of his powers, that detention should not be used for children in families at all. According to the UN Convention on the Rights of the Child, children should only be detained, whatever the purpose is, as a measure of last resort. It is our contention that in fact that is not what is being undertaken in practice. That is not the reality for these children, and in particular we would say that for children who are going into detention on arrival into this country that cannot be considered a measure of last resort.

Mr Matthews: That is perhaps the clearest example. Families are detained at the Yarl's Wood Immigration Centre as a way of fast tracking their asylum claims, ie, the families are detained for a minimum of around 10 days and the children are there with them during that period. That is for administrative convenience. It is not a measure of last resort and we therefore feel that it is a very clear breach in those circumstances of the requirement only to detain children as a measure of last resort. We think it happens at the other end of the process as well. We think the Home Office is over-using detention. We do not dispute that there may be occasions where it may be necessary to detain children as a measure of last resort, but there has been very little exploration of the alternatives to detention, working with the families to assess what their fears are about returning and so on. We do feel that it is not a measure of last resort at the moment.

Q139 Lord Judd: But, Lisa, you have a position on the whole legal status of detention of children at all.

Ms Nandy: To answer your question about whether we think that detention can ever be justified where children are concerned, we come at this very much from the perspective of the best interests of the child,

and we do not believe that it is ever in the child's best interests to be detained, nor do we believe that it is in a child's best interests for a parent to be detained whilst they are outside the immigration estate. There has been a whole raft of evidence, which some members of the Committee have been aware of and involved in through the No Place for a Child campaign, about the impact of detention on children, and we really do contend quite strongly that detention is expensive, damaging and it does not work. It is used in the wrong circumstances and it breaks down frequently. We have examples of children who are taken into detention with their families who, when they get access to proper legal advice once they have been put into contact with some of the agencies who work in detention centres, will put in a fresh asylum claim and they will get refugee status and be out of detention, but the impact of that detention stays with them right the way through their experiences in the UK and beyond if they choose to leave the country at any point. I really cannot over-estimate the damage that detention does to children.

Ms Blackwood: There are alternatives that seem to be working in countries like Australia, and there have been alternatives in Sweden, there have been pilots in America which have looked at caseworker welfare models as an alternative to detention, providing legal advice and emotional and practical support which incentivise compliance with the immigration system. Given the hugely documented negative impact and, as Lisa says, the sustained negative impact of detention, it is not necessary and it is not proportionate to the asylum policy of an effective asylum and removal system.

Q140 Lord Judd: And, to take up Adrian's point, there is nobody in the whole system who, when fast tracking is taking place, says, "My God, here is a child in the middle of a nightmare experience. What should we be doing to support the child at this juncture?". That just does not come into the game, does it?

Mr Matthews: No, I would not have thought so.

Q141 Lord Judd: We have received evidence from a number of witnesses suggesting that refused asylum seeking families are often removed from their homes and detained in the early hours of the morning with little or no advance warning. Can you tell us a bit more, give us, as it were, some colour to the situation about the experiences of children who are taken into detention in such circumstances and the impact on them of what must be a traumatic experience?

Ms Blackwood: Imagine a knock on the door at, let us say, five o'clock in the morning. See it through a child's eyes, see what it would be like for a child of maybe eight who receives a knock at the door, and it can be 10 people at the door or more who come in and say, "Go pack your bags. We are going now". They might not have a grasp of English, they might not know what is going on. They have to get in a van. The van does not have windows in the back. They might not be able to take their toys. They might have a pet; they might have to leave their pet behind. They

¹ *Footnote from witness:* In relation to local authorities financial support to unaccompanied children, children have informed us of the very different levels of financial support they receive from social services. But also Local Authorities are struggling to fund appropriate services due to limitation in both the UASC grant from the Home Office and confusion around access to the Leaving Care grant.

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have been taken into a detention centre where they have to go through 10 or 15 locked doors, they have to wait in queues to have all sorts of assessments. They see their parents distressed and tearful. Imagine that process at five o'clock in the morning through a child's eyes, if you look at it through a child's eyes, being removed suddenly with no warning, with no goodbyes to neighbours, to friends, to school, you do not know how long you are going to be in there and you do not really know why you are in there, it has a hugely damaging effect and it is unnecessary.

Ms Phillips: Both Sir Al Aynsley-Green and Kathleen Marshall, the Scottish Children's Commissioner, have received a number of representations and it is quite interesting that it has not only been from the families themselves; it has actually been from other people within the community, particularly from headteachers but also from ordinary pupils whose best friend has suddenly disappeared and they were not given the opportunity to say goodbye and so on. It is important to look at the effect on the whole community, including the school, not just on the individual child and family.

Q142 Chairman: Do we have any idea of how many children are lifted in the middle of the night like this?

Ms Phillips: No. I was in contact with the Home Office every day of the Christmas break and there were 50 children in detention over Christmas, two in Dungavel and 48 in Yarl's Wood, so I have that information but I do not know how many are being removed continually.

Mr Matthews: We did have discussions with immigration enforcement as the Office of the Children's Commissioner and we did ask about this because there is provision within their operational rules for undertaking what is called a pastoral visit before this takes place, but no figures are collected on that and anecdotally we believe that pastoral visits happen very infrequently, so in the majority of cases where families are removed it would be a surprise. I should just add that it does not always take place at the home of the young children. Sometimes it takes place where the parents would report to the immigration office and sometimes it takes place at the schools which the children are attending and immigration officers go into the schools. This is well documented and the impact then is absolutely devastating, not only on the family but also on the wider asylum seeking population in the school. We have had examples of asylum seekers stopping sending their children to school because they are afraid that the Immigration Service is going to wander into the school premises and pick up their children.

Q143 Chairman: You have got evidence of that?

Mr Matthews: Yes, we have documented cases of that.

Q144 Chairman: Can you send us those details?

Mr Matthews: Certainly.

Ms Nandy: Can I also add that we are very concerned about unaccompanied children who turn 18 and are often picked up at that point. We have examples of young people who go out to buy a carton of milk, for example, who are picked up and never return to the house that they are living in, and where they are sharing with other unaccompanied asylum-seeking children the impact that that has on those other children is enormous, and obviously the incentive at that point is to force people underground because they are so frightened. What we would say very strongly is that an asylum system which operates on a basis of fear and coercion is not going to work for anybody. It is not just about human rights. It is about how you implement an effective asylum system.

Q145 Chairman: That is a documented case, is it?

Ms Nandy: Yes.

Q146 Chairman: Can you send us the details?

Ms Nandy: Yes. The other thing that we see very often is that where it is children in families who are picked up the children often end up taking on the parental role for the entire family. We see that all the way through the asylum process, often because they have a better grasp of English. It is the eight-year old child who is liaising with the immigration officer and trying to find out what is going on and talking to the detention centre staff and translating for their parents and we would say that is just not an acceptable situation at all for anybody.

Q147 Earl of Onslow: May I ask this impression of you? Do you think that this is an example of insensitive incompetence or is it policy, this sort of behaviour, which strikes me as being unnecessary in a properly run ship?

Ms Blackwood: The surprise element of the early morning pick-ups I would say is common practice. It is not a mistake. I think enforcement agencies believe that if they do not surprise the family and do the removal in the early morning the family will abscond, but, as has been discussed, there is not this evidence of families absconding. Families want to be near doctors, near the school, and the Home Office fear of absconding is what drives this practice.

Q148 Earl of Onslow: So you would believe it possible to give what I would call civilised warning, that you will be on the 4.30 bus to Scunthorpe or wherever it is, as opposed to suddenly picking you up at six in the morning, keeping you and then putting you on the 4.30 bus to Scunthorpe?

Ms Blackwood: It seems to work in other places, for example, the alternatives to detention in Australia that we mentioned earlier, which may be discussed in the next session, are based around incentivised compliance, building a welfare model, with strong relationships and trust in the system, with caseworkers providing knowledge, information, access to legal advice, access to the services that you and your family need. You do not need to have these non child-friendly, damaging practices.

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Q149 Lord Judd: Surely, whatever the arguments for or against the necessity of surprise, the point is that in the middle of this situation there is a child or children who are innocent in a sense, victims of the whole situation, and therefore what we are discussing is the trauma of the effect on the children who will just presumably do whatever the family does but are not in any sense generating the situation?

Ms Blackwood: That is why the new UNCRC reservation is so damaging, it allows for immigration procedures ahead of child welfare principles about the best interests of the child. The principle of the best interests of the child is not considered in the decision to do a dawn raid and take a child into detention. Where have we ever seen any sort of scrutiny of the best interests of the child in a decision to remove and detain a family?

Q150 Chairman: Thank you. Can I just say that if you do send us examples if you want us to anonymise them say so. Obviously, we would prefer

as much detail, chapter and verse, as you can give but if you want us to anonymise it we can do that. Otherwise we will assume they are for publication. Is there anything else that any of you would like to add before we finish our session with you?

Ms Nandy: I would like to add one thing, which is that we have seen a real shift in the kind of policy towards children and young people in the last few years and an increasing willingness to apply some of the really restrictive policies that were applied to adult asylum seekers to families now without any regard, as Lord Judd said, for the best interests or for any interests of the child in that situation and I would urge the Committee to be mindful of some of the changes that are currently being made in the Home Office, changes like the reform programme that we have all referred to and the new asylum model which is currently being drawn up and the changes to legal aid funding, because if they are implemented as they are currently being drawn up the situation will only get worse for children and not better.

Chairman: Thank you.

Witnesses: Ms Anne Owers CBE, HM Chief Inspector of Prisons, Ms Jan Shaw, Refugee Programme Director, Amnesty International, and Ms Sarah Cutler, Assistant Director, Policy, Bail for Immigration Detainees, gave evidence.

Chairman: We are now about to start the second session in our The Treatment of Asylum Seekers inquiry on issues of detention and we are joined by Anne Owers, Her Majesty's Chief Inspector of Prisons, Jan Shaw, the Refugee Programme Director of Amnesty International, and Sarah Cutler, who is the Assistant Director of Policy, Bail for Immigration Detainees. Welcome to you all. I should declare that I am a member of Amnesty.

Nia Griffith: I should also say I am the same.

Q151 Chairman: Perhaps I can start with Anne Owers and I have to declare that I have nothing to do with the prisons at all. Perhaps we could pick up where we left off from the previous session, particularly in relation to the detention of children. We note from your evidence that you are concerned about this and have called for an end to this policy. Whilst it continues what safeguards do you think are the minimum that should be put in place to ensure that the human rights of children in detention are respected, and of course of their families as well?

Ms Owers: If you are talking about children who are actually being considered for detention. I would start at that point rather than children who end up in detention. Following on from some of the points that your earlier witnesses made, we do not routinely find any evidence that the interests of the child are considered at all in making that initial detention decision. In our view the child becomes invisible at this point and there is no consideration of whether the welfare of a child in a family will be adversely affected by the process of detention. We have given you examples in our evidence that we found in inspections of children who were detained literally

days or weeks before sitting public examinations, children who were detained when they were clearly suffering from some form of mental stress or illness, and in those circumstances it is not evident that any consideration at all has been given to the effect of detention on a child. The effect of detention on a child is inevitably going to be negative, it cannot be otherwise, but there must be some children for whom, in any proper consideration of proportionality, the necessity of detaining a child in a family against the damage that that particular child at that particular time is likely to suffer will not be right or will not have been considered, so in our view there should be a much better consideration before ever you take the decision to detain. Having taken a decision to detain, again it is our view that at that point what is needed is some independent assessment of the child's welfare and development needs by a body independent of the Immigration and Nationality Directorate that can simply look at what is happening to the child, and that that needs to be reviewed at regular intervals independently. There is no point in having those reviews, however, if they have no effect at all upon the decision to detain as well as the conditions of detention. Clearly, those reviews will point to things that need to happen in a detention centre to protect the welfare and needs of the child, but they also need to be fed into and to be actively used by those who are making decisions about continued detention. Those are the kinds of processes that we would like to see. We share with your previous witnesses the view that detention should be a measure of last resort, should be exceptional, and in the way that these decisions are made and continued there is not sufficient evidence that those considerations have played a proper part.

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Q152 Chairman: I should ask if there was anything that was said in the previous session that you would dissent from.

Ms Owers: The only thing I think the Committee needs to be aware of is that at present there are no children in the fast track process. There were but Oakington was the only centre at which that process operated and Oakington no longer takes children, but that does not say that that will not happen again and therefore that the views expressed by the previous witnesses were not valid ones.

Q153 Earl of Onslow: I am so shocked, really deeply shocked and appalled, that no consideration of children's welfare is taken by those who recommend the locking up. Do you know the names of the people who have made these decisions and should it not be published that J Bloggins of the Immigration Service locked up child A because he could not be bothered to take his interests into account?

Ms Owers: My remit, of course, strictly speaking,—and we do interpret it pretty strictly—is to inspect what actually happens who are detained, but in the course of that of course we look at the records of detained families and we do not find any evidence of any considered decision. I think that is a problem around detention generally. Because it is not subject to judicial oversight it is never exposed to the open air of, “Why did you make this decision in this particular case?”. The other thing that strikes me very much during my inspections of detention generally, and this also applies to people subject to immigration powers in prisons, is that at the moment and in general the people who make the decisions do not ever see the people about whom they make the decisions and that makes a huge difference. If we get an integrated casework model in immigration that may change but at the moment these are decisions made on paper and about pieces of paper very often.

Q154 Earl of Onslow: I want to go back to this because I think it is of such fundamental importance, that if you are the person who makes this decision, when you see the bits of paper and when you see the whole picture, surely you have seen backwards the route where that person is locked up, and they are locked up by somebody taking nothing into consideration. Is it not possible in your reports to say, “So-and-so took this decision and they did not take that into account”?

Ms Owers: There will not be a named person to start with.

Q155 Earl of Onslow: So it is all done by a number?

Ms Owers: It will be a whole process. There will be a case holder, there will be a port officer, there will be a whole heap of people.

Q156 Earl of Onslow: There will be nobody who is named?

Ms Owers: There is not at the moment a single caseworker responsible for each case. That is one of the things that the Immigration and Nationality Directorate is proposing to change.

Chairman: We are not going to get a Home Office hall of shame, are we?

Q157 Earl of Onslow: Are you saying that none of those people who have taken those decisions is known? They are anonymous, are they?

Ms Owers: No, in some cases one would know who they are but—

Q158 Earl of Onslow: Is this by accident or by design?

Ms Owers: No. I think it is because of the dislocated way in which decisions are made quite often, but there will be named people on the files, certainly. I do not think it is our job in inspecting conditions of detention to name individuals in that way. Our job is to say, as we do, what is wrong with the system and what we see being a problem.

Q159 Chairman: Presumably it is not surprising that the interests of the child are not taken into account because it is not a statutory duty to do so.

Ms Owers: That is true. On the other hand I think you could argue that under Article 8 of the ECHR those are considerations that need to be looked at, even if in the end those considerations are held not to be strong enough to override the necessity of detention, the necessity of enforcing immigration control and the reasons for immigration detention. I believe that it is necessary at least to have shown that they have been considered even if in the end they do not carry sufficient weight.

Ms Cutler: Can I add something about the naming of who is authorising detention decisions? At 28 days the Immigration Minister has to personally authorise maintaining the detention of any child that is detained. He receives a summary from his officials of all the children in detention at 28 days and he has to authorise detention at that point, so at that point there is a clear name if you want one.

Q160 Chairman: Following on from that, do we know how many cases are involved in a ministerial decision at 28 days, and as a supplementary question to that do we know on how many occasions the Minister has decided not to extend the 28 days?

Ms Cutler: There was a parliamentary question quite recently and I can send you a note with the figures, but I think around 60 28-day reviews have been done by the Minister in the recent period. Officials have told us that if detention is not likely to be maintained then release would be triggered before it reached the Minister's desk. I think it is unlikely that there will be many cases when the Minister has not authorised maintaining detention at that stage. Interestingly, the families themselves are not aware, unless someone from BID tells them, that the Minister is reviewing their detention at that point. They receive nothing in writing at any point to say “I, the Minister, or my officials have looked at your detention and decided that we will authorise it at this point”, so it is a review but it is not an official review because the families never see the outcome of that review.

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Q161 Chairman: They know it is going on as they are aware of the system but they do not know what the outcomes of reviews are?

Ms Cutler: Yes.

Ms Shaw: Can I make a follow-up to that? When I conducted my research for Amnesty, which was over a year ago now, and I can see that you are quite shocked by the situation that we are revealing for you, I found the situation, as Anne was saying, completely dislocated. The people that we interviewed for our research we did not interview whilst they were in detention; we interviewed them once they had come out of detention and the main complaint was that they had absolutely no idea what was happening to their asylum claim. The immigration personnel within the immigration removal centres had no authority over their cases whatsoever and in fact since we conducted our research the level of jurisdiction of the immigration personnel has been reduced and they are now really liaison officers, so it is not surprising that families or individuals have no idea what is happening to them because the immigration personnel act as a conduit within the immigration removal centres and people have really no idea what is happening to their claim, particularly now with the cutbacks in the legal aid situation as well.

Q162 Chairman: Looking at that 28-day review for a second, presumably that decision would be judicially reviewable?

Ms Cutler: It would be but this is going on to another safeguard, which I wanted to pick up on, of access to legal advice and representation. We have a project that works just for detained families where we go and apply for bail for them because most of them do not have lawyers. When detention is challenged it is often overturned by the immigration judge in a bail hearing, and similarly, if a judicial review was taken on a ministerial decision, feasibly it could be overturned but the problem is that if people do not have lawyers then they do not have access to the courts to challenge those decisions about them.

Q163 Chairman: But if the decision had been made you would not have any prospect of review?

Ms Cutler: We know people have requested under data protection their own file when it is in the process of ministerial review. There is also a review done by a social worker at 21 days in Yarl's Wood of the child's situation which is fed into the ministerial review, but there is a problem of tracking it back to the beginning and saying, "Why was that decision made initially?". The tendency is to maintain detention rather than to review it afresh, looking at the needs of the child.

Q164 Chairman: Do you have any details of the numbers of cases where you have been able to secure bail for the people who have been in detention?

Ms Cutler: We have got figures from 2005 of something like 1,860 children who went through detention and 30% of them were not removed as a result of their detention. They were either released

on bail or granted temporary admission which just means that when the immigration officer is reviewing their case they release them, for example, if they need the bed.

Q165 Chairman: But there is no way of knowing from those numbers how many were in detention for two or three hours, two or three days, two or three weeks or two or three months?

Ms Cutler: We have got a breakdown that I can send to you. It is not published regularly.

Q166 Earl of Onslow: Can I ask you exactly what I asked the previous witnesses? Do you regard this as a question of incompetence or a question of malice aforethought in this system that you have described to me has arisen? Is it incompetence, overload of work or generally not knowing what the other part is doing and degenerating through incompetence or is it just a sort of bloody-mindedness, for want of a better word?

Ms Owers: I think it is a consequence of a system which is entirely administrative. It is very arguable whether something that goes to people's liberty should be entirely administrative. There are two points I would add to what we have already said. One is that, as the Committee will probably know, there were provisions in the 1999 Immigration and Asylum Act to ensure that everyone subject to immigration detention had to be brought before a court. Those provisions were never implemented and were later repealed, and that would have brought immigration detention very firmly within a judicial context irrespective of whether people had a legal adviser. They might not be able well to present their cases without a legal adviser but it would automatically have brought immigration detention under judicial oversight and it did not do so. Without that, these are administrative decisions. The second point is to contrast the initial decision to detain with any later reviews. I think it would be unfair to say that at later reviews information is not available, certainly around children, because information will have been available, but I support what Sarah says, that once you have made an initial decision to detain then that is the norm from which any subsequent decision maker must deviate rather than in that initial decision taking into consideration properly the needs of children.

Q167 Baroness Stern: I would like to ask a question first of all to Jan. You argue in your submission that the detention of asylum seekers is in many cases "inappropriate, unnecessary, disproportionate and therefore unlawful". Can you tell us on what you base this conclusion and how did you reach this conclusion that it is therefore unlawful?

Ms Shaw: A pivotal part of the Government's policy is to take people into detention to remove them. We found that people were being taken into detention even though the prospects of removing them from the UK were quite slim. As Anne has already said, there is no automatic judicial oversight of the decision to detain and therefore there is no way of legally challenging that decision to detain in the first

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place. All the people that we interviewed for our research, not those who were taken into the fast track but all those who were refused asylum and were taken into detention at the end of the process, had been complying with any reporting requirements that had been imposed on them and therefore the authorities knew where they were and there was no risk of them absconding. The people that we interviewed had often been in detention for very long periods of time, so even though it was lawful possibly at the time they were taken into detention that their removal would be imminent, the fact was that they were not removed and then it was almost like they had been forgotten about and they languished. Whilst preparing for coming here today I was looking at the latest asylum detainee statistics and I noticed that amongst those currently held in detention or who were in detention when the last statistics became available in November, were 80 Eritreans. I have just conducted a piece of research into destitution at the end of the asylum process of rejected asylum seekers and I know that it is really difficult for any Eritrean to get documentation even if they wanted voluntarily to go home, and that the International Organisation for Migration has not been able to help anybody go home voluntarily to Eritrea since August 2004. I wonder then why, for example, there are 80 Eritreans in detention when there is no prospect of their removal. That is why we came to the conclusion we came to. We happened to visit an enforcement unit as part of our research and, as somebody in the previous evidence session has mentioned, targets have to be met. We were told they had eight detention places available each day within the enforcement unit and there was pressure on staff to fulfil targets. We have felt for a very long time that it was much more about whether a bed had become available in the detention centre than anything to do with proportionality or necessity or appropriateness.

Q168 Nia Griffith: Do you have any idea how much more it costs to keep someone in detention than to keep them in the community?

Ms Shaw: I do not know off the top of my head. I know that it costs about £11,000 to enforce someone's removal. I am not sure how much it costs to keep someone in detention per day.

Ms Owers: I could find out.²

Q169 Baroness Stern: Do you have a feeling that there is a target of the number of people detained so that it is felt to be an achievement if all your beds are full by the end of the day?

² Footnote from witness: Hansard col 2618W, 2 October 2006 (I am unable to answer whether IND is liable for the same costs whether all places are being used or not):

Mr Byrne: The average estimated cost of holding a person in immigration removal centres, including overheads, for one week in 2005–06 was £1,230. It is not possible to distinguish costs between male, female and family detainees. Overheads include the costs of escorting, IND Detention Services staff and an allocation of IND and central Home Office overheads. This average cost calculation excludes the three centres operated by HMPS as those HMPS/NOMS overheads which are not relevant to removal centres are not readily discernible.

Ms Shaw: I do not know whether it is that but I think there is a target to remove as many people as possible.

Q170 Baroness Stern: So if you had to meet your target and you filled beds with Eritreans, who everyone knows cannot be sent back, would you still be getting your good performance bonus, or however it works? Would you be doing well?

Ms Shaw: Possibly.

Q171 Baroness Stern: We do not know. It is something we will probably have to ask the Minister rather than ask you.

Ms Shaw: Absolutely. We tried to ascertain how many people were being detained each year because we only get a snapshot every three months of how many people are detained on a particular day. We do now know how many people leave detention each quarter, which is an improvement on when I was doing research, but piecing together information from asking questions of the detention unit at the Home Office we ascertained that about 25,000 people were detained in 2004; that is, people who have sought asylum. It may only have been for one night, it may have been for a year, because we could not work out exactly how long, but by looking at the figure of who leaves detention I think we were pretty spot-on and of those 25,000 detained in that particular year I think it was about twice as many people as were removed.

Q172 Baroness Stern: Can I go on to ask you about fast track? In your written evidence you have expressed concern about fast track. What do you think are the particular human rights implications of fast track detention?

Ms Shaw: We were concerned that the fast track system was predicated on detention and we did not think that that was right. We were concerned that almost between 99 and 100% of the decisions that are taken are refusals. We are concerned about the very tight time limits that people have to be interviewed in, including access to their legal representative. The lack of an in-country right of appeal for asylum seekers who go through the non-suspended appeal procedure. We have heard that many people are unrepresented at their appeal at Harmondsworth in their super fast track service. Sarah probably knows more about that than I do. There is this problem with access to good quality legal advice and representation which goes all through the asylum system and is particularly acute with people when they are in detention. There is a duty rota scheme at Harmondsworth but the very fact that almost everybody is refused means that it is very difficult for people, even quality solicitors, to be able to prepare a case within the two or three days that they get before the decision on the claim is taken.

Q173 Baroness Stern: The way you describe it it does not sound as if the fast track process is capable of improvement but would it be an improvement to have some judicial intervention and also what would that be?

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Ms Shaw: I do not see why people who go through a fast track have to be detained. The new asylum model is basing itself on the fast track procedures that exist. There are improvements in the new asylum model in that the dislocation that Anne described should not happen so much under that process because we are going to have one case owner all the way through. Again, there is no judicial oversight on why people in the fast track have been detained, the lawfulness of that detention, and I think a judicial review of that type would be appropriate.

Q174 Chairman: Presumably the Home Office would say, “We are worried about the risk of them absconding. There would not be a fast track anyway otherwise”. What are the criteria for putting an asylum seeker in the fast track?

Ms Shaw: There is a fast track suitability list. At the time when I did my research there were 56 countries on it. I think there are currently 16 so called “safe countries”. It is basically anybody who has a straightforward case that can be looked at and decided upon quickly.

Q175 Chairman: From those particular countries?

Ms Shaw: From the list of particular countries, but it could be any nationality.

Ms Cutler: It is purely for the purpose, as Jan said, of making a quick decision. You do not need to show that someone is likely to abscond in order to put them in the detained fast track, at the point you make the decision to fast track them. Once you’ve made the initial decision on the asylum claim, then they are maintained in detention under normal detention criteria. Arguably, you would need to raise issues about absconding at that point. As Jan says, it can be any nationality and as long as the Home Office judge that they can proceed with a decision in the case. If they thought it was an unfounded case they could certify it and have the non-suspended appeals process apply to it, and they would not have a right of appeal in this country. But in Harmondsworth and Yarl’s Wood it is not the case that they are deemed to be unfounded, it’s purely that they can be decided quickly.

Q176 Chairman: Anne was saying earlier on that there physically are not any children now in fast track.

Ms Owers: Not at present.

Q177 Chairman: So are we talking about relating to fast track now mainly single men?

Ms Cutler: There are two parts. There is fast track at Harmondsworth, which is single men, and fast track at Yarl’s Wood, which is single women.

Q178 Lord Judd: I am always fascinated by the prevailing culture in which all this is taking place. If you bring all the evidence of all of you together, and this very much relates to the present questions that are being asked, would you say that the prevailing culture is that people have no grounds? The presumption is that people have no grounds to be

granted refugee status or asylum and that they have to prove that they have? Obviously, they have to prove they have but the starting point is that they have no grounds rather than investigating objectively whether their claim is valid or not?

Ms Cutler: In the fast track the Home Office are at pains to point out that they judge each case on its merits and that it is perfectly possible to get a positive outcome to an asylum case through the detained fast track process. They are saying they are not pre-judging the outcome of those claims by fast tracking them. But, if you look at their success rate, as Jan said, less than 1% of people, looking at the statistics, have received a positive decision in their claim and very few, 2 or 3%, are successful in their appeals in fast track. So, the odds are stacked against you because of the speed, because of the fact that although you get allocated a lawyer to represent you at your appeal, they have to apply a merits test which says that you are more than 50% likely to succeed in that appeal. Two per cent win their appeal, so many lawyers are not able to use public funding or feel they are not able to at that stage, and so the person is left at the appeal unrepresented. So, BID has heard of women who have been fast tracked at Yarl’s Wood who have had less than a day in detention before they meet their representative, who might be a man, and before they have their asylum interview, perhaps with a man. They may not have told anyone that they have been raped, they may not have had time to get evidence of torture, because the criteria for detention say if you’ve got evidence of torture, you shouldn’t normally be detained, but you are powerless to get that. You can appeal against a refusal to grant you legal aid funding for your appeal to a funding review committee but the process takes 14 days and by the time they have even looked at your papers your appeal is done and dusted. In theory you can win in the fast track. In practice it is very difficult.

Q179 Chairman: What sort of countries are you talking about?

Ms Cutler: Many of the women who have contacted us in Yarl’s Wood—it is a whole range of countries but Pakistan—

Q180 Chairman: Can you just give us some examples?

Ms Cutler: We have had Ugandan women fast tracked. It is a big range of nationalities. I can send you the nationalities from the figures.

Chairman: That would be helpful.

Q181 Baroness Stern: This is a question to Sarah. In your submission you suggest that IND targets families with children, particularly single mothers, for detention and removal because they are soft targets. Can you give us any facts to support that?

Ms Cutler: We did hear from officials through the Public and Commercial Services Union a few years ago and they gave some evidence, I think it was to the Home Affairs Committee, saying that the cost saving associated with removing a family rather than a single individual were greater, so there was a

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benefit to them in targeting families. We also know that in a family situation where there are two parents it is fairly common for the Immigration Service to detain the head of the household, the father of the family, and leave the mother and children outside detention if they do not have a bed or they do not want to detain a whole family, but obviously if you are a single parent family they do not have that option, so the experience is that they are more likely to be detained and many of the women we know have been suffering for long periods are here on their own with a child. They have got a family unit at Yarl's Wood and they have spent a very big amount of money on it. I heard from the Head of Detention Services that it is now not suitable to be used for anyone else because I asked if we could use it for a different category of person rather than a family given the pressure on the detention estate and they said, "No, because it is only suitable for families now", so if you have got beds and you are paying a lot of money for them I suspect you want to fill them and therefore I would say you target people you can put in those beds.

Q182 Baroness Stern: But this is a contract with a private company, the people who run the beds.

Ms Cutler: Yarl's Wood is run by a private company.

Q183 Baroness Stern: I do not know if you can answer this, or maybe Anne can answer this. Does the contractor pay for the beds whether they are full or empty?

Ms Owers: I genuinely do not know the answer to that. I could find out.

Baroness Stern: It would be quite helpful to know whether there is any difference between the cost to the Government of a full bed or an empty bed.

Q184 Chairman: Can we be absolutely clear what you are saying about the detention of lone parents? Are you saying that with a mother and child the mother would be detained and the child left outside, or the mother and child would be put in simply because the mother happens to have a child?

Ms Cutler: If there is only one parent they are more likely to be detained, whereas if there are two parents they might just detain the head of the household and leave the mother and child outside.

Q185 Chairman: But the child would be detained as well as the mother?

Ms Cutler: Yes.

Q186 Chairman: How many cases of that are there?

Ms Cutler: Within the total number of families detained each year I do not know how many are mother only but the majority of people that contact BID are mother only.

Q187 Nia Griffith: Can we talk about the treatment of asylum seekers when they are in detention and perhaps I could start with Anne and the evidence she has just given to us about the inspections of immigration removal centres. You say that they

have revealed gaps in the arrangements for the care and treatment of asylum seekers who are detained. Can you tell us a bit more about the gaps and the human rights issues that they therefore raise? For example, do the centres have adequate resources to provide the highest attainable standards of mental and physical health?

Ms Owers: That is a very important part of inspection. Each time we go into a new area to inspect we find there are things that, once they are brought out to the public gaze, are revealed to have gaps, most recently, of course, our inspections of short term holding facilities, which have not previously been inspected by anyone. As I say in my evidence, some of those gaps have been filled, or attempts have been made to fill them, since we started doing inspections. It is welcome that detainees are now more likely to be able to engage in purposeful activity, there are pilot schemes to have access to email and internet, which is terribly important because it is the only effective way of contacting relatives overseas, and some beginnings of welfare systems and better child protection arrangements, it has to be said, too for those centres holding children. Those are all welcome. Some of the issues though that we are still concerned about, which I list in the evidence, are first of all in terms of physical care. In most centres we have found, as far as we can assess and as far as detainees tell us, that the thing that concerns detainees is not really their relationship with the staff in the centre. The thing that really concerns detainees is their relationship with those who are making decisions about their future, ie, the immigration authorities, and, as Jan has said, that has become worse recently because the immigration officers who were on site, who obviously did not have sufficient information anyway, have been replaced by administrative grade staff who are even less likely to have the kind of information that detainees need. I think that contributes to the fact that when we survey immigration detainees in centres we find high levels of detainees saying they feel unsafe and that insecurity is linked much more in most centres to what is going to happen to them next than what is happening to them in the centre. There are, of course, exceptions in what I have said, most recently, of course, our report on Harmondsworth, which revealed some very concerning practices and concerns of detainees about the way that staff treated them in that centre and the alleged aggression, intimidating behaviour and so on of staff, which was so prevalent when detainees told us and so unusual that it raised great concerns.

Q188 Nia Griffith: I was going to ask about basic issues like privacy and so forth.

Ms Owers: That can be an issue. Some of the centres have dormitory accommodation. There is one centre, Haslar, which is a Prison Service-run centre, where the physical conditions really are pretty poor. When we first inspected it they did not even have doors to the dormitories, never mind about the ability to lock doors. Of course, there are balances to be had and many detainees would prefer to be in

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accommodation with others than to be in single cell accommodation which there is, for example, now at one immigration removal centre but which carries all the feeling of being in prison, so it is a difficult balance. Privacy is always an issue in any custodial setting. There are elements of choice and of what you do, when you do it and how you do it which are taken away from you, which is part of that. I think you asked also about health care. We have had some concerns about health care. We did a detailed review of health care at Yarl's Wood, which I think the Committee has had a copy of, and that review pulled out the fact that the health care provision there was okay for people who were going to spend short periods in the centre but who did not have any major physical or mental illnesses, but when it came to people who had been there longer and where there were some serious concerns, the provision simply was not good enough. We pointed to the need for much better mental health provision because you will have detainees anyway who have experienced trauma and who have need for medical care and the fact of detention itself is likely to add to those problems or create them in the first place even if they were not there, so you need better mental health provision. The thing that we were particularly concerned about was the ability to respond properly when detainees had suffered previous torture or trauma, and I think that falls into a number of areas, first of all the ability of healthcare staff to recognise it when it is there, because it is a very specialised area, and healthcare staff in IRCs have not been trained to recognise it; secondly, to make sure that when you recognise it it is reported because it should then lead to a consideration by the immigration authorities of whether detention should be maintained or should not—so first of all recognising, secondly reporting, and thirdly, some action being taken on it. As our evidence to you says, we were very concerned that it was only in rare cases, if it was reported to the immigration authorities, that any action appeared to ensue as a result.

Q189 Earl of Onslow: When you said that it was unusual for any action to result, if the system was judicially reviewable this presumably could be dealt with by judicial review oversight.

Ms Owers: It still can, of course, be taken to the courts, but that assumes, as Sarah said, that a detainee has access to a lawyer who is able to tell them that and take appropriate action. Organisations like Sarah's will certainly raise issues if these cases come to their attention but there must be lots that do not.

Q190 Baroness Stern: May I interject with a small supplementary? I want to try and get a little more understanding of the management, the control, who imposes the rules. You say in your report on Harmondsworth that detainees were not allowed nail clippers, which I think I am right are these little things you cut your nails with and it would be very hard to do any damage with them even to your own nails?

Ms Owers: That is right.

Baroness Stern: Can you explain to us where such a rule comes from, who authorises it, who decides that in this place which is run for the Government there shall be a rule that detainees will not be allowed nail clippers, only as an example to try and illuminate this whole area?

Earl of Onslow: The same person who said you cannot carry nail scissors on aeroplanes.

Q191 Baroness Stern: Maybe.

Ms Owers: First, at a high level there are of course detention centre rules which set out in broad terms what is required, and the contract will flesh that out in relation to the individual contractor, but there will also be the capacity, as there was at Harmondsworth, for the director of a centre to flesh those out by way of local rules and regulations about what can and cannot happen. As a further example of that I point out that in immigration removal centres that are run by the Prison Service the staff in those centres feel that it is necessary that they carry staves, the short sticks that you carry in prisons. No staff in privately run centres feel it necessary to or do carry them, so within those broad rules there is a considerable amount of discretion available, and the thing that we said about Harmondsworth was that the nail clippers and other things went against the whole background to a detention centre, that there should be only the levels of control needed to maintain safety within the centre, was completely at odds with that.

Q192 Chairman: Are nail clippers allowed in prison?

Ms Owers: Yes, normally, in most prisons. It depends on the categorisation of prison.

Q193 Chairman: But in general terms?

Ms Owers: There is also considerable discussion and debate about what is allowed in individual prisons. It is one of prisoners' most frequent complaints, but yes, in almost all prisons.

Q194 Baroness Stern: Could I follow that up? Is there anybody except you that is responsible for checking matters such as the nail clippers and deciding whether the director's local rules, as you call them, are in accordance with what the Government would like immigration detention to be like?

Ms Owers: Yes. Each immigration removal centre will have what I think is called a controller. They are called that in private prisons—they may have a different name and I can check that for the Committee—who is appointed by the Home Office to oversee the contract. That person will report to the people in charge of detention at IND as well who will themselves be able to and do visit immigration removal centres. I do not think there is anyone that quite looks at it in the detail that we do when we inspect.

Q195 Earl of Onslow: I was deeply shocked yet again—I am new on this Committee and I did not quite know how shocked I was going to be by some

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of the things I have heard—by the fact that prison officers in Crown prisons say they will carry staves. Why do they not do as they are told by their senior officers, or is that a novel idea?

Ms Owers: They do. Their senior officers also think that they should do that. It is Prison Service practice and so one often finds in institutions like this, “We do it because we do it”.

Q196 Baroness Stern: Do you think the Home Office appointed controller knew that they were not allowed nail clippers?

Ms Owers: I do not know.

Ms Cutler: I can see the nail clipper example because it illustrates a range of very serious but petty ways of controlling people’s everyday lives. The women in Yarl’s Wood in the family unit have told us that they are not allowed stuff to wash their babies’ bottles with in the family unit because someone has decided that is not a good idea, and it filters through to people’s day-to-day ability to exist in the centres and it is very serious. I think there is a very serious issue here. I think they are called contract monitors and they are failing because we have had critical report after excellent critical report from Anne Owers’ team picking apart very serious institutional failures in healthcare at Yarl’s Wood, at Harmondsworth and across the system, and the people on site whose job it is to monitor the contract between Kalyx and Harmondsworth or between GSL and Yarl’s Wood, I think that really need to be looked at because they are clearly not doing their jobs properly if things get so bad that healthcare in Yarl’s Wood is not fit and not adequate and people are leaving Yarl’s Wood, because they have been wrongly re-fed after a hunger strike, with serious brain damage. There is something very serious going wrong, so it goes beyond the issue of whether people are allowed certain things right through to who is responsible for what amounts to abuse and ill treatment on a scale that is really distressing.

Q197 Chairman: Presumably a contract has got some sort of agreement criteria set into it about what they should and should not do and what the expectations are.

Ms Owers: Yes, there will be a contract. The contract will not specify nail clippers or not, and the contract will need to be looked at and examined. You need to look at what are the outcomes, what is happening, and the problem with monitoring contracts is that you tend to be looking at processes.

Q198 Chairman: Have you looked at the contracts yourself?

Ms Owers: We have seen them.

Q199 Chairman: I mean in the general question of privatised prisons or in this context.

Ms Owers: We are able to see the contract but we start from our own expectations which are based upon human rights criteria which define what we would expect to see in a well run place of custody, and that is the position that we start from. It is not hugely adrift from what the detention centre rules

and the contract will say but sometimes, as in the case of the detention of children, there is a considerable gap between what we would like to see and what is presently provided for.

Q200 Chairman: I certainly take your point about a contract being a process issue rather than an outcome issue and when you say you are interested in the outcomes I think that is where we are all coming from. Is part of the problem that contracts are insufficiently specific?

Ms Owers: I am not really in a position to help you much on that, I am afraid, because we do not inspect the service, we inspect simply the centres. We are looking at what is happening on the ground. I think that is something you may need to raise with other witnesses. There are also, of course, independent monitoring boards which are very helpful, and there is the Association of Visitors of Immigration Detainees, which also does a very good job of bringing things to light that happen in immigration removal centres, so we are not the only ones who are dipping in and out and finding out what is going on.

Q201 Lord Judd: You have, and I am very glad you did, emphasised the significance of mental health. I recall that on a previous inquiry we did a minister was sitting where you are sitting and was asked quite specifically whether he thought that provision for mental health in prisons was adequate and up to scratch, and he said he was sure it was. We did not meet in our prison visits a single person working in the sphere of health who believed this to be true of mental health. Is this because those who advise ministers—and of course ministers should take the responsibility themselves—do not understand what adequate provision for mental health needs is, or is it because there is a total failure of communication between the reality on the ground and the policy makers in the Home Office or elsewhere?

Ms Owers: I am not sure I can answer that, and I think it is probably a question again you need to put to the Minister. Are you talking about prisons and immigration removal centres?

Q202 Lord Judd: This was a quite separate inquiry at an earlier stage about deaths in custody.

Ms Owers: Oh, of course, yes. What is true is that considerable extra resources have been put into prisons in terms of mental health but the need is so great that it is dealing with those with severe and enduring mental illness, and so there is not enough, and I think it raises the prior question of whether those people ought to be in prison in any event and the danger of putting more and more mental health provision into prisons is that people become more and more comfortable with mentally ill people being cared for in prisons, which is something we need to watch for. In immigration removal centres there is still a considerable dearth of mental health expertise and it was certainly something at Yarl’s Wood that we pointed to.

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Q203 Nia Griffith: I would like to ask Jan something if we can return to the issue of the circumstances in which families are taken into detention, and in particular you mentioned the excessive force of dawn raids. Can you see any way in which this part of the process could be done with dignity and humanity? What would you see as the ideal recipe or guidelines or criteria under which families could be dealt with in these circumstances?

Ms Shaw: It is a very difficult question because many of the people that I interviewed were from families. There were families with fathers and also families like Sarah has found, single women with children, and the amount of people that arrived to take them into detention, whether it was in the middle of the night or a dawn raid or slightly later in the day, is very frightening for people. I know that for some of the people I interviewed the children suffered very long term consequences and were very traumatised as a result of that experience. I mentioned in my evidence one particular family but there was also a Jamaican woman who was taken and spent six months in Oakington reception centre with her son, and he was very severely psychologically affected by the experience. I saw him some two years after she was released from detention and he was still going through severe psychological trauma and receiving treatment for it. I do not know what he was like before he went into detention but I do not think the experience of being in detention for six months and seeing his mother totally disempowered in the way that has been described would have done him any good. I do not think these families should be in detention. I cannot see a reason for them being held in detention except for very short periods of time if they can be removed. My experience is that many of these people cannot be removed in any case and should be treated with full respect for their human rights and with dignity, but the personnel that are dealing with them, who are taking them into detention, should be properly trained in how to work with families with children, or anybody in that situation. Families in that situation should be treated with respect and not separated, a child should not see their father put into a car handcuffed.

Nia Griffith: Can I ask you about any evidence you have about the effect on other families? You mentioned earlier about what happens if someone is taken from a school and how traumatic that can also be for other children. Have you got any evidence of the way in which other families fear that detention process because of what they have heard has happened to someone else?

Ms Shaw: I have been in touch with a lot of communities in more recent research that I have done and any time that any family or any individual is taken into detention, for example, when Iraqis were rounded up in August and September last year during the second wave of people forcibly removed to Iraq, a fear goes through the whole community and everybody is just very nervous, particularly those who are complying with reporting restrictions, who expect to be targeted next time they go to report, so yes, it does send waves of fear through the whole community.

Ms Cutler: I just wanted to add to what Jan was saying in answer to your question about whether there was a different way of dealing with it. We have to remember that the purpose of detention is to remove those families, so I think it is really important that we look at that ultimate goal of deciding whether that is fair and just and in line with their human rights. To me there is no point in ending detention of families and just finding another way of removing them if that removal in itself is unjust. I worked with a woman from Iran who was a very articulate, intelligent woman who described her and her family's detention experience. Her view of detention was, "If it is not okay to detain my son why is it okay to remove him?", and I think that is really important because otherwise we get into talking about designing a system that we are more comfortable with as people which actually does not address the fundamental flaw, which is that these people should not be being removed to places where they are not safe and if they were safe they would not resist and they would not fight back in the way that they do. I also forgot to mention a very important point when I was talking about splitting families, that we have had cases, and there have been a few that Lord Avery in particular has been involved in, of breast-feeding mothers being split from infants on being taken into detention, so then the child has been separated from the mother, and that happens sometimes in other cases as well where immigration officers have gone to pick up a family and only got half the family and not the other half but have exercised detention at that point, causing a split, so there are cases where children are split from their parents.

Q204 Chairman: Have you got documented evidence of that?

Ms Cutler: Yes.

Q205 Chairman: Can you send that to us?

Ms Cutler: Yes.

Q206 Nia Griffith: Can I return now to the question of health and torture? In your submission you accuse the Immigration Service of an "institutional failure to address health concerns" and of "institutional resistance to evidence of torture". Can you give us any examples of this to back up that claim?

Ms Cutler: Yes. We know there are examples where people have torture scars or marks on their bodies that they are saying are related to torture and they tell medical staff they have been tortured and that information is either not documented properly or is not acted upon. The process, once the information has been given to healthcare, of that being fed through to the person who is then making the decision about detention or whether detention is appropriate, and that is where there is a problem because that information does not always get through or if it does get through it is not acted on. Then you get situations where detention is maintained where it should not be.

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Q207 Earl of Onslow: Is this a result of people saying, “No, this is not. This scar is because you have burnt your hand on the smoothing iron”, or the triple barbed wire fence, in other words they do not believe the torture claim?

Ms Cutler: I think you can get both. There can be disputed evidence, but if a person is alleging torture then it needs to be investigated properly and the detention centre rules say that the authorities should take into account evidence of torture. There is an organisation called Medical Justice, which is one I wanted to mention, because increasingly, in the same way as there is no access to lawyers for many of these people, the voluntary sector is picking up the health issues and the medical issues and Medical Justice is sending in independent doctors who work free of charge to try and force the existing authorities, both health authorities and detaining authorities, to follow their own rules because it adds a level of scrutiny that is not there if a person does not have a lawyer.

Ms Owers: In addition to that, it seemed to us—though I think it is improving and centres are now starting to get responses—that really it was almost like putting a message in a bottle and floating it down the river: you simply never got a response. In our evidence to you we talk about staff in one immigration centre passing on eight allegations and getting no response and in one centre which had sent quite a few such allegations, they say they had only ever had one response from the external IND office asking what the rule 35 letter was and what they were supposed to do with it. Following some of the reports we have made and some of the reports other organisations have made you may find when you get to talk to the Minister and officials from IND that they are now rather more alert to the need at least to consider what happens when they get a rule 35 letter.

Q208 Earl of Onslow: But this is crass incompetence, not answering a letter, is it not, or is it deliberate obstruction?

Ms Owers: I cannot speak for what it is. I think those are questions you need to ask others.

Q209 Earl of Onslow: Ms Shaw, do you think that there should be a maximum time limit on the length of detention and, if so, what should that time limit be or should it be a variable one case by case?

Ms Shaw: We did not in our report specify a maximum time limit because it would have been plucked arbitrarily, I think. What I would say is that some of the people that I interviewed had languished in detention for many months and it had a very severe effect on every aspect of their life, most particularly on their mental health. In 2005 the Committee of Ministers of the Council of Europe adopted 20 guidelines on forced return and guideline 7 says that detention pending removal shall be justified only for as long as the removal arrangements are in progress and if the arrangements are not executed with due diligence then detention ceases to be permissible. I would endorse that because I think that people are taken into detention to be removed, or that is what the

Government purports to do. If they are not removed and they are not removed within a short period of time then they should not be in detention.

Q210 Earl of Onslow: So would it be reasonable to say, even though you do not recommend a time limit, that if there was a time limit it would concentrate people’s minds remarkably rapidly on doing things properly and get them either removing or allowing them to stay?

Ms Shaw: Yes, I think that is true.

Q211 Earl of Onslow: There are certain places, and we were talking about Eritrea, where there is no point in attempting to send somebody to Eritrea, so either you recognise that and they then have to be released and you know there is nothing you can do about it, or they accept it.

Ms Shaw: These people should not be detained in the first place.

Q212 Earl of Onslow: Okay. Ms Owers, in the absence of a time limit on detention what judicial oversight do you believe is required to ensure that detention does not become inappropriate or prolonged?

Ms Owers: I would have to preface this by saying that my role is to inspect what happens in detention rather than to inspect the operation of the Immigration Service. It is not within my remit, although there may be a body created which will be able to do that. Within that, however, I think I can only repeat what I said to the Committee earlier, that where these decisions are purely administrative, where there is no automatic judicial oversight, then it is possible to do this without having reasons that would stand up to independent scrutiny, and I would not want to go any further than that, other than to say as I have done already, that the advantage of having some form of automatic judicial oversight is that you would have to be able to justify each individual decision to detain.

Q213 Lord Judd: Jan Shaw has spoken pretty tellingly about the use of force to effect removal from the UK but this is an issue that was raised by all of you in your evidence. I think for the record it would be interesting to know whether you endorse Jan’s views and observations and whether there is anything you would like to add on this.

Ms Owers: I am not entirely sure because I have not looked at Jan’s report recently. We have not until now directly inspected escort arrangements, for example. We are now empowered to do that. We are looking at ways of inspecting escorts. I think that this is one of the most difficult areas to be sure of what is happening in, for a whole lot of reasons, first of all, as some of your earlier witnesses said, because if anything untoward does happen many of the people by definition are going to be out of the country and not able to challenge what has gone on, but because at that point within an escort vehicle or at an airport if I put in an inspection team then I can be pretty sure that things will happen properly at the point at which we are there, and the way in which

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you get information in inspections about abuses that happen, things that go wrong, is essentially by people being confident enough to be able to tell you about that and by being able to work around it and expose it. It is much the most difficult area of immigration detention to monitor and one where abuses can happen. Certainly the indication from those who have been returned following failed removals—and we picked some of that up when we began to inspect short term holding facilities and had considerable concerns about some of the histories that were being recounted to us—was that this was done in a way where force had to be used because the person was surprised, because they had not been prepared for what was going to happen; and in the end they could not be removed anyway because the airline will refuse to take people who are disruptive, and so the whole management of the process, which was not done with preparation, with humanity, was creating problems even without the possibility of abuse. In our view, from the evidence we had, force was sometimes being used because of the inadequate preparation for the whole process and people were not being treated from the beginning with humanity.

Q214 Lord Judd: All this happens in the context of prevailing social attitudes. Whatever the regulations may say, if too much of the media and too much of the body politic is actually all the time saying that these people are a bad lot and really ought to be going out, where is the moral context to support the highest performance by the people at the front line? Would you say that was an issue?

Ms Owers: I think it probably is. I think also the issue is that the job of someone at that stage is to effect removal. That means that at that point you require the highest level of scrutiny of what is happening, given all the pressures that there will then be, and the fears and concerns of the person being removed too which will be there.

Q215 Lord Judd: Sarah?

Ms Cutler: I think it is also the impunity of people who have been seen to abuse or assault someone during the removal process. If your colleague has done that and nothing has happened to your colleague then what is to stop you doing that? There is a report by the Complaints Audit Committee of IND published in November that identified forced removal or detention as a very high risk area of IND and said that the complaints mechanisms were not effective and that the monitoring boards that I mentioned earlier are not effective in trying to deal with abuse in the centres. There is a lack of political will, there is a lack of scrutiny, at the parliamentary level as well. With the exception of committees like this I think there is a shocking lack of interest sometimes. There was an undercover investigation by the BBC into Oakington and there was an investigation by the Prison Ombudsman, Stephen Shaw, but very little actually changes and I think if the culture is impunity and it is target driven, regardless of the lack of the moral framework that you mentioned, which I agree with, I think it is

inevitable that people will be treated in the way that they are. One of the problems is that when people are beaten up or abused and they come back to the centre, unless those injuries are documented and unless they are able to get legal advice and access to civil lawyers who will help them to take a case against the person that has assaulted them, again nothing is going to change. It is done behind closed doors and when the Medical Foundation did a report on harm on removal they looked at something like 14 cases and found that in all of those cases injuries were consistent with what detainees had been saying, that very little had been done by the authorities. It really needs to be taken very seriously at the highest level to stop that culture continuing inside the centres.

Q216 Chairman: Do we know what the targets are for removal?

Ms Cutler: They scrapped the numerical target. It is the tipping point.

Q217 Chairman: More going out than coming in?

Ms Cutler: But it is interesting because they say more removals than unsuccessful new claims and it is quite hard to know how they measure that.

Q218 Chairman: So there is not a formalised target number that they use, that they have to move X thousand?

Ms Cutler: No, it is the tipping point.

Ms Shaw: There used to be a formal house number but they no longer get it.

Chairman: So now we have got a moveable feast?

Q219 Baroness Stern: Can I just try and understand the removal situation? This is done by an escort company which is not the same as a company running a removal centre?

Ms Owers: It may or may not be.

Q220 Baroness Stern: But it is a different contract?

Ms Owers: It is a different contract.

Q221 Baroness Stern: It is a different contract with a company?

Ms Owers: Yes.

Q222 Baroness Stern: And the contract is placed by the Government and there are presumably rules or there is a book of rules that we could all see about how it should be done? Question: is there a book of rules about this which says how it should be done?

Ms Cutler: There are policy guidelines. There is a family removals policy, for example, which is disclosed. I think some of the contracts are subject to commercial confidentiality and we do not get to see them, but I am not sure if all the enforcement and removal operational guidelines are in the public domain. We had a long fight to get the detention operating enforcement manual. We can find out.

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Q223 Baroness Stern: That would be very helpful.

Ms Shaw: They did install CCTV cameras in the back of the escort vans soon after the Medical Foundation's report came out because so many people were making allegations of abuse when being escorted from the removal centre to the airport. There are two separate points: from the centre to the airport and then there is what goes on at the airport.

Q224 Baroness Stern: And are there CCTV cameras in the airport as well?

Ms Shaw: I do not know.

Q225 Baroness Stern: Can I ask you who reviews the footage which is taken from the CCTV cameras? What is done with it? Who checks that the cameras are working and who looks at the cameras to see what happened while they were working?

Ms Shaw: I do not know.

Ms Cutler: My understanding is that they only investigate if there is an allegation of assault, so they would not be routinely monitored.

Q226 Earl of Onslow: To go back to June, *quis custodiet ipsos custodes*, who guards the guards themselves, it does seem to me appalling that there is no public record of the disciplinary code in these types of companies. There is no record of the numbers of cases of abuse, and I assume there has been no instance of any form of prosecution whatsoever. Am I right in that?

Ms Cutler: I am not sure if there have been prosecutions.

Ms Owers: Certainly disciplinary action is taken, not least following the television programme.

Q227 Earl of Onslow: But only because of the television programme?

Ms Owers: Yes, well, I think they have—

Q228 Earl of Onslow: One is entitled to assume that.

Ms Owers: I think they have in other cases but again you would need to ask. This is an area where we are certainly very concerned and an area where up until now we have not inspected, which is one of the reasons why my answers to the Committee are not as full as they are in other areas. It is something that my immigration team are now working on with a view, now we have the legal right to do it, to trying to work out an effective way of inspecting this very crucial

area. I think it is the area which is least in sight of others and where one would have probably the most concerns about what actually happens to people.

Q229 Nia Griffith: Could we just return to the numbers game? My question really is what place is there for that sort of numbers game when we are considering human rights? Are they actually compatible and do you have any evidence to show that the numbers game is possibly influencing outcomes?

Ms Cutler: I could say one thing about numbers. We were talking earlier about whether it is consistent to have a target to remove people that you cannot remove. At the senior level of IND they have acknowledged that they do not want people in detention who are bed blockers. It is not in their interests to have that. The problem, as with many of the areas we have discussed, is that the rules are fine; the problem is implementation. It is in their interests to have a system that has a regular independent review because it would help them to enforce rules that they have designed for good reason, for example, not wanting beds blocked. The numbers game affects behaviour at lots of levels but I think at senior levels there is a recognition that they do not want people in detention that they cannot remove but they are not implementing or following their own rules and they seem incapable of doing so without a level of independent scrutiny or pressure from legal representations or inspections that are either too few and far between or not consistent in every case, so what we need is a system where, if someone is going to be deprived of their liberty, there is a check on that and the check has to be from an independent body, not from the person making that decision to detain in the first place.

Q230 Chairman: When you talk about an independent person, you are talking of somebody outwith the Home Office entirely?

Ms Cutler: Yes. It needs to be brought before a court in the same way as anyone else deprived of their liberty is.

Q231 Chairman: And that would include race tribunals and so on?

Ms Cutler: Yes.

Chairman: Okay. Thank you very much. It has been a fascinating session. There is a lot of concerns for us to think about and there is an awful lot of things for us to talk about.

Monday 22 January 2007

Members present:

Mr Andrew Dismore, in the Chair

Fraser of Carmyllie L
Lester of Herne Hill, L
Onslow, E
Plant of Highfield, L
Stern, B

Mr Douglas Carswell
Nia Griffith
Dr Evan Harris

Witnesses: Mr Robin Esser, Executive Managing Editor, *Daily Mail*, *Mr Peter Hill*, Editor, *Daily Express*, *Mr Alan Travis*, Home Affairs Editor, *The Guardian*, and *Mr Tim Toulmin*, Director, Press Complaints Commission, gave evidence.

Q233 Chairman: Welcome this afternoon to our evidence session and continuing inquiry into the treatment of asylum seekers. We are being broadcast and recorded. Our witnesses today are Alan Travis, the Home Affairs Editor of *The Guardian*; Peter Hill, the Editor of the *Daily Express*; Robin Esser, Executive Managing Editor of the *Daily Mail* and Tim Toulmin, Director of the Press Complaints Commission, in place of Sir Christopher Meyer, who I understand had an operation the other day.

Mr Toulmin: You have me instead, I am afraid.

Q234 Chairman: I should make clear from the start that this inquiry is not into asylum policy and migration policy, which is a matter for the Home Affairs Committee; but we are looking at the way asylum seekers are treated by the system. We have received a lot of evidence about media coverage of asylum seekers, and we believe it is important to hear from all sides, and give an opportunity to the press in particular to respond to the critics who submitted evidence to us. Everyone is entitled to a fair hearing, including the media, but nobody is on trial today. It is an opportunity, we think, for a genuine engagement, hopefully constructively, on these very difficult issues. The evidence we have had from the media, both the written evidence and any transcript from today's hearings, will be published as an annex to our report. I would like to correct a couple of points. In the Express on 3 January there was an article by Patrick O'Flynn referring to our inquiry in part. I should make it clear that we will be asking questions, but we are not pushing any view. We have yet to come to a view. Our views will be set out in our report, which will only be produced after we have heard and analysed all the evidence from all parties submitting evidence to us. Contrary to what the article may suggest, the *Daily Express* and any other paper is not at risk of being hauled up before the European Court of Human Rights, by Cherie Blair or Matrix Chambers or anybody else, whether on legal aid or in any other way, because the newspapers are not public bodies, which is a prerequisite for being brought before the European Court of Human Rights. Newspapers benefit from the protection of Article 10(1) of the European Convention which protects freedom of speech, and this Committee has been very hot all along on being against censorship and in favour of free speech. Lord

Lester may wish to say something about that later on as he has done many cases on behalf of the media, defending them from possible attacks like that. We would also like to make it clear that we regard immigration policy as a legitimate issue for robust debate and reporting and hope no-one would suggest otherwise. I hope everyone would agree that it is important to ensure the debate is conducted in a way that is both accessible to readers of newspapers and also well-informed and accurate, using correct terminology, which I hope is something we can all accept, even if we have different opinions on the subject matter itself. Before going to the questions, I would like to ask the witnesses if anyone wants to make a brief opening statement. Mr Hill, what do you see as the role of an editor being in this context? *Mr Hill:* I think we should speak for our readers and for the people of Britain in the way that we see it. The way that we see it is possibly not the way that you appear to see it. You said that there is no threat to newspapers from European legislation, but if that is the case why are we talking about human rights in this context if it is not to stifle the debate?

Q235 Chairman: It is not a question of stifling debate. That is not what we are here to talk about. We want to talk about the role of newspapers and the way they report things, and we will develop that line during our questioning, and will put one or two specific points to you. It is important that we clarify the role of editorial policy, and you have given us points on that. I do not know whether Robin would like to add to that.

Mr Esser: As we are facing probably the greatest demographic change in this nation since the Norman invasion, we certainly feel that the public needs to be fully informed of the situation with asylum seekers and those who fail the asylum-seeker qualifications. Our main criticisms have not been directed towards asylum seekers *per se* but towards the system, which we feel has been very unfair to genuine asylum seekers. If the system was better organised and we knew and the Government knew what the numbers were and treated asylum seekers in a quicker, more rapid way, I think that would go a long way to preserving their human rights.

Mr Travis: I think the role of an editor of a newspaper in this country in respect of this question is to present a fair and accurate picture of the

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country as it exists, as asylum seekers' lives exist, and the problem facing the country exists. It is part of the role of an editor to reflect the views of their readers, but I think that has to be based on an accurate picture and not the misleading picture that is being painted. I think that especially in the last five years there has been something of a lull, it is said, in media coverage of asylum seekers, and yet in this year alone, the last three weeks, there have been 87 different articles in the national press, tabloid and so-called quality, referring to asylum seekers. This is a lull. Over a year about 2,500 articles were carried by our national press about asylum seekers in the last year, and I think overwhelmingly those are negative and hostile in tone, and the cumulative effect of that has a role in fuelling public opinion beyond merely reflecting it.

Mr Hill: You must ask yourselves as a committee why there are so many headlines, and in particular why there are so many what you would describe as negative headlines. The reason is that asylum and the broader immigration system is a complete shambles. Anyone can walk into the country now. There was a report only last week in which the Home Office had admitted that the immigration system was so undermanned that people were simply being waved through. This is a nonsense of a situation and, as Robin has said, I think it makes life very, very difficult for genuine asylum seekers, which the *Daily Express* has always supported; and we have always accepted that people should be given sanctuary in this country if they are in genuine danger of torture, or worse, or persecution. We have always supported that. What we cannot support is the unrestricted entry to this country of hundreds of thousands of people, many of whom hate this country—people who want to destroy this country, people who want to become suicide bombers—there is an enormous amount of crime also for which, I am afraid, asylum seekers are responsible. Many of the headlines that I see have been chosen by the United Nations magazine *Refugee* relate to simple factual matters of crime—murder and all kinds of crime.

Q236 Chairman: As I said at the beginning, we are not looking at treading on the Home Affairs Committee's territory in terms of looking at asylum seekers policy.

Mr Hill: But you have to understand that is why we have so many negative headlines, because so many negative things happen.

Q237 Chairman: We are not talking about asylum and immigration policies; we are talking about how individual human-beings are treated. That is what we are interested in in the context of this Committee. Robin, can I ask you about language? Do you regard the use of language and precision of language in describing these issues as important or do you regard some of the terms as interchangeable?

Mr Esser: We regard it as very important, and we always try not to be inflammatory and to use the terms as recommended by the PCC. All our people know about this, and of course there are occasional lapses because people are not perfect; but we think

that it is important not to be inflammatory, although a great many of the headlines, as Peter rightly says, come out of court cases where people have been found guilty of criminal acts and the judge himself has said something which appertains to the case. Certainly, on occasions, a judge has recommended deportation, and once you start talking about deportation of immigrants, of asylum seekers, you might well find that hostile, but it is a fact.

Q238 Chairman: Have you ever published any letters from asylum seekers in your letters column?

Mr Esser: We have not had very many, but I would imagine the answer is "yes"—but we print millions of letters over two or three years. Certainly we publish letters from organisations that assist asylum seekers, and our letters column is a broad church.

Q239 Chairman: I am pleased to hear that, and I am pleased about your assurance about individual asylum seekers. Part of the problem is sometimes you end up looking in a representative way rather than at the individuals concerned. Perhaps I can ask the same question to Peter. Have you ever published letters from asylum seekers?

Mr Hill: I do not know. I could not say one way or the other. I know I am always very careful to publish letters from people who write in opposition to things that we might have said. I am always perfectly willing to put the contrary point of view. I would never shrink from that.

Mr Travis: We certainly not only publish letters from asylum seekers, but have interviewed them and talked about why they have come to Britain and what conditions they are living in in Britain. We also talk to people who are threatened by asylum seekers and who protest about say putting an accommodation centre in their neighbourhood. We have talked to people directly and reported their views and we print letters by them. We believe that the way to understand readers—to understand the nature of what is going on about this debate is to reflect all those views and no merely provide a partial picture. In terms of language, if I may pick up the Chairman's point, it is interesting that one of the reasons why there was so much controversy over the question of not using the term "illegal immigrant" or "bogus asylum seeker" was an attempt at that time to try and resurrect the idea of an asylum seeker being someone who had to come to this country, in neutral terms, and whose case for asylum had not yet been judged, and who would not know whether they were a genuine refugee or maybe an economic migrant posing as an asylum seeker, or were indeed a bogus asylum seeker in that sense, until their claim had been resolved by the Immigration Service or by the courts. I think it is a great shame, but there has been a complete collapse in meaning in the term "asylum seeker" and it is now a term of abuse. When Article 19 of the Human Rights group looked at media coverage in the Sangatte period, they found 51 different labels to refer to asylum seekers, and at one time the Home Office produced a leaflet describing in very careful terms what an asylum seeker was, what a refugee was, what an illegal

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entrant was, what an over-stayer was, what an immigrant was—because a dictionary definition of an immigrant is someone who comes to a country to stay for longer-term settlement as opposed to an economic migrant or a short-term person. I think that the idea of an asylum seeker has completely collapsed and we need in some way to change the name or find some way of restoring its meaning.

Q240 Chairman: Do you think “asylum seeker” has become a surrogate for racist abuse?

Mr Travis: I certainly think the discourse about asylum between 2004 and 2005, and now about economic migrants from eastern Europe, has become a synonym, a way for some newspaper commentators to talk about race in a way which they think is more acceptable.

Q241 Chairman: Can I ask Peter and Robin: have you met asylum seekers personally yourselves?

Mr Hill: I have not. I have met representatives of the Romanian Government on a similar and associated topic but I have not met any asylum seekers—or I do not think so.

Mr Esser: I have, yes. I live in a community that is fairly mixed and I have met several asylum seekers, that is to say people who have succeed in obtaining refuge in this country. I have also had the privilege of meeting one or two who have not.

Mr Hill: Personally, just going back to the previous point about terminology, the word “asylum seeker” is a bit of an odd one because what we are really talking about is the system of sanctuary—people who come to this country and are fleeing persecution and genuine threats are effectively seeking sanctuary, in the way that people once sought the sanctuary of the church. As I understand it, they have to be able to prove that they are under that kind of threat; but I am afraid the way that the system—and I think it is a laughable word anyway because there is not a system—works, people are not having to prove anything and are really not subject to any kind of real test. Even when their claims are rejected, as we saw last week, the claims of 500 people whose claims for sanctuary were rejected are now having their claims heard again because the Government failed to deport them from the country. The whole thing is an absolute shambles, and a fiasco; and this is reflected in the way that some newspapers cover this issue, because it is an issue that greatly troubles the people of this country.

Q242 Chairman: That is a point you have made already. Do you think you have any responsibility towards asylum seekers yourself, in terms of you or your newspaper?

Mr Hill: I think we have a duty to be fair to the people, and I think we are fair to people. I think we are very, very fair to people who come to this country in genuine need.

Q243 Chairman: Do you think your coverage has exacerbated what the PCC referred to in a memo of 23 October, a press release, as hostility and fear towards asylum seekers?

Mr Hill: Whether it has or it has not, I think that we must cover issues that we believe are important to our readers and to the people of this country, and not to shrink from them.

Q244 Chairman: Even the violent attacks we have seen.

Mr Hill: I do not think in any way we are responsible for violent attacks, no more than we are responsible for football hooliganism.

Q245 Nia Griffith: Peter, you quite rightly wish to criticise Government policy, and we on this Committee would uphold the freedom of speech and your absolute right to do that. Can I refer you to an article that appeared in the Express in August 2004, you talked about Britain’s asylum policy. The article makes a lot of sense; you talk about the asylum policy of spreading people about having certain detrimental effects, and it is a perfectly legitimate article. It then seems very unfortunate that you chose the heading “Asylum Seekers Spreading AIDS across Britain” when in fact it is the policy that you are talking about. That is the issue where it seems that the Government’s wish and duty, if you like, to try to discourage any incitement to violence against a group, would have to ask you the question: does that heading incite violence against a group? That is the issue we are talking about; we are not talking about curtailing people by law because we are not into preventing freedom of the press; but we are saying that a title like that, which is completely at odds with the actual article itself, has a very negotiate impact.

Mr Hill: Well, you will have to come and advise me on my headline writing in future, I can see! The point is, was the headline a truthful headline? There is a great deal of evidence that tells you that there has been an enormous increase in the incidence of AIDS and other illnesses, like TB, that have arrived in this country with people from abroad. I do not think that can be disputed. It is very wrong of people to suggest that we cannot be truthful in our headlines. We must be able to be truthful in our headlines, whether the facts are unpalatable or otherwise. We cannot tailor our headlines to fit news as you would wish it to be.

Q246 Nia Griffiths: I think we are talking here about incitement to commit violence against a whole group, whereas perhaps you are dealing with a very small percentage of a large group.

Mr Hill: We do not approve of violence. We do not approve of extremism, but I think the failure of Government and of responsible people in general to address this issue of immigration is driving many, many respectable people into the arms of extremist parties because the recognised parties will not address these issues; they would rather not address these issues.

Q247 Lord Lester of Herne Hill: I should declare my own personal interest. I have had the privilege of acting for *The Times*, *The Sunday Times* and *The Guardian*, using Article 10 of the European Convention to strengthen press freedom against

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unnecessary restriction. I have not had the privilege of representing the Express or the Mail. I would like to see what common ground there is about the press and then ask you questions about how to portray the situation. I imagine you would all agree the right of free speech is fundamental.

Mr Hill: Yes.

Q248 Lord Lester of Herne Hill: I imagine you would all agree that it is not absolute.

Mr Hill: Well, we can see it is not absolute because there are quite a number of laws that prevent it from being absolute.

Q249 Lord Lester of Herne Hill: I am asking about the principle. In principle, whatever the laws may say, there are basic rights of freedom—

Mr Hill: I agree that there are responsibilities that go with the right of free speech, yes.

Q250 Lord Lester of Herne Hill: We all agree that the only restrictions placed on free speech are those that are no more than necessary in a democracy.

Mr Hill: Quite.

Q251 Lord Lester of Herne Hill: That requires a fair balance to be struck and maintained between the right to free speech on the one hand and competing rights and interests on the other.

Mr Hill: Agreed.

Q252 Lord Lester of Herne Hill: I am sure you know that this Committee in all its reports has espoused exactly the principles I have just tried to summarise. You have probably read our reports.

Mr Hill: I cannot say that I have read them all, I am afraid.

Q253 Lord Lester of Herne Hill: You will know, I am sure, as a responsible editor of a national newspaper, that this Committee has consistently espoused those principles. I am sure you know that, as a responsible editor, do you not?

Mr Hill: Yes, I am sure you have—although I am not sure the evidence you have heard has always been particularly truthful because, for instance, I have got—you recently heard evidence from someone called Jago Russell, who was the policy officer of an organisation called Liberty. Mr Jago Russell told this Committee—and you did not challenge it—“There is the *Daily Express* comment that refugees are flooding into the UK like ants. That kind of language reminds you of what happened in Rwanda, the Hutu power and the Tutsi described as cockroaches.” Mr Russell claimed that this was a comment by the *Daily Express*, and you did not challenge that because you did not ask to see the article. In fact this was not a comment by the *Daily Express*; this was a comment by a British Transport Police spokesman after a night in which 74 illegal immigrants had been caught by the British Transport Police. This was his comment and it was merely reported in the *Daily Express*. He said: “This was the most illegal immigrants we have ever caught in one go. They were like ants crawling from an ant

hill.” We simply did not make that comment ourselves; we reported that comment, as we must, because we are reporters.

Q254 Lord Lester of Herne Hill: Thank you for telling us that, and I am sure we will take that into account. I was not asking you about what a witness told us. I was asking you about your understanding of the work of our Committee, and I think you have agreed that as far as you are aware our Committee has always, in all our reports, made clear the principles we have just summarised.

Mr Hill: I am concerned about references to human rights legislation in relation to this particular issue.

Q255 Lord Lester of Herne Hill: I will come to that, I promise. At the moment I am just dealing with free speech.

Mr Hill: Well, that is my concern.

Q256 Lord Lester of Herne Hill: I understand that. You accepted fairly that you have duties and responsibilities as an editor of a national newspaper to be accurate, to avoid unnecessary emotive language, to avoid stirring up prejudice and hostility against groups of vulnerable people. I think that is the burden of what you said to us.

Mr Hill: No, I did not say that—

Q257 Lord Lester of Herne Hill: Tell us how you put it.

Mr Hill: I did not say I should avoid use of emotive language because if a subject is an emotive subject, I see no reason why I should not use emotive language.

Q258 Lord Lester of Herne Hill: Very well. Your headline on 3 January was: “How the liberal elite is trying to gag us on the asylum racket”.

Mr Hill: Yes.

Q259 Lord Lester of Herne Hill: Then you suggested that this Committee is attempting to gag you.

Mr Hill: That is what I have believed.

Q260 Lord Lester of Herne Hill: What is the basis of your belief that we are trying to gag you?

Mr Hill: Because you are discussing the idea that in some way the way the press refer to asylum seekers could infringe their human rights—or am I mistaken?

Q261 Lord Lester of Herne Hill: You think that because we are trying to examine the problem of asylum and the contribution made by the press—

Mr Hill: In that way.

Q262 Lord Lester of Herne Hill: In the public understanding of the problems, that that is an attempt by this Committee, a Left-dominated committee, to censor or gag you. Is that your understanding?

Mr Hill: That certainly was my understanding, but I am delighted to be reassured.

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Q263 Lord Lester of Herne Hill: Very well. I think I can reassure you on behalf of the Committee that we have no such intention.

Mr Hill: Thank you. Good.

Q264 Lord Lester of Herne Hill: I am sure you will report our agreement with this in your newspapers, so that the public are left in no doubt that this is not some kind of Charles I censorious committee. What I would like you to tell us now is how you think your responsibilities should be discharged in striking that fair balance between your fundamental right to inform your readers of matters of fundamental concern about what you see as failed asylum policy and the abuse of the asylum system on the one hand, and being fair to a very vulnerable minority of people who are fleeing political persecution, which, as I understand it, you accept is a justification for their being admitted to this country, if they can prove they are victims. How do you secure that balance in the instructions that you give to people who write your headlines or the news reporters or otherwise, to ensure that you are fair to this highly vulnerable group of people, in your editorial responsibilities? How do you do that?

Mr Hill: I think all my journalists are well aware that I do like the newspaper to be fair, and certainly to be truthful; but we have to report what we see. Quite frankly, there is not an awful lot of positive news on this particular subject. I am afraid most of the news is of a very negative nature.

Q265 Lord Lester of Herne Hill: What kind of advice, guidance or instructions do you give your staff about how to handle these very sensitive problems fairly in accordance with your responsibilities?

Mr Hill: Well, all my staff are perfectly well aware of the Press Complaints commission and its rules and guidance. They know perfectly well, and I constantly reinforce this message, that we must be truthful in what we say.

Q266 Lord Lester of Herne Hill: Have you ever had to say to one of your staff, "I really think that is most unfair to asylum seekers and I think we are in danger of exaggerating and whipping up prejudice, and I really think you should now be more balanced in the way you report or comment on this"?

Mr Hill: I often discuss with my staff both the way they write their reports and the way they write their headlines on all manner of subjects—on everything.

Q267 Lord Lester of Herne Hill: You have not answered my question. Have you ever had to exercise some kind of pretty strong guidance and discipline because you felt your staff—

Mr Hill: No.

Q268 Lord Lester of Herne Hill: You have not. Mr Esser, I do not want to prolong this, but broadly speaking is there any disagreement about principles between us, or do you accept the way I tried to

express the fundamental right to free speech, the exceptions, the fair balance and the need to exercise responsibility by the press.

Mr Esser: No, there is no area of disagreement. We believe in those principles and we try every day to make sure that we stick by them.

Q269 Lord Lester of Herne Hill: What mechanism or guidance do you have to ensure that that is done in practice by your staff?

Mr Esser: The first thing, I think, is to abandon the idea that journalists are brought up to rush out and write inflammatory stories; they are not; they are trained to report what has gone on in a straightforward manner. They are trained to produce the facts. The comment column, and *The Daily Mail's* opinion about matters, is expressed in a separate and different way. As Peter has rightly said, we stick by the principles and the excellent guidance note that the PCC produced on asylum seekers and terminology and attitudes, and all our journalists carry in their wallet a pocket-sized version of the code. The idea that they are running around looking for inflammatory things to say about asylum seekers is wrong.

Q270 Lord Lester of Herne Hill: I follow that, but one of you said you see it as your role to speak for the people of Britain, but I hope—and please correct me—you are not saying by that that the people who are not from Britain but are genuine victims of political persecution in unspeakable countries abroad, should not be spoken for as well as the people of this country.

Mr Esser: That is an absolutely fair point, but I do not think we try and speak for the people of Britain. What we try to do is inform our readers and reflect the views of our readers, and many of our readers write to us about asylum seekers and similar matters, expressing sometimes fears and sometimes approvals. We consistently say, as Peter does in the *Express*, that this country has a great tradition of asylum granting; and long may that continue.

Q271 Lord Lester of Herne Hill: How do you avoid the danger of stereotyping, of making sweeping generalisations about groups of people that are not fair to individuals within the group? You know what I mean! You can make stereotypes about women or black people or Jews or Muslims—all kinds of people. How do you avoid the obvious elementary danger that powerful generalisations are made which in fact stir up prejudices? How do you do that in practice, or maybe you think you should not do that—

Mr Esser: It is very difficult. We do of course pick out individual examples of people who have succeeded, and run major features on them. The difficulty you express is the difficulty that, for instance, *Government Expresses*. The *Government* talks about asylum seekers; it does not talk about individuals; it talks about asylum seekers and immigrants. The *Government* is a system of generalisations.

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Q272 Lord Lester of Herne Hill: Would it be helpful if the PCC, represented here today, gave rather clearer and more positive guidance—I do not say regulation, but I say guidance—on how to handle these difficult, sensitive issues and produce some kind of further discussion document? At the moment what they have done is very short and some would say primitive on the subject. Would you think any more help from them would be a good idea?

Mr Esser: I think the PCC constantly reviews the code and its guidance. One of the strengths of self-regulation is the lightness of regulation. That is something of which I approve, as a believer in freedom of expression and the freedom of the press and so forth.

Q273 Chairman: Just to put the record straight, we have the ants article in front of us. The headline is: “Refugees are flooding into the UK ‘like ants’ . . .”

Mr Hill: Yes.

Q274 Chairman: Paragraph 1: “Hordes of immigrants pour from Channel Tunnel trains like ants from an ant hill as the tide of asylum seekers into Britain continues to rise.” Paragraph 7 is a quote from the BTP spokesman who said: “This is the most illegal immigrants we have ever caught in one go. They were like ants pouring from an ant hill.”

Mr Hill: That is correct, yes, but I wanted to draw the distinction between a report of what someone else said, and the suggestion from Mr Jago Russell that this was an inflammatory comment by the *Daily Express*, which it was not of course.

Chairman: Just a minute; the purpose of this hearing is to hear both sides of the story, and we will form our own views, having heard from Mr Russell and having heard your view as well.

Q275 Dr Harris: Just on that point, though, clearly we have heard what you said and we have the original article to check—

Mr Hill: Yes, I am glad you have the article.

Q276 Dr Harris: We are not liable to be misled without checking the original source, but that British Transport policeman who was talking about illegal immigrants said—he was talking about how they came out of the lorry once the container was opened.

Mr Hill: Yes.

Q277 Dr Harris: Your headline says: “Refugees are flooding into the UK ‘like ants’”—not “illegal immigrants coming out of a container like ants from an ant hill”. Do you accept there is a difference between refugees and illegal immigrants?

Mr Hill: I can see what would happen there. I can see that the sub-editor could not get the expression “illegal immigrants” in the headline because it is very, very long—and, yes, that probably has resulted in the wrong term possibly in the headline, yes. I can see that.

Dr Harris: I think that is what Mr Russell was referring to, and I am glad we have now reached agreement that that was the problem because refugees are people who are genuine and have been granted asylum, and they would feel a bit upset, I suspect, to be considered to be flooding in the first place, and being described as an image that is not human.

Q278 Mr Carswell: A question for Mr Hill and Mr Esser: Do you think that the political establishment has dealt with the public policy challenges posed by asylum and immigration effectively, and do you sometimes get the feeling that in your newspapers you are asking the sort of questions and raising the issues that the political establishment would frankly you rather did not talk about?

Mr Hill: I think for a very long time the *Daily Express* in particular was vilified by the liberal media and in particular the BBC for raising these matters about immigration and asylum, and indeed also about the associated matter of the policy of multiculturalism. I think now everyone—or informed opinion now accepts that the policy of multiculturalism in which people have been encouraged to set up almost separate states, almost with their own walls and certainly their own rules and behaviour, quite contrary to British behaviour—that that policy has been completely discredited. For a long time the *Daily Express* was the only newspaper that was raising these matters. As I say, I think these matters ought to be discussed because they are matters of enormous importance for the future of our country, and they should be discussed openly and robustly.

Mr Esser: It is certainly true that many of the stories we have raised about the shambles are uncomfortable for the Government. I believe an all-party House of Commons committee eventually confessed that they were, and a former Home Secretary said—it was a bit of an echo of the *Daily Express*—that this country was swamped with immigrants of all kinds, including asylum seekers—not really a phrase that was as moderate as perhaps it should have been. Of course the Government is embarrassed and of course the thing is a shambles; and of course that does add to our readers’ and the general public’s worry about asylum seekers, and that must eventually produce added hostility, where it should not.

Q279 Mr Carswell: Given the rise of political extremism in Europe—we had Pim Fortuyn in Holland, where the political elite refused to address questions of asylum and multiculturalism; Jean-Marie Le Pen in France, who was runner-up in the last set of presidential elections in France—do you think there is a danger of political extremism if we do not have a political establishment and a press openly discussing and debating these issues? Do you think there is a danger that if perhaps we were to ever use human rights law and legislation to stifle debate it could lead to the rise of political extremism?

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Mr Hill: I think there is evidence that political extremism is already on the increase in this country. You have only to look at some of our local authorities where extremists are now contesting seats and winning seats. There is a grave danger, if the political elite fails to address these issues, that extremism will increase because people who care deeply about these will have nowhere else to go. They will have nowhere to turn.

Mr Travis: Can I just comment on that? I think there are three parties dancing this particular unsavoury tango here. You have the politicians, the public and the media locked in a rather unsavoury vicious circle. Newspapers such as Mr Hill's and Mr Esser's claim they reflect the views of their readers; politicians faced that media barrage in one particular heightened period in 2003. Over a 31-day period the *Daily Express* ran no less than 22 front-page lead stories on the subject of asylum based mostly on guesstimates from unofficial sources. In this situation, newspapers both fuel that political prejudice and fuel that extremism. Recent Mori research in this area showed that *Daily Express* readers think that 21% of the British population are immigrants. The *Daily Mail* readers say it is about 19%. *Guardian* readers say it is about 11%. We are all actually exaggerating. It is only 7%. Even FT readers, who seem to be the "best informed in the country", as their slogan goes, got somewhere near at 6 or 7%. We have all exaggerated this problem in that respect, so it becomes fuelled. The idea that this is some kind of balanced, accurate reflection of public opinion on this subject is belied by the fact that Mr Hill's newspapers in the past printed manifestly false stories—fantasy land. We had from the *Daily Star*: "Asylum seekers have stolen nine donkeys from Greenwich Royal Parks and eaten them." It is supposedly based upon fact, you know—and police saying they think they killed them and ate them—and the only quote from the police in the story is, "we are totally baffled over what happened to the donkeys". The idea that they were seized by asylum seekers rather belies the idea that this is some kind of responsible, grown-up—

Mr Hill: Has anybody ever found the donkeys? By the way, there have been far more articles in *The Guardian* about Big Brother!

Mr Travis: Can I finish my evidence, please? It is correct to say that the problems and breakdown in the asylum system have created a political space in which this media campaign is rooted and can flourish, and without a managerial and efficient asylum system in this country—and we have a history now of 12 years of mismanagement and problems—will only continue to fuel such a campaign and provide the basis for it. These stories are not written without a grain of truth in them mostly. They are rooted in factual reporting. That is only a negative view of the situation, but I think that while there are 400,000 plus people living illegally in this country, and whilst that situation remains unresolved, then such media coverage will continue.

Q280 Mr Carswell: Building on the question of reflecting public opinion, I have a further couple of questions. Looking around the Committee I note

that not every member is necessarily elected or has a direct democratic mandate. How many people actually buy your newspaper every day, Mr Esser and Mr Hill; and do you think that puts you more in touch with public opinion than perhaps some people?

Mr Esser: In the case of the *Daily Mail*, 2.5 million people buy it every day, and it is read by at least 5 million people. It is obviously not demographically representative of the whole nation, but it does at least give us a constituency which has a voice.

Mr Hill: Getting on for a million people buy the *Daily Express* and probably about 3 million readers. I would not personally claim to be any better informed than Members of Parliament. They meet their constituents and I meet the readers. I would not lay claim to have any special knowledge, and I do not think the fact that that number of readers reads the newspaper gives me any particular power over anyone, and I am not here on an ego trip—no.

Q281 Mr Carswell: At the time that the Human Rights Act was passed, did you ever envisage being asked to come before this sort of committee and asked to justify press freedom and how you sub-edit your newspaper and the contents of your letters page in this way, in the context of the European Convention on Human Rights?

Mr Hill: Personally, I think the Convention on Human Rights has no bearing on what we do in our country. We of the *Daily Express* believe that we are a nation state, and we should be able to run our own affairs; and certainly we believe very, very strongly, that the Human Rights Act should be repealed as soon as possible because it is a travesty. It is a nonsense that our country—that our own laws should be abused in this way.

Q282 Mr Carswell: I was keen to hear from Mr Esser and Mr Travis.

Mr Esser: Once it appeared, yes. I joined newspapers because they are free and because I believe in them being a plank of democracy, and I am always prepared to defend freedom of the press at a dinner party or in front of a committee.

Mr Travis: It is quite justified for the Committee to examine media coverage of asylum seekers.

Chairman: We are not here to debate the pros and cons of the Human Rights Act.

Q283 Lord Lester of Herne Hill: I think you were saying that the Human Rights Act was of negative value.

Mr Hill: Yes.

Q284 Lord Lester of Herne Hill: But are you aware that for the last thirty years the only weapon we have had, as newspapers and lawyers, to enlarge free speech in this country, was to use the European Human Rights Convention in the absence of any legal instrument which gave us a positive right, and so generations of people like me have sought to persuade British judges and, if necessary had to go to Strasbourg, because we did not have a policy of human rights. When the Human Rights Act came in,

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section 12 was written in especially to give priority to free speech—you are younger than I am and you may not be aware—

Mr Hill: I am aware of that, but that came along and that was used, fine; but I think we would have done something else if it had not been there. We would still have established the freedom of the press in our country, one way or the other. I am sure of it.

Q285 Earl of Onslow: As somebody who has had a little dig by a Conservative colleague about not being elected at all—I am here because my ancestor got rather drunk—

Mr Hill: It is all right; I was not elected either!

Q286 Earl of Onslow: Mr Esser, we have covered the ants story. What people I think are worried about is that some of the headlines—and there is a *Daily Mail* one I have in front of me which says, “Thousands of suspected bogus asylum seekers will be entitled to have their free housing benefits reinstated”, which refers to a ruling that refused asylum seekers could make a fresh claim if they adduce new evidence—that it is the particularisation of one or two cases which is bringing odium on a group of people who are not entitled to have that odium heaped upon them. I go along with you 100% on the chaos of the immigration system; it has obviously failed to function as it should. I do not think there is any argument about that. Equally, I do not agree with you over the Human Rights Act because unfortunately Parliament is not doing what old-fashioned libertarians like me say it should be doing, which is protecting Englishmen’s liberties; so we have to have some outside judicially enforced defence of our liberties. That is something about which I am pro and very, very keen to preserve. However, I am worried that the particularisation of people can bring odium on a group of people unfairly, and stir up hatred and trouble. Would you like to comment on that?

Mr Esser: That is an absolutely fair observation. I would argue that that particular story, which I imagine was some time ago, did a disservice to genuine people who are here having been granted asylum, because the housing benefits are all eaten up by people who should not be here, then they have an even greater problem in claiming what is their right.

Q287 Chairman: 10th November last year.

Mr Esser: You can certainly make a case that by exposing the number of people who are abusing the system, you are helping those people who are in genuine need of asylum.

Q288 Earl of Onslow: I think it is terribly easy, if I may say so, for people like you and me, who, by our own efforts, live extremely comfortable and decent and good lives—some of these people are oppressed beyond peradventure when they arrive here, and those we have got to protect. I think that would be agreed by everybody. How do you stop the particular question degenerating into—

Mr Hill: The way you do that is to clean up the asylum system so that it is the genuine people who get in, and the people who are not genuine that are excluded. At the moment that palpably does not happen because a very large proportion of people who come under the aegis of asylum are not genuine asylum seekers. No real attempt is made to separate them and no attempt is ever made, or very rarely made, to deport those who fail the test. I believe only a quarter of those whose cases are rejected ever get to be deported from the country, so the whole thing is in disrepute and discredited. It is very difficult. It is obvious why people have a dim view of asylum seeking in general, because in general it is a very, very poor system. To go back to the other business, you are quite right that the reporting of individual cases might have an unfortunate effect of giving people a generally negative impression, but I also believe that readers are capable of telling the difference between a story that is about a lot of people and a story that is about an individual. We have to give them credit for that. I certainly do not believe that readers of the *Daily Express* are prejudiced against foreigners in general. I recently helped a woman who has got a very small charity that helps people in Malawi. We carried one article in the *Daily Express*, and my readers sent in £20,000 to this woman, just a very small individual charity. I do think that this shows that my readers are not by nature prejudiced against other people; they are perfectly willing to help other people, but what they want is for the system to be fair and genuine, and it is not; and that is what you have to sort out.

Q289 Earl of Onslow: I am very pleased that you acknowledge that there is a possibility of the one story damning everybody else, and that is the sort of thing we as a Committee have been trying to dig for and look for, and see if in some way the tension on the individuals can be lowered but on the Government can be heightened. In other words, the failure of the system which I think everybody admits, from the Home Secretary downwards, is something that has to be put right—I would agree with you—but one has not therefore got to attack the individuals unless they are self-evidently crooks who ought to be banged up, and that is a different thing altogether.

Mr Hill: Agreed.

Q290 Chairman: Can I put a couple of your headlines to you to do with your point about terrorism? I do not think anyone would accuse me of being soft on terrorist issues, and indeed I have been quoted in both your newspapers on the issue of Muslim extremism, but there are two headlines in the *Daily Express*: “Bombers are all spongeing asylum seekers.” That gives the impression—

Mr Hill: May I interrupt you? That is a court case that is going on right now and I think it would be very, very wrong of us to comment on that case, because I certainly would not want to be responsible for prejudicing anybody’s trial, and I am not prepared to discuss it.

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Q291 Chairman: We will not go on with that. Another one says separately: “One in four terrorists are suspected asylum seekers.” I do not know whether or not that is the same story, but clearly they could not both be accurate, could they?

Mr Hill: Well, I do not know if it is the same story.

Q292 Chairman: You have two separate headlines. Without going into detail, by definition, looking at them, they are mutually exclusive.

Mr Hill: The first one I am assured was a headline specifically about that case.

Q293 Chairman: That is the current case.

Mr Hill: That is the one that we do not want to discuss.

Q294 Chairman: Fair enough!

Mr Hill: I do not think we should discuss it because if this is a public hearing—

Q295 Chairman: That is fine, if it is *sub judice*.

Mr Hill: The other one, as far as I know, was a more general story. I do not know.

Chairman: The point I was going to make was the impression given by the headlines, but we will not discuss it.

Q296 Dr Harris: I need to declare my interest in that I buy the *Daily Mail* every day and read it. It does not win me any sympathy from Mr Hill, and I suspect not even from Mr Esser; but I am one of your readers.

Mr Hill: I am sure he is very grateful!

Q297 Dr Harris: I do want to raise some of the questions about the headlines. Firstly, how do you know who is a genuine asylum seeker? How do your readers know when you refer to genuine asylum seekers and the collection of terms you used, fairly enough, for non-genuine—“bogus”, “failed”?

Mr Esser: Failed.

Q298 Dr Harris: Or bogus or non-genuine or mere economic migrants—how do your readers distinguish between those two when they see an asylum seeker family move in down the street?

Mr Esser: With boring regularity we repeat the case that we welcome genuine asylum seekers and that this country has a tradition of doing so and of granting asylum to those who need it. We must have said that at least 100 times. Beyond that, you read the stories. This Committee tends to talk only about headlines. Headlines are written usually in the space of about five minutes, five minutes after the newspaper is supposed to have gone to bed, by people who pick out something which is supposed to attract readers to read the story. Headlines should not be considered on their own.

Q299 Dr Harris: I accept that point but I do want my question pursued. How do you know what is genuine? When you use a term like, “We welcome genuine asylum seekers” who are you referring to in a way that they can be identified?

Mr Esser: Those that succeed in getting asylum.

Q300 Dr Harris: They are refugees, are they not, because they have asylum? Everyone, pre-getting refugee status, is an asylum seeker.

Mr Esser: Correct.

Q301 Dr Harris: I am not talking about refugees now; I am talking about asylum seekers who are genuine and asylum seekers who are not. How do you distinguish between the two?

Mr Esser: That is a decision that comes eventually after they have been here rather a long time, waiting for the so-called system which does not work. The majority of stories we write about people who are not genuine asylum seekers stem from the courts, from these people having committed some form of crime.

Q302 Dr Harris: Are children ever bogus asylum seekers? That is, the children who come with their parents who make a claim and are therefore dependent. Are they ever bogus or non-genuine, or are they a third category and it is not their fault?

Mr Esser: We would never describe a child as a bogus, failed or genuine asylum seeker. We do not do that as far as I know. If we have done that, it is a mistake. We do make mistakes occasionally, not as many as many other newspapers but we do.

Q303 Dr Harris: I was not going to cite a case because it is the one that was referred to as *sub judice*. The point I am trying to make is that there are people who make asylum claims who are just unsuccessful. They have a good case. Zimbabweans, for example, which your newspapers have supported from time to time, are not getting asylum but you have not, I believe rightly, accused them of being bogus or economic migrants. They have just been unsuccessful in persuading the authorities that they have a genuine fear of a risk of persecution on their return. There are genuine ones who get refugee status. There might be genuine ones who do not but they are not trying to pull a fast one. Then there are people somewhere in between and there are people who are clearly trying to kid the system, who are pretending. It is quite complicated. The problem I would like your reaction to is: if there are asylum seekers in the area and your readers see headlines that say, “Most asylum seekers are not genuine. We support genuine asylum seekers”, what are they supposed to think about the people down the road who have moved in when they do not know the details of their case? Do you accept it is a problem?

Mr Esser: It is a problem. It would be wrong to assume that the only information people get is from newspapers. They get information from all sorts of areas and in the case you mention probably from the neighbours. It is perhaps better to get your information from a newspaper which has tried to be responsible and fair than from gossip. It should not be underestimated that a lot of people get their knowledge from their next door neighbours, the people down the street, the people in the local shop or the people on the market stall. That can be and is

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quite often much more inaccurate and pejorative than the information they may get from their newspaper.

Q304 Dr Harris: Mr Hill, in your very helpful memorandum, which we are grateful for because it does set out your position at some length, you talk about your paper's longstanding campaign of hatred against the BNP. That is on record. If the BNP go around saying that gypsies are going to leech on us, would you resent it and react to that and say, "That is outrageous, typical BNP quasi-racism or racism"?

Mr Hill: I do my very best not to give any publicity to the BNP or anything they say because I believe the more oxygen they get in that way the worse things are. I tend not to give them a platform in *The Daily Express* unless I am obliged to.

Q305 Dr Harris: The reason I ask that is that on 20 January 2004 a headline in *The Daily Express* says, "Gypsy invasion will add to our problems . . . and theirs" and the first line says: "The Roma gypsies of Eastern Europe are heading to Britain to leech on us." It may be there is evidence for that. I am not arguing about the accuracy. I am arguing about how that might be perceived because that is one of the issues we have. We are not saying you should not be allowed to write your views; it is just a question of the tone. Do you understand that that might be used by an extremist to fight a political campaign on racial grounds against gypsies?

Mr Hill: It is possible, yes.

Q306 Dr Harris: You say in the same article, "The neo-Nazi BNP is no doubt rubbing its hands in glee at the thought of the political capital it can make out of smouldering resentment."

Mr Hill: If the government were to address the issue responsibly and sensibly, this would not happen so it would not become an issue. The fact of the matter is that the government has failed to address these matters. The government said that there would be only between 5,000 and 13,000 arrivals from Eastern Europe. There were 600,000. It is not just the government; it is the political elite simply wilfully failing to address these matters, so yes, the language does get to be rather emotive but it is quite understandable because of the wilful refusal of government to—

Q307 Dr Harris: I am trying to meet you half way. Would you accept that there is a risk of using language like "Gypsies are heading to Britain to leech on us", even if they did not come, that the damage might be done to people here perceived as leeches who did? You add to that ingredient because your readers would not rush out and hate people on their own. If you add the fact that there are extremists seeking to take advantage of that sort of language for those people who are willing to act on that sort of language, do you accept there is an issue around language like that?

Mr Hill: I cannot tailor the newspaper on the basis that some extremist might take one word or a number of words from it any more than I can tailor the headlines to meet with your approval. I can only do what I see as being the right thing at the time for that particular newspaper in response to that particular situation. I cannot keep thinking: goodness me, I cannot say this in case the BNP seize on it. I cannot run a newspaper like that.

Dr Harris: I could have said that there are people out there who might have their views reinforced by what you say without the intervention of a third party like the BNP. Would you still accept that there is not a need to be careful in language like that, particularly when there are 1.6 million gypsies here, which was another of your headlines?

Q308 Chairman: It was a *Sun* headline.

Mr Hill: I do not edit *The Sun*.

Q309 Dr Harris: You say that you were challenged in your interview with *The Independent* about some of your reporting on this. The quote is: "Of course it is a legitimate story . . ."—this was about rural areas being made a misery by gypsies—"he insists, as were, he believes, *Express* reports that as many as 1.6 million gypsies were on the way from Eastern Europe following the enlargement of the European Union. It may not have happened, but it was a genuine fear at the time, he argues."

Mr Hill: It was a fear at the time.

Q310 Dr Harris: If there was a genuine fear of black people or Jews, is that sufficient in itself to justify reporting in emotive language, which is what you are quite good at, those sorts of fears, or do you think there is a clear category distinction that can be made between blacks and Jews on the one hand and gypsies and asylum seekers on the other?

Mr Hill: I do not think anybody would want a huge influx of any particular people, whether they be Jews, Moslems, Eskimos or anything else, because what we are talking about is the effect on the resources of our country and on its culture. If there are huge, sudden influxes of people it will have a negative effect on our own culture and on our resources, housing, health and all the other things.

Q311 Dr Harris: Even if they are nurses coming to prop up our health service? That would be a positive effect of an influx of people.

Mr Hill: That would never happen because the government would never do anything so sensible.

Q312 Dr Harris: I would love to take you up on HIV and TV but I would like to deal with this question of crime because it is something that you helpfully put in your memorandum. Is it your view, your opinion or your evidence based view that in terms of things like motoring offences asylum seekers used correctly as people claiming asylum, not refugees and not illegal immigrants, are more likely than the general population of the same age to commit serious motoring offences?

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Mr Hill: I would not put it that way, but I think there has been a large number of cases that we have seen of asylum seekers and illegal immigrants committing serious motoring offences like driving without insurance in particular. We shall never know the numbers because the government does not keep a check on the number of asylum seekers and illegal immigrants who are involved in crime at all. No statistics are kept.

Q313 Dr Harris: If there are half a million people in this category there are bound to be some people with serious motoring offences. There are bound to be some people who save other people's lives in acts of great heroism and charity.

Mr Hill: I have not come across them. I would report it if I had.

Q314 Dr Harris: Is it enough to say that because there are instances it is reasonable to say that they are asylum seekers doing it? I would like to draw the same analogy with drawing attention to the race of someone who commits or is alleged to have committed an offence. Do you see any parallel between those situations?

Mr Hill: Yes. I think it is perfectly legitimate to draw attention to it. If you have a situation, which I think is admitted, that there are huge numbers of illegal immigrants and enormous numbers of people seeking asylum without justification, I think it is perfectly reasonable to draw attention to this, yes.

Q315 Dr Harris: Even if it is not relevant in the individual case?

Mr Hill: How do you mean?

Q316 Dr Harris: If the fact that they were an asylum seeker was not relevant to their offence or the race of someone might not be relevant to the offence they are accused of, if it is genuinely considered not appropriate to say the race of someone in a court case, unless it is relevant.

Mr Hill: Unless it is relevant, yes.

Q317 Dr Harris: Would you say that this has been a useful exchange or has it stifled debate?

Mr Hill: I welcome it, which is why I agreed to come here.

Chairman: Something like 40% of the nurses and 25% of the doctors in the NHS were not born in the UK.

Q318 Lord Lester of Herne Hill: You talked about how the policy of multiculturalism has failed.

Mr Hill: Yes.

Q319 Lord Lester of Herne Hill: What do you mean by "the policy of multiculturalism"?

Mr Hill: Multiculturalism as opposed to multiracialism. I am perfectly in favour of a multiracial Britain. It has added enormously to our culture. Multiculturalism, as I understand it, is that policy of encouraging people to form groups of their own interest or religion and not in any way to want to assimilate into the society into which they have

joined. People like Trevor Philips and various others have now accepted that this is a failed and discredited policy because it leads to separatism, discord and ghettoisation. I am absolutely against that. Multiracialism I am absolutely in favour of.

Q320 Lord Lester of Herne Hill: I understand what you say and I agree with you but I want to get this absolutely clear. Looking at the common ground, because I think it is a useful thing to do, we both agree do we not that the right policy is one which seeks equality of opportunity on individual merit?

Mr Hill: Yes.

Q321 Lord Lester of Herne Hill: Which respects cultural diversity in the sense that we do not seek to turn everybody into the stereotyped view of an Englishman, whatever that is. We expect diversity in our nation.

Mr Hill: And welcome it.

Q322 Lord Lester of Herne Hill: Provided that diversity is not bought at a price of oppression or that people seek to impose their own views in a way that violates basic rights and freedoms. For example, stopping you from expressing your views because they are not politically correct or stopping Salman Rushdie from publishing a novel or anything of that kind. Broadly speaking as I hear you, is that what you mean when you oppose what you call a policy of multiculturalism?

Mr Hill: Yes. I am absolutely in favour of the enormous, rich diversity that we have in our country.

Q323 Earl of Onslow: You said 600,000 people were coming in from Eastern Europe. We accept that figure. Is that not a completely different issue from asylum seeking? That is a policy which has arisen from treaty obligations which we have agreed. When you say that, it clouds if anything the asylum and the refugee debate from outside. I lay aside whether it was right or wrong but if you take those two and merge them you help the muddle rather than separating the issue into getting the asylum issue sorted out. If any of us can sort that out everybody benefits. Would you like to comment?

Mr Hill: If the number of asylum seekers were reasonable, I would agree with you. Particularly in the early part of this new century, there has been such a vast number of people claiming asylum. Goodness knows how many that is. It has become part of a wider question of all kinds of immigration. If you were talking of relatively small numbers of asylum seekers it would not be an issue at all. It is the scale of it.

Q324 Earl of Onslow: I accept it is the scale. If I remember rightly, the Prime Minister was asked at the last general election how many there were. He categorically refused to answer because he did not know. We desperately badly want racial peace in this country. We want harmony if we can possibly have it, so we can go on insulting each other in the normal, bog standard, British way which we have all grown

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to love. If you lump two problems into one and make them worse that tends, to my way of thinking, towards not concentrating on the really serious problem which is the asylum problem rather than the immigration figures from Eastern Europe.

Mr Hill: It is all a problem. That is the point, because of the enormous scale. If immigration was at a reasonable level and if asylum seeking was at a reasonable level, I certainly would not have a quibble against it at all. The fact of the matter is that it is uncontrolled. Both of these processes seem to have no control whatsoever exercised over them by the authorities or by the government and that is what is wrong with this. That is why they tend to be lumped together.

Mr Travis: I did not recognise at all the volume that Mr Hill describes. It must be news to him that the number of asylum seekers claiming asylum in this country has more than halved in the last three or four years and I think in the last year the figures show 25,000 claimed asylum, the lowest level since about the early 1990s.

Mr Hill: I did talk about the first years of the century.

Mr Travis: I am talking about the year 2000, which is the first year of this century. Those numbers have fallen. I am glad to hear though that Mr Hill does foresee a point in the future when he is willing to support refugees coming to this country in that he said if we could show that people were genuine refugees coming to this country he would support them coming here and would maybe write more positively about them.

Mr Hill: Provided it is a reasonable number, yes.

Mr Travis: I am glad to tell you that this day has arrived. We have, for example, the United Nations High Commission Refugees Resettlement Programme under which up to 1,000 refugees nominated by the UNHCR are amongst the twice displaced people, perhaps the most oppressed, vulnerable refugees currently on the planet. Unfortunately, due to the atmosphere of hostility to them in this country, no more than four or five local authorities have been prepared to put up their hands and say they are willing to take as many as 60 or 70 in major towns of 250,000 or 300,000.

Mr Hill: Most local authorities have been so inundated with other asylum seekers and other immigrants that they are incapable and do not have the resources to cope with any more. That is in itself an enormous problem.

Mr Travis: I am disappointed to hear that.

Q325 Baroness Stern: We have talked a lot about negative coverage. I want to ask you a question about positive coverage, about human stories, stories of people seeking asylum, some of them with horrendous stories who are living very difficult lives. There was a story about that in *The Guardian* on 18 December and in the Scottish press we see a lot of very positive stories about asylum seekers who are not allowed to work so they do very good things instead, they win awards and they help people. In your view, would it be a good idea if there were more stories like this? If you do think it would be a good

idea, do you think someone is failing to communicate with you that there are such stories and could something be done to rectify that?

Mr Hill: There are a lot of Scottish asylum seekers in Parliament and we are always pretty positive about them.

Q326 Chairman: That is quite flippant. Baroness Stern is asking you a serious question.

Mr Hill: I know. I am sorry. I could not resist.

Q327 Baroness Stern: Could I have an answer to the slightly broader conception of asylum seekers?

Mr Hill: You are very welcome to call me and if you get any of those stories I will look at them and I am quite willing to publish them. Absolutely. You tell me.

Q328 Baroness Stern: Nobody ever puts any your way? None of the organisations or groups? Nobody has ever put such stories your way?

Mr Hill: I do not recall it anyway.

Q329 Chairman: You would be prepared to publish them if they did?

Mr Hill: If they were interesting, yes. We publish many positive things about people who have come to this country and many great success stories.

Mr Esser: We would welcome such stories and indeed we have published some. It would be a very good idea if those organisations who exist to help asylum seekers told us about them instead of writing letters of complaint, often on spurious matters. They could forget the arguments about terminology in the odd headline and tell us some good, positive stories. *The Daily Mail* is full of positive stories. We like positive stories.

Mr Travis: We find no shortage of stories about asylum seekers being presented to *The Guardian*. We sometimes suggest that they should maybe go and tell their stories to *The Daily Express* and *The Daily Mail*.

Q330 Chairman: Would you publish any negative stories about asylum seekers?

Mr Travis: Yes, we certainly do. We report court cases which involve individuals but perhaps we do not necessarily draw the same inferences from them as the gentlemen to my right here.

Q331 Baroness Stern: Would you say, "I think it is time that we had a bit of balance so let us go and explore this story that is clearly positive"; or would you need somebody to really come to you and say, "Come on. The time has come"?

Mr Hill: The nature of news is that it tends not to be very positive. If you remember, there was a man called Martyn Lewis—and still is, for all I know—who wanted the newspapers to be filled with good news but I am afraid the world is not like that. Good news to some extent is no news. Nothing happened today. That was fine but there is not really anything in that, is there?

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Q332 Baroness Stern: There are so many negative stories that it might be really newsworthy and surprising to your readers if there was a nice, positive one.

Mr Hill: You are always welcome to telephone me if you hear of such a story and I shall consider it.

Mr Esser: It is interesting that, as has been demonstrated today, there are very differing newspapers. There are 10 national newspapers and we are all obviously in competition with each other, particularly *The Guardian*. Despite this very broad approach, none of the newspapers finds a huge fund of positive stories. It would be a very good idea if the agencies put their minds to it. It is called positive PR, I think.

Q333 Nia Griffith: We have heard from the CRE, Oxfam and Liberty that the local, regional press is a lot more positive in their portrayal of asylum seekers. Have you noticed in any way a difference between national and local press?

Mr Toulmin: I am aware of the fact that various regional newspapers have been singled out for particular praise through receiving awards for their coverage of asylum seekers and issues to do with immigration. The complaints trend that we see does tend to concern national newspapers. The regional, local press is a very large part of what the PCC's remit extends to and we would be in a position to see if there was a general concern about the regional press. In any case, the numbers of specific complaints about the national press, considering how many articles are published—Alan said at the beginning that there were 2,500 articles about asylum seekers in the national press only last year—go to show that the number of complaints does not reveal a huge groundswell of concern about them from people against the national press, given that they can complain about issues to do with accuracy, privacy, intrusion, discrimination about individuals and so on.

Q334 Nia Griffith: In terms of looking at things like the local, regional press, can you suggest any reasons why they are so positive in their coverage?

Mr Toulmin: That is a matter for individual editors, I suppose. The type of content does vary obviously from regional, local press and national press. They would probably stay close to their readers. If they write a story about an asylum seeker, there is quite a high likelihood that their readers will know who this person is, for instance, so there might be a degree more of relevance than in the national audience.

Q335 Chairman: Do you think there is a problem, talking about asylum seekers, that that effectively reads across to the legal migrants who may be here with a work permit or even second and third generation migrant families, in the way that people may not be able to distinguish between an asylum seeker family, an asylum seeker individual or a failed asylum seeker or indeed somebody else who perhaps has a dark skin?

Mr Hill: Why are we talking about people with dark skin? We are not talking about people with dark skin in particular. I am certainly not talking about people with different coloured skin. I do not believe it does have an effect, no. There are established groups in this country who have been here for generations and people are perfectly happy about that.

Q336 Chairman: Some organisations like the CRE, the National Union of Journalists, Oxfam and the PCC have published guidelines to try and promote the accurate reporting and unbiased reporting of asylum seekers and refugee issues with correct terminology, distinguishing between asylum seekers, refugees, illegal immigrants and migrant workers. How do you ensure they are put into effect?

Mr Hill: It is quite difficult, I agree, and perhaps we should make more effort to do so. I would go along with that.

Q337 Chairman: Have any of your journalists complained to you that they feel they have been asked to write stories that they do not think are appropriate?

Mr Hill: No.

Q338 Chairman: Mr Esser?

Mr Esser: Certainly not.

Q339 Chairman: The reason I raise that is that I had a phone call last week from a member of the editorial staff, not on one of your papers but another tabloid, who said he wanted to speak to me off the record rather than the other way round, which was a novel experience.

Mr Hill: There is no such thing as off the record. Do be careful.

Q340 Chairman: I know that. I am going to respect it from his point of view anyway. He was complaining to me that he felt sometimes he was under pressure and other journalists had complained to him as a member of the editorial staff that they were under pressure to report on these sorts of stories negatively, using language and terminology that they felt was not appropriate.

Mr Hill: I would never put any of my journalists under pressure to write something they did not want to write.

Q341 Chairman: Mr Esser, how do you ensure that the guidelines are put into effect?

Mr Esser: We attempt to ensure that the guidelines are followed by constantly reminding our people what the guidelines are. The senior editors who oversee the copy and so on are very well aware of it, as of course is the editor. Inevitably the odd slip gets in the paper because people are working under huge pressures of time, but generally speaking we do keep to the guidelines. We are proud of our record of doing so and that is certainly always our intention. I echo Peter's view on our journalists. No journalist on *The Daily Mail* is ever told to write a story in a particular way.

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Q342 Lord Lester of Herne Hill: Mr Toulmin, I am a very strong believer in self-regulation and the work of the PCC, as I think you know. I think you also know that in the Human Rights Act special importance is given to self-regulation in section 12. When I look at your code of practice however, it seems to me to be something that needs further consideration. I would like to draw your attention to what I have in mind. Nothing I am saying now is to suggest changes in the law; I am talking about self-regulation and the role of the PCC. In paragraph 12 of your code, you talk about discrimination. The PCC says that the press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation et cetera. It does not talk about groups; it talks about a particular individual. Would it not be a good idea for the PCC to consider the kind of thing that the Earl of Onslow was talking about, the demonising of whole groups of people because of their group categorisation and stereotyping, as well as attacking an individual because they are black or an asylum seeker and so on? Would it not be better to widen the code in that respect and then give some rather more practical guidance in consultation with the editors—we have heard three editors today—about exactly how in practice to avoid the risk of unnecessary attacks upon whole groups of people because of their group characteristics?

Mr Toulmin: Without getting into a great lecture about the structure of the PCC, it is probably worth pointing out that the PCC itself is an independent body to which the press has submitted, so that is self-regulation in a way. The PCC itself does not write the code. There is a separate committee of editors that writes the code of practice. They charge the independent PCC with enforcing it. It is a very timely suggestion because representations are currently being invited by that committee to make suggestions about how the code might be improved. That committee has considered the point about clause 12 and whether it should extend to groups of people many times before. The code at its heart is meant to be a document that protects individuals against the overweening freedom of the press that you described at the beginning of your remarks. The PCC is a manifestation of the press recognising that freedom must be limited. When it comes to the issue of clause 12 and discrimination that committee—and I would be delighted to hear if you could make a suggestion about how to get over this difficulty—has not come up with a form of words that protects their right to freedom of expression, including the rights to make jokes about groups of people, for instance, whilst at the same time addressing the issue with which you are concerned. It has been said that one person's insult in this context is another person's joke and so on. You would be expecting the Commission to be making rather subjective judgments, sometimes on matters of taste, fairness and so on about groups when the philosophical basis of this document is about protecting named individuals where I think we have some considerable success. You raise a point that is made frequently. I am not saying that we have a satisfactory answer to

it because I do not think we do necessarily, but there is this process whereby suggestions can be made to that body that reviews the code on an annual basis.

Q343 Lord Lester of Herne Hill: I do not quite understand the problem about clause 12 as you describe it. I agree it is not for you to decide but it is for the editors when they look at this again. Is it not an extraordinary idea that you limit the focus to prejudice against me as an individual, because I am a Jew, rather than prejudice against me as one of 200,000 Jews? Surely newspapers need to be given concrete, practical guidance that they ought not to stigmatise, for example, Jews on the basis of group characteristics unnecessarily. No editor here would disagree with what I have said. No one would say, "We see it as our responsibility and right to stigmatise Jews in this country on the basis of group characteristics." While you are thinking about the answer to that, look at what you say in the public interest at the bottom. Your definition of the public interest is extraordinarily narrow if you look at it. It does not recognise, as for example does the European Human Rights Convention or the Human Rights Act or any body of principle that I know, that there are other public interest considerations to be weighed in the balance in responsible reporting and editorialising other than the very narrow list there. Is that something that might be reconsidered in the context of the discussion we are having today, the definition of the public interest?

Mr Toulmin: On that point, it is often misunderstood what that box relates to. It is not an exhaustive list. It says "includes but is not confined to" that following list. The public interest could include a broad range of issues upon which the Commission as an independent body would make a common sense decision. If there are specific issues that you have in mind where there is a glaring omission of something that is in human rights legislation, I think we should hear about it in any context, this context or any other. If I may come back to discrimination to deal with your example and others, we have had some success in dealing with this issue in recent years and reducing therefore the number of complaints about discrimination by taking complaints and talking to suitable groups of people, interest groups and so on, coaching them about how the code can be used. One of the things we have seen is that those types of objections about groups are generally better dealt with under clause one, accuracy, which applies to groups of people obviously because it does not refer to an individual. People can complain to us if there is a general point of inaccuracy which we find is an effective way of dealing with the types of complaints that people would initially think may amount to discrimination. It is the reporting base that they consider to be unfair because it is based on or the article relies on something that is either inaccurate or misleading.

Q344 Lord Lester of Herne Hill: Are you saying that if a newspaper indulged in over broad racial stereotyping, for example, that would fall within clause one?

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Mr Toulmin: I believe it may well do, yes, but I also believe there is a certain piece of legislation that would apply if you are racially discriminated against.

Q345 Lord Lester of Herne Hill: I am talking about speech, not discrimination. I am talking about the abuse of free speech through racial stereotyping. Do you think that falls within clause one rather than clause 12?

Mr Toulmin: There is a very strong chance that it would.

Q346 Lord Lester of Herne Hill: Would it not be a good idea to spell it out because it is such a serious issue and an important part of the public interest that there should not be unnecessary racial stereotyping of groups of people in a pejorative sense?

Mr Toulmin: In addition to this code, there is an entire book which brings together our own rulings under it, which is available not just to the industry but more broadly, which goes into some of those details. More broadly than that, there is a whole load of reasons themselves. If there is an example of the PCC not being able to deal with an issue because of the code, there is a procedure by which the code can be changed. If you have particular examples in mind, we would be very pleased to see them, to see where the problem lies.

Q347 Lord Lester of Herne Hill: I do not think you have the drift of what I am searching for. I am talking about the very busy editor, sub-editor or journalist who needs guidance from you by self-regulation, not by the heavy hand of law. What I am suggesting to you is not that they go through your case law or some large book but that in the code or some practical guidance there are the principles that I am sure you know the late, lamented Hugo Young brilliantly described about 30 years ago in his seminal document. Should not some of that be translated into half a page so that there can be guidance on it?

Mr Toulmin: It would be based on particular examples of where the press was having difficulty. If they exist, we will look into it but if you are saying should that emerge from a vacuum and there are not any specific examples it would be more difficult to make a case. Of course we are prepared to look at anything.

Q348 Lord Lester of Herne Hill: Do you think that the PCC's compliance mechanisms are sufficient to deal with the kinds of problems this Committee is concerned with or would you welcome something a little more strong and effective?

Mr Toulmin: The discussion has shown the difficulty in separating out the treatment of individuals and the broader public policy issues. On the issue of the treatment of individuals, the PCC does have its structure which is flexible, its code which is accessible and its work it does with groups of people, telling them how to complain, getting decent resolutions quickly with no charge and so on, which

can change practice of newspapers and there are many examples more broadly in the industry. There is a record of achievement there. That is not to say that we are in any way perfect. We do listen to recommendations and suggestions from any group and any individual. I am sure the Committee would have some.

Q349 Lord Lester of Herne Hill: Is there any code of practice that you are aware of that covers these issues, not yours but from newspapers or media organisations, which we should know about, which you would commend as being particularly good in this area?

Mr Toulmin: There are various pressure groups that work with the media on asylum, refugees and there is a media project as well. There is the work done by the Commission for Racial Equality. There is a lot of interest in this area and a lot of dialogue. Doubtless you have had submissions from all of those people.

Q350 Chairman: The code of practice is published after discussion by a committee of editors?

Mr Toulmin: Yes.

Q351 Chairman: Is the same process applied to the PCC guidance notes as well?

Mr Toulmin: The position with regard to guidance notes is slightly different because they usually arise when the PCC itself on the back of trends in complaints or indeed representations from particular interest groups shows some issue where the code could require some amplification. The Commission will be proactive in drawing together the terms of that but, because it talks about the code and there is a separate committee that deals with the review of the code, those guidance notes do have to be notified to that committee to ensure that what we are saying is compliant, but it is our initiative.

Q352 Chairman: Notified to them for approval or just notified to them?

Mr Toulmin: It is notified to them. They do not veto it. What we say has to be compliant with the code so technically I suppose, if it ever arose as an issue and we said something wildly at odds with clause one, they could come back and say, "That is not what we meant when we phrased this" but that has not ever arisen because we strive to get the point over.

Q353 Chairman: Mr Hill, you are a member of the PCC?

Mr Hill: I am.

Q354 Chairman: Are you a member of the committee that does this?

Mr Hill: No.

Q355 Lord Lester of Herne Hill: In the letter written about the editors' code of practice committee what was ruled out was the very question I was asking you, which was whether the code should deal with discrimination and prejudice against ethnic groups rather than only individuals. The view taken by the

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editors in their wisdom was that it should not deal with groups because that violates free speech. When you were saying that the committee was covered at least by clause one, that is not apparently the view of the editors. I am mentioning this now because this Committee might come to the conclusion that the view expressed by the editors here is too narrow and therefore it needs to be dealt with, not necessarily today, but speaking for myself I personally would like this issue to be dealt with, perhaps in writing afterwards because on the face of it what is said here is rather surprising.

Mr Toulmin: I am not suggesting that my answer would address all your concerns. It is certainly not the same thing as changing the code on discrimination to make it applicable to groups as well as individuals. We found a lot of the concerns that were brought to us from people who initially phrased their complaint in terms of being discriminatory about groups of people can make a successful complaint on clause one because the thing they are taking exception to is based on something that is either misleading or distorting. I am certainly not suggesting that that equates with what you were suggesting before.

Q356 Baroness Stern: Could you tell us how often, say, last year you wrote to editors to remind them of your guidance on refugees and asylum seekers and could you give us one or two examples of the sort of thing that prompted you to write to them and remind them?

Mr Toulmin: Thank you for that because that gives me an opportunity to draw attention to an area of our work that is proactive. There is this note which you have seen. Lord Lester thinks it is narrow and there may be scope to look at it under review as well. We commission an agency to scan the whole of the British press, not just the national but the regional and local as well, looking at this phrase. Last year there were 14 examples in the whole of the press out of however many hundreds of thousands of articles there were. Some of them were quoting Members of Parliament in debate and editors felt a bit cross that we had written to them when that was the situation. On other occasions, because we require a response from an editor to justify their use of this phrase, it is a very simple mistake. Perhaps a new journalist has come in or a trainee does not realise that it exists and therefore as a result they must reissue the guidance and so on. The answer to your question is 14. In each case we had a reply from the editor—I have a list if you want to know who they were—and an undertaking about what action would be taken to make sure that the terms of the note would be complied with.

Chairman: It would be helpful if you could let us have the list.

Q357 Dr Harris: Is the term “illegal asylum seeker”?

Mr Toulmin: That is right.

Q358 Dr Harris: It would not pick up the use of the term “refugee” instead of asylum seeker incorrectly?

Mr Toulmin: No, it would not, but we do ask the agency to scan for “illegal asylum seeker” which was the phrase that caused particular consternation. There was some work done by the Liberal Democrats, the Shadow Secretary of State, that initially brought that particular problem to our attention, that that phrase was still being used.

Q359 Chairman: What about interchangeability of other groups like “asylum seekers”?

Mr Toulmin: That would require a judgment by the person doing the scanning, to know whether it was incorrect. It might be a little more complicated. Because “illegal asylum seeker” is always going to be wrong, we scan for that.

Q360 Dr Harris: It is always going to be inaccurate but the term “illegal asylum seeker” does not create the problems of classification, because that makes people think there are illegal asylum seekers whereas if you call asylum seekers illegal immigrants that is far worse in terms of the effect it has on people’s opinions. That is where there is merit in going further to be proactive and look at this.

Mr Toulmin: There may be all sorts of areas we can look into. If you just did a scan for “illegal immigrant” you would get a large number of cases where it was legitimately used. Then there would have to be a value judgment by someone to decide where it was illegitimately used. That might present some difficulties. One of the things we do when we go about the country and host open days and so on with all sorts of different interest groups is to tell people how to complain and what they can complain about. If there was a very straightforward issue where there was confusion on that basis they could complain.

Q361 Lord Lester of Herne Hill: You said in your written evidence to us that the current system of regulation works well and that it has not been necessary to issue rulings about asylum seeker complaints for some time. I wonder whether you could reconsider that statement in the light of the discussion today, because on the face of it that seems to me to be—I am sorry to put it like this—a bit complacent.

Mr Toulmin: I do not think it was meant to be complacent. It was just a statement of the fact that the complaints we have had before us have not required the Commission’s sanction of a published, critical note of adjudication. Most of our work is conducted in the area of conciliation. The PCC primarily is a dispute resolution service, about undertakings, future conduct, corrections, apologies, tagging internal records, retraining of journalists who have been errant and so on. I am not suggesting that we have not had complaints that have raised possible breaches of the code since then. The point is that they have been satisfactorily resolved directly after our intervention. We have not had anything on the scale of the two examples we sent you since. If there is a major complaint to us, we will adjudicate on it. It is not a policy decision not to but we are bound by the types of complaints that we get.

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Q362 Lord Lester of Herne Hill: That is the point, is it not? I am asking you about the systemic problem and a systemic solution. The systemic problem is damaging, misleading newspaper reporting in some sections which may damage community relations. The PCC obviously has to have a view about that as the voluntary regulator. You are saying it is entirely on the basis of the individual complaint but does not the PCC have some general view about systemic problems that need to be tackled, for example, by the code?

Mr Toulmin: The specific complaints we get are the basis on which we were set up, to deal with complaints from individuals and their representatives. That is our main work. Then there are various proactive things we can do that we have discussed. Beyond that you start to get into the area of monitoring. We could have a grand, monitoring body looking at not just coverage of asylum seekers but absolutely everything you fancy. That would be an enormous bureaucracy and very expensive. You are shaking your head.

Q363 Lord Lester of Herne Hill: I am not suggesting that at all.

Mr Toulmin: There is work we do at the grass roots level before the complaints are even necessary and hopefully we have prevented them. There is work we do to raise the profile of the code and the requirements of it within the industry and then there are the responses that we make to specific complaints. Then there is a wide range of responses that we can make to those. There is obviously a further degree of involvement that you think we should have.

Q364 Lord Lester of Herne Hill: I am sorry to interrupt but you are misunderstanding me. I am not suggesting any of that. It is simply that your code reflects what the PCC and the editors think are practical problems requiring attention in the code. All I am putting to you is the need to reflect on whether the code itself and your system might deal with the systemic problem if you recognise that there is such a problem. Do you recognise that there is a systemic problem that needs your attention?

Mr Toulmin: We would have a very clear view based on a large number or a volume of complaints with which we could not deal, which would have left us in an unsatisfactory position. I cannot say with any honesty that that is currently the case. In any case, the code of practice is written and reviewed by a separate committee. We, the PCC, can make suggestions to it but we are not responsible for writing it. If there are examples of newspaper articles or the practices of journalists in gathering information for those articles which somehow people wish to object to, that it has fallen through the net somehow, obviously we need to see the cases.

Q365 Nia Griffith: In 2003 the committee reviewing the International Convention on the Elimination of all forms of Racial Discrimination expressed concerns about the increasing prejudice against asylum seekers and immigrants in the UK media and

they also mentioned the lack of effectiveness of the PCC in dealing with the issue. They recommended that the government should consider how the PCC could be made more effective and suggested that the industry should be empowered to hear complaints by groups like the CRE and other interested organisations. What steps have been taken in response to that comment?

Mr Toulmin: Since then the whole process regarding this guidance note and the monitoring of that, compliance with that has been taken. I must declare an interest. A member of the CRE, Coleen Harris, the director of strategy of the CRE, is a member of the Press Complaints Commission as well, which illustrates in part the fact that there is ongoing dialogue with bodies who represent and have an interest in this area; and also slightly different bodies, not just concerned with asylum seekers such as the National AIDS Trust when discussing issues to do with HIV and AIDS and so on have had some very constructive dialogue with us. If that recommendation was made towards the government, that would be a matter for the government to respond to but since then—and obviously that is some time ago, three and a half years ago and it predates my time as director of the PCC, although I was there before—there is a reasonable record of dialogue. It is not just dialogue; it is what we can do to train and coach people and their representatives about how best to use the code. Hopefully we do not get any complaints at all if people know how to deal with journalists immediately and know what their rights are under the code. In an ideal world, we would not have to deal with any possible breaches of it.

Q366 Dr Harris: On the issue of your redress, there is this famous story in *The Sun* called “Swan Bake” which started off: “Callous asylum seekers are barbequing the Queen’s swans . . . East European poachers lure the protected Royal birds into baited traps . . .”. It turns out there was no evidence that that was the issue. The question is whether there is adequate redress or reinformation to the public because a clarification was made some months later on page 41 of one of its issues, acknowledging that conjecture had been confused with fact. I would be surprised if that was the phrase they used. If they settle out of court before you make a ruling, there is nothing to stop them giving far less prominence to the correction of fact under point one of your code than the actual story itself. Therefore, it does not achieve anything in terms of redressing the balance of information.

Mr Toulmin: I am the first to admit that the example as you describe it does not make us look particularly good. There is a number of factors there. Yes, that was a prominent story that was corrected or clarified further back in the newspaper. It was before my time as director. As I recall it, we had taken a complaint from a pressure group. In other words, not from the people directly concerned. It was very difficult to engage with them in our normal procedures, investigation and resolution. Eventually the complaint was dealt with on the basis that there had

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been an offer to publish something. The newspaper published it unilaterally afterwards. That is not a very good indication of the work we do on prominent apologies and corrections which far more regularly—in about 80% of cases—are published around the scene of the crime, if you like, either on the same page or further forward than the original. Yes, you can quote those two pages and say that makes the PCC look rather feeble but I do not think it is indicative of what we do in general. More to the point, I do not think it was ever accepted by the newspaper that the story was wrong. What they were saying to us was that they had relied on a police source. The police source would not go on the record and therefore they were left in a position where they had to publish some sort of follow up. They never accepted that the story was invented.

Q367 Dr Harris: That was not my point. My point was about the place. Finally, to come back to Mr Hill and Mr Esser again, it is said that the sort of headlines we have been discussing, with or without unfortunate sub-editing—and you have kindly accepted that that can happen in a busy paper and I accept that—if it was accepted that there was this pattern that had an impact on the public image or the public's view of asylum seekers such that genuine asylum seekers and refugees were suffering as a result—and research could be done to show a few people, a significant number of people, some of the stories, asking questions before and after, to see if it affected their opinion or if the BNP were using them in a leaflet some of the headlines which exist—would you in that case argue that something ought to exist in the code, for example, that would ensure that genuine asylum seekers, as you call them, and refugees were given some further protection within the code; or do you think it is just a good practice point?

Mr Esser: It is a good practice point. I do not think you need to have that in the code. What the PCC has done is to introduce a greater sense of responsibility in the press, in all 10 national newspapers and all the Sunday newspapers and the local papers too. It has done a very good job. I do not accept that newspapers, particularly *The Daily Mail*, deliberately go out to be provocative. We try not to be but if it was shown to us that it is destructive to community relations we would certainly think hard and long

about the construction of our headlines. However, our readers read the paper; they do not just read the headlines.

Q368 Dr Harris: I know I do. Mr Hill, anything to add?

Mr Hill: In relation to the PCC code, we have to be very careful not to try to impose a level of political correctness in terms of expression on the newspapers. I would not like to see any kind of reworking of the code which made it difficult for people to use the kind of robust language that the newspapers in this country have a right to use and indeed, in many cases, a duty to use, because it is the newspapers in particular rather than television for instance that raise the issues that need to be discussed by our society. Quite often we do need to use strong and robust language. I for one would not like to think that I had to be limited. I do try to exercise responsibility and I know that my journalists do as well, but there are times when strong language is called for. Most people nowadays are very careful to avoid racial stereotyping. As a recent controversy has shown, people are very much against racial prejudice in our country. There has been a huge amount of good education in our country. I think the newspapers have helped that as well as anybody else. We have to be able to raise the issues. We have to be free to discuss them and if necessary in robust terms. That is very important indeed. Yes, we must be responsible, I agree, but we must be free to cite individual cases. If that has a bad effect, I am afraid it cannot be avoided because there are a lot of those cases. We cannot ignore them. It is very important to establish that the press is a free press, albeit a responsible one.

Q369 Chairman: Would any of you like to make a short, closing remark?

Mr Travis: On the final PCC point, my chairman does sit on the PCC committee of editors. His view would also be that he would be very reluctant to see an extension of clause 12 to cover groups as well. In matters of freedom of expression, we have to be extremely cautious. There are remedies available to deal with this problem. Perhaps the PCC could be rather more vigorous as a regulator rather than as a mediator in these cases.

Chairman: Thank you for your evidence. It has been a very interesting exchange from both our points of view.

Monday 5 February 2007

Members present:

Mr Andrew Dismore, in the Chair

Judd, L	Nia Griffith
Lester of Herne Hill, L	Mark Tami
Onslow, E	
Plant of Highfield, L	
Stern, B	

Witnesses: **Rt Hon Rosie Winterton MP**, Minister of State for Health Services, **Ms Frances Logan**, Assistant Director of Legal Services, **Mr Jeff Peers**, Head of Primary Medical Care Access, and **Mr Richard Rook**, Mental Health, Department of Health, examined.

Q370 Chairman: Good afternoon, everyone. This is one of our continuing sessions on our treatment of asylum seekers inquiry. We have been joined by Rosie Winterton MP, Minister of State at the Department of Health; Frances Logan, who is Assistant Director of Legal Services, Department of Health; Jeff Peers, Head of Primary Medical Care Access, Department of Health; and Richard Rook, Mental Health, Department of Health. Welcome to you all. Do you want to make an opening statement, Rosie?

Ms Winterton: Just very quickly to say that I am sure you will be very interested in our ongoing consultation on the issue of asylum seekers and entitlement to healthcare services. It does bring an awful lot of considerations into account that we have been wrestling with and no doubt we will touch on some of those. Finally, just to say thank you for the report on the Mental Health Bill. I have not been able to read all of it in detail, I have read quite a few of the recommendations, but certainly it has been very helpful in shaping our continuing thinking. I guess the most important thing is probably to get down to the questions, is it not?

Q371 Chairman: Yes. We would like to ask you some questions about the mental health issue later on. I appreciate you have only just had the report very recently so we understand the position. Starting off on the asylum seeker issue, the 2004 Regulations made people who are not lawfully resident in the UK liable for hospital charges. Did you conduct a public health impact assessment and/or a race impact assessment before introducing those Regulations?

Ms Winterton: We looked at the issues regarding public health. At the time we did not conduct a race equality impact assessment. When we are looking at consolidating the Regulations and also looking at the results of the consultation we have been carrying out and possibly taking those forward, we will do that at that time.

Q372 Chairman: Will you do a public health impact assessment as well?

Ms Winterton: Certainly we will look at the impact on public health. As I am sure you are aware, quite a lot of the issues around diseases like TB, cholera and so on are addressed separately which cover a lot of the real public health issues but it is the sort of

thing that we will bear in mind when we are looking at the results of our consultation in the work that we are going to be doing on consolidating the Regulations as they stand.

Q373 Chairman: What is the timetable for the consultation?

Ms Winterton: At some point in the near future, as soon as we can, we want to consolidate the Regulations that we have in terms of the 1989 Charging Regulations. We believe that in terms of the consultation we carried out, and are still working on in terms of the primary care side, we would like to do them both together so that the advice to the NHS is clear. I suspect you will come on to the fact that at the moment there are some issues which are not as clear as they might be.

Q374 Chairman: I think we may come to that later. I can see why you want to move the two together, but what is the timetable? When do you expect to complete the analysis of the consultation and come forward with proposals on the Regulations?

Ms Winterton: I cannot give you a definite timetable because we are also working alongside the Home office through the Asylum and Migration Ministerial Committee that is looking at a lot of the issues around enforcement in terms of asylum and general access to services. We want to bring the two together so that we are not doing something which becomes piecemeal again. Certainly we would like, obviously parliamentary time permitting, to be able to come forward with something later this year.

Q375 Chairman: Thank you. Can I raise a particular point about asylum seekers who have been refused who have got or are suffering from HIV/AIDS, including pregnant women, not eligible for free anti-retroviral treatment unless they were already receiving it before they were refused. Are you monitoring the effect of this policy on HIV/AIDS infection rates, and how do you reconcile that approach with DFID's campaign for universal access to anti-retroviral treatment?

Ms Winterton: This is absolutely a very difficult issue and we have made it very clear, as you say, that anybody who is diagnosed before they have failed their asylum is given treatment. Recently we introduced the Easement Regulations or conditions

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whereby somebody who failed could continue to receive treatment. We have made it very clear that whilst people can have screening and counselling, the issue of starting treatment once people have failed does raise all kinds of implications in terms of wider health provision. Obviously we are always looking at the implications of that, and certainly it is something where we are very aware of the points that have been made about it, but there is absolutely no doubt that it does open up the question of what attitude one would take towards other conditions like kidney disease and so on, which might similarly be said to be conditions in terms of long-term treatment where you might open up the same issues.

Q376 Chairman: But the Government has got a particular policy in relation to the Department for International Development of huge investment in the developing world to try and combat AIDS and HIV. That is why the Chancellor as well as DFID have been so strong on this enormous initiative alongside malaria and so on.

Ms Winterton: Yes.

Q377 Chairman: If we are committed to this as a government policy why are we not treating people we may well be planning to send back to these very countries?

Ms Winterton: In a sense, what we have said is obviously within our own healthcare system we do provide treatment for people who are entitled to it. We want to work with other countries to make sure that in the longer term there is provision within those countries for treatment. I think we have to be very aware of how you encourage other countries to provide treatment but whether you say that means anybody who is in this country, whether entitled to be here or not, gets treatment in those circumstances, I am not saying that is an easy decision but obviously it does raise very difficult issues if you are talking about opening up one area to saying what implications does that have for other conditions which, as you will know, has been a matter of much public debate in terms of what our healthcare system is supposed to provide and not supposed to provide.

Q378 Chairman: Before I bring Lord Lester in with a specific point on the law in relation to this, I do not recall us as a government saying we are going to eliminate kidney problems throughout the world working with international agencies in other countries but we have said quite clearly that we want to do as much as we can in relation to HIV/AIDS, malaria and one or two other illnesses. Is there a specific case to be made, therefore, in relation to one or two specific conditions where we have said we are going to work with the developing world to eradicate these types of illness or significantly reduce their incidence?

Ms Winterton: I can only go back, in a sense, to saying that whilst we have done a lot, we have certainly supported DFID's leadership in terms of combating HIV and AIDS, we are a major international funder in terms of helping to make this

happen, again there is perhaps a difference between what we actually provide within the UK and what we are expected to provide for people who are not normally resident here and are perhaps living here illegally. That is the decision that in a sense it boils down to. It is the difference between making sure that we can encourage other countries to have the treatment available within their countries or whether, in a sense, we say we provide everything here which, within it, some would argue then provides a draw to people.

Q379 Lord Lester of Herne Hill: Minister, I am sure it is common ground looking at our obligations here rather than those of other countries elsewhere that failed asylum seekers have basic human rights. The question I want to ask about that is probably better answered by your legal adviser because it is a legal question. I just wonder how you reconcile the refusal to provide free secondary healthcare to refused asylum seekers with our basic obligations about the right to life under Article 2 of the European Human Rights Convention and the right to be protected against inhuman or degrading treatment under Article 3, or under the Economic and Social Rights Covenant, Article 12, which requires us to take steps necessary for the prevention, treatment and control of epidemic diseases. How on earth can you reconcile this policy with those international obligations binding on the United Kingdom? It is a lawyer's question and, therefore, I would not expect you as Minister to answer it.

Ms Winterton: Well, I will have a bash and then hand over to Frances Logan. Under Articles 2 and 3 we believe we meet those because our policy is that any immediate treatment that is clinically necessary is provided, any emergency treatment is also provided, so in the sense of protection and preservation of life we meet Articles 2 and 3. There is an issue about afterwards if somebody has the resources to pay about collecting that but there is also discussion that if somebody does not have the resources to pay that is not collected. In terms of Articles 2 and 3, that is how we believe we meet those. Also, in terms of prevention of epidemics, I do not know whether you have noticed that in terms of treatment of TB, cholera and things that can spread in the sense that they are airborne, treatment is available for those. In terms of the treatment in terms of preventing the spread of HIV, obviously there are other protections that we would expect, whether a person was having treatment or not, which are the way of spreading the infection. If I could perhaps ask Frances Logan if there is anything she would like to add to that.

Ms Logan: I would really just like to repeat what the Minister has said. The schedule to the 1989 Regulations which set out the charging regime, as you know, has a list of matters where there is to be no charge, which covers in large part the public health diseases for which there is to be no charge to patients. Again, if people need emergency or immediately necessary treatment they should be treated free at the point when they need the treatment and only after that should the issue of

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charging come up. As the Minister has said, there is discretion locally for them to see whether or not it is going to be possible to recover the charges at a later date.

Lord Lester of Herne Hill: Could you send us the guidance that you give as a Department to make sure that you are compliant with our international obligations in respect of my question¹. The written guidance that you give to make sure that you are compliant, if we could have a copy of that, that would help.

Q380 Earl of Onslow: Minister, I think I was more shocked than I thought possible to hear the complacency that the Department seems to be showing over the treatment of women with HIV who are pregnant and not receiving treatment. I am new on this Committee and I cannot over-estimate how it really hit me that hard. I think it is completely disgraceful that we can produce flannelling excuses and bureaucratic waffle, which is in a sense what I have heard, over the treatment of a human being like that. There is a thing called the parable of the Good Samaritan and we are in danger of passing by on the other side and I hate it.

Ms Winterton: Can I just say that I hope we would not be considered to be complacent about these issues. It is difficult in terms of getting the balance between what we are trying to provide for people who are ordinarily resident here and—

Q381 Earl of Onslow: Minister, it is not difficult to let somebody who needs retroviral drugs and is pregnant to be given them. That is a no-brainer of a decision.

Ms Winterton: In terms of the maternity cases we did issue guidance which says that maternity services should automatically be considered to be immediately necessary because of risks to mother and baby. We responded to the Health Select Committee's report into this when it published a document in terms of new developments in sexual health and HIV/AIDS policy last year and at that point we did issue a notice to overseas visitors' management committees reminding them of the fact that any services connected with maternity should be considered of immediate necessity.

Q382 Lord Plant of Highfield: That brings me on to my question, Minister, which is about maternity services and charging. In your written submission you say that: "If the patient is chargeable, the charge will stand and cannot be waived", but in our evidence sessions we have had examples of destitute women who were refused asylum seekers being required to pay in full for antenatal treatment before receiving any care and others who were so frightened of incurring debt they cannot pay that they do not seek medical help during pregnancy. Is it the Government's intention that destitute refused

asylum seekers should be denied maternity care? If not, can you tell us how the NHS does provide for them?

Ms Winterton: Well, as I have said, we have been very clear that maternity services should automatically be considered to be immediately necessary. They should go ahead whether payment has been secured or not. We reissued guidance making it very clear to the NHS that was the case. At the same time, it is true to say that NHS managers do have a duty to collect payment if it is appropriate, ie if the person can afford to pay, but if they cannot afford to pay they have the ability to write off the debt. This is about trying to strike the right balance between saying what can we do to make sure that the system is not being abused but at the same time that it is humane. I can understand that people might think there is a bit of confusion between saying "You are supposed to collect the money but you have the discretion not to if it is unreasonable to do so", but we are very clear that managers who do not feel that a person can pay do not have to force them to pay, obviously, or deny treatment, but if somebody can clearly afford to pay that charge should be made.

Q383 Lord Plant of Highfield: So we can be clear, can we, someone who is a failed asylum seeker and whose only source of income is the very limited benefit payable to someone in that position, that person will be entitled to free antenatal and maternity care?

Ms Winterton: Certainly in terms of maternity care they should be entitled to that because we have made it very clear that it is considered to be immediately necessary.

Q384 Chairman: Are these the same guidance notes that you were referring to in answer to Lord Lester or are they separate ones? If they are separate ones, perhaps we could have those.

Ms Winterton: The particular one that I am talking about in terms of the last notice that we sent out was in January 2006. We will send that as well, yes.²

Q385 Lord Lester of Herne Hill: I think this is for Frances Logan probably. I am sure the Department is aware that some years ago the High Court using common law, not European Human Rights Convention, decided in the case of destitution of asylum seekers that common humanity prefigures cognitive law. In other words, quite apart from all the stuff in legislation, there is a common law protection of common humanity against destitution. What I wonder is what steps your Department takes to ensure that as far as possible you are minimising the risk that some good NGO is going to bring proceedings against you for denying common humanity to failed asylum seekers in the areas that, for example, the Earl of Onslow has indicated? Is that not a serious risk now with the policy that you are now putting forward to us?

¹ Department of Health, "Implementing the Overseas Visitors Hospital Charging Regulations: Guidance for NHS Trust Hospitals in England", April 2004. See Appendix 89.

² Department of Health, "Dealing with pregnant overseas visitors", January 2006, See Appendix 89.

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Ms Logan: I think the duty in relation to Articles 2 and 3 would be the same duty that we would need to have regard to under common law, that we make available emergency and immediately necessary treatment for those who need it to protect that person in extreme circumstances. The question of destitution is probably a slightly wider one than the issues to which these Regulations apply. I think my answer would be that we meet the obligations in the same way.

Q386 Baroness Stern: You will know, I am sure, that some refused asylum seekers are refused but they cannot leave. They are mostly rather poor people and so they are legally entitled to section 4 accommodation and welfare support but, as I understand it, under the 2004 Regulations they are not entitled to free secondary healthcare. My question, is can you explain why it is that the government denies hospital treatment to this group who may well be suffering from HIV, which we have talked about, cancer, diabetes or a number of other serious illnesses? What is the rationale for that?

Ms Winterton: You are talking about people are perhaps co-operating but cannot return home for one reason or another?

Q387 Baroness Stern: Yes. I am talking about people whom we have agreed have been refused, cannot leave, and someone has decided they are entitled to section 4 accommodation and welfare support, for example the Eritreans, as my colleague reminds me.

Ms Winterton: That is something that we are looking at at the moment and have been talking with the Home Office about those very issues.

Q388 Earl of Onslow: Minister, you do not have to look at it. It is glaringly obvious that if somebody has got cancer, AIDS, diabetes or whatever it is, you do not have to go and discuss it with John Reid, you make sure they are given proper healthcare.

Ms Winterton: Can I just explain why we do need to have some discussions about that with the Home Office. The first point is that at the moment people who are failed asylum seekers, as we know, can continue a course of treatment. They have the immediately clinically necessary treatment, they have accident and emergency treatment. The issue has been quite clear that if somebody is not supposed to be in the country then we have said that they are not entitled to healthcare on an ongoing basis. However, there is an issue that I think it is absolutely right to point out, that if people are, let us say, co-operating but cannot go home then we do need to look at that. There are issues about the information that can be passed, how you know whether somebody has failed or not failed, establishing entitlement to treatment, and also putting it alongside, which is what we have wanted to do, looking at the issue in primary care as well. There is a great deal of information that we need to put together in terms of primary care. For example, at the moment it is almost impossible to know whether somebody is seeking asylum or has failed their asylum appeal. What we want to do is make it clear

that the same information would apply to primary care as applies to secondary care. We also need to have a system whereby the information can be passed between, for example, the Home Office and the Health Service. I know it is easy to say why can we not just do it immediately but I am afraid we do have to look at all the implications in terms of what that means for costs on the Health Service, for example, what it means for Primary Care Trusts, what it means for GPs in terms of them accessing the information. As I have said, for the moment in terms of immediately necessary treatment, that is given; in terms of emergency treatment, that is given. The hospital issue is around starting new courses of treatment for people who have failed the asylum process and perhaps cannot return home.

Q389 Chairman: Following up on what my colleagues have said, supposing you have got somebody from Eritrea or Zimbabwe, we know that we are not sending them back, we cannot because it is not safe even though they may be a failed asylum seeker, somebody is diagnosed with cancer, you may want to give emergency treatment, but if they are not entitled to the continuation of treatment have you made an estimate of the number of people who might die before you make your mind up?

Ms Winterton: No, we have not done that. What we have done is we know there are possibly 6,000 failed asylum applicants excluding dependents who are co-operating with the Home Office and after the completion of a process that has taken responsibility for supporting asylum seeking families including those with unsuccessful claims away from local authorities, 7,730 Home Office supported failed asylum seeker families. Obviously many of them will not necessarily need secondary care but many of them may need primary care services. I should also say that it is fairly obvious at the moment that most people will stay registered in primary care because one of the difficulties is that the 1999 guidance had information about how to handle refugees, the guidance had information which I think did not mention the issue of either refugees or asylum seekers, so at the moment we have a situation where most people probably stay registered with a GP because there is no way to pass the information from one to the other. Within the context of the Asylum and Migration Committee that is meeting at the moment we are looking at all the issues around entitlement to services and what we can do to change that if necessary.

Q390 Baroness Stern: Just let me make sure I have got this clear. An Eritrean woman who is not able to go back, the GP says she has got breast cancer, she thinks, but this woman is not able to go to hospital to have treatment, if I have got that right. Is this a matter that has been decided by you in the Health Department or is this something that is imposed on you by the Home Office?

Ms Winterton: It is something that was decided in the charging regulations. The charging regulations came in in 1989, they were put out by the Health

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Department, and they have obviously been continued because there have been discussions about who should be entitled to NHS care.

Q391 Earl of Onslow: Minister, I am sorry, the more you say the more awful it gets. Here is a woman, a mythical woman admittedly, who has been diagnosed with cancer, and because she cannot be sent back you allow her to die in the streets because of Tory regulations in 1989. Is that what you came into Parliament for, to support Tory regulations to allow people to die?

Ms Winterton: As I said, this is an issue that we are looking at at the moment. Somebody can go to hospital if treatment is life-threatening, but they may be liable for charges if they can afford it. The other issue that we are looking at, and this is where some of the difficulties have come in, is that at the moment if we put the same system in primary care as is in secondary care we could have to change some of the other regulations which mean that at the moment GPs cannot charge for NHS treatment in the same way as secondary care can.

Chairman: We are going to come to primary care very shortly.

Q392 Lord Lester of Herne Hill: Minister, can I just say to you in a considered way, because it may help you to get this treated as a priority by the Secretary of State and your colleague, that what you have just said in my view would be no defence at all to an application for judicial review of the policy and practice you have just described since administrative difficulties and bureaucratic incompetence are no excuse, and therefore I strongly advise your legal advisers to look at this and get on with it as a matter of high priority.

Ms Winterton: What I should add is that we are very clear that it is a clinical decision as to what treatment is necessary to save lives. What we do not do is set out in regulations what types of treatment should be available. If there is a clinical decision that a particular course of treatment has to be undertaken to save a life then it can be given. The issue will then come as to whether, if a person has the resources to pay for that treatment, they should be asked to do so.

Q393 Mark Tami: Getting back to the charging regime, could you tell us for refused asylum seekers how much is being recovered through charges, how much is being written off, what is outstanding and what your view is as to the likelihood or otherwise of that being recovered?

Ms Winterton: We have not collected that information centrally. One of the things that we are looking at in terms of taking this forward, and I should say that it has never been a requirement to collect information about the charge either to the NHS or the charges that have been collected, and I am quite prepared to send the Committee the information that we have in terms of possible costs, is at the moment being finalised and as soon as it is I am more than happy to send it to the Committee if it is robust, but it is something that we just have not

asked to be collected in a central way. We have put it on the duty and the discretion of the NHS as to how they gather those charges.

Q394 Mark Tami: So you do not really have any idea of the actual size of this?

Ms Winterton: No. We have figures as to the possible numbers of people who would be involved, as I have said, in terms of the failed asylum seekers, the ones that I gave before, but in terms of the general overall costs we have not collected that information.

Chairman: The problem that we have got and that these questions are getting to is, is the game worth the candle? You have outlined a number of occasions where people can exercise discretion and all the rest of it, and on the face of it you have a huge superstructure to create the impression that you know the total number of asylum seekers and it is getting the money out them, when in practice we have collected very little in spite of a whole set of bureaucracy to do that and we are effectively writing off most of the charges anyway, so is this not effectively a political presentation which does not bear reality on the ground about what is happening?

Q395 Earl of Onslow: Chairman, that is what you were saying in Opposition when we produced the regulations in 1989, so I believe.

Ms Winterton: I think it is important to recognise that we do want to give that local discretion. When we say that PCTs are responsible for 80% of the budget, first of all we can issue guidance, we can give a duty, but we do feel it is up to local discretion and, quite honestly, in some of these circumstances, individuals' discretion when they are faced with particular cases as to whether they pursue them or not. It is up to them to decide whether overall it is worth the cost of trying to collect a charge, which may be extremely difficult. I am sorry that I cannot be more precise about the actual figures but we just feel that the best way for this to take place is to give that local discretion.

Q396 Chairman: But if we believe in evidence-based policy presumably one of the key elements of the evidence to make this policy would be (a) the amount that is collected, (b) the amount that is waved, and (c) the amount that is written off. We are trying to develop policy based on evidence. Surely that is evidence that we ought to be able to collect?

Ms Winterton: What we are trying to do at the moment, through a number of surveys, is to get an idea of the type of cost this would be if we transferred it through to primary care services and looked at the issue of failed asylum seekers. What we have not done is consistently collect it and no government has required that that information is consistently collected.

Q397 Earl of Onslow: Department of Health guidance discourages general practice from registering refused asylum seekers and we have heard that this has led to a situation where health professionals are effectively required to carry out immigration checks before accepting asylum seekers

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as patients. This, I must admit, makes complete sense. If a stray Eritrean walks into my daughter's GP surgery she obviously has to find out whether this is a failed asylum seeker or not. We have also been given details of a case where a hospital breached patient confidentiality and passed on patient details to the Immigration Service. Do you think it is acceptable for health professionals to conduct immigration checks, and, if so, how do you ensure that they are properly trained so to do and that patient confidentiality is in no way breached?

Ms Winterton: This is exactly one of the very real difficulties that we are wrestling with at the moment. In fact, when most GPs take on a patient they tend to ask simply for where they live and they cannot refuse anybody unless there are what are called reasonable grounds for doing so. The issue becomes if we want to change to a situation which at the moment in primary care, you are quite right, is confusing because we have these two different slightly conflicting instructions. One is, as I said before, that there is specific advice on refugees in the 1999 guidance which says that refugees have a right to register but makes no mention of asylum seekers or failed asylum seekers, which we obviously feel is out of date. Then in the 2004 regulations it says that GPs have the discretion to accept anybody who is resident locally but should not refuse unless they have reasonable grounds to do so, so at the moment we do not have clear directions, which is why we are trying to look at whether there should be a greater check in a sense on who can register with a GP and we need to clarify that. Certainly, in terms of divulging information to the Home Office, there is an obligation on health workers not to divulge information unless there is the consent of the patient, so in terms of people being asked to send information to the Home Office at the moment there is no obligation to do so. In our view, certainly at the moment, the idea of passing on any information would be a breach of confidentiality if that was passed on as a result of a consultation. This is something that we want to get greater clarity on and, at the same time as we are looking at the hospital regulations, to look at this as well.

Q398 Earl of Onslow: For how long have you been aware of this muddle?

Ms Winterton: I think the awareness of the muddle has been around since 2004, which is why we consulted on the issue of primary care. That was the consultation document that we brought forward at that time, and in response to that consultation one of the difficulties that we had was that there was not in a sense a consensus. Some people felt that people who were failed asylum seekers should not be in receipt of primary care services. Other people thought that they should be, and what we have been trying to do ever since is look at some of the issues around that but at the same time look at that in terms of the wider policy on asylum seekers and entitlement to public services. There are, as I am sure you will be very aware, very divergent views on that issue.

Q399 Nia Griffith: Perhaps, Minister, you could tell us a little bit more about exactly what information you have in that consultation, which were the specific routes you sought information from and what were the specific questions that you were asking.

Ms Winterton: The specific questions that we were asking them are set out in this document which I can let the Committee have. There were a whole number of them. Maybe it would be best if I sent the summaries to you³. For example, we consulted on who would be eligible for free NHS primary medical services, which visitors should be ineligible for free NHS care in terms of primary medical services, how would you operate a new scheme, how would you confirm eligibility, which I think is what people asked for at the moment—at the moment they are probably asked for proof of residence or just an address, but very little else, is the approach that we have to existing overseas visitors the right one, and what are the primary medical services which should be considered to be freely available on public health grounds. We will obviously be summarising the results but, as I have said, there was not really a conclusive outcome. There were very divergent views about to what extent the NHS should be available to people who were not ordinarily resident and others who very much felt that on public health grounds there should be freer access than we have at the moment.

Q400 Nia Griffith: Could you go into who you asked again, please? Which specific groups were you asking?

Ms Winterton: We would normally put the consultation on the website. We would consult professional groups, we would consult refugee groups. Those are the ones that immediately spring to mind. Did we send it to every GP?

Mr Peers: No.

Ms Winterton: That is the general way that we would consult.

Mr Peers: The number of responses were in the several hundreds. I think there were about 300 responses from various groups.

Q401 Chairman: Bearing in mind this was a 2004 consultation and we are now in 2007, when is the outcome of the consultation going to be published? Presumably you could publish the responses and your analysis of them? Does it take three years?

Ms Winterton: I think it is important that when we publish the responses, or perhaps a summary of the responses given the numbers of them, we should be indicating our way forward. As I have said, I am aware that there is considerable time since 2004 because the responses were asked for back in August 2004. We want to make sure that what we are doing brings everything into line and if we started consolidating the 1989 regulations and then did not

³ Full consultation document available at <http://www.dh.gov.uk/assetRoot/04/08/22/67/04082267.pdf>. See Appendix 89.

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do the primary care regulations at the same time we would be in danger of more confusion and what we want to do is try to minimise that.

Q402 Chairman: But three years?

Ms Winterton: We have been putting this in the context as well, as I have said, of general access for asylum seekers to services that we have been looking at in conjunction with the Home Office.

Q403 Lord Lester of Herne Hill: Minister, I would like to ask about children. What safeguards, if any, are there to ensure that children of refused asylum seekers in this country can receive health care from a GP in accordance with the obligations under Article 24 of the Rights of the Child Convention? That is the general question, but more specifically about safeguards are there in fact departmental guidelines on unaccompanied asylum seeking children and children in families of failed asylum seekers? I ask the question partly because much treatment is not emergency or immediately necessary treatment, for example, HIV, cancer, chemotherapy, radiotherapy and so on, so have you got some guidelines in place now to deal with the problem about medical care for children in those contexts?

Ms Winterton: I am not sure whether the guidance is separate when it comes to children. I wonder if Mr Peers could help me out here in terms of primary care.

Mr Peers: In terms of primary care the position is that this is indeed one of the issues that has been holding us up in the sense that the original 2004 proposals were very much for tightening up eligibility for primary care, so that failed asylum seekers under those proposals would not have been eligible. Children, obviously, do not tend to act in their own right. They tend to act, obviously, through their parents or guardians or whoever is responsible for them at the time and this is one of the reasons why we have been reconsidering the approach set out in the 2004 consultation.

Q404 Lord Lester of Herne Hill: But are there any guidelines, is the question?

Mr Peers: At the moment I am not aware of any in the primary care sector.

Q405 Lord Lester of Herne Hill: Then let me pass on to the other most vulnerable group of all apart from children, which is victims of torture. What are the guidelines we have got to make sure that victims of torture have full access to proper medical care, please?

Ms Winterton: For victims of torture, first of all, if we are talking about somebody who was an asylum seeker, they would obviously be entitled to all health care.

Q406 Lord Lester of Herne Hill: Failed asylum seekers.

Ms Winterton: It is difficult to say. I am not sure that a victim of torture would be a failed asylum seeker.

Q407 Earl of Onslow: Where you have Afghanistan, where they are sending people back afterwards, you would certainly have been tortured under the previous regime and probably tortured by some of your mates when you got back, but that is another story. It is perfectly possible that that could happen or where there has been a change of regime.

Ms Winterton: In the time before somebody could have been sent back they would have been eligible for care until their case had been refused.

Earl of Onslow: Obviously we do not have any guidelines, is the answer to that.

Q408 Lord Lester of Herne Hill: Suppose they are victims of torture but their case has failed. Are they entitled to full access to medical care?

Ms Winterton: As I said, if there was care that was immediately necessary in the view of a clinician, including, for example, mental health care that was considered to be immediately necessary, then a person would receive it. If somebody was, for example, in a crisis and needed life-reserving help because of that crisis, they would get it and it would be for the clinician to say whether that person needed that care at that point.

Q409 Lord Lester of Herne Hill: And are there guidelines on that too?

Ms Winterton: As I said, there are guidelines saying that if somebody is in need of treatment that is immediately clinically necessary then the person can receive it and we do not dictate what the conditions for that should be. What we say is that that should be decided by a clinician because what we felt very strongly was that if we started trying to dictate from the centre every condition that a person would be eligible for treatment for then it would take it away from the clinician.

Q410 Chairman: Have we any idea of how many failed asylum seekers are resident in the UK and not registered with a GP?

Ms Winterton: Not registered with a GP? I do not. What I do know, as I said, is the fact that it is possible for all asylum seekers—

Q411 Chairman: No, failed asylum seekers whom we are discouraging from registering.

Ms Winterton: No, because most people would, I suspect, register before they had failed and there is no real system of removing somebody from a register when they have failed because it is unlikely that the GP would know that they had failed.

Q412 Chairman: Let me put the question in a slightly different way. Somebody pitches up at A&E with an urgent medical condition. A&E would presumably ask who the GP was. They would know if somebody was not registered with a GP. Have you any idea how many people end up in A&E departments who are failed asylum seekers who are not registered with a GP?

Ms Winterton: No, I do not know how many people would end up there.

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Q413 Chairman: I come back to evidence-based policy again. If this policy is going to be made to work surely those are two figures that you are ought to try and get to grips with, because if the impact of not allowing people to register with GPs is additional pressure at A&E that goes completely against what the Government is trying to do by moving treatments so far as you can away from A&E into primary care.

Ms Winterton: That certainly is an issue but to a certain extent I think that what we have to tackle is (a) whether the advice at the moment is confusing in terms of GP registration, which I think it is, and (b) whether we take an overall decision, which would have to apply, I believe, to both secondary and primary care as to whether—

Q414 Chairman: No, I am not questioning that. What I am questioning is, is this based on evidence or is this based on finger-in-the-air what might happen?

Ms Winterton: There is some evidence that we are trying to collect which is about the possibility of numbers of people who might be affected in secondary care, which is why we are looking at the figures of people who are NASS registered. It is quite difficult to go down to the level of every A&E department and how many people are not registered. Sometimes in these circumstances there is not always the ability to collect that because people are obviously in very quick circumstances. Some people may turn up quickly.

Q415 Chairman: But you know in London, for example, a lot of people use the A&E department as primary care because they are not registered with a GP because it is a transient population, for a variety of reasons, so it is not uncommon, and that is one of the problems we have in London with the A&E departments being overloaded because people are not using primary care. It comes back to the point of evidence-based policy. If our policy is the right one, which is to try and get people to use primary care more or walk-in centres more, we are effectively discouraging that by trying to dissuade people from registering with a GP.

Ms Winterton: Yes. There is evidence that people who are not registered do tend to go to A&E more but we do not have information about whether they are failed asylum seekers or perhaps the cases that you have talked about. Again, if we were to go down to the failed asylum seeker scenario, that would involve healthcare professionals at that level in an A&E department not only saying, “Are you registered with a GP?”, but also, “Are you a failed asylum seeker?”.

Q416 Chairman: But you are only asking them to find out whether you are going to charge them or not.

Ms Winterton: With regard to emergency care, that is available anyway.

Q417 Chairman: That is not the point.

Ms Winterton: Only if afterwards it is considered to be appropriate, and there are, as one can imagine, very specific circumstances where that would happen, probably when somebody is taken into in-patient care through A&E when that kind of conversation can happen.

Q418 Chairman: But if you are expecting acute hospitals, secondary care, which is the answer to our previous questions, to check on people’s immigration status before you decide whether they have got to pay or not, it is the same question.

Ms Winterton: Yes, but you have to be realistic about what happens in A&E.

Q419 Chairman: I am realistic.

Ms Winterton: What can happen in A&E is that people can go in, have treatment—

Q420 Chairman: If they got knocked down by a car and got their leg chopped off, that is one thing.

Ms Winterton: No, I am talking about the other way round. It is more likely, if you were run down by a car and got your leg chopped off, that you would spend some time in the hospital bed, at which point it would be more realistic to have that conversation. In some instances where somebody comes in with perhaps a broken arm and has it plastered up and goes out again, we have to be realistic about the amount of conversations that people can have in terms of ascertaining these things. Yes, they can ask who one’s GP is. Whether they get down to the level of saying, “By the way, are you a failed asylum seeker?”—

Q421 Chairman: But that is what you have asked them to do in your previous answers.

Ms Winterton: Absolutely, insofar as it is possible for people to do that, but we have also made very clear, which is what I was saying earlier, that there is discretion about that, and if an individual oversees visitors manager feels that it is not possible or it is disproportionate in a sense in terms of cost to try to collect charges, then they do not do that. We give people that discretion because otherwise I think you would probably accuse us of having a system which the oversees managers could not fulfil. We do say that there is that discretion for the very reason that you have to have something that is achievable.

Q422 Chairman: The picture you are presenting to me and other members of the Committee if I am not mistaken is a system that is pretty chaotic, that relies on questions being asked which are never asked because you give discretion not to ask them. It is so hit and miss it might as well not be a policy.

Ms Winterton: We have to be very honest about this in response to public concern that people were not taking advantage of the NHS and every one of those who is elected will know that the public have concerns with regard to this area.

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Q423 Chairman: Of course the public have concerns. I recognise that but the public have concerns generally about asylum and immigration. If we are going to put forward policies, presumably we put forward policies that (a) are coherent, (b) are capable of being enforced and (c) are enforced, rather than simply saying we are going to do something when it is impossible to make it happen.

Ms Winterton: It is not always impossible to make it happen. I am sure you have seen cases, as I have, where people have been pursued, sometimes for quite considerable amounts of money, because they have been able to afford it. The public wants to know that we have a system in place which means that, if it is very obvious that somebody has the ability to pay for care that they are getting from the NHS that other people have in a sense funded, it makes sure that that can be implemented. That does not mean that it is perfect in every case. I think it would be extremely difficult to find a system that would be absolutely certain of, on the one hand, gathering every scrap of money that possibly could be levied and at the same time being humane enough to say, "We do give treatment that is necessary." I am not saying that is an easy balance to get but I think it is important to recognise that we cannot leave out the issue of public concern. Otherwise, we are more likely to have the public wanting a system where we were absolutely not having anything. We have to set up systems that allow the discretion for people to collect payment if that is the right thing to do, whilst acknowledging that for many people there is a strong feeling that the National Health Service should be for people who are ordinarily resident and who should therefore benefit from it. It is getting that balance right. I am not saying that at the moment there are not things we need to look at. I think there are things that we need to look at but it is not an easy equation to get right.

Q424 Nia Griffith: Supposing we did consider the issue of failed asylum seekers being allowed to work and pay taxes. Do you think that would make a difference?

Ms Winterton: If they were working and paying taxes, I am not sure whether that would change the issue of "ordinarily resident". Perhaps it would. I see what you mean: if they could not go home and were working and paying taxes, yes.

Q425 Lord Lester of Herne Hill: Is it not the function of ministers to lead public opinion and not simply slavishly to follow prejudiced public opinion? Do you not have a responsibility to stand up to a highly prejudiced public who believe that failed asylum seekers should not get medical treatment? Surely it is your function as an elected representative of people to do that and not just to respond?

Ms Winterton: First of all, we have made very clear that in a clinical judgment if treatment is immediately necessary that will be provided. At the same time, we have to accept that we have a responsibility as elected representatives also to make sure that when we have an asylum policy, this is what we have to be very realistic about. If we want to offer

a fair asylum system and overcome some of the problems that I see in my constituency and I am sure others in their constituencies see as well, we have to have a public that feels the system is fair. If you do not try to do those two, frankly you end up with more serious situations. Yes, we have to lead it but if you are suggesting that by leading it we simply said that anybody who was in the country, visiting, illegal or not illegal, whatever, could have access to NHS treatment the electorate would say they felt that was not fair. I would not like to see the consequences of people taking that too far. It is striking a balance between the two. It is not always easy but we have to get that balance right.

Q426 Earl of Onslow: We visited Yarl's Wood a week or two ago and there were two issues that struck me and I think all of us who went there. Firstly, there were several women who were definitely mentally ill. Secondly, there was an individual case which was of a Muslim woman who perfectly reasonably expected to be looked at by a woman doctor. The attitude of the private company manager to my question on this was cocky, full of the expression "with respect" in that tone of voice and I know what it means because I have used it myself.

Ms Winterton: Usually it means with no respect or without respect.

Q427 Earl of Onslow: These women were shaking and palsied. It was very, very upsetting. What policies do you have to make sure that the mental health issues are dealt with and, furthermore, that in the case of deeply held religious beliefs like that they are entitled to be looked at by a female doctor? We all know that there are now more women doctors than men doctors these days passing out of the medical schools.

Ms Winterton: That must have been horrendous to see if that was the way that somebody was being treated. First of all, the responsibility for immigration removal centres including health care, as I am sure you know, is the responsibility of the Home Office. What we have tried to do is to provide a clinical governance group that works with the Home Office and also looks at how, when there are privately run establishments, we can look at the relationship with the PCT. I am more than happy to go and look at what is being done in terms of the mental health care advice that is being put through that group if that would be helpful.

Earl of Onslow: That is the best answer you have given so far this afternoon.

Q428 Baroness Stern: I hear what you say about the Department of Health not being responsible for that area of health care, although I might well ask you whether you think that is appropriate. We have heard of a case—and there may be more—where a woman who was breast feeding was taken into immigration detention and the baby that was being breastfed was left outside. I can see you grimace. I think we all do. Have you intervened in such a

situation? Do you have a view about this? Have you told the Home Office to stop this now or do you not see it as your business?

Ms Winterton: That is not something that has been brought to my attention before. We can enquire of the Home Office if it has been brought to their attention and what is being done about it.

Q429 Chairman: We were very disturbed about some of the medical issues arising out of Yarl's Wood. There was one woman we saw being lifted at the drop of a hat from Yarl's Wood to be taken to Heathrow. She was not even allowed to change her baby before being taken to Heathrow. She got to Heathrow and was hanging around a long time. She was not allowed to feed the baby. There was no milk available. Eventually milk was produced several hours later and she was not allowed to sterilise the bottle. Little things like that in themselves may sound small but they are very serious. If you are prepared to look at some of these issues arising out of health conditions at the immigration removal centres where people have no choice but to be there over their health care, that would be very helpful indeed.

Ms Winterton: We are genuinely looking at the issues that you have raised and looking at them very seriously.

Q430 Baroness Stern: In relation to the Mental Health Bill, can I ask you about the evidence necessary to initiate detention? The government considers that when detention is being initiated evidence from a medical practitioner is necessary but it does not consider that a medical practitioner's evidence is necessary for prolongation of detention and considers that an occupational therapist or a nurse will be sufficient to meet the requirement of objective medical evidence when continuing detention. Can you comment on why that is?

Ms Winterton: In terms of renewing detention, we have issued some draft regulations on that. We would expect the responsible medical officer to be consulting two other people. I am prepared to look at whether we should specify that one of them should be a doctor⁴. In general, in terms of renewing, it is important to say that we would expect that, as somebody is being detained, all the time they would be being looked at by a multidisciplinary team. The issue is whether one should be consulting a doctor at the time or an approved clinician who would have the ability to decide whether somebody still had a mental disorder.

Q431 Earl of Onslow: I have not taken a great part in this Bill except I made two interventions. The Minister—and I have seen it from our side when we were in government so this is a general criticism of ministers—was being surrounded by people who really knew what they were talking about. On one occasion Baroness Royall had had a very heavy and nasty going over. She picked up the brief which had been written before the amendment and read it through. That is not what Parliament is for. Can we have an undertaking from you that, when it comes up both in the Commons

and at report stage later on, you will actually listen to people who know what they are talking about? I promise you I have seen half baked Tory hereditary peers in the last government wading through and doing exactly the same thing and I used to get just as angry then. This is nothing personal; it is just a failure of government. You are supposed to be saying that you are all grown up and better than we were so you ought to listen to people, especially those behind you.

Ms Winterton: The Mental Health Bill has been eight years in discussion. I have been responsible for mental health now for three and a half years. I have listened to an awful lot of people who know what they are talking about. There are very different views on this as well. Amongst professionals, there are many immensely different views when it comes to treatment.

Earl of Onslow: Of course I accept that. I was just taking two instances at which I was present.

Chairman: The letter that you wrote to us was very helpful in terms of our report so thank you for that.

Q432 Earl of Onslow: The explanatory notes and ministerial responses to questions raised during the Committee stage in the Lords focus on abuse as a reason for displacing a nearest relative. Is it the government's intention that patients should be able to displace their nearest relative on broader grounds than that the nearest relative abused or has condoned the abuse of the patient? What if there has been no abuse but the patient is estranged from the nearest relative for reasons falling short of abuse? In other words, they do not like them. I accept it is a very difficult balance. I understand that.

Ms Winterton: The nearest relative should have the ability to go to court and ask for a change to be made in who it is. This was a human rights issue that you may well be aware of. We did have to change this legislation because there was a case where the person's nearest relative was somebody who was abusing them. That then raised issues about what rights a person should have in terms of their nearest relative. In the draft Bill provision for a nominated person was much wider and people could choose who they want. When we decided to amend the 1983 Bill, we had to change it in line with some of the criteria that are still in there. We also wanted to change it so that it could take account of the Civil Partnership Act. Where the issue also arises is with the approved social worker applying for a change. Some people have maybe worried that this meant that if somebody was a bit tiresome as a nearest relative the social worker could wander off to court and say, "Can we have somebody else because this one keeps asking for them to be released?" We are very clear that, when anybody is doing that first of all, we would want to see the patient consulted and, secondly, there would have to be strong reasons why an approved mental health worker felt that the person was unsuitable. It really could not be just because they were a bit bothersome. I personally think we need to make sure that in the code of practice it is perhaps a bit stronger in terms of emphasising that this is not something that can be done on a whim, that there is a court procedure behind it, so you have to be quite firm as to what you want to do.

⁴ See Appendix 89.

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Q433 Lord Plant of Highfield: I would like to ask you about forcible feeding. It is a procedure that is used in some cases of mental disorder and it is clearly an invasive therapy. In that respect, it is somewhat similar to electro convulsive therapy. Under the Mental Health Act of 1983, there is a statutory requirement to have a second medical opinion before imposing electro convulsive therapy on a patient. By contrast, will the government consider a similar requirement for a second opinion to be applied for the equally, if not more, invasive procedure of forcible feeding?

Ms Winterton: I do not think this is something that is required by the Convention but it is something we could look at.

Q434 Lord Lester of Herne Hill: This is required though under the Convention, Article eight: the positive obligation to provide effective supervision and review of the treatment of Bournemouth patients who are deprived of their liberty under the Mental Capacity Act. What provisions will the government introduce to give effect to that positive obligation?

Ms Winterton: As you know, we are using the Bill that we have to make sure that as a result of the Bournemouth case, if people are deprived of their liberty, an assessment is made of whether that is in the person's best interests. We are talking about somebody who would already be in a care home, for

example. We are not talking about somebody being taken from their home and put somewhere else because that would then fall under the Mental Capacity Act and come through local social services. What we are talking about is people who are perhaps in a care home. Perhaps it is considered for their own safety that they may have to have their door locked at night because they might wander around otherwise. Because they do not have capacity, in all that there is no kicking in of the Mental Health Act but there is a proper assessment made of the deprivation of their liberty to make sure it is in their best interests. There are some people at the moment who just do not have that.

Q435 Lord Lester of Herne Hill: That assessment will be continuing in the sense that it can be reviewed when necessary?

Ms Winterton: Yes.

Q436 Chairman: Is there anything you think we have missed?

Ms Winterton: I do not think so. In terms of your report, we will take away all the recommendations and look at them. We were glad to see that in general you were quite enthusiastic, but not completely. We will come back to you obviously when we have given further consideration to these issues in terms of asylum seekers.

Chairman: Thank you very much.

Witnesses: Mr Justice Hodge, OBE, President, Mrs Nehar Bird, Immigration Judge, and Miss Rebecca Cooper, Head of the President's Office, Asylum and Immigration Tribunal, gave evidence.

Q437 Chairman: Can I welcome Sir Henry Hodge who is president and Mrs Nehar Bird, a judge from the Asylum and Immigration Tribunal? Perhaps you would introduce yourselves.

Mr Justice Hodge: Rebecca Cooper is the head of my office at the A&IT. She is here to keep me on the straight and narrow.

Q438 Chairman: Is there anything before we start?

Mr Justice Hodge: No. Thank you for asking us. We have really come here to try and help you about how we do our work in relation to the various things you are interested in.

Q439 Chairman: Thank you for coming at relatively short notice. It particularly arises out of our visit to Yarl's Wood last week. One of the things that particularly came up was the question of access of detainees to bail hearings. It has also been raised with us by a number of witnesses. When families with children apply for bail that is often granted but many detainees do not have access to a bail hearing for one reason or another. Do you monitor access to bail and if so can you tell us a bit more about that?

Mr Justice Hodge: The numbers of bail applications have gone up quite significantly over recent months since the Home Office decided to keep lots of foreign national prisoners in custody. We have always had bail hearings as an important part of our jurisdiction both now and when it was the Immigration

Appellate Authority. We are dealing with something over 800 bail applications a month and I think it is fair to say they are going up slowly. We have various problems in relation to bail. Traditionally, we have been at the bottom end of the pecking order for delivery of detained persons to our hearing rooms. That is getting better but we often start our cases rather late which squashes them up. The process which I introduced when I was chief adjudicator a few years ago is that, if somebody wishes to apply for bail, they do so nearly always with representation although not always. We try and list the case and in the main we succeed in listing the case within three days on the basis that it is a liberty issue. The representatives who have applied for bail on behalf of their client will usually be briefed to an extent about the issues. The Home Office is expected to file with us under the procedure rules a bail summary on the afternoon before we have the hearing. They are supposed to serve that on the representatives as well. That comes before our judges when they hear the case the following day.

Q440 Earl of Onslow: Do they?

Mr Justice Hodge: Yes, they do it in a much more efficient way than they used to. The bail summaries vary in competence and quality. There are some criticisms from my judiciary colleagues about them. The presenting officers who represent the Home Office before our tribunals often are not as well

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briefed as we would like them to be on these cases, but we get through. The statistics show that something like 30% of bail applications are withdrawn, probably because the information is not full enough. There may be some problem about the hearing. We do not let people adjourn bail applications because it just turns over and over if we do. My judiciary grants about 25% of bail applications. About 44% are refused. That gives a sort of over-arching picture of how it works. It is an important part of the jurisdiction and very important obviously for the people who are detained.

Q441 Baroness Stern: Do you think that children in detention should have an automatic bail hearing?

Mr Justice Hodge: It is very rare for an unaccompanied minor to be held in detention. For children with a grown up with them, you would require to change the law to achieve that. At the moment the adult will have to make an application and on many occasions they will. What status the child has is very interesting but we would not regard the child as having an individual status to make a bail application because the child would be held as part of the family of usually the mother, although sometimes the father.

Q442 Baroness Stern: You do not have a view on detaining children? I suppose it is not appropriate for you to have a view.

Mr Justice Hodge: I have a personal view of course but I do not know the numbers of children who are detained. Nehar Bird sits at Yarl's Wood on a fairly regular basis and hears a number of bail applications there.

Mrs Bird: Usually at Yarl's Wood, more recently, they have had family bails. I have not heard that but when I say "family bails" the bail application is of the appellant who may be refused or is at Yarl's Wood because they have been refused asylum and the family is part of that appeal. They do not have a separate right of appeal. The person making the application is the appellant, the mother at Yarl's Wood. Often they deal with families but it is a female detention centre for immigration purposes.

Q443 Chairman: It is for families as well.

Mrs Bird: It has some families now.

Q444 Chairman: We saw several when we were there.

Mrs Bird: When there is a principal appellant who is a mother with children, they are detained together. It is not the child who is applying for bail. Often that is the unfortunate part of it. It is the mother. You have to consider the children as part of that because often there may not be any provision, unless social services step in and take over, for granting bail to children on their own because of accommodation and so forth.

Mr Justice Hodge: You would split the family too which probably would not be a good idea.

Q445 Chairman: That would be a matter for the judge to decide as well as the Immigration Authority. I personally do not think that children should be in detention, full stop, but we are where we are. You quite cleverly dodged the point that Baroness Stern was putting to you, saying it requires a change in the law. We are in a position to make recommendations about these things. Do you think it would be a practical recommendation, bearing in mind the point you made about splitting families, for us to say that in these circumstances children should be allowed to make a bail application in their own right, obviously by an arrangement?

Mr Justice Hodge: You are familiar with the rules. It is not a dodge. We would loyally do what we were asked to do. We have argued for a long time that the whole bail system within the immigration and asylum world needs a proper rethink. In the 1999 Act there was a system which had it ever been implemented would have meant that everybody who was detained automatically had a right to apply for bail. That was never implemented and I am not sure that there are any such proposals, but we would like to see greater communication.

Q446 Chairman: Have you put any proposals to the DCA for such a review or would you like to see such a review?

Mr Justice Hodge: I do not really think that is our role. We get asked periodically what our view might be about something. If somebody ever asks about bail we will always say that somebody needs to have another look at it. I am just about to write a letter to the chairman of the Law Commission to say that it would be a very good idea to have a consolidation of the immigration and asylum legislation because it is all over the place. Equally, legal aid is not an area that you are interested in but whenever we are asked about it we say the more people that are represented under legal aid the better we think it is. We cannot really go much further than that. Otherwise, we are trespassing on your and Parliament's toes.

Q447 Earl of Onslow: I caught you talking earlier on, I think, about the delivery of the bail applicant not being very well done. Is there any excuse for this whatsoever? If you say, "I want to hear the appeal at three o'clock on a Tuesday afternoon", why is the person not there? Should they not be given a bollocking for it?

Mr Justice Hodge: The reason they are not there is all to do with the way in which people are moved from detention and prison facilities into the courts and the tribunals. If you had the Home Office in front of you and asked them about delivery contracts, you would have heard how it all operates. We think we are at the bottom of the pecking order so if you have a case at the Old Bailey the van goes there first. Then it comes round to Southwark Crown Court and ends up at the asylum and immigration tribunals in central London. Therefore, they deliver for nine at the Old Bailey and by the time it gets to us it might be a bit late. It is not always the case. We are trying to deal with that by a development of video linking, using the video

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systems. We are pleased to say that the Home Office have agreed to put video links into the removal centres. We are hopeful that fairly soon we will be able to deal with bail applications by video link. There are quite a lot of practical issues to work out but that would get rid of this delivery problem of getting a person in front of us.

Earl of Onslow: If Mercedes can deliver just in time spare parts for their factory, why can we not do the same with people who require bail?

Q448 Lord Lester of Herne Hill: Can I explain the context of my questions about the quality of information that comes to asylum judges and how it is taken into account? When we went to Yarl's Wood there were a number of criticisms of the judges for perhaps not paying sufficient regard to material that was being placed in front of them, especially health and social work reports. That was one of the reasons why we wanted to see, first of all, in practice, how good the quality is of the information you receive in social reports and health reports. As an experienced sitting judge, what is the situation with regard to your own experience?

Mrs Bird: Are we talking about Yarl's Wood?

Q449 Lord Lester of Herne Hill: Not only about Yarl's Wood. I think Yarl's Wood and generally.

Mrs Bird: These are reports produced by the appellant?

Q450 Lord Lester of Herne Hill: No. In Yarl's Wood, they would be reports produced by staff—the welfare officer, for example.

Mrs Bird: I have been sitting at Yarl's Wood for about a year. I have not seen a welfare report from staff at Yarl's Wood. Occasionally you get a medical report, because obviously everyone arriving at Yarl's Wood has to have a medical examination. Therefore, there might be a very short medical report. I saw one the other day where there was a girl of 18, who was detained. There was a very cryptic, short report saying that she was extremely distressed, and that she should be referred to a counsellor. This was a recommendation made around 24 January and there was nothing further, so she has not been referred to anyone. I have not seen a report from a counsellor or somebody who has seen this girl, but it was felt that she needed to see someone quite quickly.

Q451 Chairman: We met the social worker based in Yarl's Wood 100% of his time. He says he is producing these reports all the time, and he is under the impression that they are put before you or your colleagues, be they bail applications or more substantive applications, for consideration; and yet, you are saying you have not seen these reports.

Mrs Bird: I have not seen those reports.

Q452 Lord Lester of Herne Hill: During the 10 years I sat as a Recorder, there always seemed to be a great issue as to whether criminal judges were taken seriously for social inquiry reports, I remember, and it was a great trouble to get my colleagues to do that.

It would be helpful to us to know how good is the quality of information you get, whether you would like more and whether you think in general that the immigration judiciary would be helped by more information and would use it if it were provided?

Mrs Bird: Absolutely. If you are talking about the Home Office, and you have a statement from the Home Office, all that you may have is the reasons for refusal letter, which is the letter giving the appellant the reasons for refusing the application. You might have a country of origin information report included, which gives the background objective evidence, but it is often not sourced. It refers to things, but those documents are not included in that report for you to go and see what exactly is said. All you have is a paraphrase or a summary of, say, the Amnesty International report or the human rights report. It is referred to but not included. If you have a lot more of that information, for our purposes, it is very useful but we do not have that information from the Home Office. It is often not produced at the hearing, because it is said to be in the public domain and that means if we want to have a look at it we have to go and access it ourselves.

Q453 Lord Lester of Herne Hill: I am thinking about the information about the applicant for bail seeking to be set free, information about the likelihood of absconding, mental health, social reports, and so on. What happens if you do not get sufficient information? Can you adjourn it?

The Committee suspended from 6.06pm to 6.16pm for a division in the House of Lords

Mr Justice Hodge: In the interlude we have had a discussion. We are not familiar with any kind of process which produces a social work report out of a removal centre or a detention centre into paperwork for us. It is possible that they go into the bail summary in some way or another, but we are not familiar with that happening so we do not see them. This may be something that has passed us by. It might be a bit more routine than we know about but I am afraid we cannot help on that. On the way in which this judicial work is carried on anyway, it is quite an odd process because on the one side you have the Home Office who interview somebody, write a reasons for refusal letter, and there is an appeal. The Home Office put in the details of how the person came to the interview, and the reasons for refusal, which are now very much more detailed than they used to be. They almost invariably put in country information from their own unit. The appellant's side put in evidence from the appellant, and maybe occasionally from a fellow family member or a witness and, when they are decently represented, maybe the Amnesty report about the same country and the human rights watch report. My judiciary and ourselves are all left there weighing up what the answer is to this question. It is not like most pieces of litigation which Lord Lester is familiar with, where there is one party putting all their case and bringing all their witnesses and the other party bringing all their case and their

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witnesses; and then the judge making up his or her mind about what the answer is in the light of the evidence. We have country guidance information and evidence from the appellant, and that is what we are working with.

Q454 Chairman: Presumably, if it is patched in from the Home Office, why can you not keep a library of standard materials which are accessible to your judges?

Mr Justice Hodge: They are all available and they are brought along as a matter of course and in virtually every single asylum case the Home Office will produce the country information report. The appellants will also bring along these things and the judiciary get very used to the information. We have expert reports periodically which add to the information that we have. We make decisions on the basis of what is there. What I have always stood out against is the judiciary going off and doing their own research after the event because, if you do that, you are going to be making a judgment on the back of information that one side or the other has not seen. We do not encourage that at all. What we encourage our judiciary to do is to make a decision on the basis of the information that is there in front of them and it is up to the parties to put the information before us.

Q455 Lord Lester of Herne Hill: The answer you have just given is extremely helpful in the context of Yarl's Wood because the very fact that you are not aware of this material being available may lead to some change. Will you be able to help us, because we are a Committee that is going to make a report on all of this? Can you help us afterwards or now by suggesting ways in which the quality of information about the reasons for granting or refusing bail for a particular individual might be improved systemically so that judges like Mrs Bird sitting would have better access than at present to that personal information, not country reports and not for the general situation? In terms of bail, that must be a high priority. Practice directions and that sort of thing I realise are only possible when one gets to the bottom of that problem.

Mr Justice Hodge: This is obvious, but when somebody is applying for bail, our judiciary wants to know: are they likely to turn up on the next occasion that they are required to turn up; are they going to have some fixed address at which they can live; are there usually going to be sureties who will stand for them to make sure that they do attend and are they likely to be removed if they have been through the system very quickly or if they are on the fast track records, and they lose, are they likely to be removed very shortly? If the answer to those is all in favour of the appellant, I hope the judges will be granting bail. That is what the judges are really focusing on. If the quality of information coming from the Home Office is poor, then it is more likely that a decision in favour of the appellant might well be made.

Q456 Lord Lester of Herne Hill: Are there practice directions saying that the presumption should be in favour of liberty, if the Home Office do not put forward cogent, compelling reasons to the contrary?

Mr Justice Hodge: No, but there is a case called *Khawaja* where Lord Scarman said back in 1984 that the presumption of liberty which applies to the subject applies to anybody who is in this country. All the judiciary are working on the basis that it is the Home Office they have to satisfy that they should not be properly detained. The Home Office come along and say, "We do not think they will turn up. We think there is a danger of them absconding. They are disruptive" and produce those kinds of problems. Quite often, we worryingly think they are not as evidence based as they should be. If they are not evidence based, they have a surety and an interest and it looks as though they are not going to be removed with any speed, I again hope that the judges will be granting people bail because of the presumption in favour of liberty; but you have to have the liberty constraint. We may also get electronic tagging, electronic monitoring and so on. That is supposed to be coming in fairly shortly if it is not there already. All of that is to try and make sure that the person has their liberty but, at the same time, there is some control given to the state and the organs of the state who do not want these people just to disappear into the wide blue yonder.

Q457 Earl of Onslow: We came across a case of a woman who was an illegal immigrant, who was married to somebody in the United Kingdom. She was a middle aged woman; she was not somebody who had been whipped out of a village Wuziristan. She was sent back to Nigeria where she could then applied for a visa which was her legal right to be granted. Why did anybody decide that you could send somebody back to Nigeria who was going to get a visa when they got to Nigeria to come back?

Mrs Bird: Whether to remove or not is not for us; that is for the Home Office. You said she was married to somebody who was either a British citizen or somebody who was settled here but I am assuming that she married this person whilst she did not have any legal status here. She was an overstayer or an illegal; one does not know. If she has no legal leave to remain here and she marries someone, it is not automatic that she is going to be granted leave to remain because she has done something in order to regularise her stay. The law now says you must do that from outside. You cannot seek to regularise your stay here because you are an overstayer and you got married. It depends on the circumstances. The Home Office, as you are probably aware, has a very wide discretion. They could have allowed that lady to regularise her stay here but I do not know her immigration history. Maybe it was very poor and she was therefore required to go back and make an application for entry here just like anybody else.

Chairman: We cannot get into the individual cases. It is not an asylum issue either.

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Q458 Earl of Onslow: It is a bloody fool issue.

Mr Justice Hodge: There is a very quick answer which is queue jumping, which is what the presenting officers will always say. If you are right that she should stay, you would be told, not by me because it is not for me to say, that lots and lots of people come over here, get married and say, "Let me stay." If you did that, they would say that the floodgates would open. That is where that argument comes from. I have decided cases where I have said, "You have to go home because it is unfair that you should jump the queue."

Q459 Nia Griffith: You mentioned very briefly the fast track appeals. Is there any consistent difference in the quality and the availability of representations for fast track appeals as opposed to the other appeals that you are dealing with?

Mr Justice Hodge: We do not think so. We think the quality of representation is neither better nor worse in fast track cases than it is in the regular cases.

Q460 Chairman: What about legal representation? We heard from previous witnesses that it is very patchy. Sometimes it is difficult to get legal aid or representation for the asylum seekers who have made the application. How often do you find that people are not represented or represented very inadequately?

Mrs Bird: There is no easy answer to that. Things are getting more difficult with the cuts in legal aid. You have more people who are appearing before you unrepresented. Often they may be represented but the level of representation could have been better. It is all constrained by legal aid. I do not know an awful lot about how the legal aid system works but I assume that, because there have been these cuts, you have lots of people who used to do representation, some of the more experienced people, not doing it any longer. You have people who have just come into it more recently. Although people may be represented, they may not have the level of representation that would serve them best. Often you have people who are appearing before you unrepresented. At the same time, you have people from the Home Office who are not there so you end up having an unrepresented appellant and no representation from the respondent at all. Then you have to juggle to try to work everything out. The quality of representation has gone down. I have been doing this since about 1995 so I will have noticed that. There are more people who are not represented because of the cuts so that has made it more difficult for us.

Q461 Chairman: If you have this position where parties are not represented, does it take a lot longer (a) to hear the case and (b) to prepare your judgment?

Mrs Bird: Yes.

Mr Justice Hodge: The judges differ. Some will bend over backwards to hear everything somebody has to say. Others will not, but I hope they both reach the right result. Without representation, it is very difficult to have any confidence that the appellant

has made a decent statement, although there might be one there, and has had advice about how the whole system works. We need to introduce the system more carefully, to make sure that they are involved in the case more carefully. I regularly say that almost any level of representation is rather better than none at all. You do very occasionally get really terrible representation. You get that in every court and every tribunal. I had one only the other day where it was sad. We are strongly in favour, as a group of judiciary, of the availability of representation but we are very aware of the problems involving funding it all because we have read about it. Some of it seems to have been deliberately overspent and not wisely spent by representatives over time.

Q462 Chairman: Have we a false economy here? Is that something you feel you could answer?

Mr Justice Hodge: We have a set number of cases and we have to decide them. I have some figures for the fast track where, over a short period, we had something like 75% of people represented and 25% who were not. We put two asylum cases into a hearing day and the judgments would have to be written by the end of the following day. The fact that they are represented or not represented makes no difference to the judges' work. The judges turn out what they are expected to turn out, irrespective of the lack of representation. I do not think there is an easy answer to that question.

Q463 Chairman: Are you treating it as an inquisitorial hearing if people are not represented?

Mr Justice Hodge: We are an adversarial system. We have to be very careful when the appellant is not represented not to turn into some kind of inquisitorial system. It is for the presenting officer to ask questions and give guidance about not cross-examining appellants in those kinds of circumstances from the bench because it gives a sense of unfairness.

Mrs Bird: Instead of asking the appellant questions and assuming one role or the other, our role is to explain to the appellant what is happening, give them an opportunity to put their case and, if there are problems—for example, if there is no presenting officer—then you have to say, "This is what the Home Office says. What do you have to say about that?" You give them an opportunity to have a hearing because that is what we are there for. You try to do it so that the person feels they have had a fair and just hearing, although they have not been represented and they have only had the Home Office there or no Home Office and just me, for example.

Mr Justice Hodge: This is almost in reply to the absent Lord Lester. The real work done by judges in this system is not sitting at the hearing. It is preparation beforehand and the very extensive reading of all the background material you are given afterwards and then the writing of the judgment. All our figures show that, if you hear for an hour, it probably takes another two hours to do the reading and maybe two and a half hours in total to do the preparation. That is where the big effort goes in and

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it is a very paper based system. It is useful to have a hearing but it does not often give huge amounts of enlightenment.

Q464 Lord Judd: I do apologise most sincerely for not having been here earlier but I was involved in the Corporate Manslaughter Bill, putting forward the view of this Committee. I am interested that you emphasise so heavily the financial dimension to people not being adequately represented. You thought cuts had made this more difficult. Can you say anything about the way the system is operated? Are you satisfied that people are being as fully briefed and having the situation and process sufficiently well explained to them so that they know what is possible and what their rights are, or do you think that more articulate people are able get a grip on it and less articulate people are put at a disadvantage?

Mrs Bird: Are we talking about the appellant here?

Q465 Lord Judd: Yes.

Mrs Bird: That is always going to be the case. Not being involved in legal aid and how things work, that is not for me. It is really for the representatives of the appellant. There are limitations that one is not clear about. Often, somebody who was represented appears before you and their representative cannot represent them any more or they have had legal representation to get their case ready. One does not know. They come along but you have a statement which a solicitor or somebody has prepared, so you have all that documentation but they do not have anybody with them.

Mr Justice Hodge: They will tell you that funding has been withdrawn because they have not met the merits test. They probably do not know what that means but it means that the legal aid people have decided they do not have a good enough case to win and therefore they are not going to help.

Q466 Earl of Onslow: Do I understand that in some cases the Home Office does not bother to turn up to oppose the appellant? If that is the case, surely the Scarman rule on the liberty of the subject must apply? It is for the Crown to stop people being put inside and if they cannot be bothered to turn up you should give them bail straight away. If you did that with regularity, they would jolly well turn up.

Mrs Bird: I was talking about appeals, not bails as such. We often have a Home Office representative there for a bail hearing. I am talking generally when we have to hear somebody's asylum appeal, for example. The Home Office may not be represented. For bail hearing, yes, there is a Home Office representative. What we may not have is a bail summary. Then you are left with the presenting officer coming along and we post bail anyway although there is no bail summary.

Q467 Earl of Onslow: Does not the Scarman rule apply in black and white?

Mr Justice Hodge: Yes, but you would want to know where they are going to live, whether they have sureties, what the risk might be of them absconding. If you are satisfied with all those factors, I hope that they would be granted bail by the judges. There may be cases where even without a bail summary there is something which makes it rather doubtful. For instance, the person might be going to be removed in two weeks' time. There could be all sorts of things. In terms of representation by the Home Office, there was a time four or five years ago when it was pretty regular in asylum hearings that in only half of the cases they were represented. Now it is in the high nineties and sometimes there are blips, so nearly all the time we do get representation from the Home Office and it is virtually always on a fair basis.

Q468 Chairman: Is there anything you would like to add to what you have told us?

Mr Justice Hodge: No, I do not think so.

Chairman: Thank you very much.

Wednesday 21 February 2007

Members present:

Mr Andrew Dismore, in the Chair

Judd, L
Lester of Herne Hill, L
Plant of Highfield, L
Stern, B

Nia Griffith
Dr Evan Harris

Witnesses: **Mr Liam Byrne MP**, Minister of State for Immigration, Citizenship and Nationality, **Mr Matthew Coats**, Senior Director, Asylum, **Mr Jeremy Oppenheim**, Director, Social Policy (and IND Children's Champion) and **Mr Stuart Hyde**, Director, Enforcement, Home Office, examined.

Q469 Chairman: Good morning everybody. This is the last of our evidence sessions on our inquiry into the treatment of asylum seekers. We are joined this morning by Liam Byrne MP, Minister of State for Immigration, Citizenship and Nationality; Matthew Coats, Senior Director, Asylum; Jeremy Oppenheim, Director, Children's Champion; and Stuart Hyde, Director of Enforcement and Removal. Welcome to you all. Do you want to make any opening remarks, Liam?

Mr Byrne: Only to say, Chairman, that I am glad that we have been able to have this session. I know that it was the Committee's preference to have it substantially earlier, but I am afraid the UK Borders Bill second reading got in our way. I note too that there—

Q470 Chairman: Can you speak up?

Mr Byrne: I will try. I am actually quite ill so I am slightly deaf, I have a cough, and I cannot speak very much—

Q471 Chairman: We will get on fine then!

Mr Byrne: But I shall try and answer your questions to the best of my ability. There is some written evidence that we still need to get you and I will get you that as soon as I can. I know, too, that the Committee will have quite a lot of evidence that has been drawn from specific cases, and although it is difficult for me to speak about specific cases, I am more than happy not only to investigate but to write back to the Committee where there are examples that you think warrant some greater exploration. I think the last thing I wanted to say is that obviously this is a time of great change in the asylum system after the reforms that have been driven through over the last seven or eight years. We have arrived at a point now where the majority of initial decisions are taken in between one month and eight weeks instead of the 22 months that it was back in 1997, and we will be able to publish next Tuesday whether or not for 2006 we have hit our own target of removing more failed asylum seekers than we have received unmeritorious claims within the year. This is significant because of course it gives us a chance to work through the backlog of cases that have built up over the last few years. We announced some time last year that we had about 450,000 case files in warehouses in IND. That is not people of course,

many people will have multiple case files and some people will have left the country and a lot of people's claims will have been settled, and indeed we have now got the chance to work through that backlog over the next four or five years and Lin Homer provided her first update on our progress to date yesterday. Alongside that, we are introducing the new asylum model and we have said that it will be up and running across the country by the summer. In fact, we hope to have it up and running a little bit sooner than that. That has a lot of important benefits because one case worker becomes responsible for a decision and an individual from the beginning until the end. So I am very much hoping that we will be able to have the Committee's reflections and evidence so that as we finalise the implementation of the new asylum model we are able to draw on the lessons that you can teach us about how the system can be improved, because undoubtedly it can.

Q472 Chairman: Thank you for that. I ought to make clear for those who are observing our proceedings that we are looking at the treatment of asylum seekers, not who is or who is not an asylum seeker nor who should or should not be an asylum seeker; that is outside the terms of reference of this inquiry. Perhaps I can start by raising what we think is quite a serious gap between what is supposed to happen in principle and what is actually happening in practice. I think we have had quite a lot of evidence to suggest that this gap actually is there. We want to try and understand why this is happening. Some witnesses have suggested the problem is at the sharp end and in others that it is part of a deliberate strategy to treat asylum seekers rather badly so that they do not come to the UK in the first place, effectively acting as some sort of deterrent or that they leave as quickly as possible afterwards. Do you think there is a gap between policy and practice and, if so, why do you think this exists?

Mr Byrne: I am looking forward to the Committee's evidence on the subject. I think there are undoubtedly gaps between the implementation of policy and the policy itself and I think no-one was more blunt about his appraisal of that than the Home Secretary last year. When he said the Home Office in his estimation, and in particular IND was not fit for the future, he was talking precisely about

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the fact that very often practice did not follow policy. That said, there have been some remarkable challenges that IND in particular has had to respond to. Global migration has doubled since the 1960s, the number of asylum seekers claiming asylum in Britain experienced a dramatic increase in the mid to late 1990s, and the systems that the Government inherited were antiquated, frankly, so I think what the IND has been trying to do is not only deal with the surge in cases that were experienced in the 1990s but also rebuild a different system. If you look at the new asylum model, and I do not know if the Committee had a chance to visit any new asylum model offices, and if Committee members are interested I would recommend that, and Matthew would be delighted to organise that because it is the biggest process re-engineering job in government at the moment. It will introduce dramatic changes, it will make decisions much faster, and I think it will make decisions much fairer. If you were to ask me whether I suspect there is a gap between policy implementation and policy, then I think it is a matter of record that everyone from the Home Secretary down is pretty convinced that there is today and that is why the reform programme that John Reid has set out is so vitally important.

Q473 Chairman: Thank you for that concession. I think we will explore some of those issues in detail with you as we go along with you this morning. One fundamental problem is the question of destitution and we have had quite a lot of evidence that for thousands of individuals and indeed families who have unsuccessfully sought or are still seeking asylum in the UK many are homeless and they are dependent on the support of charity. Others who are here effectively illegally because their applications have been turned down are working illegally exploited by rogue employers. Do you think there is a case for saying that asylum seekers during the currency of their claim and refused asylum seekers whom we accept we cannot return because their home countries are not safe enough (and there are groups like that) should be allowed to work?

Mr Byrne: I do not think there is a case for saying that they should be allowed to work. I think that as we accelerate the time that it takes either to grant people asylum and begin their integration into the community or resolve their case and successfully have them leave the country, the case for that argument diminishes faster and faster each year. When we published the IND review in July last year, we set out some fairly ambitious targets for how quickly we wanted the process to work, so we said that by December next year we would be seeking to either grant and integrate or remove asylum seekers within six months¹. I think the great challenge that all countries in Europe have is that over the next 14 years in the run-up to 2020 about a billion young

people are going to join the labour market in the developing world according to the World Bank, and we know from the International Labour Organisation that people moving from a low-income country to a high-income country can increase their wages by about five-fold by moving in that way. So I think, if anything, the pressure on our borders is likely to grow in the future and because in this country we have got the longest unbroken record of economic growth since records began, we know that our economy is an attraction for people to come and work. I think the risk is that if we allow people who are claiming asylum also to work at the same time, then we create a risk that people will come to this country illegally and claim asylum in order simply to be able to work. I think that this is dangerous for a very simple reason: I think it is about 60 or 70% of asylum claims that are made are found to be unfounded and without merit and that is an enormously significant number, and the job that I think the Government has got is to preserve the integrity of the asylum system. We have a long and very proud tradition in this country of granting asylum and humanitarian protection to those who are fleeing persecution and torture. I think that if the system becomes a system in which there are a very high number of claims because there is this ability to work, that would be a mistake because the asylum system would come into disrepute, and the kind of politics that we saw put forward by the Conservative Party at the last election, when for heaven's sake the proposal was to renegotiate the 1951 Geneva Convention, will gain support because people will see that the asylum system is being abused, I think we have got to be very careful about creating the wrong kind of incentives to apply for asylum.

Q474 Chairman: What about the position of people who have been refused, who we accept we cannot send back? There are various countries—not many—where we simply say you are not an asylum seeker, however we accept that you cannot be returned. I am sure you get the same on the doorstep that I get which is the criticism that people are effectively living on benefits and they are not contributing and one of arguments that you can put back could be we could require them to work rather than making them dependent on benefits for as long as they are going to be here until they can be returned. That is one way of looking at because we know if we do not support them because the system of support is so weak—and we will explore that with you shortly—people inevitably are going to end up working illegally or get into trouble as a consequence simply to survive.

Mr Byrne: I have a different view to some people about which countries are safe to send people back to. The strange thing about my job is that there are very few parts of government where ministers are asked with such frequency to overturn decisions that are made by independent judges. I have a certain view of my own abilities but I do not think that my judgment is better than that rendered by an independent judge who has got the full facts in front of them, consideration, background on country

¹ *Footnote from Liam Byrne MP:* In my reply I mentioned that we had set fairly ambitious targets for how quickly we wanted to process asylum cases in the future. I would like to make clear that the target set for December of 2008 is that 60% of cases should lead to a grant of status or removal within six months.

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information, witness statements, the possibility to look at a cross-examination of a witness. I think that, by and large, independent judges have got a much more robust ability to determine where people should be returned to their country of origin. Events move very quickly in the world and I think that there are very few countries where we should not be sending people back, and actually I think if the situation in somebody's home country is such that they have a genuine and well-founded fear of persecution or worse, then surely the judge should be saying that they should be granted asylum.

Q475 Chairman: But that is not what is actually happening, is it? We have got cases where people have ended up in the UK as asylum seekers, their asylum application is refused and yet you the Home Office accept that it is not safe to send them back—Somalia, Zimbabwe—so they end up here in this limbo.

Mr Byrne: Let me take the example of Zimbabwe. We do not think in the Home Office that it is unsafe to return to Zimbabwe. In fact, there have been quite a large number of voluntary returns to Zimbabwe for which we have written the cheques. We are also contesting a case about enforced return to Zimbabwe and we are arguing that actually the evidence that we have leads us to believe that enforced return is safe to Zimbabwe. The courts have quite rightly exercised their discretion to challenge that judgment, and we are awaiting a decision from the court over the months to come². If you take Somalia, again Somalia is a country where there have been quite large numbers of voluntary returns and we have even successfully delivered enforced returns to Somaliland. David Triesman was appointed as the Prime Minister's Special Envoy on Returns and it underlines this point that actually we think that there are lots of ways in which it is possible for people to go back home. Sometimes that will require guarantees to be written about the individuals by a particular government, other times other strategies will be needed, but my view is that we should not be allowing people to work, we should be constantly exploring where courts have said people should be going home how to make sure that happens.

Q476 Chairman: And so we leave these people in limbo until that happens?

Mr Byrne: I would not call it limbo, I would call it active consideration. We are constantly seeking safe routes back to countries of origin, and that is what the Prime Minister has asked David Triesman to do.

Q477 Lord Lester of Herne Hill: My wife is an asylum judge and I am sure she will be glad to read your confidence in the judiciary. What puzzles me

about your answers so far, Minister, is the matter of common humanity and common sense. If someone is trapped here, whether because of Home Office mistakes or other reasons, if they are trapped here indefinitely, as a matter of common humanity and as a matter of common sense, should they not be allowed to work, perhaps even required to work, make their contribution and not be in a poverty trap during that period? As a matter of common humanity is that not what other Member States of the European Union in fact provide at the moment?

Mr Byrne: I think there are two premises there that I would slightly disagree with you on Lord Lester. The first is that I do not accept the use of the word "indefinitely". I do not believe that people are here trapped in a poverty trap indefinitely. I think the evidence which I have seen shows me that very often it is possible through diplomatic work to open up safe routes back to countries which are sometimes thought of by different groups within our society as impossible to remove to, and I think what David Triesman has done over the last year and a half has been excellent in opening up safe routes back. I think he has really challenged the notion that people face the prospect of being here indefinitely. I think David's success in getting safe routes back to northern Iraq and to Somaliland is evidence of that. The second risk that I just would point to is something I mentioned in my introductory remarks. I just think that there is an enormous danger that if people are given the ability to work then we will see this surge in abusive asylum claims, and I think that that would be very, very damaging for the asylum system and it is a very dangerous prospect in my view. If public confidence is allowed to ebb away from the asylum system any further frankly than it has already, then we are going to see the rise of far-right politics in this country in a way which is deeply uncomfortable. I see it in my own constituency already.

Q478 Baroness Stern: Thank you, Minister. I would like to go into a bit more detail now about accommodation and support. We have had a number of witnesses who have told us that you are still using the section 55 provisions to refuse support to asylum seekers, particularly in cases where the applicant is only claiming subsistence and not accommodation. Refugee organisations have reported to us that this policy leads to destitution for some asylum seekers. You say that there are a number of safeguards built into section 55 to protect the vulnerable. Could you tell us what these safeguards are and how they actually operate in practice.

Mr Byrne: I will ask Matthew to talk a little bit about the safeguards. I would find it very useful to see the Committee's reflections and evidence on the use of section 55 because I would like to see if the evidence the Committee has collected is painting a different picture to that picture which has been painted for me which is that section 55 is used very sparingly—180 cases only in fact over the last

² Footnote from Liam Byrne MP: In my reply I said that the courts were exercising their discretion to challenge our judgment on the safety of enforced returns to Zimbabwe. I should have said that our decision is currently being challenged in the courts. It will be for the courts to reach a view on the point taking account of the evidence provided by the parties to the appeal proceedings.

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quarter for which there are reported figures³. I think there was also a related issue that was put to me about whether IND is able to pay travel expenses because very often these interviews are conducted in Croydon, and I guess one of my slight concerns was that people might find themselves in something of a Catch-22, which I think is unreasonable, so I am able to say to the Committee that IND will be changing that policy and paying travel expenses to Croydon and introducing that shortly, but for the medium and long term the biggest change will be the introduction of a single caseworker, so where an asylum seeker has been dispersed to a particular part of the country, there will be a much greater proximity to their case worker. We plan to set up what are called “NAM hubs” by IND, but they are basically eight centres around the country where these new asylum model offices will be set up and that is where the case owner for the individual case will be based, so it will be much easier for people to be in touch and have these interviews conducted without the difficulties of travelling to Croydon. There are two changes I envisage: one, paying people’s travel expenses to Croydon so they can undertake these interviews; and, two, the better answer, that people are able to travel much more locally to see a caseworker who is conversant with the full details of their case. Matthew, do you want to say a little about the safeguards that are in place?

Mr Coats: As the Minister indicated, this only applies to a very small proportion of people and following clarification from the courts does not relate to accommodation, it is only in subsistence cases that it is applied⁴. The new asylum model will provide a more responsive and more local system. We do intend in the meantime to make sure that people can get to Croydon for existing claims and we do ask case workers to take into account the full circumstances of the case and for the applicant to have the opportunity to discuss that face-to-face to ensure that all of the information is known before section 55 is applied; and, as I have said, only in a very small proportion of cases do we use that.

Q479 Baroness Stern: Thank you. I will resist the temptation to ask supplementaries and proceed. I want to talk about supermarket vouchers. Section 4 support for refused asylum seekers is provided in the form of supermarket or luncheon vouchers to the value of £35 per week (I think that is right) and we have heard quite a lot of evidence that individuals cannot exchange these vouchers for things they need—culturally appropriate food, phone cards, winter clothing, bus fares and baby supplies. We

heard that the Home Office is responding to this problem by drafting regulations to specify circumstances in which extra support could be provided. Could you tell us what is your timetable for introducing additional support? Have you considered getting rid of the vouchers and giving people money instead?

Mr Byrne: I think it is important just to frame the answer to this question by saying that section 4 vouchers are made available to those who have had their appeal rights exhausted and so are individuals that from the IND’s point of view should be on their way home, but where we accept that there may be some barriers to that. In a very, very, very small number of cases there may be medical reasons. In other cases there may be further representations which have been lodged, and there is a real onus there I think on IND to dramatically step up the speed with which it is considering those representations. My own observations tell me that the way that these cases were dealt with in the past compounded the length of time it took to consider these cases because when cases are passed from one unit to another anybody who has got any training in process technology can tell you that if you build up queues within each unit it slows the overall process time down. That is why the new asylum model is so important because it is genuinely incumbent on the IND to accelerate the time that it takes to consider these representations so that the amount of time that people stay on section 4 support is very limited. The policy was designed, after all, for a very, very limited period of time and the fact that we have got people on section 4 support for extended periods of time is not good and where people are on extended periods of time on section 4 support because IND is taking too long to consider those representations, then that is just not acceptable, and IND has got to accelerate its consideration of those cases. I think the interpretation of the legislation is fairly clear that it is not possible to provide cash, but the Committee’s observations on the problems in exchanging vouchers for culturally appropriate products and childcare products would be really very welcome because we have been quite honest, I think, not only that IND has to raise its game but how long it is going to take in order to get in place the much faster decision-making time. It is going to take us about three or four years before we are able to consider 90% of cases either grant or removed within six months, so there is still going to be time ahead of us before we get these processes as slick as they should be. It is going to take us four or five years to work through the backlog of cases. The challenge that we have, I do not think, is to change the way that section 4 operates, but where there are problems with the way in which people can exchange vouchers for the basic necessities of life I think the Committee’s observations would be very welcome. Matthew, do you want to say a little bit about the timetable for the regulations and what you envisage?

Mr Coats: We are aware of the issues and, as the Minister says, we would welcome further observations from this Committee and beyond. We will be publishing a consultation on improvements

³ *Footnote from Liam Byrne MP:* In my reply I mentioned that section 55 is used very sparingly. I would like to make clear that my point was that very few cases are refused support because of section 55.

⁴ *Footnote from Liam Byrne MP:* In his reply Mr Coats mentioned the clarification from the courts on section 55. It would be more accurate to say that that clarification means that section 55 is unlikely to lead to the refusal of support in a case where accommodation is requested. The court judgments mean that support is most likely to be withheld in cases where subsistence only support is requested. This is because an alternative source of support is available in these cases.

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that we could make to the system of vouchers (rather than whether they are vouchers or cash) over the next few months⁵.

Q480 Baroness Stern: A very quick supplementary; have any of you ever been in a supermarket queuing up behind people who have got vouchers?

Mr Byrne: I have in my constituency.

Q481 Baroness Stern: You have stood in a supermarket and watched it?

Mr Byrne: In my constituency, yes.

Q482 Baroness Stern: Did you find it conducive to human dignity?

Mr Byrne: Actually in my constituency people do not really pay that much attention to that kind of thing. That is only a personal observation.

Q483 Baroness Stern: I want to talk about accommodation. We have heard that the quality of some of the accommodation provided under section 4 is appalling. We have heard about cases where there was no heating, leaks, ceilings falling down, and no locks on bedroom doors of shared accommodation. Do you recognise this as a problem and are you doing anything to bring section 4 accommodation up to a decent standard?

Mr Byrne: Jeremy might want to comment slightly, but the accommodation contracts for section 4 are being changed. As the Committee will know, there are two sets of contracts which are in place and the separate section 4 accommodation contracts will no longer exist by the end of this year, they will effectively have been merged in with the other housing contracts that we have in the field, but, Jeremy, it might be helpful for you to talk a little bit about the standards that we expect of contractors?

Mr Oppenheim: Broadly speaking, as the Minister has already said, the intention in IND is to bring the section 4 contracts in line with the wider contracts for asylum support which have standards which are set both nationally and locally, so there are some nationally set standards and of course individual housing authorities set local standards, and we expect all the accommodation that is procured to fit those standards, and they can be subject to internal inspection as well. So far as section 4 accommodation is concerned, the primary reason for some accommodation not being of a standard that we would wish was as much as anything else to do with the fairly large increase in demand in 2005. It was as a result of that that some of the accommodation that our providers made available has not been of a standard that any of us would wish, and that is why, as the Minister has said, we are moving the accommodation to providers that can do better.

Q484 Baroness Stern: Thank you very much. I want to ask you about asylum seekers with disabilities and other care needs. We have heard that they have encountered difficulties in getting appropriate accommodation and support from local authorities, especially in Scotland. How do you ensure that asylum seekers with care needs do not end up being passed between the Home Office and local authorities with neither accepting responsibility and each trying to wash their hands of them?

Mr Byrne: Can I just clarify something. Has it been the Committee's experience that these are asylum seekers who have applied for support under the National Assistance Act and where basically the local authority has said that because of the eligibility criteria that they have in place, the asylum seeker's need is not sufficiently great for them to qualify for care? Is it a problem with the operation of eligibility criteria, I suppose I am asking, in local authorities in the Committee's experience or is it a bit more complicated?

Q485 Baroness Stern: It is probably a bit more complicated.

Mr Byrne: Well, the basic position that we take is that where there are social care needs, either of children or of adults, then the courts have been fairly clear—I think it was in the case of *Westminster*—that the local authority has National Assistance Act obligations to the individual to conduct an assessment and to provide services where different thresholds of eligibility have been met. What IND does is ask on the application form for accommodation whether there are any particular needs that the individual has and then, as part of our contract with accommodation providers, we will ask for those needs to be met. In that basic position I suspect that in the real world there are instances of where people fall between the gaps, and having been the Social Care Minister in a previous role I would very much welcome the Committee's observations on where those gaps have been spotted, so that I can better understand whether it is a problem with eligibility criteria, which is obviously difficult for me to affect, but there may well be instances of where changes in IND processes and policy could actually help remedy some of the issues that the Committee has identified. One of the ways in which I think we will be able to do this is actually through a different kind of working relationship between local authorities. I grew up in a local government household. My father was a local authority chief executive and so I spent a lot of time in town halls when I was growing up, and one of my observations on IND over the last year is that I do not think that IND works effectively enough with local authorities and indeed a wide range of local stakeholders. That is not just on provision of support, it is on tackling illegal immigration, it is on community cohesion, it is in a number of different areas. In April, we will publish the business plan for the Agency for the next year. The IND becomes the Border and Immigration Agency, a shadow agency, on 1 April this year. One of the commitments I have ended up having to personally draft myself with Jeremy here

⁵ Footnote from Liam Byrne MP: In his reply Mr Coats mentioned that we would be consulting in the next few months. He would like to make clear that he was referring to the consultation that will be taking place on the draft regulations on additional needs.

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is the way in which we will work much more closely with local authorities in the months and years to come. I want to see a far greater use of local area agreements to tackle a whole range of issues—tackling the harm that illegal immigration causes, community cohesion, and this may well be another area where we can seek to set joint targets, joint protocols and joint processes with local authorities, and that is why the Committee’s observations in this field would be quite timely, germane and helpful.

Q486 Nia Griffith: Minister, we have also heard that there have been some difficulties where people have been transferring from section 95 support to section 4 support and what we would really like to know as this can sometimes leave families and pregnant women destitute; what exactly is your Department doing to resolve the problems?

Mr Byrne: Again this is an area where the Committee’s picture will be extremely helpful for me in order to contrast with the picture that I have been given. I think that the statistics that have been put in front of me do not seem enormously unreasonable in terms of the turn around time that it takes for people to move from one form of support to another. I have been told that the majority of cases that are classed as urgent, such as where somebody becomes street homeless, are turned around in one to two days, and that a good 45% of cases that are less urgent are turned around in three to five days. To me that sounds like we have got most of our cases fitting within the 21-day grace period. Again I suspect, as Andrew said in his opening remarks, there may well be evidence that you have come across where practice differs from policy and so the Committee’s views would be very helpful. Matthew, I do not know if you want to comment. One of the sources of optimism, I suppose, for the Committee in the months to come is the fact that this is precisely the kind of decision that again will not be split off and given to a unit in some other part of IND has got a bureaucrat rigmarole of its own. Actually this will be something that is again handed to the single case owner who is conversant with all of the background of the individual’s case and is therefore, I would have thought, much better able to make decisions about this kind of transition much, much faster.

Q487 Nia Griffith: Could I just ask before Matthew comes in, obviously we all know what is desirable; the question is what system have you got of quality control to ensure that it actually happens?

Mr Coats: The Minister refers to the cases in which we successfully meet the standards. None of us would want to under-estimate the impact on individuals for the cases that we did not and it is an issue that we take extremely seriously. As the Minister said, it is one of the strongest arguments for end-to-end case management so that you can track somebody through the case system and we are making sure that as part of the fulsome training for our newly recruited case workers, which many have finished and some are coming off the back now, an 11-week foundation programme in case management in asylum, that this is one of issues that

we tackle. Case owners need to make sure that there is close contact management, a close understanding of the individual circumstances rather than an understanding of the whole group, while making sure that the changes, not just between types of benefit but at every stage of the process as the case is progressed, are well-known and well-understood. We believe that that is the best way that we can ensure that not just we raise performance in this area but do truly take account of individual cases and avoid the types of thing that you have pointed to.

Mr Byrne: If the Committee would find it helpful, I would be happy to furnish just a little note explaining the process of improvements which have been already identified as required. Your question was about the quality control measures and, in essence, the basic quality control measures come down to a regular reprise of the statistics about how many cases have been settled inside the aspirational time windows that we have been set. We know that there are a number of cases that currently fall outside that time window and action plans have been put in place in order to remedy that, and if the Committee would find that helpful we would be more than happy to furnish that.

Q488 Dr Harris: I want to ask you about section 9 which, as you know, involves the withdrawal of support from families with children and therefore has the potential to leave people destitute and indeed separate families because local authorities can use Children Act-type powers to ensure that the children are looked after. Because I believe the Government was concerned about that potential impact, it was planned to pilot it, and those pilots have taken place. What have you found from the pilots in terms of those issues that I raised—destitution, family separation—and has the evaluation of pilots been published and, if not, why not?

Mr Byrne: The pilots have been conducted and the draft evaluation report has been published. It is currently with me.

Q489 Dr Harris: Being produced internally?

Mr Byrne: Yes the internal evaluation report has been produced and the draft is with me. I have some further questions about it and one of the things that I want to do before it is published is just test a few of the conclusions that it came to, with front-line staff in the respective pilot areas, so I hope that we can publish it over the next few months. Broadly, I think the conclusions are that the policy has not been a breakthrough policy in achieving its intended outcome which was to encourage people who did not have a right to be here to go home, but there equally have been some quite strong views put to me that it may be something that could, in some circumstances, be important to have. I need to test those conclusions a little bit further myself because obviously the pilot was conducted before I became the Minister, so broadly that is what the conclusions are and as soon as I have had a chance to go and speak to some people who have to do this day-to-day in the field, as soon as I am happy on what they have said to me, I will seek to publish it.

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Q490 Dr Harris: But is not the danger therefore that your view might be that you do not agree with the evaluation and you will want it redone? I do not think many people would consider that appropriate practice in the evaluation of pilots. The whole point of pilots is you do them, you complete them, you evaluate them, and you publish the evaluation, and if politicians—and I would be tempted as you would be—are able to say I do not like this evaluation for whatever reason, it is not evidence-based policy-making, is it?

Mr Byrne: That is a reasonable point. I would not prejudge the conclusion that I come to but, like any decisions that I make, I have to be held to account for it. If that was the decision I came to and that was the outcome that followed then I would have to be held accountable to it, but as I say at this stage I do not want to prejudge.

Q491 Dr Harris: What I am saying is if you publish the report and then give your decision and you are entitled to ignore the report or to only weigh it partially but to not publish it does make people think that the whole way these evaluations is done is brought into disrepute, perhaps not intentionally.

Mr Byrne: I understand that point. My commitment is to publish it and therefore make it clear that if the decision that I make is at odds with the evaluation report then hopefully that will make it easier to hold me accountable for the decision I have taken.

Q492 Dr Harris: This issue of evidence is an interesting area. You made a point earlier about asylum seekers and not wanting them to be allowed to work because that would lead to an increase in abusive claims. Do you have any evidence or can you point to any being commissioned by the Home Office to demonstrate, for example, allowing asylum seekers to work would lead to an increase in abusive claims?

Mr Byrne: Are we back on the first question?

Q493 Dr Harris: You said very clearly in answer to that question that you thought that allowing asylum seekers to work would lead to an increase in abusive claims. What evidence do you have that you can show us in the public domain that that is the case?

Mr Byrne: Well, I arrived at that decision myself on the basis of logic. I think that when you have got a situation where people are able to increase their income so substantially by moving from a low-income to a high-income country where we create opportunities to work and participate in the labour market, then human nature is that those opportunities will be thoroughly explored. I just think that is a perfectly logical conclusion to draw.

Q494 Chairman: Before you go on can I just come back to the section 9 point because you talk about the evidence that you may or may not publish.

Mr Byrne: No, I do not want the Committee to be in any doubt about my intention to publish the report. I will publish the report. What I do not want to do is prejudge the conclusions that I make on the basis of the evidence.

Q495 Chairman: Let me put to you the evidence that we have had from the Inter Agency Partnership. They tell us that the pilot has been applied to 113 families, the children of five families have been taken into care and separated from their parents. Some of those children and families have just disappeared and others are rendered destitute. This is *Kathy Come Home* territory that you applying to asylum seekers because they are an unpopular group. Is this a humane way to treat families with children put into care and separated from their parents?

Mr Byrne: As I say, I am not this morning going to prejudge the conclusions I make on the basis of the report because I think it is important that I understand it and test what it says with people in the field, but my commitment is to publish the report and the policies that we will adopt on the basis of it.

Q496 Chairman: I understand you are going to publish the report and your conclusions but I am putting to you a very simple question: is it right to take children away from their parents and put them into care simply because it suits your asylum policy?

Mr Byrne: I am just not going to answer that question in a simplistic way this morning. I am going to consider the report, I am going to take time to talk to people who have worked in the pilot and I am going to present to the Committee, if you would like that, and to the House a fulsome reflection, and I just think that is an intelligent way to approach policy.

Chairman: Perhaps you could look into those cases and let us know what happened to those five children in care and what happened to their parents. That would be very helpful to know.

Q497 Dr Harris: Can I just return to this question that really rolls around the same point about evidence. The more logical something seems the easier it would be to find the evidence and to do the research and to confirm what you might call these feelings of logic (or prejudice as other people might call it). I would like to ask you about your other assertion which is doing the right thing by some human rights groups would lead to an increase in the influence by far-right groups. What evidence do you have to back up your assertion that allowing asylum seekers to work and other such things, which you gave in response to Lord Lester, would increase the popularity of far-right groups? On that basis, what other things might government do rather than debate the issue as I am sure you would want to as well, with these far-right groups rather than just cede the point that they are seeking to make. Do you see the logical problem: if you say if you do not do this there will be more BNP, then that is argument for doing all sorts of things?

Mr Byrne: With respect to you Dr Harris, I think you are traducing my argument. I think what I sought to say, and I apologise to the Committee if I did not make this sufficiently clear and lucid, is that I believe that if asylum seekers had the ability to work then my view is that the number of abusive asylum claims would increase. I think that when you have a situation when already 70% of asylum claims are found to have no foundation, then we already have

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a world where there are a lot of abusive asylum claims, and if we then added an economic incentive to claim asylum, I think the number of abusive asylum claims would increase, and I think that when you have an asylum system that is under such pressure from abusive claims, that is source material for far-right groups to point to the asylum system and say, "Look, its very existence is causing this kind of abuse to take place." They would use this evidence in a very simplistic fashion on the kinds of leaflets that I see in Shard End in my constituency to peddle the politics of hate. I think that this House has got an obligation to make sure that the asylum system is not abused, that it is a system that has integrity so that actually its security is assured. At the last election we were very clear about our commitment to preserving the asylum system and we were very critical of mainstream Opposition parties who sought to undermine it by arguing that we should renegotiate the Geneva Convention.

Q498 Chairman: One last question on section 9. The pilot finished 18 months ago; why has it taken so long for you to produce report?

Mr Byrne: That is partly my fault because the agenda of reform that we have had in IND has not been light over the last few months and it would have been easy for me, I think, to issue the report and draw the conclusions quite quickly and get them out of there, but actually I think it is such an important subject, as the Committee has highlighted, that it is incumbent on me to understand it in detail. I hope to do that as soon as I can but I want to hold my hand up and say I am responsible and accountable for that.

Q499 Chairman: It is pretty important when children are taken away from their parents and put into care and their parents are left destitute on the streets.

Mr Byrne: Absolutely.

Q500 Lord Lester of Herne Hill: If I could, Minister, I would like to ask a few questions about child asylum seekers. First of all, as you know, the United Kingdom made a reservation to the Rights of the Child Convention basically excluding children and young people who are subject to immigration control from the protection of the Rights of the Child Convention. As you know, that reservation has been widely criticised not only by this Committee but by all of the Children's Commissioners and by the UN Committee on the Rights of the Child itself, which monitors the preservation of the Convention itself. Other countries have not entered a similar reservation and have managed perfectly well without it. The question is: how do you think it is justifiable to continue that broad reservation in place excluding this highly vulnerable group from the protection of the UN Convention?

Mr Byrne: The advice that I have been given is that if we were to remove this reservation it would effectively weaken our ability to argue that immigration control actually came first and that, second, we achieve the objectives that the

Convention has through different kinds of measure, so the fact that we have in place the Children's Act, the fact that we have in place a pretty sophisticated child protection regime in this country effectively allows us to provide and secure more than adequate protections for children who are unaccompanied asylum-seeking children. I think my slight concern, given those protections that we have in place, would be that to remove this reservation would be a gesture and nothing more.

Q501 Lord Lester of Herne Hill: In other words, I take your answer to be that we are in fact complying with the obligations under the Convention on the Rights of the Child and therefore the reservation does not matter. On that basis, can I then ask you the next question which is whether local authorities are being provided with sufficient resources to allow them to provide an appropriate package of care and support to separated asylum-seeking children? That is the first thing I want to ask you.

Mr Byrne: The rates of support that we provide—and I believe is adequate, it is not a figure that is conjured out of the air by IND, it is a figure that is discussed at some length with organisations like the Local Government Association—and the figures, for the Committee, are a weekly rate of £721.49 for under-16s and £323.12 for 16 to 17 year olds⁶. I think there is a related but slightly different question which is about whether overall the policy that IND has in place for unaccompanied asylum-seeking children is right, and I think there is quite a widespread view that changes are important. Changes in a number of areas—changes for example in the way that we concentrate unaccompanied asylum-seeking children in certain parts of the country. There are quite wide questions, I believe, about how we assess age and this is extremely important.

Q502 Lord Lester of Herne Hill: I will come to that.

Mr Byrne: You are going to come to that so let us pick that up in a second.

Q503 Lord Lester of Herne Hill: I am just focusing at the moment on resources and I will come to age in a moment.

Mr Byrne: Let us stick on resources. I think there are questions about whether the policy that we have adopted at the moment, particularly the concentration of unaccompanied asylum-seeking children in certain parts of the country is right. There are questions about whether that is the most expeditious form of policy, and to that end we will publish next week our consultation document on the future policy for unaccompanied asylum-seeking children. I think there is a strong argument for centres of excellence around the country which would allow us to move numbers potentially out of

⁶ Footnote from Liam Byrne MP: In my reply I mentioned the rates of support available to local authorities who are supporting unaccompanied asylum seeking children. I would like to make clear that those rates are maximum rates. Grants will be paid in respect of relevant expenditure lawfully incurred by a local authority within the standard maximum rates.

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the South East where we know there are particular pressures on children's services. I am satisfied that the basic rates of support that we have got in place are appropriate. There is of course on top the special circumstances grant which local authorities can apply for, for example where the particular configuration of local services means that there are not large numbers of foster parents locally, and those are arrangements that I talk about with the Local Government Association not infrequently, and which I think work quite well.

Q504 Lord Lester of Herne Hill: Will your proposals that you are going to make for the programme result in more resources being available to local authorities or fewer resources?

Mr Byrne: It certainly will not be fewer.

Q505 Lord Lester of Herne Hill: Will it be more?

Mr Byrne: But I think we have to recognise that the cost structure for providing adequate support for children is very, very different in different parts of the country and I think that suggests that a policy which leads to a sharp concentration of unaccompanied asylum-seeking children in the South East is not sensible.

Q506 Lord Lester of Herne Hill: My question is will it relate in more resources or not being available to local authorities?

Mr Byrne: Sadly, as the Immigration Minister it is difficult for me to change the local government settlement so I do not think there is recourse for me to change funding that way, nor do I have evidence that the rates we have published in the field are the wrong rates. It has been said to me that the way we support unaccompanied asylum-seeking children is expensive because we appear to be concentrating support for those children in parts of the public service economy with the highest overheads. I think the resources we do have in place in the field—and I am right in saying they are national standard rates, am I not, Jeremy?

Mr Oppenheim: Yes.

Mr Byrne:—could be used to provide far more effective support than they do at the moment.

Q507 Lord Lester of Herne Hill: Could I come to the question about determining the age of asylum seekers. First of all, by way of background, am I right in thinking there has been a dramatic increase in the proportion of unaccompanied or separated children whose age has been disputed by immigration officers in the last five years? The figures I have seen are 11% in 2001 and 43% in 2004. Is that right?

Mr Byrne: Yes, there is that increase.

Q508 Lord Lester of Herne Hill: How do you account for that?

Mr Byrne: I will invite Jeremy to give a little more detail on that. This would be one of the questions on which we consult in the document because there are different views about the most appropriate means of establishing age.

Q509 Lord Lester of Herne Hill: I promise I will come to that.

Mr Byrne: But it is so important, because we must not have adults in the children's system and nor must we have children in the adults' system.

Q510 Lord Lester of Herne Hill: And it must be lawful.

Mr Byrne: And it must be lawful. IND has made mistakes in this field in the past and I instructed IND to concede a recent court case where I thought we were in the wrong place.

Q511 Lord Lester of Herne Hill: The question I am asking is quite a narrow one: Why has there been this great increase in disputed age cases in the last five years?

Mr Oppenheim: I think there are three possible reasons. The first is that, over time, we have improved, with agencies who deal with children, our identification of what we call age disputed cases. Over time it has become something on which we have worked more closely with other agency partnerships in identifying. Secondly, there are some improved methods for revealing age disputed cases than there have been previously and I think that has been going on over the last three or four years. Lastly, I think there is a greater evidence of exploitation by people claiming to be one age when they are possibly another. There are significant incentives for people at the moment to claim to be younger than they are and part of the reform programme to which the Minister referred, which is being published next week, will attempt to address that.

Q512 Lord Lester of Herne Hill: The Home Office is proposing, is it not, to substitute the use of dental X-rays for visual assessment of the age of asylum applicants, in order, in the view of the Home Office, to improve the system for determining age? Is that right?

Mr Byrne: If the Committee will forgive me, I do not want to pre-judge the report that we will publish on Tuesday in its entirety. We do have to publish that report in full to the House first. I apologise but I do not want to undermine that commitment.

Q513 Lord Lester of Herne Hill: Let me put it another way. Am I right in thinking that IND has established a pilot scheme to assess the age disputed asylum seekers using X-rays?

Mr Byrne: I believe it is local authorities, is it not, Jeremy?

Mr Oppenheim: There are some local authorities which have used dental X-rays as a method of determining age. It is not IND that has undertaken that work; it is individual local authorities, who have to care for young people under the Children Act and who are determined not to have adults in their care system, nor to have young people who are under 18 in adult systems.

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Q514 Lord Lester of Herne Hill: It is right that the Royal College of Paediatrics and Child Health, the Royal College of Radiologists and the Office of the Children's Commissioner for England have all expressed concern about the use of X-rays, suggesting that the test would be inconclusive and intimidating and potentially harmful to the children concerned?

Mr Byrne: I will let Jeremy comment on the detail but we cannot get away from the fact that we must have in place the most effective system for determining a child's age. If it is true that a dental X-ray is able to establish with a more precise range an individual's age than, for example, any other form of X-ray or, indeed, any other form of determination, then I think we have to look very hard at that evidence because we cannot have adults in the children's system. To have adults in the children's system poses a serious threat to our obligation to protect children effectively. We have to look at which is in the best possible interest of the child.

Mr Oppenheim: As part of the development of the reform programme, we have been consulting closely with the Royal College of Dentistry and the Royal College of Paediatrics, as well as the Department of Health, all of whom are quite content to work with us on these issues and have not signalled implacable opposition. So far as the Office of the Children's Commissioner for England is also responsible for immigration matters for the devolved administrations—and we work through Sir Al Ainsley-Green—we are in discussions with the Children's Commissioner around these issues too. Whilst none of these has come to any resolute conclusion, they certainly have not come to a position of opposition.

Q515 Lord Lester of Herne Hill: Could you take into account when you reach a decision Minister the 200-page report by Jacqueline Bhabha and Nadine Finch: *Seeking Asylum Alone*, in which they suggest a holistic assessment would be preferable to any other in determining age. Will you take that into account?

Mr Byrne: Yes, absolutely. The consultation must produce a consensus about what is the most effective way of establishing the age of a child so that we do not have adults in the children's system.

Q516 Lord Lester of Herne Hill: A number of witnesses have expressed concern about the treatment of children during removals, including the fact that they are taken from their beds early in the morning in order to maintain an "element of surprise". We have also heard that there is anxiety created within schools and communities when children disappear without explanation. Do you consider that the early morning tactic, the surprise tactic is, first of all, legitimate, and, secondly, if it is legitimate, is it necessary?

Mr Byrne: First, I would say very genuinely that I am grateful for the way you have posed that question. Sometimes in this House, I am afraid to say, and sometimes in the media, individuals get trapped into an assertion that somehow

immigration officers behave inappropriately and somehow select families as soft targets. I have been out on early morning arrests because I think it is important for me as a minister to understand the consequences of decisions that I have made. Every immigration officer to whom I have ever talked has left me with an indelible impression that families are not a soft target; they are the hardest target. Immigration officers very typically have young families of their own and the process of going through arrest and deportation and detention, particularly if the parents are abusive and threaten violence and sometimes indeed threaten the health of the children, it is extremely emotionally distressing. The way immigration officers conduct themselves I think deserves the very highest praise because they conduct themselves with extreme professionalism in what is an extremely difficult and emotionally distressing job to do. This is a field of activity in IND's business where we have a balance to strike. I am of the view—and I have a young family, as the Committee knows, of my own—that the imperative should be to keep a family together. We have extensive arrangements with the International Organization for Migration and we offer, in my view, quite generous voluntary return packages. I do not know if the Committee have had the chance to hear from IOM, but IOM say to us that we are world leaders in the business of organising voluntary removal of people because of the integration support that we provide. But where that hand of support is pushed away and returns have to be enforced, then they have to be done as carefully and as sensitively as possible. That is why we seek to undertake pastoral visits, that is why we seek to liaise with schools and healthcare professionals where that is appropriate but when it comes to the process of arrest itself, there is a real premium in keeping a family unit together. The simple fact is that we are, in the work we are conducting, more likely to be able to arrest a family together early in the morning.

Q517 Chairman: When the immigration officers go to detain somebody in one of these dawn raids, are they given a time by which they have to complete the detention?

Mr Hyde: First and foremost, we do not conduct dawn raids and I would object to the use of that language. My staff, as the Minister has pointed out, take carefully the task they have to do. It is a very difficult and demanding task. They are not given a time limit by which they have to have somebody removed. We use the opportunity in the morning, which is the most likely time that the whole family will be together, so that the whole family can be kept together and retained together throughout their removal in order not just to protect their dignity and respect but also to protect their human rights. We do not set our staff a time limit by which they have to get people out of the house and back into detention.

Q518 Chairman: The reason I ask that question is that, time and again, we hear from families in Yarl's Wood—and we will come to some other questions about Yarl's Wood but this is a good time to raise

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this—that they were given very little time to get their belongings together. Effectively it was all done in half an hour: the father was sat to one side and not allowed to get his kit together, his wife had to pack for him, the children had to sort themselves out. I gained the impression from talking not just to one family but to a whole series of families that the whole thing was done in a rush: the immigration service were keen to get the whole thing over and done with, get them in a van and take them off to Yarl's Wood. My concern, as far as the children are concerned, is that that creates an absolutely terrifying scenario: the father sat on the bed, with the immigration officers effectively keeping him out of the frame, the mother very distraught, the children not knowing what is going on. They may have experienced similar things in their own country, even if they are failed asylum seekers, but what sort of impression is being treated in that way going to create on those children for the rest of their lives?

Mr Byrne: That is exactly why it would be totally wrong to give immigration a blunt target of time in order to conduct an arrest and removal. Even if I wanted to set such an abhorrent policy, I would not implement it. If you spend time with immigration officers who have come back from this work, you can read in their faces how emotionally drained they are. This kind of work is a very, very difficult job to do but they do it because it is Parliament's will. An independent judge has come to a decision about a family's right to be here and the prospects for their safe return. They have pushed away every type of voluntary support we have offered, support which the IOM says is world leading, so the parents have left us with no choice. When parents put their families in that position, then, I am sorry, these immigration officers are paid by Parliament to do a job and they do it well.

Q519 Chairman: That is not really answering the point. There may well not be a formal target, I accept what you say about that, but, in practice, time and again we heard from families in Yarl's Wood, from separate people, that they were given about half an hour to get their belongings together from their lives in this country and then they were off, and they felt there was time pressure. I fully accept that it may be imposing a great strain on your staff, it is obviously not a very pleasant job for anybody to be asked to do, but that is beside the point. The point here is that these families were given insufficient time to get themselves together. Why on earth is there time pressure to perform the operation? If there is not a formal target, which I accept, why do I have the impression from talking to these people that this is what is going on? Going back to my earlier question, is there a gap between what you think is going on and what is happening in practice? I am very pleased to hear that you go out yourself, but are you seeing the true picture or seeing the cleaned-up operation particularly for your benefit?

Mr Byrne: This is an important point and I genuinely appreciate the way you are putting it. If there is evidence that the Committee has of inappropriate arrest, then it is important that I look

at that evidence and satisfy myself that operations were performed as they should have been. I can say to the Committee, and I will ask Stuart to echo this so that you have it both from the Minister and the lead official in this area, that there is no time limit set, either as a matter of ministerial policy or of operational policy, in which immigration officers have to undertake this kind of activity.

Q520 Chairman: The welfare officer at Yarl's Wood told us that most of his time is spent in trying to track down the belongings of people in Yarl's Wood who had not been able to get their stuff together, and half the time he could not find the things that belonged to them because they had been stolen or the landlord had just chucked them away or whatever. He also told us that one of the barriers to people leaving Yarl's Wood voluntarily was the fact that they did not know what had happened to their possessions. If they knew what had happened to their possessions, they would have been able to pack their belongings together and they would be much more susceptible to being removed with less fuss. I see that you are nodding in response to those points. Not only is the account from the detainees in Yarl's Wood that they have this problem, it is corroborated by the welfare officer in Yarl's Wood that it is a problem. It is creating a problem further down the track—because if they do not have their belongings they will not go—and yet this is still happening.

Mr Byrne: Let me ask Stuart to answer the question on the operational detail and I will come back on the policies.

Mr Hyde: The only circumstances I can imagine when there will be some sense of urgency to get a family out of the accommodation would be if there was a risk assessment undertaken jointly with the police that would indicate there may be further difficulties with the local community if that is not conducted within a short time frame. I think that is a legitimate reason for us to move fairly swiftly, to undertake that piece of work and get that family out as quickly as possible so that we are not creating further pressures elsewhere. In relation to the property, the reason I was nodding is because I am more than aware that that is an issue and we have put a lot of things in place to try to ensure that property goes with the individuals and certainly I am aware that people have said that property within our estate needs to be moving with the people as quickly as possible. My detention managers are more than aware of the need to ensure safekeeping of property and ensure that the individual detainees know exactly where that property is. It is an important issue and it is important to those detainees and it is something that I hold very strongly with my detention managers.

Mr Byrne: The only point I would add is that we are often frustrated by a number of things when we are seeking to deport people who have no right to be here. Sometimes people apply for judicial review, which is their right; sometimes people become abusive and disruptive and it becomes difficult to persuade airlines to put them on; very often people will refuse to co-operate with the re-documentation

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process—and that is often one of the most difficult things to resolve because individuals will often have destroyed their documentation, their passport and so on. The more co-operation we can solicit from an individual, the easier and more efficient the process is for IND. If there are examples the Committee has of individuals being caused problems by our poor handling of their possessions which therefore jeopardises their co-operation with us, that would be extremely helpful to see, because that is precisely the kind of practical issue, if you like, that gap to which you alluded in your introductory remarks, that we have to iron out.

Chairman: I suggest you do what we did, which is to talk privately to the detainees in Yarl's Wood and they will tell you. They all said the same thing.

Q521 Baroness Stern: Mr Hyde said: "We do not conduct dawn raids." Of course dawn is a moveable feast and it was probably not the right word, but can you tell me what time you visit these families?

Mr Hyde: We will not undertake a visit before 6.30 in the morning unless there are extreme reasons which I think would have to be exceptional.

Q522 Baroness Stern: So 6.30.

Mr Hyde: Yes.

Baroness Stern: Thank you very much.

Q523 Lord Judd: This might be an appropriate moment to ask whether you, Minister, and the Government hold as one of the key commitments of government the interests and wellbeing of children.

Mr Byrne: The Government's commitment to the protection and welfare of children is set out very clearly in government policy and indeed in the Children Act. We in IND have an additional responsibility to ensure that the immigration laws which have been passed by Parliament are implemented.

Q524 Lord Judd: This brings us back, Minister, to the issue that has been referred to several times in this discussion, which is the difference between policy and implementation. How do you respond to the very specific point made by Her Majesty's Chief Inspector of Prisons that the child's welfare and development needs are not central to any decision about whether to detain a family or during the detention itself? They are not automatically taken into account when a decision is being made.

Mr Byrne: The task that Parliament has asked of the immigration service is to enforce the immigration rules. In undertaking that task, IND has to operate within the framework of child protection policy that is set out in legislation.

Q525 Lord Judd: The Chief Inspector is suggesting that it does not happen. I am asking you if you agree that it does not happen and, whether you agree or not, what you are doing to ensure that it does happen.

Mr Byrne: We rely extensively on the Chief Inspector's work and I think the way the Chief Inspector provides oversight for IND and its

detention policies and practices is both extremely effective and absolutely essential if we are going to execute the kind of reform that we envisage for IND over the next three or four years. The clarity and the force of Ann Owers' recommendations is something frankly that we have to replicate across the regulatory regime for the agency as a whole. One of the first decisions I took last year was to conclude that 11 different regulators for IND and inspectors for IND is ridiculous. There is no way we can achieve the kind of ambitious reform programme that we envisage for IND without far more effective scrutiny, transparency and oversight than we have today. That is why I propose to boil down the number of inspectors from 11 to a much smaller number—not one but possibly one or two—so that there is a much bigger and stronger inspectorate to provide the kind of transparency which I personally think, hitherto, IND has lacked and suffered from. I know that is a roundabout answer to your question but, as a direction of travel, we are probably on the same page.

Q526 Lord Judd: If we could get to more specific dimensions of the implementation of policies, can you give the Committee a categorical assurance that in all these reforms and all the streamlining about which we speak and to which you are so clearly committed there will be a determination to reduce or eliminate the detention of children and to ameliorate its worst effects?

Mr Byrne: Let me answer that question in two ways. First I am going to ask Jeremy to talk about our child safeguarding strategy. Second I want to take head-on this question of the detention of children. I will commit to this Committee that I will explore alternatives to the detention of children in the immigration detention centres which we have available. My own preference would be that when we organise voluntary check-in of families and children, people turn up. We recently organised—in Scotland, in fact—voluntary check-in arrangements for 141 individuals. One of them turned up. Where we have a situation where individuals like that are so determined to evade the instructions that they have been given by the immigration service, in accordance with laws passed by this House, these Houses, that sometimes we will have to detain people in order to remove them. It costs a great deal of money to the British taxpayer; it would be nice if we did not have to do it, it would be nice if people did indeed check in. In order to keep the families together, it is sometimes necessary to detain children. It is incumbent upon us to explore every possible means of securing that detention and effecting that removal without recourse to putting people in the immigration detention centres that we have. I hope to be able to announce over the next few weeks where and how we will explore those alternatives. Sometimes, in order to give effect to the immigration laws, we will need to detain children. If people checked in voluntarily, we would not need to do that. As a parent, it often makes me quite angry that parents are putting their children in that position. Where we have offered an IOM package of

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voluntary return that is worth thousands in integration assistance back in people's home countries, where we have organised voluntary returns and voluntary check-ins and parents then determine to continue to evade the laws, I think they are inflicting something which is unnecessary on their children. But, yes, we must do continue to explore alternatives because that is the right thing to do.

Q527 Lord Judd: There is a difference between saying that we must continue to explore and saying that the objective is that children should not be detained. In a very complex situation in which the demands on those working in the front line are very heavy, it is sometimes very important to set out in absolutely clear terms the guiding principle. The guiding principle, would you not agree, is that children should not be detained?

Mr Byrne: Until I see satisfactory evidence that we can enforce immigration laws without the need to detain children, then I cannot subscribe to that principle. That is why I am in the position of continuing to explore. Until I have found an alternative which works, then I cannot subscribe to that principle. I wish I could but I want to be honest with the Committee about the position I am in. Jeremy, do you want to say a little about child safeguarding, because I think that is important.

Mr Oppenheim: Stuart Hyde is a member of the DFES-led National Safeguarding Board. We are close to completing work within the agency, within the Immigration and Nationality Directorate, on an overall safeguarding strategy which will underpin both policies and practices around the organisation. There are other things we have done. Ministers have asked us to undertake a review of family removals, taking a general look at the most effective ways of undertaking family removals. That will be before ministers in the near future. To be clear with the Committee, children on their own are exceptionally rarely detained: they are detained as part of family groups. I think that is a key thing to say. Where a child comes to our attention or a young person who is unaccompanied, we will wait for the local authority to take up their responsibilities, and that may mean a young person is detained literally for a couple of hours, or in an exceptional circumstance—and it really is exceptional—overnight. But it is families with children that are detained. The third thing to which the Minister has already referred is a wide-ranging look at the way in which we treat unaccompanied asylum seeking children which is due to be published in consultation next week. The children's champion office which I head up, amongst other things, has a very robust approach to making sure the internal parts of the Immigration and Nationality Directorate are taking the views and taking account of children's needs in all that we do. I am accountable to the Director General directly and to the Minister for concerns that I have and my colleagues have around those areas and we report regularly to both. We retain the services of a professional adviser on children's issues, seconded from the London Borough of Croydon, an

experienced social work manager, and we have also commissioned the Central Office of Information to pick up a point I think the Chairman made about the impact of some of the things that we do on children and not just their parents. So we are looking at tools and ways in which to communicate more effectively with children directly about what is happening to them and to their families when they are involved in the immigration processes.

Q528 Lord Judd: Minister, you have spoken about your own family experiences and your feelings as a father. I am sure you would agree that in the very traumatic circumstances we are discussing, children are innocent victims, and therefore the guiding principle in all we are doing is that children who have been quite badly enough traumatised already should not inadvertently be still further traumatised. When you are asked by officials to authorise the detention of a child for more than 28 days, what are the criteria you use in coming to your decision? How often have you refused such a request for extended detention?

Mr Byrne: To date I have not refused any request for extended detention. The key thing on which I seek to satisfy myself is whether there is, in my opinion, a sufficiently sharp focus on successfully deporting the family. Because, in my view, if the officers or the officials are not considering clearly enough, for whatever reason—and it might not be things that are within their control or the ambit of things that they can change—things which are indeed going to act as a protracted barrier to that family's deportation, then we should not have them in detention. If people are not being clear enough about what the target date is for an individual's removal then, in my view, there is not sufficient reason for their continued detention. There have been occasions when I have had to refer things to the Director General where I have not been clear enough in my own mind that there is a sharp enough and clear enough strategy for people's deportation. The key thing I ask to see is the reason for why that family is in detention and why their detention is continuing and, second, the target date for the deportation. I have to say—and I am generalising now on the basis of documents I read each week—overwhelmingly the reason for extended detention is because the parents have decided to lodge a last minute judicial review. Very often, these are families who have gone through the tribunal process at great length. They will often have mounted judicial reviews before, but they are often lodging judicial reviews again at the last minute because they know it is an obstacle.

Q529 Lord Judd: You are saying, Minister, that in such circumstances these considerations must take precedence over any primary concern for the welfare of the child.

Mr Byrne: We constantly have to incorporate concerns for the welfare of the child in all of our activities; but we are not asked to do one job, we are asked to do two jobs. We are asked to enforce the immigration laws, as well as take regard for the welfare of the child.

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Q530 Lord Judd: And enforcing immigration laws takes precedence.

Mr Byrne: We have to balance the two.

Q531 Baroness Stern: When IND staff are deciding to detain someone, what factors do they take into account? I am particularly interested how they take into account whether the individual they are thinking about had been tortured before coming to the UK. Do they know that the individual they are thinking about has been tortured before coming to the UK?

Mr Byrne: I will ask Matthew to talk a little bit about some of the criteria for detention. Stuart, if you want to add anything, please do. I would like to confine my remarks to these: where individuals are detained, of course they have access to bail proceedings.

Q532 Baroness Stern: Yes, we are coming to that.

Mr Byrne: After seven days, people can apply for bail and IND must make its case to continue detention if we believe that is right. Where it is not right then an immigration judge will take the decision to free people. After the seven day period, there is then no limit on the number of re-applications for bail that an individual can make.

Q533 Baroness Stern: I think I heard you to say: we detain people not worrying too much about the information because we are confident that there will be a bail hearing in seven days and if we are wrong it will be put right at that stage. Is that basically what you said?

Mr Byrne: No, that is not what I am saying. I am going to ask Matthew to talk about the criteria for detention. I was trying to be helpful by saying that there are, of course, when we make these decisions, safeguards around them.

Mr Coats: We clearly take the decision about whether to detain extremely seriously. It is not something taken lightly. Individual circumstances in cases determine exactly the mixture of factors that we would take into account. I would point to two. The first is around risk to the public and to harm issues. We must take those into account as one of our first ports of call and the risk to the public that an individual might pose. We also look to those who might be removed quickly, where decisions may be processed through our fast-track process. Those would be the two that we would start with and there is a wide range of other issues that we would take into account around individual circumstances. We do not normally detain people where there is independent evidence that they have been tortured. We work closely with the Medical Foundation, for example, in understanding what processes should apply there. In the last few months, I have been out to talk to their senior officers about how they we can incorporate their concerns in the processes for torture survivors into our processes as we reform them. We accept that we have needed to improve that and I am confident that those working relationships between us and those groups have allowed us to reform and improve our processes.

Mr Hyde: Following a recent very helpful meeting with Dr Arnold, who has taken us to task on this issue—and I think quite rightly—I have issued further instructions to clarify the point with my staff, particularly those in detention centres, that where an allegation of torture has been made there is a reference back to the caseworker to ensure that is investigated properly. I have given some undertakings and both myself and Matthew will be undertaking a review of that activity over the next month or so. We have issued very strict instructions about what detention staff across our detention estate are required to do, and I can, if you wish, provide a copy of that for you.

Q534 Baroness Stern: As far as we can see, you detain people to facilitate their removal, even when they have reported whenever they should have, done everything they have been told to do, and seem not really to need to be detained in order to facilitate their removal. Can you comment on that?

Mr Byrne: I will ask Matthew to add something here, but I come back to my point about voluntary checking. The evidence we have, unfortunately—and I wish it were different—is that voluntary check in has not just failed but failed very dramatically, therefore, detention is part of the tool kit that is available for the immigration service. Detention is very, very expensive and we have to use it in a more sophisticated way. This is why a single case owner who is responsible for a decision from the beginning to the end has the potential to bring about a relationship with an individual and to get to know them in a different way than is possible when we ship cases between different units all over the country. I think this will allow us to use detention much more intelligently in the future, because I then have an individual case owner who I can call to account on whether they have delivered on the task on which they have been asked to deliver, and one person has the full evidence about an individual and a degree of a relationship too and is therefore able to call the decision in a far more accurate way.

Mr Coats: I would make two points. Firstly, one size can never fit all; we need to make individual decisions. Secondly, it is an unfortunate fact of life that many people will abscond when asked to be removed or the contact arrangements might break down in some other way. It is something that we must retain as a tool to be used by case members but the emphasis is on that: case owners need to make, in conjunction with colleagues in detention services and in some cases beyond, a good decision and a decision that is fit for that individual case. Where they make a judgment that that is what we need to do to effect the conclusion that is right for that case, then that is what we should do. That is what we are aiming to do and the way that we would use the resources that are available to IND for detaining people in the best possible way.

Q535 Baroness Stern: I have one more question on this, about people whose applications have been refused although we know that for the foreseeable future they cannot be returned to their country of

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origin. We have been presented with evidence that such people are detained, even though they are not at the moment going anywhere and might not go anywhere for a very considerable period of time—depending obviously on how well Lord Triesman does in his activities. Do you think it is a sensible use of your detention spaces and a sensible way to deal with such people, to keep them detained for so long?

Mr Byrne: In my experience, the courts take a pretty dim view of us detaining people without an immediate prospect of removal. I think immigration judges have a pretty good view about how quickly individuals can be returned to different countries and they quite rightly bail people where they do not believe there is, as I think the phrase is: “immediate prospect of removal”.

Mr Coats: The recollection I have, although we might well clarify it, is that it is a “prospect of imminent removal”.

Mr Byrne: Imminent removal. “Imminent” is the word I was looking for. The only cases I have come across where immigration judges have made the decision not to grant bail is where they have public protection concerns. This often arises in drug dealing and drug cases as well. I think the courts do a good job of holding us to account on this.

Q536 Lord Lester of Herne Hill: You may not know this, Minister—

Mr Byrne: You may disagree with what I have just said. I would be interested to hear.

Q537 Lord Lester of Herne Hill: One of the problems is that people are held unnecessarily and then they eventually finish up with an application for bail after they have been detained for a long time through no fault of their own and through Home Office mistakes. That is one of the problems. I will come back later to ask questions about the bail process but it is a problem if there are no internal policy safeguards to make sure there is no unnecessary detention, that, although the bail application is there at the end of the process, meanwhile people will have been unnecessarily deprived of their liberty. You need to have really good quality controls administratively in operating the system.

Mr Byrne: I think you need two things: a much stronger investment in the decision in the first place—and that means better trained case owners—and, second, we do need more robust scrutiny and accountability for IND. That is absolutely right.

Q538 Lord Judd: That brings me to one question I would like to ask. A significant number of our witnesses have expressed very real concern about the lack of judicial oversight of detention. Do you think, Minister, that it really is right that the decision to detain and to continue detaining an asylum seeker—which goes absolutely to the heart of that person’s liberty—should be entirely administrative?

Mr Byrne: Provided we have the ability for the courts to take a bail hearing after seven days, I think there is protection for the individuals. The detainees do have access to judicial review and obviously to *habeas corpus*, and that satisfies ECHR

requirements, article 5(4), but detained people are able to bring proceedings before the court to challenge the lawfulness of their detention, so I think we do have judicial safeguards in place.

Q539 Lord Judd: You said earlier in your evidence, very candidly—you have been very candid all through—that you thought that in some areas the judicial approach was better informed to make decisions than with the best will and the greatest commitment you could possibly be, and that therefore you would defer in certain spheres to the principle that judicial judgment should take precedence. If you are depriving people of liberty, which is absolutely central to all we stand for in this country of ours, is it really just an administrative decision?

Mr Byrne: I think there have to be judicial safeguards in place, which is precisely why I think the bail process is so important, and then, alongside that, I think it is important that where there are administrative decisions there is effective oversight, regulation and inspection of their decisions. I have been very open over the last 10 months about how I think the structure of accountability for IND is not strong enough and needs to be stronger in the future. On this question of detention, I think there is a balance to be struck. Where administrative decisions are made, they need to be subject to greater transparency and stronger inspection regimes than we have today, but, at the same time, we cannot allow simply open-ended administrative decisions to keep people in detention. We have to have a judicial aspect to the process which is why the bail hearings are so important. I come back to this point that, after the initial hearing, there is not a cap or a limit or an exclusion on people coming back over and over again to challenge that bail hearing, and it is important that we provide access and support for individuals to connect with legal advice—and that is a subject, Chairman, which you might come to shortly. So there is a balance to be struck, but I think preserving the bail process that we have is part of it. I do think that stronger oversight and accountability is the other half where administrative decisions are involved.

Q540 Chairman: Could we turn to Yarl’s Wood and our visit. First of all, I would like to ask you a more general question about changing contracts to run Yarl’s Wood. A letter we have had from the Home Office suggests that the cost of the contract is dropping significantly. I am not sure if that is sensitive; if not, I will mention it. It is dropping from £120 million to £85 million over eight years. The GMB have written to me expressing their concerns about the likely impact of this. They have been told there may well be redundancies and they are very concerned that the significant reduction in the cost of the contract will mean they will not be able to maintain the current standard of treatment of detainees and their safety. I have to say, we were very impressed by the staff you have. We thought they were doing an excellent job at Yarl’s Wood. They were very sympathetic and caring in their approach.

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They do not think they will have sufficient time to respond to detainees' welfare matters and the good practice of maintaining a dialogue with them, which obviously reduces the temperature at Yarl's Wood and makes what they are trying to do in terms of removal much easier.

Mr Byrne: I worked in government procurement for many years before I was elevated into this position and, if I may, on this particular question I will take advice from my Home Office lawyers as to whether I can talk about the commercial contract details in committee. If I could take that question away and write back to the Committee, I would be very grateful.

Q541 Chairman: If you would, because it is a matter of great concern. We were impressed by the staff we met. We thought they were doing a very good job and it would be a matter of real concern if they were not able to continue to provide a very high standard of service to the detainees. Following on from the question that Baroness Stern posed, could I ask you about people attending for routine immigration service interviews. In more than one case people turned up, as expected, on time for their interview and they were detained at the interview. Effectively, it looks as though they have been asked to go there under false pretences. One case, in particular, which stuck in my mind was that of a woman who was asked to make sure she brought her child with her to the interview because they wanted to talk to the child but in fact they were detained. They were not allowed to go back home to collect any possessions whatsoever and they were taken straight to Yarl's Wood with just the clothes they stood up in. Obviously you will not know that particular case, but is it right that detention interviews are effectively used under false pretences to detain people? The consequence of that, once that gets out, is that there will be a disincentive for people to turn up for routine interviews if they think they are going to be lifted there and then.

Mr Byrne: I hope it is not false pretences. People who are in the position of the individuals in the case you describe should be fully aware that if they are subject to detention and deportation at any time then they are individuals who are here in breach of immigration laws. They will have decisions that will have been made on their cases, so the position they are in is that they are subject to immigration control and they are subject to detention and deportation at any time. I do not think there is any misleading of people going on. I do not think there is any false pretence. I think we are pretty clear with people about the position they are in. Stuart, I do not know if you would like to add anything about reporting centres. I visit a lot of reporting centres and I think it is less disruptive for an individual. I understand that individuals may be surprised and they may not like that very much but I do not think we have ever misled these individuals about whether we think they should be in Britain or not.

Q542 Chairman: The point is this: if it gets out that you are likely to be detained there and then, people are less likely to co-operate. These are people who are co-operating. They are turning up. They have not broken the rules. They are co-operating and turning up for interviews. The net result, if it gets out that you are likely to be arrested at the interview, is that people will not turn up any more and that makes your problem harder.

Mr Byrne: I am not sure. It is not a secret that this happens. It is quite widely known. Our commitment is to extend monitoring to everybody claiming asylum by April this year, so the use of reporting centres will, if anything, grow and become more significant. It is the incentive structure that is at the root of your question.

Q543 Chairman: It is partly that. The other point I would like to make, which is a humanitarian point, is why on earth were they not allowed to go home to collect children's belongings and their clothes? In the case I told you about earlier on, they were taken straight to Yarl's Wood with the minimum amount of possessions. That surely is not a humane way to treat people who have not committed any criminal offence.

Mr Byrne: They have committed an offence.

Mr Hyde: My staff are tasked with undertaking the detention and removal of individuals who should not be in the UK, whose rights have gone through every conceivable right of appeal. It is down to them to choose the moment at which they make that intervention. We have just had a discussion about the value of going in at an early part of the morning, six or seven o'clock in the morning, and there are people who disagree with that. In fact the Children's Commissioner in Scotland had recommended the detention to be undertaken at a reporting centre over going to detain people from their home addresses. I think I need to leave them with that discretion of where they undertake that detention. In most reporting centres there are suitable facilities in order to effect that detention. In relation to the individual case—

Q544 Chairman: I would not ask you to comment on that.

Mr Hyde: I would be more than happy to look at that. There may be other circumstances.

Q545 Chairman: Could I give you one or two other examples. I do not expect you to comment on individual cases; my point is one of principle. Are people taken to collect their belongings before they are taken to the detention centre?

Mr Hyde: I would hope that my staff will do everything possible to reunite people with their possessions. I am more than happy to look at that individual case or any other case that the Committee has heard.

Q546 Chairman: Let me put another case to you, that of reuniting a breastfeeding mother with her breastfeeding child. While we were at Yarl's Wood we heard of one case where a breastfeeding mother

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was separated from her infant for several days when she was detained at an immigration interview. Can that be humane?

Mr Hyde: Certainly separating a breastfeeding child from a mother is something that is not acceptable. I do not know the circumstances, but again I am more than happy to look at that.

Q547 Chairman: Another case concerns somebody I spoke to personally. This is a mother at Yarl's Wood who was told, "Okay, get in the van, we're off to Heathrow." She asked if she could change her baby before they went and if she could get a jumper for her child and she was told, "No. Get in the van, we're off." When she got to Heathrow—she was at Heathrow for a long time—she asked for baby milk for the baby and none was produced. She was not allowed to take anything with her, so she was not allowed to get the baby milk before she left. Eventually, several hours later, at night, she was given milk but not the facilities for sterilising the baby's bottle. Ultimately, the whole process fell through, not through her fault, but she was brought back to Yarl's Wood afterwards anyway.

Mr Byrne: Again, that is not acceptable conduct. We need to look at the individual case, if you could provide that.

Q548 Chairman: I am putting to you various examples, but I would make the point that it is all very well saying you would like to hear from us about the evidence but you should see for yourself that evidence. You will see immigration cases, like us in our surgeries, but this is at the very difficult, sharp end. In our surgeries we will see far fewer of such cases. I do not approach this with rose-tinted spectacles: I know, just as well as you do, that some people are working the system, but have you gone to talk to people in Yarl's Wood, like we have done, privately, talking to asylum seekers and their families?

Mr Byrne: I have not yet had a chance to go to Yarl's Wood. I try to spend about one-quarter of my week on the road visiting different parts of IND. I have now completed visits of pretty much every local enforcement office and I am now going around most of our border departure points. My goal is to get around all our detention facilities. I have visited some already but I have not yet got to Yarl's Wood. I will make sure I do that.

Q549 Chairman: Bearing in mind that is where the children are detained with the families, it is essential that you talk to people there. We have many more of these stories. We all talked to people individually and privately without staff there—and we were very grateful for the facility that enabled us to do this.

Mr Byrne: It was important to do that.

Chairman: And it has enabled us to lift a stone and find a pretty horrible picture underneath. This is the gap between policy and practice.

Q550 Lord Lester of Herne Hill: Could I add one more example. A Pakistani family came in an unheated van from Scotland, overnight, an eight-hour journey, and by the time they arrived at Yarl's Wood, the woman, who spoke almost no English, was quite ill and has since been ill on a continuing basis. There were a whole lot of issues about that, but that journey in an unheated van for a family with young children sounded not the kind of thing you would expect in the United Kingdom.

Mr Byrne: No.

Q551 Nia Griffith: Whilst there was much that was very professional in Yarl's Wood, there did seem to be some areas of concern. One of the things that concerned us was the fact that it is a centre primarily for women but the regular GP is a male GP. Many women would find that unacceptable, particularly perhaps for religious reasons. They could request a female GP, but that would take a few days, and it seemed to me that a woman in that sort of circumstance should not have to be put in a position of making a special request. It should be standard procedure that they would be offered that facility. Perhaps that is something that could be looked into.

Mr Byrne: I completely agree with that point. The healthcare contract has now been reviewed. I think I am right in saying—I do not know if it is commercially confidential—that the new contract that is coming into place is with a practice where there is a full-time female GP because of that point.

Mr Coats: Yes, we are alive to the problem of a lack of female doctor facilities on a 24-hour basis and we are not the only department at the Home Office that has that difficulty. We have now made specific arrangements in order to overcome that but it is sometimes difficult to provide that service.

Q552 Chairman: We would like to ask you some questions about bail, but there was one particular question that was raised while we were at Yarl's Wood. There is a social worker permanently based at Yarl's Wood who produces reports but the reports never get to the immigration judges for making the decisions on bail applications. It seems to us bizarre that you have a process where you have reports being prepared on children's welfare which seem to disappear into the ether. They do not seem to be taken into account by yourselves in the decision-making process as to whether or not to authorise continued detention. They do not get to the immigration judges, as we heard from an immigration judge who practises at Yarl's Wood. She said she had never seen one and yet we know they are produced on all the children. Why are these welfare reports on children not made available on bail applications to the judges who sit at Yarl's Wood?

Mr Byrne: I was curious about this because my understanding was that the welfare reports are provided to the parents and I did not quite understand why the parents did not then furnish the court with them.

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Q553 Chairman: We are going to put some questions about the quality of representation and how people present their cases at appeal hearings but why is there not a system that those reports are made automatically available to the judge?

Mr Byrne: Because they are provided to the parents. Jeremy, perhaps you would like to add to that.

Mr Oppenheim: They are reports that are done independently by a Bedfordshire social worker. We pay Bedfordshire to provide the service. As the Minister has said, they are reports that we use to consider the welfare issues relating to children during the period of their detention and we do take them into account. The Minister takes them into account when he considers whether children should remain in detention beyond the 28th day, so they are taken into account by us, they do not go into the ether. But they do contain a lot of sensitive, private information, and it is not for us to present those reports to the bail hearing but it is absolutely for the parents to use them, should they wish to do so.

Q554 Lord Lester of Herne Hill: Just widening this to the whole bail procedure generally, we have heard evidence about the poor quality of Home Office representation at bail hearings, of cases where no Home Office representative turns up at all and therefore the immigration and asylum judge is not helped by anyone from the Home Office, or cases where the representation simply is not good enough to enable the judge to make an informed decision. That obviously has a bad effect on the applicant and on the Home Office and the general public. How does the Home Office monitor the quality of legal representation and what steps are being taken to deal with these obvious shortcomings?

Mr Byrne: I have heard these stories as well. Anybody who talks to immigration judges a lot will have heard these stories. It is completely unacceptable for a case to be listed and for the Home Office not to have been able to organise the file and the representation.

Q555 Lord Lester of Herne Hill: What are you doing about it?

Mr Byrne: I will ask Matthew to talk about the plan that is in place in order to remedy this. At the very least, it is disrespectful to the court and that is not a position that IND wants to be in.

Mr Coats: The Appeals Directorate sits within my managerial responsibility so I am familiar with the area. Firstly, as we move to a more regionalised way of organising IND, the role of the centre becomes increasingly quality assurance and consistency. That is true in the Appeals Directorate. We are bolstering our arrangements for doing that at the moment. The second point is that we take extremely seriously bail hearings and making sure that there is the proper working arrangements between the different caseworkers and the presenting officers to ensure that people have the right information at the right time in the right place, and considerable progress has been made in that area on bail hearings. Thirdly, we need to reform our systems to make sure that the people who are presenting the cases are the ones who

are intimately familiar with it. The new asylum model is an example of that, where the person who writes up and makes the decision is the one responsible for presenting it in court. We think that is a significant advance in giving a good service to the court in terms of the information we put forward and the way we do it. We have been through a revision process recently that has included internal candidates, those from other government departments and those from outside both of those external candidates. We had an excellent response for that. We recruited more than 300 people, I think, to do that job and they are finishing, as I said earlier, putting them through an 11-week foundation process. That takes account of all stages of the asylum process, from initial contact, through decision making, through to the appeals and Commission, the removal or the integration. We think that will help considerably over a period of time, although we have to make sure through our central Appeals Directorate and, indeed, what other managers do that we keep our ears open and are alive to the feedback from the tribunals and from our colleagues in DCA. We actively do that. I have been out to visit the courts a couple of times during my time, to understand how it works in practice, and through the centralised part of the Appeals Directorate we will make further improvements as we see how the revised arrangements, particularly for asylum, work.

Q556 Lord Lester of Herne Hill: That is very helpful. Could you be a bit more specific, because we would like to know what your firm expectations are as to what you intend to achieve by the end of this calendar year. Is it your expectation that by then you will ensure good Home Office representation in all cases that come before the immigration and asylum judiciary?

Mr Byrne: We have currently managed to achieve 98% representation. In the last financial year, we hit 98% representation in cases. This year it needs to be 100%. As Matthew said, and I think it is implicit in your question, it is not just making sure there is representation in 100% of cases, it is also making sure that there is quality presentation across the piece and particularly consistency of quality across the piece. In autumn this year, we will publish a new quality framework which will help us ensure that we have something objective against which to measure the kind of standards that we expect of our presenters.

Q557 Lord Lester of Herne Hill: You will not publish that until the autumn. Why can it not be published sooner than that?

Mr Byrne: Good question. Why can it not be published sooner than that?

Mr Coats: We will clarify that.

Q558 Lord Lester of Herne Hill: Bearing in mind that I live with an asylum judge, I do not believe it can be correct that in 98% of cases there is now Home Office representation. You might want to check that. My next question is about the access to

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legal advice and assistance and representation by applicants for bail hearings. We have had evidence that the amount of representation and the quality of representation is poor. That is the first point. The second point is that proven information about health reports, as has already been said by the Chairman, are not made available to the judge. How can a fair hearing take place on the right to liberty when there is so little support being given to help our vulnerable people to present their case? Is it not a matter of equal concern to the need for good Home Office representation, that there be good applicant representation as well?

Mr Byrne: I have heard this said as well. I hear it said in my own constituency. Very often the first thing, when I probe a little bit, is that it turns out the people have not only had access to legal support but have had access to two or three different firms of lawyers, and I then am told that the quality of the lawyers was terrible and that lawyers are generally evil people who are just looking for the money. On probing that sort of outrage and set of accusations, it then turns out—and I have had this experience on an all too frequent number of occasions in my own surgeries—people have not actually given a full account of the facts to their lawyers and this has sometimes been left to emerge in the courts. The difficulty I have is managing to gather an objective picture of what is going on.

Q559 Lord Lester of Herne Hill: Could I suggest you might go and look at what is happening in these bail application hearings at any one of the centres.

Mr Byrne: Yes, I am happy to do that.

Q560 Lord Lester of Herne Hill: For half a day. That leads to my next question, that one of the problems is getting the applicant before the judge when the applicant is at a detention centre. As a matter of experience, the judge sits there, waiting for several hours until the afternoon, by which time the applicant arrives. One of the ways of coping with that is by having video links between the immigration removal centre and the judge and I understand that that is to be introduced. Could you give us an idea of whether that is going to happen and what the timetable is?

Mr Byrne: I have indeed spent time in courts and plan to do so again in the future. Video links will be in all our centres by May and we hope that they will be operational in June. We completely agree with you that we think it will make a real difference to the efficiency of the process and reduce the burden on the courts' time.

Q561 Lord Lester of Herne Hill: Finally, the fast-track procedure. Obviously speed is desirable but so is fairness. We have had evidence suggesting that there are significant concerns about due process because of the speed of process, which makes it impossible to secure a fair hearing because there is not enough time for traumatised people to disclose the difficult, sensitive material they need to support their case. What would be your response to that concern?

Mr Byrne: It is obviously the Legal Services Commission that is responsible for the contract with the providers to provide prompt on-site legal advice. Where the Committee has evidence that that is not happening, it would be extremely helpful for me to review it so that I can challenge whether that contract is being monitored and implemented effectively.

Q562 Chairman: Could I come back to where we started. It is not that we have immigration controls—obviously we all accept that we need immigration controls and I think we all accept the argument that there are people who are trying to work the system and not comply with the rules—but our concern is to make sure that those who are in a vulnerable position, detained, living on very reduced benefits, are treated humanely. The real concern we have come to is that, whilst at one end we have a tough policy, underneath is the implementation of that policy and it does give the impression to some people that the policy implementation is simply to be mean and nasty to asylum seekers as a deterrent. I think broadly it is a question of trying to make sure that, whilst we have tough immigration controls, they are operated in a fair and humane way. Some of the examples perhaps may have surprised you and I hope you will go away and look at some of the things we have talked about⁷.

Mr Byrne: Thank you.

⁷ See Appendix 93.

Written evidence

1. Memorandum from Positive Action in Housing

CONCERNS OVER CROSS BORDER TRANSFERS OF IMMIGRATION DETAINEES

The issue

Immigration detention in the UK is without limit of time, without automatic judicial oversight and many in detention “have no idea at all” of the reasons for their detention and the possibilities for contesting it.¹

Immigration detainee transfers around the “detention estate” of the UK are common and appear to be becoming more frequent. These transfers exasperate the very extreme legal, emotional and psychological issues faced by detainees. Due to, among other factors, the distinctiveness of the Scottish legal system, transfers between detention facilities in the rest of the UK and Scotland are particularly problematic.

There has been much anecdotal evidence regarding detainees being held in several detention centres prior to removal or eventual release. As an organisation that assists in facilitating the bail process through which detainees are released Positive Action in Housing know that it is not uncommon for Dungavel to be the first and only experience some people have of Scotland.

In compiling the information below we have spoken with the Scottish Detainee Visitors (SDV) and The Law Centre Northern Ireland and thank them for their assistance.

The scale

From February to April 2006 SDV have visited and spoken to 50 people in Dungavel. Of these, 19 or 38% volunteered the information that they have been transferred to Dungavel from other detention centres in England. SDV have no way to assess if these figures are representative of all of those currently detained. Kate Alexander, (SDV Co-ordinator) feels these figures underestimate of the true scale of the issue as they do not take into account those who are detained elsewhere in the UK and taken to Dungavel without staying in another detention facility (an anecdotally common practice).

SDV also note that the frequency of transfers have increased during the last year. They see people detained in Dungavel, transferred to England and then, increasingly coming back to Dungavel for a second stay (having done a “tour of the asylum estate”).

Northern Ireland

At the end of December 2005 the ND announced a policy change, which has effectively meant that immigration detainees are no longer detained in NI, instead they are being transferred to Dungavel where they either remain or are again moved to England. Most often these are immigrants sans-papiers, or asylum seekers who are either detained whilst crossing the border to Eire or having been dawn raided.

It has been suggested that this policy may involve up to 15 people moving per day.²

The consequences

Legal representation

The effects of cross border transfers are to further “disempower the clients who are already the most vulnerable and have the least resources in society”.³

Detainees are often detained while they have no legal representation. Those that do have representation and are transferred to Scotland often have to choose between receiving sub-standard legal representation from England or taking on the task of finding new representation in Scotland.

Technically, the Law Centre Northern Ireland can still represent clients while in Scotland; they are under the same immigration ministry. In practice though, due to limited resources and funding restrictions, this is rarely possible. In addition, the majority of the transferees detained currently have no access to advisers at all before arriving into Dungavel. This means that with no expertise or knowledge of the legal system, often very limited English language skills and whilst recovering from the trauma of detention and the circumstances that forced them to flee from their country of origin, detainees must find fresh legal representation and ensure that they have the opportunity to exercise their full legal options. In Dungavel the assistance to do this is provided by a printed sheet with the names and contact details of a handful of immigration solicitors.

¹ Council of Europe Commissioner for Human Rights report on the UK. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=865235&BackColorInternet=99B5AD&BackColorIntranet=FABF45&BackColorLogged=FFC679>

² Information from the Law Centre Northern Ireland

³ Buster Cox, LCNI.

Detainees who have been transferred cross border often experience the standard of their legal representation declining. This is partly due to the fact that personal visits are not possible or that with overworked solicitors they experience the consequences of being “out of sight, out of mind”. As the Commissioner for Human Rights states *“it would take a particularly dedicated lawyer to venture from London . . . to the Scottish countryside to visit his client.”*

If a detainee does chose to change solicitor they risk their paper work being lost during transition. Also, some solicitors are un-cooperative when asked to transfer papers. While transferring between solicitors clients are most vulnerable to removal.

In some cases solicitors are unable to locate clients after a transfer. The Law Centre for Northern Ireland report cases where a detainee has been deported before their solicitor has been able to locate them. Like English solicitors, NI solicitors are unable to represent clients in any Scottish High Court proceedings, including Statutory Review.

Bail Applications

What little judicial oversight does exist comes from bail applications. The importance of securing access to this is reiterated by the Council of Europe Commissioner for Human Rights who wrote that *“it is essential that this possibility [of a bail application] be a real and not a virtual one and here I have a number of doubts”*.

Cross border transfers make it even more difficult for a bail application to be lodged as it physically separates detainees from the family and friends who may be willing to stand as cautioners. It also separates the detainee from what support networks who may be able to raise the money to be lodged as a bail bond.

Often, the only hope for judicial oversight through a bail application will depend on attracting the interest and good will of a stranger who answers a request made from a voluntary organisation.

Social/family contact

Cross border transfers cause and increase the disruption of support networks, including family, social, campaign and legal networks. People are detained without their families and or partners and then transferred; making family visits impossible

Once detained, family and friends of detainees often have no knowledge of where in the detention estate detainees are located. If they do find out it is often impossible for them to physically visit and in practice very difficult to maintain contact by telephone.

Many detainee support organisations believe that transfers are used to break the ties between detainees and supporters in a strategic attempt to facilitate removals. This is difficult to prove.

Transfers create total disorientation for detainees and increases stress. Scottish Detainee Visitors are often asked “What is Scotland” and “is this Britain”. SDV have taken atlas’ to show people where they were being held.

Transfer as punishment

It has been suggested that transfers are used as a punishment for taking part in protests, publicising cases through the media or hunger strikes. Again this is impossible to prove but anecdotal evidence is strong. It is certainly a belief strongly held by some detainee support organisations as well as by detainees themselves.

Detainees report being threatened with transfer as punishment and Positive Action in Housing is currently in touch with one Zimbabwean ex-detainee who was transferred to Dungavel having taken part in a hunger strike.

RECOMMENDATIONS

Positive Action in Housing and many of the organisations we work with would urge the Joint Committee on Human Rights:

- given the importance of a comprehensive picture of the use of detention and cross-border transfers to enable informed debate, MSPs should request that information should be made readily available on all those kept in immigration detention in Dungavel, including their detention histories;
- for colleagues in Northern Ireland, seek clarification on the process of transfers from Northern Ireland to Scotland and request that solicitors are kept fully informed of any transfer and subsequent move;
- call for an absolute end to detention transfer as punishment;

- request that detainee transfers be kept to an absolute minimum, with the rationale behind any transfer being made fully transparent; and
- support the request by the European Commissionaire for Human Rights that anyone kept in detention for three months should receive an automatic Judicial Review of that detention.

David Reilly

2 August 2006

2. Memorandum from the Chartered Institute of Housing

INTRODUCTION

The Chartered Institute of Housing is the professional body for people in the UK working in housing. The Institute has 20,000 members, working in housing associations, local authorities and the private sector.

The CIH has a strong interest in asylum issues. In 2003 we published a policy paper *Providing a Safe Haven—Housing asylum seekers and refugees* (a copy of which is attached to this submission), and we have lobbied the Home Office and also worked through the National Refugee Integration Forum to achieve the reforms called for in that paper.

More recently, in 2005 we published (with the Joseph Rowntree Foundation) a good practice guide to *Housing and Support Services for Asylum Seekers and Refugees*, based on investigation of existing good practice across the UK. Jointly with the Housing Associations Charitable Trust, we now have a project called Opening Doors, funded by the Housing Corporation and aimed at developing refugee and asylum-related work among housing associations.

Our submission to the committee is brief. We simply want to underline the seriousness of some of the problems the committee is investigating, on which it will no doubt receive detailed evidence from specialist bodies providing services to asylum seekers. Housing professionals are very concerned about public policy and public attitudes towards asylum seekers. Many have worked actively to address their housing and support needs, but often feel that they are working against the grain of government policy and in the face of hostility towards asylum seekers which is not challenged—and is often made worse—by government pronouncements.

We also see this issue against the wider background of policy on community cohesion. We have carried out a wide range of work in this area, including publishing good practice guidance to housing workers, and have contributed to Home Office working parties following the publication of the Cattle report.

CIH POLICY ON ASYLUM SEEKERS AND THE RESPONSE OF HOUSING PROFESSIONALS

Our 2003 policy paper *Providing a Safe Haven—Housing asylum seekers and refugees* called for a series of changes in policy towards asylum seekers, many of them still relevant. Our 2005 good practice guide *Housing and Support Services for Asylum Seekers and Refugees* gives advice on good practice to housing professionals, including advice on some of the issues covered by the Committee's inquiry. We draw on both these documents in covering relevant points of interest to the Committee.

Work in preparing the good practice guide in 2005 elicited well over 100 practical examples of local projects which accommodate and support asylum seekers and refugees, from places as far apart and as different as Glasgow and Bournemouth, Swansea and Bury. This (to CIH) surprising response indicates the well of sympathy which exists, despite the present climate, for receiving and supporting people who are escaping abuse and mistreatment in their countries of origin. Despite enormous problems, it would be wrong to draw the conclusion that there are no places in Britain where asylum seekers have been accepted by housing providers and—in many cases—local communities. Local authorities, often working with housing associations, have shown this is not the case in places such as Sheffield, Bolton and Leicester which have received many hundreds or thousands of asylum seekers and continue to do so.

ASYLUM SEEKERS—OVERALL ISSUES RELEVANT TO HUMAN RIGHTS

The aims of achieving “community cohesion” are not a key driver of government policy on asylum—all new proposals and policy statements should be tested from a “community cohesion” perspective as well as other considerations, eg whether they reduce or control numbers

We believe that community attitudes towards asylum seekers (and new migrants more generally) have recently become both a more problematic and an even more pressing issue, especially since the London bombings and other incidents. We believe that it is vital to recognise that integration of asylum seekers is an issue from “day one”. Unfortunately the government's refugee integration policy *Integration Matters* does not do this. There have been references to the principles of community cohesion in policy statements

by NASS,⁴ but while this may influence the locations to which asylum seekers are dispersed, and liaison arrangements with local authorities, it cannot be said to be a dominant consideration in asylum policy generally.

There are many examples of policy on asylum not be considered from a community cohesion perspective. An important example is destitution (see below). If policies lead to destitution, this inevitably means that asylum seekers become a burden on the community—they have no money, little to occupy their time, and are often young people. This is a recipe for problems.

Asylum seekers in the UK, if they are not actually in detention centres, are living in the community—whether in NASS accommodation or otherwise. The way in which they relate to that community—and *vice versa*—is of crucial importance in community cohesion. There are many examples of good practice at local level in seeking to prepare the way for and integrate asylum seekers (as documented in the CIH good practice guide),⁵ but unfortunately government policy does not properly recognise this need.

Now that community cohesion has been transferred to the Department of Communities and Local Government, there is further danger that policy towards asylum seekers will be seen as separate from that towards black and minority ethnic communities more generally.

Government should change the political message—stop referring to asylum seekers mainly as a problem to be controlled

One of the main characteristics of government policy is that it often fails to challenge popular misconceptions about asylum seekers—so that there is widespread misunderstanding about the extent to which asylum is being sought, and of who “asylum seekers” are—including much confusion with other types of entrant to the UK. Government needs to change the message—asylum seekers are people in need of protection, arriving in much smaller numbers than hitherto, and their protection is the hallmark of a civilised society.

It is particularly important to challenge misconceptions at a time of concern about immigration. As the statistics show, asylum represents a tiny proportion of entrants to the UK. The issue of employment-related immigration has become confused in people’s minds, and press coverage and (unfortunately) government pronouncements make this worse. CIH welcomes Secretary of State Ruth Kelly’s call for an “intelligent debate” on immigration—and trying to end this confusion should be one of its main elements.

An example of the problems that the government creates for itself through its political messages arises with the “Gateway” programme, under which numbers of refugees are accepted directly from refugee camps nominated by the UNHCR. There have been successful relocations of refugees from places such as West Africa and Myanmar/Burma to cities such as Sheffield and Bolton. The local authorities have worked hard, in partnership with housing associations and local ALMOs (arms length managers of the council housing stock) to accept, accommodate and help integrate these refugees, at government request. But it has been difficult for them to do so in the climate created by government messages about controlling asylum, and of course in the face of hostility from the national press. So far, the government has had limited success in extending the Gateway programme, probably for these reasons.

There is little positive media treatment of asylum seekers/refugees, eg successful examples of integration, host communities welcoming newcomers, etc—which would assist in assimilation and preparing host communities.

The issues about media treatment of asylum seekers were well-documented in the 2005 study by Roy Greenslade for IPPR.⁶ Again, if anything they have become worse since then. For example, in the wake of the London bombings the *Daily Express* (27 July) ran a headline “Bombers were all spongeing (sic) asylum seekers”, even before the identity of the suspects was even known. To the best of our knowledge the newspaper has not yet been criticised for this by the PCC. The impact of such headlines was the subject of an article in the trade magazine *Inside Housing*.⁷ Regrettably, there are few signs of any improvement as far as national newspapers are concerned.

Various resources exist on tackling media distortions, and these have proved useful at local level. Casual monitoring of local media suggests that coverage is often far better than at national level, and that it is easier to achieve positive coverage of “success stories”—such as that schools with a high proportion of asylum seeker children often have excellent exam results.

⁴ For example, in NASS Newsletter no.3, March 2004.

⁵ Perry, J (2005) *Housing and Support Services for Asylum Seekers and Refugees—A good practice guide*. CIH for the Joseph Rowntree Foundation.

⁶ Greenslade, R (2005) *Seeking Scapegoats—the Coverage of Asylum in the UK Press*. IPPR.

⁷ Perry, J *Refugees Deserve Support* in *Inside Housing*, 23 September 2005.

There have also been many examples of local newspapers taking up campaigns to help asylum seekers stay in their areas, where cases have been rejected by the Home Office. For example, the Sukula family in Bolton (the subject of a ruling under section 9 of the 2004 act—see below) were strongly supported by Bolton people and this was reflected in the *Manchester Evening News*, which ran a poll showing that 87% of its readers were in favour of the Sukulas being allowed to stay.⁸

The CIH good practice guide includes examples of resources for promoting better images of asylum seekers and of good practice in challenging poor coverage at local level.

Government should have targets which relate to matters other than control of numbers

It is remarkable that the government targets relating to asylum and refugees relate largely to the issue of controlling numbers, ending abuse of the system and dealing with applications more speedily. There is no specific target (known as Public Service Agreements or PSAs) that genuine asylum seekers should be properly identified and speedily offered safety, accommodation and support.

Similarly, although the government has a refugee integration strategy this is not reflected in its PSAs. More especially, even though the strategy depends for success on the collaboration of several departments, there is no means of securing cross-departmental commitment, as there is (for example) with community cohesion.

CIH wrote to the then immigration minister, Tony McNulty, on this issue earlier this year. Among other points we argued that:

- The Government consider making the refugee integration strategy a “cross-cutting” requirement applying to all arms of government, in a similar way to the policies relating to neighbourhood renewal and social exclusion.
- ODPM (now DCLG) and the Home Office could consider adopting refugee integration as one of the cross-cutting themes of Local Area Agreements—following the work already being done in one or two local authority areas.
- Departments could be asked to ensure that their BME-related policies refer explicitly to refugees, new migrants and (where appropriate) asylum seekers (for example, the various ODPM strategies and action plans in this area make little reference to refugees).

Unfortunately the minister did not agree to pursue these points.

ASYLUM SEEKERS—DESTITUTION

Government should end policies leading to withdrawal of accommodation and financial support and hence to destitution

There is growing evidence from a number of cities of destitution among asylum seekers because of lack of support, which may arise for various reasons. These cities include:

- *Coventry*—where a study of 38 destitute asylum seekers found that three-quarters were at the end of the asylum process and they had lost support.
- *Leicester*—where there were 168 similar cases, 68 of whom had been destitute for more than six months.
- *Newcastle* – more than 300 cases were estimated in a recent report.⁹

There are similar reports or unquantified assessments relating to both Leeds and Sheffield.

Inevitably the figures will fluctuate over time. In preparing the CIH good practice guide, we identified six reasons why destitution may occur:

- having to leave NASS accommodation because their asylum claim has failed but the government will not forcibly return them to their country;
- being rejected for “hard case” support or refusing it because of the conditions (for example, in cases where an asylum application is refused, but there is no safe route for the person to be sent home);
- wanting to proceed with a legal claim or appeal, but unable to access legal advice;
- NASS support being withdrawn before a decision on the asylum claim has been received (eg because the asylum seeker moved to another area without permission);
- cases rejected on appeal where further legal action (eg a “human rights” claim) is pending; and
- administrative errors (eg NASS believes an asylum case has come to an end but in fact the person has lodged an appeal).

⁸ The story is summarised in the article *Life on the Edge* in Inside Housing, 9 September 2005.

⁹ The Coventry and Leicester studies are cited in Perry (2005) (see above). The Newcastle figures are given in Prior, J (2006) *Destitute and Desperate*. A report for Open Door (North East).

Where asylum seekers (and especially families) are threatened with or become destitute, this not only affects the people themselves but also has a wider impact:

- housing and other professionals could be required to take what they believe are unprofessional actions in evicting people from accommodation in circumstances where they are still in need;
- communities are affected by the presence of destitute people without the means to support themselves (see above); and
- other asylum seekers, relatives, etc feel obliged to provide accommodation in support in trying circumstances—leading to overcrowding and further deprivation.

Destitution is we believe a growing problem causing hardship not only for the individuals but for the communities in which they live, and which unfairly have to suffer the consequences.

Making families destitute is unacceptable to housing and other professionals

Another development, which may not in practice have led to destitution but could in the future, is the piloting in northern England of a scheme deriving from section 9 of the 2004 Act, to withdraw accommodation from families refused asylum, who for various reasons have not left the country. This has caused considerable concern to housing authorities who would be obliged to evict the families because payment of their rent has been withdrawn, which is likely to lead both to destitution and to the children being taken into care. It is also thought to be in conflict with councils' obligations under the Children Act.

Eleven councils have written to the Home Secretary calling for the policy to be rescinded. At present some councils are continuing to provide accommodation while the scheme is reviewed, but it is understood that the families are no longer receiving benefits, so are dependent on charity.

Government should make much greater efforts to improve decision-making on asylum cases

Our investigations leading to the good practice guide convinced us that one of the main reasons why destitution occurs is that asylum seekers with strong asylum cases are being rejected, and are then unable or afraid to return to their home country. This point was made to us repeatedly by experienced workers dealing with destitution cases. The single biggest step which the government could take, to reduce destitution and improve community relations, would be to improve the quality of asylum decisions so that genuine cases are properly decided. Other organisations have more detailed expertise in this area, and will no doubt provide further evidence of poor decision-making.

The danger is that it, in putting the onus on fast rather than fair decisions, not only will the original decisions not be of better quality but the opportunities for asylum seekers to challenge them will be reduced.

ASYLUM SEEKERS—OTHER ACCOMMODATION AND SUPPORT ISSUES

Apart from the issue of destitution, CIH has a number of other concerns about access to and quality of accommodation for asylum seekers:

- *Insufficient control of accommodation quality in suppliers to NASS*—Since NASS issued new contracts this year, mainly to private suppliers, evidence has emerged of major problems in Glasgow and elsewhere of problems with the quality of accommodation and of families having to make sudden and unplanned moves.¹⁰ Much more effort is required to publish and enforce high standards of accommodation and support, rather than simply to achieve accommodation targets.
- *Basic housing advice should be provided to asylum seekers while still in NASS accommodation*—housing is such a complex issue, and the time for resolving it is so short, that asylum seekers should have basic advice before they receive a decision on their cases.
- *Time periods for resolving housing needs of approved applicants are too short*—the Home Office has been consistently told that the “28 day period” in which asylum seekers stay in NASS accommodation after a positive decision is too short, particularly as in most cases the time period is much shorter.
- *Little knowledge of housing circumstances of asylum seekers not in NASS accommodation*—generally the information available applies to asylum seekers accommodated by NASS, not those who live in the private sector (often in shared accommodation) and only receive subsistence support. This makes it very difficult to provide them with proper housing advice in the event that they receive a positive decision.
- *Forms of support are demeaning to asylum seekers*—dependence on NASS accommodation with very limited further support, or in some circumstances on vouchers, is very demeaning for asylum seekers and may worsen public perceptions of them. Because they cannot work or get access to welfare benefits, domestic equipment such as cookers and fridges has to be supplied in NASS accommodation. This creates tensions when (for example) other social housing tenants see them

¹⁰ Details of the Glasgow incidents are in the article *Out of the Frame* in *Inside Housing*, 18 August 2006.

receiving these for “free”, not realising that they live on support levels much less than those of income support. For this reason, CIH has joined other bodies in calling for asylum seekers to have the right to seek work.

- *Frequent moves lead to difficulties of access to other services*—where asylum seekers are moved between NASS providers, or are in unstable private accommodation, there is great difficulty in ensuring their access to schools, health services, etc. Accommodation problems are at the root of many of the other difficulties asylum seekers and refugees face.

The CIH would be pleased to supply further information to the Committee on these or other issues.

29 August 2006

3. Memorandum from Ayrshire Friends of Refugees Group

1. Our group feel that the Committee should look into the areas of use of detention, conditions of detention and removal of failed asylum seekers.

We understand in particular that the detention of children runs contrary to the United Nations Convention on the Rights of the Child.

We also believe very firmly that locking children up with their families is inherently harmful and should be avoided wherever possible. We also note that the UK Children’s Commissioners and the UK Chief Inspector of Prisons have also spoken out against the policy of detention, particularly where children are involved.

In the light of the above we would ask the Joint Committee to examine the work of the *All Party Parliamentary Group* report on Children and Refugees which we understand was published in July 2006.

Please give this matter of detention urgent consideration, and we hope you will, through your Committee’s work, be able to recommend an alternative policy.

2. The treatment of asylum seekers and refugees in some sections of the media is in our group’s view disgraceful.

It is our contention that some media coverage probably breaches the Race Relations Act.

We would ask that the Committee give some attention to how the reporting of asylum and refugee issues can become more balanced.

We also think that it would be useful for the Committee to comment on media coverage, and perhaps make some suggestions to bring about more responsible reporting in future.

21 August 2006

4. Memorandum from Reverend Gill Jackson, Director of Social Responsibility for the Diocese of Leicester

Allow me to introduce myself. I am Chair of the Leicester Multi-Agency Forum for Asylum Seekers and Refugees (which brings together about 40 agencies each month to share information and concerns about asylum seekers and refugees) and I also Chair the Leicester Voluntary Sector Forum for Asylum Seekers and Refugees (VSF). In addition to this I am Director of Social Responsibility for the Diocese of Leicester and within our diocese we run two projects for asylum seekers—one for women and another one, which is open to all asylum seekers and refugees.

I understand you are seeking submissions in relation to human rights concerns and the conditions of life for asylum seekers and failed asylum seekers in the UK and I would like to submit the two enclosed pieces of information as part of this submission.¹¹ The report on destitution amongst asylum seekers was written by myself on behalf of the VSF and I recently launched the report together with Sir Peter Soulsby MP. The report highlights the serious plight of asylum seekers in Leicester who have been refused leave to remain but who are too afraid to sign up to voluntarily return to their country of origin, ie they are not eligible for any support whatsoever, and they are left without food, shelter or medical support. You will note that we have over 150 asylum seekers who sleep on the streets of Leicester as a direct consequence of current policy. Their only source of food are projects such as our own or those run by the Red Cross and TocH—but the demand has been so great of late that our projects are currently completely out of food.

The bundle of press cuttings relates to a particular case in which the Bishop of Leicester and myself intervened. This case highlights a specific example of a human rights abuse where the young woman in question was twice forcibly put on a plane to be deported to the Congo, a country where she knows no one and doesn’t speak the language. Both times they tried to deport her without a passport and only the clothes she stood up in—despite the fact she is Zimbabwean and holds a Zimbabwean passport (she happened to

¹¹ Ev not printed.

be born in the Congo). This young woman is now awaiting the outcome of a judicial review (which I raised money to pay for)—but in the meantime she is not allowed to work; nor is she eligible for any benefits whatsoever (I have therefore had to ask for donations of food and money to keep her going for the past four months—we are still awaiting to hear from the court).

I hope these submissions will be of value to your inquiry. As Chair of the various asylum and refugee groups in Leicester I have a good overview of the lived experiences and issues faced by asylum seekers and refugees so do contact me if you would like any further details or information.

17 August 2006

5. Memorandum from the Campaign to Close Campsfield and the Barbed Wire Britain Network to End Refugee and Migrant Detention

I enclose evidence for your Committee's inquiry, submitted on behalf of the Campaign to Close Campsfield [immigration detention centre] and the Barbed Wire Britain Network to End Refugee and Migrant Detention.

As you will see, the document is brief, only four pages long, but it makes 24 quite distinct points. Given the brevity of this evidence and the difficulty of reducing it further I am not submitting a summary. A note about the Campaign and one recommendation are included.

NOTE

The Campaign to Close Campsfield is a local, Oxford-based organisation with no paid staff. Over the past 13 years it has obtained the support of the relevant elected and other civil organisations (Kidlington Parish Council, Oxford City Council, Oxfordshire County Council, Oxford & District Trades Union Council) for the demand that Campsfield should be closed on humanitarian and human rights grounds.

The demand for an end to immigration detention in the UK has been adopted by trade unions including the Transport and General Workers Union, MSF (now part of Amicus), National Association of Teachers in Further and Higher Education (part of UCU), National Union of Journalists, and National Association of Probation Officers, and is supported by the General Council of the Trades Union Congress (TUC Congress, September 2001).]

Referring to the JCHR's "Call for Evidence", section entitled "Use of detention and conditions of detention and methods of removal of failed asylum seekers"

We do not have the resources to compare the practice of detention against national or international conventions and treaties (ICESCR, CRC, ECHR etc). We do, however, reflect local experience and opinion on the rights and wrongs of detention in general terms (information from Asylum Welcome visitors, legal advisors including from Bail for Immigration Detainees Oxford, campaign visitors, friends and relatives). It is in this respect that we submit the following:

1. It is wrong to imprison for any length of time people without their being charged with an offence, or brought before a magistrate or judge, or being found guilty of an offence and sentenced to be imprisoned.
2. It is wrong to imprison anyone for an indefinite period.
3. These considerations bear particular weight in the case of asylum seekers, many of whom have been through hard, often traumatic experiences that have led them to exercise their right to seek asylum in this country.
4. This treatment of detained asylum seekers (and other detained migrants) is grossly unjust discrimination against them compared with the treatment afforded other residents of the UK.
5. As well as its being unjust—indeed partly as a result of this—the detention of people in these circumstances is very damaging to their morale, self-respect and health. There is considerable anecdotal evidence of this from detainees themselves (eg *Voices From Detention II*, Barbed Wire Britain, 2006), from their visitors, and from medical researchers (Mina Fazel and Derrick Silove: "Detention of refugees", *British Medical Journal*, 2006: 332: 251–252). As Dr Christina Pourgourides has put it: "Detention recreates the oppression people have fled from and is a hostile response to asylum seekers. It is associated with stress and distress, but whether that is a mental health disorder is debatable" (Royal College of Psychiatrists annual conference, 6 July 2003).
6. Complaints by detainees concerning inadequate medical care are frequent. They range from the universal dishing out by medical staff of Paracetamol to cover all eventualities, to neglect of serious conditions, and failure to take sufficiently seriously the statements of detainees about their health.

7. The depths of despair to which detainees may be driven by the fact of their detention is reflected in the increasing number of suicides (15 in the last five years) by immigration detainees, and the increasing number of instances of self-harm (*Driven to Desperate Measures, Institute of Race Relations, 2006*).

8. We do believe that families are indeed being targeted for detention prior to deportation because they are easy targets and make it easier for the government to raise the statistic of numbers of “failed asylum seekers” who are deported.

9. It is wrong in particular to imprison children.

10. It is apparent—although the government fails to provide proper statistics—that “ordinary” prisons are being used to detain immigration detainees, despite the fact that a few years ago the Home Secretary rightly denounced the practice as unacceptable and said it would end.

11. The UNHCR guideline is that immigration detention should be imposed only in exceptional circumstances and furthermore in any case should not exceed 48 hours. Practice in the UK is so grossly at variance with this advice that this deserves attention.

12. Many asylum applicants are detained despite the fact that they are not liable to deportation as their cases are still being considered by the government. As well as being wrong this is in breach of the government’s own stated policy.

13. The initial decision to detain is made by quite junior immigration officers. This is just the first encounter of an asylum applicant with the “culture of disbelief” and the often arbitrary decision-making that pervade the asylum regime in the UK. Many reports have referred to this phenomenon, eg *Seeking Asylum Is Not a Crime: Detention of People Who Have Sought Asylum, Amnesty, 2005*).

14. The same culture of disbelief can be observed in operation in the immigration courts when applications for bail and for refugee status are made. There is no apparent accountability for the decisions made by immigration judges. There is no record available to the public of what is said in court. Country information provided by reliable sources (Amnesty International, UNHCR, etc) is often ignored. Detainees are frequently sent back to known conflict areas, eg Sudan, Democratic Republic of the Congo, Somalia, Sri Lanka, with no regard to their experiences in those countries and what will happen to them.

15. Reductions in available legal aid and the speeding up of procedures have in the past few years made the asylum regime progressively more draconian and difficult for the individual asylum applicant to challenge, particularly when he or she is held in a detention centre. The process of detrimental changes continues even now. This would appear to undermine the UK’s obligation seriously to entertain individual applications for asylum.

16. Government statements that the decision to detain is reviewed regularly in each individual case are widely believed to be so wide of the mark that they would be better not made.

17. In general, rights for immigration detainees exist in print only and lack implementation. In the words of a lawyer who was detained: “It would be a delight to see at least some of them in action” (*The Rights of Immigration Detainees, Barbed Wire Britain, October 2006*).

18. Migrants are frequently moved from centre to centre, disrupting support they may receive from visitors, lawyers, etc. There were on average 34 movements of detainees every day during 2004 from and to Campsfield, which has space for 190 detainees. The number of 25 given by the IMB for Campsfield for 2005 excludes visits to hospitals, court hearings, interviews, etc. No reasons are given for this merry-go-round but it must be lucrative for the transport providers.

19. The personnel of the private companies that transport detainees between centres and to airports often inflict violence on the detainees. Covert television reporting has exposed this, and reports by organisations such as the Medical Foundation for the Victims of Torture (*Harm on Removal: Excessive Force Against Failed Asylum Seekers, October 2004*) and Bail for Immigration Detainees have given details of individual instances; there are civil legal cases in progress that arise out of this practice. Newspaper reporting (again, of necessity, covert as the government is strongly opposed to reporting of what happens inside detention centres) and detainees’ accounts also report the racism of some detention guards.

20. Arising from the above, and always ensuring that detainees’ own interests and wishes as regards anonymity are observed, detention centres should be opened up to independent reporters and researchers.

21. We are most concerned that the fourfold increase under this government of the use of detention appears to have been driven in part by the interests of commercial companies offering to build and/or run detention centres. See Christine Bacon: *The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies*, working paper 27, RSC, Oxford; also *VOICES II*, introduction). Furthermore, companies are awarded contracts here when they have been heavily criticised for their operations both here and in other parts of the world.

22. The JCHR inquiry is into the treatment of asylum seekers, but much of the above applies also in the case of other migrants detained who are not seeking asylum but may be “overstayers” or otherwise “undocumented migrants”. They are often seized from their workplaces or, like asylum seekers, from their homes or even in the street for paperwork irregularities. They are parted from their families and possessions, and taken by security van to a detention centre with no information about what will happen to them next. They may have come here legally, established a family, and stayed on without regularising their position.

Removing a person to a country they have not been in for maybe eight or more years is a punitive process that breaks up families and creates dependence on the state for those left with no breadwinner (information from Bail for Immigration Detainees).

23. Given the foreign nationality and the ethnicity of asylum detainees, the catalogue of injustices in this area—when compared with what faces other residents of the UK—amount to a systematic practice of racial discrimination by the state.

24. In terms of the combination of the numbers of asylum seekers detained, the lack of judicial oversight, and the duration of detention, the UK's practice in the matter of detaining asylum seekers is among the worst, if not the worst, in the European Union.

RECOMMENDATION

That the Joint Committee on Human Rights should declare that government policy on detention of asylum seekers is incompatible with exercising the recognition of human rights.

September 2006

6. Memorandum from Your Homes Newcastle

Your Homes Newcastle is concerned primarily around issues affecting:

ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

Issues already identified regarding 555 of the NIA Act 2002 have been addressed I feel, by pressure of the population which noted inappropriate treatment of people, as well as the decisions of the courts. The application of S9 of the 2004 legislation has similarly been deferred due to the prospect of families being broken up and children taken into care. The pilot (set for three months and now 15 months later we are no nearer an evaluation of the pilot) appears to have ensured that the issue has been “kicked into the long grass”. What should we learn from the evaluation and the social impact of the proposals and of the application of the scheme? This need to be concluded and evidence provided as to the outcomes.

YHN is also concerned that for failed cases the only form of financial support offered to Section 4 or “hard case” clients is in the form of vouchers. I am given to understand that there is no legal basis for providing cash so does this need to be changed? Many outlets will not offer change so the £35 per head (or so) will go even less far and people are left with no options as to how they obtain their food—as they will not even have cash for public transport. This cannot be right. In today's society there should be more tolerance in providing support. Even a smart card facility would assist as there would be an avoidance of the loss of change and people could shop with sureness about what they have spent In the early days of the dispersal system there were limits on the level of cash support which were changed—why not here?

Single people who have failed and are not seeking section 4 support are left to their own devices as to how they are supported—not having access to any public funds. In the North East—the Open Door publication *Desperate and Destitute* identified that there is an increasing underclass of people living roofless and in financially desperate circumstances. It was estimated that some 300 people were living in such circumstances. The Government is creating an underclass whilst driving forward on other social reform and social exclusion issues yet ignoring this one.

Notice to Quit accommodation has only improved a little from the early dispersal dates. I provided Lord Best with evidence of inadequate notice periods to clients following initial notification to us from the Home Office. We still serve many seven-day notices which is not enough time to set up onward moves. The prescribed period of 28 or 21 days is seldom adhered to and government must do more to facilitate better cessation of support which in turn will lead to improved move-on/integration issues being dealt with.

DETENTION AND REMOVALS

We have seen evidence of poor methods of removal employed by the UKIS. We have heard detailed accounts of families being herded like cattle into waiting vans in the early hours without time given for families to get dressed or to gather personal effects. We are not inundated with such case examples but there is a need to minimise such examples.

The detention of children is something which the government needs to address. These children have hitherto been living in the community, attending school and making friends. The next day they are locked up without adequate reason. The impact of these actions can only be imagined but they and their families are not offenders/criminals or do they pose threats. They have exhausted their appeal rights but are treated like criminals.

TREATMENT BY THE MEDIA

The government have failed in not doing enough to play down the issue of asylum in the media. At times they have added fuel to this particular fire by using terms like “Floods of people” Whilst this is to be expected whilst operating in a political area, at an operational level via officers, terms like “Stock of clients” or “batches of people to be dispersed” only serve to underpin the Home Office’s view of inequality and less deserving people by the use of such derogatory and unacceptable terms. We in Newcastle have a positive approach to the work with the media including TV, radio, and the local press and we take the opportunity to show what positive approaches can mean for the local economy, schools and the general population. This may be more difficult at a national level especially when the issues get merged with others like migration but this is why organisations like government have to work harder at it.

Vin Tottori
Manager Asylum Seekers Services

6 September 2006

7. Letter from Rev Dr Iain Whyte

I have already submitted, with two colleagues, a detailed report on the treatment of some Zimbabwean asylum seekers. I wish to add to it the following comment by a young woman from the Congo we shall call Rose. She stayed with us and told us how her father and husband were killed by the present President of the Republic of the Congo. She is convinced that she will be killed if she is returned.

Rose has constantly been in touch with organisations in Scotland who assist asylum seekers. They have accompanied her to the Immigration Centre in Glasgow to which she reports every Tuesday. She told me recently that the officials there take her mobile phone from her during her time there, thus preventing any communication with the outside. She tells me that this is now policy for all asylum seekers. I regard this as a sinister development in the continuing violation of human rights. If she was to be removed in a van from the centre she simply “disappears” and anything can be done to her. As you know, as opposed to those charged with criminal offences, no asylum seekers have the right of appeal or redress against being moved anywhere against their will.

Rev Dr Iain Whyte

8 September 2006

8. Memorandum from Ingrid Eades

CONCERNING MR A FROM AFGHANISTAN

I will briefly set out the background, which explains why Mr A came to England.

Mr A is from Kabul, where his father was a member of the administration and a KGB member during the Russian occupation. His father was murdered by the Mujahadin in 1992 when they came to power. Mr A was at that time studying to become a doctor.

The family—the mother, her three sons and one daughter—fled to Pakistan where they had an uncle. The mother and one son returned to Kabul for a funeral in 1999, where the son was taken by the Taliban and killed. The same year, in Pakistan, another brother was taken and is presumed to be dead. At this point, Mr A fled to England with the help of an agent.

He arrived in this country on 2 February 2000 and claimed asylum immediately. His request was lost by Immigration so he was not interviewed until September 2002 and a decision was given against him in December 2003. The fact that he was not interviewed immediately was subsequently held against him, although he has proof that he applied immediately.

He lived and worked in Manchester until January 2005, when he was taken to Campsfield House Removal Centre.

On 5 February 2005, he was taken to Manchester airport to be deported. In the terminal waiting room, he resisted an attempt to take him out to the plane by holding on to the arms of a chair. Three men picked him up by force. On the runway, two men held his arms and one his head. When he resisted, two more came and put him on the ground. When he shouted to them that they were breaking his arm, they increased the pressure. One hit his head with his knee so that it hit the ground. He lost consciousness briefly and, when he came to, he found himself handcuffed. On the plane, the steward refused to take him.

Back at the terminal building, a nurse gave him some medication. He felt very nauseous, dizzy and close to losing consciousness. Police came but did not interview him as he was not well enough. The police were told by those holding him that they had been forced to restrain him as he had bitten them, which was untrue.

He was taken to a hospital or medical unit some 10 minutes from the airport. When told by his guard that he was a failed asylum seeker who had resisted deportation, the doctor to whom he was taken refused to examine him or give him medication, simply putting his arm in a sling (his shoulder had been dislocated).

He was held at Manchester Airport for between four to seven days, he isn't sure exactly. During this time he phoned his solicitor and a friend. They were not allowed to see him but complained about his treatment by phone. This resulted in a visit from the guard who had injured him, who threatened him with more violence if he spoke to anyone about his treatment. Mr A was told that they could keep him there for a long time and nobody would know or care. If he left, he would inevitably return, and this guard would be waiting for him.

A nurse checked that he could move his arm, took off his sling, and he was sent back to Campsfield House, where he was given a check-up, sent for a shoulder x-ray and given anti-depressants.

In June of 2005, a young Turkish boy, whom Mr A had taken under his wing, hanged himself in the adjoining room. Mr A had been talking to him for several hours before his death and was one of those who found him and took him down. He was severely traumatised by this, needing high-dose anti-depressants to sleep. In the midst of these traumas, in early July, Immigration tried to deport him yet again, despite the fact that the Judicial Review oral hearing had not taken place. The local MP, Dr Evan Harris, managed to stop the deportation this time.

The doctor at Campsfield wrote to Immigration pointing out that Mr A was not in a fit state to be detained, and BID also applied pressure. He was then released back to Manchester on 10 July and saw his doctor, who made an appointment for him at the local mental hospital. He also went to see his local MP who told him he could not help him as there were no problems in Afghanistan.

However, before he could attend the hospital, he was arrested again when he went to sign at the police station (Friday 5 August). He was driven again to Campsfield House, where the manager refused to take him. He was then taken to Harmondsworth Removals Centre, where Immigration told him of their determination to deport him. His drugs were taken from him on arrival and, despite asking every day, they were not replaced for five days. As a result he suffered from severe headaches and shaking with severe pain in his eyes and teeth. He also coughed up some blood and his mental condition deteriorated. A blood test was taken though he was not given the results.

An application for an oral hearing was lodged and accepted at the High Court—largely, I think, because it was recognised that he had had some very dubious solicitors, to whom he had paid about £6,000. He was released back to Manchester pending his Oral Hearing at the High Court. A date has not been set for this yet.

It is now 18 months since the episode at Manchester Airport, and Mr A's health has simply deteriorated. His headaches are severe and constant, and the pain travels down his spine and arm. He has constant nausea, lack of appetite, short-term memory loss (he cannot remember things for longer than five or 10 minutes), insomnia, shaking and spells of blindness. In short, he is unable to function. He is on anti-depressants and pain-killers and sees a psychotherapist or counsellor every fortnight but, at the time of writing, has not had any brain or neurological tests. (This could now change as I have written to his GP and moves are underway to test him further). He is fortunate in having a compatriot who houses and supports him, for he receives no financial help from the authorities. He received some financial support during the first two years here, but after that found a job and paid taxes. He now has no work permit, but his health would not allow him to work at the moment.

Immigration judges told Mr A that Afghanistan is now a safe country; he knows differently. He knows that, on arrival, he would be asked his father's job and that he wouldn't last very long.

In terms of the focus of your enquiry, Mr A would seem to have suffered human rights abuses on points 1, 2 and 3. The method of his attempted removal was brutal (Articles 3 and 8 of the ECHR), he continued to be detained whilst he was clearly medically unfit (possibly Article 8 again), he has not received the medical attention his condition would warrant, having had no neurological or brain tests (possibly Article 14), and has had no financial support since 2001. He is in a pitiable condition, which seems to date from his attempted removal on 5.2.05.

Ingrid Eades

(Mr A's English teacher at Campsfield House in 2005)

20 September 2006

9. Memorandum from members of the Britain Zimbabwe Society

We have pleasure in enclosing our submission to the Joint Committee as we have been concerned for some time about the volume of human rights issues raised by the experience of one asylum seeker alone. The submission is prefaced by this asylum seeker's statement. We understand that his experiences are common and therefore likely to be replicated in many cases in the UK.

We have together some considerable experience in working with asylum seekers, in adult education and counselling in a number of fields. All of us are members of the Britain Zimbabwe Society.

1. STATEMENT FOR THIS SUBMISSION FROM FM, AN ASYLUM SEEKER—AUGUST 2006

I am a former detainee who spent almost two years in different immigration removal centres.

I had a very bad experience during my stay [in them]. At some point when I was being moved from Campsfield detention centre in Oxford to Dungavel in Scotland, I was put in a van that had a cage-like space in it. I was locked in that cage-like “room” which is designed for only one person and there is no space to stretch one’s legs or even to stand. All the way to Scotland!! There wasn’t even a window to see outside. They had taken away my wristwatch so I don’t know for sure how many hours I sat there. I had a terrible headache and I told the officers and they refused to give me any painkillers. I suffered that day.

Also when I was moved from Dungavel to Colnbrook [detention centre] we arrived at night and I was very hungry but they refused to give me anything to eat and I needed a bath, they refused me too. I had to go to court the following morning. They even refused to let me wash my face and brush my teeth. I went to court hungry, dirty and tired. They woke me up at around 5 am, I did not have much sleep.

Another day when I was taken to the airport I was tightly handcuffed and I was assaulted and insulted by the officers. Some people who were cleaning the runway even joined in beating me up and carry me into the plane.

Now the suffering is going on. My asylum case is going on and on. My life is on hold. I am not allowed to do anything, work or study. Sometimes I feel very emotional and angry for no reason. By the time they decide to grant me some sort of status or worse, to remove me back, I will be a broken man already.

I have so much to say but I want to keep it short for fear of boring you with details. I think immigration detainees are treated worse than criminals.

2. SUMMARY

The following evidence is presented by the three individuals below who have voluntarily been involved in the welfare of the writer of the statement above, who is from Zimbabwe, over the period August 2004 (after he had been detained for some months at Dungavel IDC in Scotland) to the present. He has written extensively about his experiences. We understand that these are common to other asylum seekers and therefore the issues raised are likely to be replicated in many cases in the UK.

We recognise that the JCHR may be required to limit the inquiry to breaches in terms of the Human Rights Act 1998 and the 1950 European Convention on Human Rights (ECHR). Even so we believe that human rights issues are also raised in asylum procedures, namely through the delays and incompetencies (see below), which directly affect his psychological wellbeing, and have included these.

As laypeople we believe the statements illustrate several breaches of human rights, that such breaches are occurring virtually unnoticed in this country, and that this situation is a disgrace to the UK. We are however pleased to have this opportunity to bring them to the Committee’s attention. If required we can supplement this submission with the original manuscripts of the statement above and other accounts written by FM and with copy letters we have written to MPs, solicitors and Home Office ministers and officials on the issues below.

The asylum seeker known as FM in this document, who suffered torture at the hands of the Zimbabwe militia, wishes to use a pseudonym at present since his case has not yet been resolved but he fully endorses this submission.

3. EVIDENCE (UNDER PARAS I, II AND IV IN CALL FOR EVIDENCE)

(i) *Access to accommodation and financial support*

FM has received no financial support or benefits of any kind after his release from detention in August 2005. He has been supported regularly and almost entirely through the goodwill (particularly of one) of the undersigned. This lack of benefits continues to the present day even though the Home Office sent FM a letter on 9 August 2005 saying that his application to have his case reconsidered was successful, ie he was no longer a “failed” asylum seeker. Nor was he given an Application Registration Card (ARC), necessary as an ID card, until 10 months later, in June of this year.

Comment: We consider it a breach of human rights that asylum seekers are not permitted even to do voluntary work. The only apparent explanation is that the HO wish to make life in the UK as unrewarding and unpleasant as possible in order to force people to repatriate.

(ii) *Provision of healthcare*

Since FM had no form of acceptable identity until he received an ARC card in June 2006 he was unable to register with a GP. When he had previously tried to do so he was referred back to the Home Office and when he became ill with a virus in April 2006 he had to choose between presenting himself at a local A + E hospital department or travelling with a high temperature from east Kent across London to his Home Office registration centre in London (Becket House). He did the latter because of his previous experiences of rejection without any ID. Fortunately he met a stranger who helped him when he became confused and lost his way.

(iv) *Detention and methods of removal*

(a) Use of detention

Although FM suffered torture at the hands of the Zimbabwe Youth Militia he was held in detention for 19 months contrary to the Convention.

(b) The degrading method of transfer between detention centres

FM describes two instances in his statement. Further details from his written account of his transfer from Dungavel detention centre to Colnbrook IDC (near Heathrow) in February 2005, included the following:

FM was given no notice of his transfer to Colnbrook, for the purpose of his immigration hearing at the Royal Court in the Strand in London (2 February 2005, ref: CO/4891/2004). He was woken up at 6 am the day before the hearing, and without being allowed to wash was placed in what he described as a cage in an enclosed van for a journey which lasted approx. 12 hours without respite or food. By 9 pm that evening he had had no food, no night clothes or wash things. After this experience he had to represent himself in court the following day.

(c) Treatment by “escorts” on the occasion of attempted forced removal (17 May 2005).

FM was given one hour’s notice and thus little time to contact his solicitor. He was only given his removal papers on being taken to the van although he noted they were dated 8 May. On the way to the airport he was painfully handcuffed and subjected to threats that he described as psychological warfare against him. On board the plane he refused to sit down and the escorts became physically violent until the airline staff had to intervene and he was returned to the detention centre.

On another removal attempt no removal papers were handed to FM prior to attempted removal. The removal order was “fed” to him through bars in the van on the way to the airport.

(d) Treatment at Colnbrook detention centre

Having been in detention without a break since January 2004 he was now placed in a cell with no windows and poor ventilation. There were no education classes. He felt like a beggar having to ask for basics such as washing powder and toilet paper. We understand that this detention centre was managed, as were the “escorts”, by Premier Detention Services Ltd, and were not subject to the level of inspection of the other detention centres.

Please also see the appendix for extracts from other accounts written at the time by FM.

4. EVIDENCE ON OTHER MAJOR AREAS OF CONCERN TO US

4.1 *Access to reliable legal advice as a human right*

Comment

We are surprised and disappointed that access to legal advice is not included within the scope of an inquiry on human rights.

FM had particular difficulty in accessing legal advice south of the border. On his transfer from detention in Scotland to detention in Colnbrook there was no transfer of legal representation, and he had no time to find it before he had to appear alone at a key hearing in the High Court in London. This was a very stressful and unsuccessful experience and at the end of it he misunderstood the outcome completely. (as did his supporters until we had obtained at some expense a transcript of the hearing).

Many Zimbabweans have to rely on overstretched and underfunded voluntary organisations such as the Zimbabwe Association, Medical Foundation for Victims of Torture. FM would not have found a good immigration solicitor (who secured bail and a reconsideration of his case in August 2005) without the personal intervention and professional contacts of the undersigned. Increasingly, good advisors in the field of asylum law have become so overstretched themselves they are turning to other branches of the profession. This has now most unfortunately happened in FM’s case.

4.2 Delays and incompetencies in asylum procedures which cumulatively affect psychological wellbeing

4.2.1 Delay in hearing a fresh application

The Home Office sent FM a letter on 8 August 2005 saying that his application to have his case reconsidered was successful. Yet to date (ie more than one year later) there has been no further word from the Home Office in spite of complaints made by his solicitor. (During this time he has received no benefits, see 3.1 above).

4.2.2 Treatment regarding Bail Hearings

FM's solicitor had faxed information the day before a bail hearing on 12.7.05 but it appeared this had been deliberately withheld until he was back in detention.

At the same bail hearing, sureties were not allowed to speak. A court official said that sureties not being allowed to speak was very unusual. The case appeared to have been pre-determined and was dealt with in minutes.

4.2.3 Issues of identity

Added to the on-going delay in re-hearing FM's case (see 4.2.1 above) it took 11 months for the Home Office to provide FM with the ARC identity card. Without this card he was unable to register at a library, be accepted as a volunteer in a charity shop, play for a local football team and worst of all was denied healthcare (see above). He described himself as a "non-person", with all the damaging lack of self-esteem that goes with that.

Moreover the authorities have persistently challenged FM's nationality (and therefore identity) as Zimbabwean. Like a number of desperate Zimbabwean asylum seekers he escaped using a false Malawian passport. However the Home Office is in possession of his Zimbabwean passport and birth certificate and his extensive written narrative was supported as authentic in June last year by a leading academic expert on Zimbabwe. In spite of this his ARC card, his main form of identity, and, we understand, other Home Office records states he is Malawian.

5. CONCLUSION

We conclude by saying that there is little doubt that in the face of the disappointment induced by infringement of his human rights in the UK as described here, and without the support of individuals willing to campaign on his behalf, FM may not have had the strength of purpose to cope with his fear of return to Zimbabwe, resist removal, or maintain his self-respect. He would have become destitute and depressed and unable to maintain contact with his wife and child exiled in South Africa. He may still do, since his case remains unresolved. We fully understand his perception that asylum seekers are treated worse than criminals. He and many like him should not have, anywhere within the European Union, to rely only on individuals to uphold his human rights.

APPENDIX

- (i) The hell of being an asylum seeker 8 June 2005 (extracts from an account by FM):

"... The officers treat me like a criminal. I do not think they are properly trained to deal with people like me. I am not a criminal. I am an asylum seeker detained in a jail... I think this building was designed to break people psychologically. I am trying to stay sane because I think if I lose it, it will be very difficult to regain it after I get released... I am not rude, I am simply terrified..."

- (ii) Extracts from FM's friend Francis Asima's complaint to the police regarding his attempted removal on 4 April 2005. The complainant has only recently received a letter from them stating his account was not accepted by the escorts as true and there was therefore no case to answer. The complainant was never interviewed by the police.

"... At the airport, the escorts brutalized me and I was beaten [sic] and handcuffs on my wrists were continuously twisted. I objected... they started kicking me and punching me repeatedly. One... kept saying that I was a baboon... He kept on saying I had to go to Africa because black people belong there..." etc. etc. "He kicked me on my crotch and my neck with pain. Sharp pain my wrists and severely bruised. I have nightmares... Please call the police."

Mrs Shelagh Millar

Mrs Joan Weir

Reverend Dr Iain Whyte

endorsed by Forward Mutero (pseudonym)

10. Memorandum from the Commission for Racial Equality

1. INTRODUCTION

The Commission for Racial Equality (CRE) welcomes the opportunity to respond to the inquiry by the JCHR into human rights issues raised by the treatment of asylum seekers in the UK. Recently the CRE has provided parliamentary submissions on issues relating to asylum issues on several occasions.¹²

The CRE has the following duties under the Race Relations Act 1976 (RRA):

- to work towards the elimination of discrimination and harassment;
- to promote equality of opportunity and good race relations between people of different racial groups; and
- to keep under review the workings of the RRA.¹³

The CRE's primary goal is to create an integrated society. We have defined an integrated society as being based on three inter-related principles:

- Equality—for all sections of the community—where everyone is created equally and has a right to fair outcomes.
- Participation—by all sections of the community—where all groups in society should expect to share in decision-making and carry the responsibility of making society work.
- Interaction—between all sections of the community—where no-one should be trapped within their own community in the people they work with or the friendships they make.

The 1951 United Nations Refugee Convention provides protection for those fleeing persecution in their country of origin for reasons such as their race, religion, nationality, membership of a social group or political opinion. Most Member States of the United Nations including the UK have signed and ratified the Convention in recognition of the need to protect persons in such circumstances. The starting point for government policy and practices concerning asylum seekers and failed asylum seekers should be that everyone has the right to seek asylum and that asylum seekers have the same human rights as any other persons.

The CRE has a number of general concerns with the treatment of asylum seekers and failed asylum seekers which link to issues of racial discrimination and promoting good race relations:

- lack of political leadership within central and local government linking asylum issues with race relations;
- the effect of the exception under section 19D of the RRA which permits discrimination by public authorities in exercising immigration functions on grounds of nationality, ethnic and national origins;
- the failure by public authorities with functions affecting asylum seekers (such as the Immigration and Nationality Directorate, the Department for Health and the Prisons Service) to properly consider the impact of their policies on race equality and promoting good race relations.

The CRE also has a number of specific concerns within the areas the inquiry is focusing on (healthcare, the use of detention for asylum seekers, treatment by the media) as well as the effect of far right political parties inciting racial hatred. We note that we have not provided any submissions on the areas of accommodation and financial support or the treatment of children as the CRE does not have any specific concerns within the terms of the inquiry relating to those topics at this point in time.

2. POLITICAL LEADERSHIP

Political discourse and the manner in which the government provides leadership on asylum issues is, in the view of the CRE, critical in maintaining good race relations in the UK. The need to conceptualise asylum issues in terms of race relations is not only important for the effective formulation and implementation of government policies, but also in the manner in which government, at both national and local level, responds to the media and far right political parties on asylum issues.

Political leadership was recognised as vital in this context by the United Nations Committee on the Elimination of Racial Discrimination in its last report on the UK government's progress in fulfilling its obligations under the UN International Convention on the Elimination of Racial Discrimination (CERD).¹⁴ At paragraph 14 it states:

¹² For example the written and oral submissions to the JCHR inquiry into the UK government's compliance with the UN Convention on the Elimination of Racial Discrimination, 14th report of session 2004–05, and the written submission to the Home Affairs Select Committee inquiry into immigration control, 5th report session 2005–06.

¹³ Section 43, Race Relations Act 1976.

¹⁴ CERD Concluding observations on the UK government's 16th and 17th reports, 10 December 2003.

“The Committee remains concerned at reports of attacks on asylum seekers. In this regard, the Committee notes with concern that antagonism towards asylum seekers has helped to sustain support for extremist political opinions.

The Committee recommends that the State party adopts further measures and intensify its efforts to counter racial tensions generated through asylum issues, inter alia by developing public education programmes and promoting positive images of ethnic minorities, asylum seekers and immigrants, as well as measures making the asylum procedures more equitable, efficient and unbiased.”

In 2005 the Home Office produced its strategy to increase race equality and community cohesion in the UK.¹⁵ The CRE submitted a response to consultation on the draft strategy in October 2004.¹⁶ In the response we made a number of recommendations, including that:

- national and local governments need to provide leadership on promoting good race relations and in doing so take into account communities such as asylum seekers;
- integration strategies need to enable asylum seekers, refugees and other migrants to engage with their new communities, promote understanding and respect for such persons and to provide factual information to settled communities on how migrants actually impact on the use of resources, including the benefits of migration.¹⁷

Despite these recommendations, the strategy does not include any reference to asylum seekers or failed asylum seekers. In addition the Home Office’s strategy on integration of refugees¹⁸ does not consider how to integrate asylum seekers. Indeed in the Foreword by Des Browne MP he specifically states that despite receiving submissions that the strategy should include asylum seekers, it is the government’s view that *“... integration can only begin in its fullest sense when an asylum seeker becomes a refugee.”*

The Joint Committee on Human Rights has also recognised that the strategy does not deal with asylum issues. It recommended in its inquiry into the government’s fulfilment of its international obligations under CERD that:

“(the strategy be implemented with particular attention being paid to) . . . the need to counter racial prejudice and discrimination directed against asylum seekers and immigrants . . . (as part of the strategy) . . . media strategies should seek to counter inaccurate and inflammatory reporting of asylum issues.”¹⁹

This means that asylum seekers and failed asylum seekers fall into a lacuna, not being properly considered in the context of race equality, race relations and integration issues in either of the main government strategies on race equality and integration.²⁰ This also means there is a lack of political leadership on countering or balancing negative and sometimes biased media reporting, nor is there a coherent national and local government response to inflammatory statements by far right political parties.

In addition, we agree with the observations of a number of organisations and the JCHR that recent government legislation,²¹ policy²² and language may actually contribute to the negative perception to asylum seekers.²³

3. SECTION 19D OF THE RACE RELATIONS ACT

Section 19D was introduced in 2000 as an exception to the provision under section 19B of the Race Relations Act 1976 which required public authorities not to discriminate in the exercise of their functions. The exception permits discrimination on the grounds of nationality, ethnic or national origins in exercising immigration functions, but only where there has been a specific authorisation made by a Minister. In order to monitor the effect of the provision, section 19E provides that an Independent Race Monitor will report on their effect.

A number of authorisations have been made during the last six years which cover a range of immigration functions. Most recently in the year 2004–05 there were nine authorisations in operation with the main ones affecting asylum seekers being:

- prioritisation in the examination of arriving passengers;
- asylum work streaming; and

¹⁵ *Improving Opportunity, Strengthening Society: A government strategy to increase race equality and community cohesion.*

¹⁶ See <http://www.cre.gov.uk/downloads/strengthindiversity.doc>

¹⁷ See pages 9 and 18 of the CRE response.

¹⁸ *Integration Matters: A national strategy for refugee integration*, March 2005.

¹⁹ *The Convention on the Elimination of Racial Discrimination*, JCHR 14th report of session 2004–05, paragraphs 54 and 62.

²⁰ The same issue means that asylum seekers, and people with forms of exceptional leave, are often not addressed in the context of public bodies’ Race Equality Schemes, which they are obliged to produce as part of their General Duty to eliminate unlawful racial discrimination; and to promote equality of opportunity and good race relations between persons of different racial groups under the Race Relation Act, as amended.

²¹ For example the introduction of the section 19D exception in the Race Relations Act permitting the government to discriminate in immigration functions on grounds of nationality, ethnic or national origins.

²² For example the policy of detaining asylum seekers in centres or in some cases prisons.

²³ *Op cit*, JCHR paragraph 63.

— directions for removals of failed asylum seekers.

The terms of the inquiry state that the human rights issues raised in asylum procedures and the determination of asylum claims are outside the scope of the inquiry, except insofar as they directly affect the treatment of asylum seekers. The position of the CRE is that section 19D is fundamentally discriminatory and its application does directly affect the manner in which asylum seekers are perceived and treated. The effect of the authorisations may lead to prejudicial, non-objective and therefore discriminatory decision-making. As a result we consider it appropriate and necessary to comment on this provision.

The government's justification for the introduction of the provision has been that it is necessary to allow "... the Immigration Service to focus its resources in a logical way, and to operate an intelligence led immigration control".²⁴ In practical terms it allows for discrimination in two main situations: the examination of passengers where there is evidence of abuse or adverse decisions against a nationality, or in determining asylum claims, it allows for the fast-tracking of the decision process where significant numbers of claims from a particular nationality are found to be unfounded.

The CRE agrees with the conclusions of the UN Committee on the Elimination of Racial Discrimination that the provision is incompatible with the very principle of non-discrimination and with the recommendations of the Committee,²⁵ the Council of Europe's European Commission against Racism and Intolerance²⁶ and the Joint Committee on Human Rights²⁷ that the provision should be repealed. Alternatively, the CRE considers that the exception should be restricted to discrimination on grounds of nationality as no justification for discrimination on based on ethnic or national origins is apparent and indeed the government (for example) revoked such an authorisation on 11 June 2002.²⁸

The CRE is concerned that the authorisation concerning prioritisation of examination of passengers will become self-fulfilling in that immigration officers subject priority nationalities to more stringent questioning and do not treat each entry request on its merits. This risk has been expressed by the Independent Race Monitor.²⁹ It is also of great concern as the effect of having an authorisation in place may become an influencing factor even where the authorisation is not even relied on. In the Prague Airport Case³⁰ an authorisation existed which permitted discrimination in the examination of Roma seeking to enter the UK, many of which at that time were seeking asylum in the UK. The Respondent indicated that the authorisation was not actually implemented or relied on at Prague airport and claimed that there was no direct discrimination under the Race Relations Act against Roma in the manner in which they were examined. The House of Lords found that there had been direct discrimination contrary to the RRA and international law, as well as emphasising the need to treat each person seeking to enter the UK on their merits.³¹

The CRE also has particular concerns with the authorisation concerning asylum work streaming which have been raised by the Independent Race Monitor in her annual reports:³²

- that caseworkers indicated that they can become cynical about certain nationalities that are subjects of the authorisation;
- that the creation of the list of nationalities may become "self-perpetuating" as immigration officers may become more likely to reject claims of asylum from those countries and not treat the claim objectively on its merits;
- allowed appeal rates for asylum seekers from a number of African countries—Somalia (43%), Sudan (39%) and Eritrea (39%)—have been very high, suggesting that their original rejection decisions may have been affected by cynicism;³³
- accounts of asylum seekers are sometimes not believed because of western assumptions and negative perceptions of claimants from particular countries.³⁴

As a result the CRE agrees with her recommendations that there needs to be continued monitoring of grant and refusal rates of asylum by nationality, any variations from the overall appeal rates or high allowed appeal rates should be examined to establish the cause, and independent element should be introduced into the initial decision making process.³⁵

²⁴ Response of the UK government to the Council of Europe's European Commission Against Racism and Intolerance Third Report on the United Kingdom, 17 December 2004 (see appendix).

²⁵ CERD Concluding observations on the UK government's 16th and 17th reports, 10 December 2003, paragraph 16.

²⁶ ECRI's Third report on the United Kingdom, paragraph 50.

²⁷ JCHR 14th report of session 2004–05, paragraph 83.

²⁸ Independent Race Monitor Annual Report April 2002–March 2003, paragraph 4.

²⁹ Annual report 2004–05, paragraph 2.31–2.33.

³⁰ *Regina v Immigration Officer at Prague Airport, ex parte European Roma Rights Centre and others*, 2004 UKHL 55.

³¹ Baroness Hale at paragraph 90.

³² See Annual Report 2002–03, paragraphs 21, 25; Annual Report 2003–04, paragraph 42, 86; Annual report 2004–05.

³³ Annual report 2004–05, paragraph 3.5.

³⁴ Annual report 2004–05, paragraph 3.2.1.

³⁵ Annual report 2004–05, paragraph 3.28–3.29.

4. THE PROVISION OF HEALTHCARE

In 2004 the Department of Health amended the National Health Service (Charges to Overseas Visitors) Regulations 1989³⁶ so that they obliged trusts to charge those not ordinarily resident in the UK for secondary care, unless they require emergency treatment. It was specified that this would apply to failed asylum seekers. More recently the Department of Health has made similar proposals to restrict access to primary care.³⁷ The Commission for Racial Equality has a number of concerns regarding this area of government policy.

The CRE also has concerns about the manner in which these policies seem to have been formulated. These policies were developed during a period when there was significant press coverage of alleged “health tourism” of non-residents.

However the CRE is not aware of any research undertaken by the Government quantifying how significant “health tourism” is, beyond the anecdotal. Likewise, there seems to be no evidence that failed asylum seekers are a particularly significant drain on NHS resources, or that they abuse the system. The CRE considers that whilst the Government has a duty to respond to public concerns, it must also make policy informed by a sound evidence base. Where myths exist about immigrants acting as a drain on services, the CRE believes that it is the government’s role to counter these myths. Research into public attitudes on asylum, commissioned by the CRE found that:

*“Access to the NHS was assumed to be an important driver of immigration. Many people immediately linked health care to immigration and thought that asylum seekers have a detrimental impact upon the NHS. This was the case across all social groups. A total of 45% of respondents thought that asylum seekers had a negative impact upon the health service. Only 17% thought that the impacts might be positive.”*³⁸

Given these perceptions, it is important for the government to provide objective and clear statistics of actual use of the healthcare system by failed asylum seekers.

Evidence exists that failed asylum seekers have been denied access to healthcare as a result of the policy on secondary care outlined above resulting in, for example, women giving birth without medical assistance and cancer patients going untreated.³⁹

The CRE considers that to charge for secondary healthcare people who are suffering from serious illnesses or chronic health problems, may lead to a breach of their rights under the European Convention on Human Rights, if they are not able to pay for such treatment and therefore are not given the treatment.⁴⁰ For example, the prohibition on torture has been held to be wide enough to include suffering which flows from naturally occurring physical or mental illness where it is exacerbated by treatment for which a public authority can be held responsible.⁴¹ This may also then invoke the article 14 right to non-discrimination. Article 14 is non-exclusive in that although it refers to a number of protected grounds such as race, colour and national origins, it also prohibits discrimination on grounds of “other status”. The amendments to the Regulations apply to persons not ordinarily resident in the UK and could be construed as constituting a form of status for the purposes of article 14. A difference in treatment will be discriminatory if it does not pursue a legitimate aim or the means used to achieve the aim are not reasonably proportionate.⁴² It is arguable that charging for secondary healthcare to all failed asylum seekers, without any consideration of whether or not they have the financial means to pay for the treatment, may mean the measure is not proportionate.

In addition, the CRE considers that these regulations may impact adversely on ethnic minority communities lawfully resident in the UK. There is a very real risk that this policy will create confusion as to who is and is not eligible for charging. This confusion may deter certain communities, particularly new migrant communities, from accessing healthcare to which they are, in fact legally entitled.

Likewise, there is a real risk that NHS staff will conduct document checks, or even deny or charge for healthcare, in a way which is discriminatory. NHS staff are not immune to prejudice, or influence by negative media coverage of asylumseekers and immigration. Moreover, there seems to be a lack of clear guidance for frontline staff on how to go about checking eligibility in a way that is both effective and non-discriminatory.⁴³ This runs the risk of undermining existing Department of Health initiatives aimed at

³⁶ National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2004.

³⁷ Proposals to Exclude Overseas Visitors from Eligibility to Free NHS Primary Medical Services: a consultation, May 2004. Since this consultation Ministers have been considering these proposals.

³⁸ M Lewis, 2005, *Understanding attitudes to asylum in the UK*, by (jointly funded by the CRE and published by ippr), p 28. http://www.cre.gov.uk/downloads/asylum_icar_report.pdf

³⁹ Refugee Council (2006), *First do no harm: Denying healthcare to people whose asylum claims have failed*.

⁴⁰ For example the article 3 prohibition on torture.

⁴¹ *Pretty v United Kingdom* [2002] ECHR 427.

⁴² *Gaygusuz v Austria* (1996) 23 EHRR 364.

⁴³ One recent enquiry undertaken by the Healthcare Commission found that in one London hospital “Staff reported that there was a lack of clarity about the entitlement to maternity care for overseas visitors, including women described as asylum seekers.” Healthcare Commission (2005) *Review of maternity services provided by North West London Hospitals NHS Trust*, p 44.

improving health outcomes for disadvantaged groups, and is likely to have an adverse impact on good race relations. We consider that there is potential for evidence of entitlement to be requested disproportionately from people from ethnic minorities having the right to reside in the United Kingdom.

The CRE considers that both the existing secondary care regulations and the proposed primary care regulations contain policies and proposed policies which are relevant to race equality in the context of the Race Relations Act 1976 as amended (“RRA”). Under Section 71(1) and Schedule 1A of the RRA, listed public authorities have a general duty, in carrying out the functions, to: eliminate unlawful racial discrimination; and to promote equality of opportunity and good race relations between persons of different racial groups. In addition listed public authorities have specific duties to monitor existing policies for adverse impact on the promotion of race equality, and assess and consult on the likely impact of proposed policies and publish the results.

The CRE wrote to the Department of Health in 2003 and 2005 requesting that both the policy on secondary care, and the proposed changes to primary care entitlements, be the subject of Race Equality Impact Assessments, in order to examine their impact on particular ethnic groups and to put in place measures to ensure that discrimination does not take place. On the issue of secondary care this was not undertaken.

More broadly, the CRE has general concerns about the Department of Health’s lack of progress on its race equality duties, and its failure to undertake Race Equality Impact Assessments on a range of other relevant policies to determine whether they may have an adverse impact on the promotion of racial equality. As a result, in August 2006 the CRE wrote to the Department of Health warning them that it may have to use its formal investigation powers. It is the first time the CRE has enacted its legal powers in this way to tackle failings in relation to policy development. The CRE has since been informed by the Department of Health that it will undertake a Race Equality Impact Assessment on the proposed primary care restrictions, despite their previous reluctance to do so. We intend to monitor this undertaking closely, and to examine what mechanisms the Department of Health intends to put in place to ensure that the proposed policy will not adversely impact on ethnic minorities who are entitled to care.

5. THE USE OF DETENTION AND CONDITIONS OF DETENTION

It is likely that several thousand asylum seekers are held in immigration detention each year. Several hundred of these are likely to be held in prisons.⁴⁴

The policy of detention of asylum seekers has been used by the government since March 2000 and was last updated in February 2006.⁴⁵ Detention is used in purported “fast-track” cases where it appears the claim is straightforward and can be decided quickly. Detention can also be used where officials believe an individual is at risk of absconding, where there is a need to establish an individual’s identity or for the purposes of removal.

The CRE is concerned that the policy may lead to breaches of asylum seekers’ fundamental rights under the European Convention on Human Rights, in particular the right to liberty under article 5 and the right to non-discrimination under article 14. This issue has been considered in detail very recently by the European Court of Human Rights in the decision of *Saadi v The United Kingdom*.⁴⁶ The case concerned an Iraqi asylum seeker who was detained for seven days under the policy in 2001, despite not being considered at risk of absconding. At first instance in the High Court Justice Collins found that Mr Saadi’s rights under article 5 had been breached however this was overturned by the Court of Appeal and the House of Lords upheld the decision of the Court of Appeal.

On appeal to the European Court of Human Rights found that:

- the detention of the applicant in the circumstances was not in breach of his rights under article 5 as his detention was “to prevent his affecting an unauthorised entry into the country” within the terms permitted by article 5(1)(f);
- the length of the detention was not excessive and arbitrary;
- as a result the court did not need to determine the claim that the policy was also discriminatory.

Despite the above it is important to point out that:

- it was a majority decision of the court (four votes to three) by the barest of margins. The strong dissenting judgment stated that the true reason for the detention was not to prevent an asylum seeker from effecting an unauthorised entry, but was an administrative reason, in order to proceed with the fast track procedure. The minority therefore held that there had been a breach of convention rights;

⁴⁴ The government does not publish annual figures. Instead it publishes a quarterly “snapshot” of how many people are currently in asylum detention. On 24 June 2006 there were 1,825 asylum seekers in detention. 120 of these were in prison establishments. *Home Office, Asylum Statistics: 2nd Quarter 2006*. <http://www.homeoffice.gov.uk/rds/pdfs06/asylumq206.pdf>

⁴⁵ See Chapter 38 of the IND’s Operational Enforcement Manual: <http://www.ind.homeoffice.gov.uk/documents/oemsectiond/chapter38?view=Binary>

⁴⁶ Application No 13229/03, 11 July 2006.

- Judge Bratza who was in the majority said that although detention for seven days was acceptable, detention significantly in excess of this period would not be compatible with article 5(1)(f);
- A previous High Court decision concerning the policy found that it was unlawful to detain an ailing 64 year old at Oakington for five and a half weeks before an asylum decision was made.⁴⁷

The CRE therefore considers that the government should strongly consider revoking the policy, where there is no indication that the person is at risk of absconding, or at least limiting the length of time a person will be detained (as there is currently no upper limit). This is particularly important given the Prison Ombudsman's enquiries into Yarl's Wood and Oakington detention centres detailed below which indicated widespread racism.

A number of reports detail evidence of widespread racism, and poor management in the area of race equality, in prisons and detention centres over the last five years. These include the Commission's own formal investigation into the prison service, the Zahid Mubarek enquiry,⁴⁸ and the Prison Ombudsman's enquiries into Yarl's Wood and Oakington detention centres in 2004 and 2005.⁴⁹

In November 2000, the CRE decided to conduct a formal investigation (FI) into racial discrimination in the Prison Service. The CRE made three general findings of unlawful racial discrimination contrary to the Race Relations Act 1976. These covered the events leading to the murder of Zahid Mubarek, the failure to provide ethnic minority prisoners with equivalent protection from racial violence, and the failure to provide race equality in its employment or custodial practices.

Specific failings related to:⁵⁰

- (a) The general atmosphere in prisons;
- (b) Treatment of prisoners;
- (c) Race complaints by prisoners;
- (d) Investigation of race complaints;
- (e) Correcting bad practice and spreading good practice;
- (f) Protection from victimisation; and
- (g) Management systems and procedures.

Despite finding that there was evidence of racial discrimination within the Prison Service, the CRE decided to suspend any decision on whether or not to use its enforcement powers. This decision was taken in recognition of the race equality work undertaken by the Prison Service since 2000 and its agreement to work on an Action Plan over a five year period.

Although the Prison Service has made progress since the CRE formal investigation, we are still concerned that the good work being done at the policy level is not being translated into changes at the operational level in establishments.

Reports by Her Majesty's Chief Inspector of Prisons continue to raise significant concerns about the management and state of race relations in prisons. A number of reports in 2006 by the Chief Inspector of Prisons have highlighted issues relating to the management and state of race relations in some prisons. Of particular concern were reports on Parc, Ford, Styal, Blakenhurst, Northallerton and Swaleside prisons.⁵¹

The Chief Inspector's reports on Oakington and Yarl's Wood detention centres suggest some improvement in the management of race equality issues at these centres following the Prison Ombudsman's investigations in 2004 and 2005. However, the Chief Inspector's reports on other detention centres published in 2005 and 2006 show that there continue to be failings of varying degrees in some facilities such as Lindholme, Heathrow, Colnbrook, Dover and Harmondsworth.⁵² Common failings are inadequate or non-existent mechanisms for the reporting and investigation of racist incidents, lack of race or diversity policies, lack of training for staff in race issues, and lack of interpretation and translation.

The CRE also has concerns with respect to the contracting out of detention facilities to private firms such as GSL UK and Premier Detention Services. The Home Office has a general duty under section 71 of the Race Relations Act, as amended, to have "due regard" to the need to eliminate unlawful racial discrimination; and to promote equality of opportunity and good race relations between persons of different racial groups in carrying out its functions. Such functions include all procurement functions.⁵³ This means that the Home Office remains subject to the race equality duty in respect to the actions of its contractors.

⁴⁷ R (*Johnson v Secretary of State for the Home Department* [2004] EWHC 1550.

⁴⁸ Report of the Zahid Mubarek enquiry, Vol 1 & 2 (2006) <http://www.zahidmubarekinquiry.org.uk/article.asp?c=374&aid=2848>

⁴⁹ Prisons and Probation Ombudsman for England and Wales, 2005, *Inquiry into allegations of racism and mistreatment of detainees at Oakington Immigration Reception Centre and while under escort*; Prisons and Probation Ombudsman for England and Wales, 2004, *Investigation into allegations of racism, abuse and violence at Yarl's Wood removal centre*. See: <http://www.ind.homeoffice.gov.uk/aboutus/reports/>

⁵⁰ The full CRE Formal Investigation reports can be viewed at: http://www.cre.gov.uk/pubs/cat_cj.html

⁵¹ Inspectorate Reports on prisons can be viewed at: http://inspectorates.homeoffice.gov.uk/hmiprison/inspect_reports/hmp-yoi-inspections.html/

⁵² Inspectorate Reports on immigration removal centres can be viewed at: http://inspectorates.homeoffice.gov.uk/hmiprison/inspect_reports/irc-inspections.html/

⁵³ See CRE Guidance on procurement of Public Authorities: <http://www.cre.gov.uk/downloads/duty—proc—pa.pdf>

If the Home Office chooses to use private providers of detention services then, in order to meet the duty, race equality clauses should be included in the contracts with private providers and there should be systems in place, through the contract monitoring arrangements, for monitoring race equality outcomes. Failure to do this places the Home Office at risk of being in breach of its race equality duty.⁵⁴

6. TREATMENT BY THE MEDIA

The CRE believes that the reporting of asylum issues in the UK press has implications for good race relations, potentially shaping the way in which sections of the public view asylum seekers, refugees, new migrants and even ethnic minorities more broadly. The CRE shares the same concerns about the treatment of asylum seekers in the UK media that were expressed by the United Nations Committee on the Elimination of Racial Discrimination in response to the sixteenth and seventeenth periodic reports of the UK and Northern Ireland:

“13. The Committee is concerned about the increasing racial prejudice against ethnic minorities, asylum seekers and immigrants reflected in the media and the reported lack of effectiveness of the Press Complaints Commission (PCC) to deal with this issue.

The Committee recommends that the State Party consider further how the Press Complaints Commission could be made more effective and could be further empowered to consider complaints received from the Commission for Racial Equality as well as other groups or organisations working in the field of race relations.”⁵⁵

The CRE notes that in certain high-circulation newspapers coverage of asylum in recent years has often been disproportionate, inaccurate and hostile. Research commissioned by the CRE in 2004 found that *“immigration and asylum have been treated in a negative way (by the press) and constructed as problems or threats, with key themes being the reduction of migrant rights, the burden on the welfare state, and the dishonesty of migrants . . . A significant finding of research on asylum seekers/refugees and the British media has been the repetitive use of certain terms and types of language. Asylum seekers are described as a ‘flood’ or ‘wave’ and as ‘bogus’ or ‘fraudulent’.”⁵⁶*

The CRE notes that coverage has often conflated genuine asylum seekers, refugees and economic migrants (regular and irregular) into one category. As one report by the Institute for Public Policy Research (ippr) states, *“the misuse of terminology is not merely sloppy, it underlines the way in which these papers . . . view all incomers, of whatever status, as unwanted aliens.”⁵⁷* In some respects therefore, coverage of asylum seekers in the press runs the risk of promoting hostility not just towards asylum seekers but new migrants in general, and even established ethnic minority communities.

Although the relationship between press coverage and public opinion on asylum (and immigration more broadly) is complex, research generally indicates that press and media plays a role in setting the political agenda and in influencing attitudes. One of the research reports commissioned by the CRE found: *“there is consensus that media discourses on asylum, refugees and immigration . . . reinforce negative stereotypes and an inflammatory and derogatory vocabulary has become commonplace . . . Research suggests that media coverage does have an effect on attitudes (and behaviour) towards asylum seekers, refugees and immigrants, but the causal relationships are extremely complex. Media messages are seen to be filtered by the audience. However, in general, hostile attitudes are strengthened in a cycle of reinforcement which needs to be interrupted by addressing both pre-existing attitudes and media messages.”⁵⁸* These findings are corroborated by other reports.⁵⁹

The effect of negative media reporting on asylum issues has also been pointed out by the Independent Race Monitor in her annual reports on the effect of section 19E of the Race Relations Act 1976. As detailed previously in this submission, it permits discrimination by a person in carrying out immigration functions on grounds of nationality, or ethnic or national origins. She highlighted the biased reporting of tabloid newspapers which she thought encouraged negative views among the general public but also influenced perceptions and engendered feelings of cynicism in caseworkers. This could in turn affect decision-making on individual cases concerning entry and asylum as it makes caution and suspicion more likely.⁶⁰

⁵⁴ Although contracts are confidential, the CRE’s understanding is that they do not contain obligations on race equality. This is because this is not the case with private contracts for prisons, and that there is little evidence of systematic implementation of good race equality practices in immigration removal centres.

⁵⁵ Concluding observations of CERD, 10 December 2003.

⁵⁶ N Finney and E Peach of the Information Centre for Asylum Seekers and Refugees, 2005, *Attitudes towards asylum seekers, refugees and other immigrants*, commissioned by the CRE. p54 http://www.cre.gov.uk/downloads/asylum_icar_report.pdf

⁵⁷ R Greenslade, 2005, *Seeking scapegoats: Coverage of asylum in the UK press*, the Institute for Public Policy Research (ippr), p 21.

⁵⁸ Finney and Peach, 2005, pp 59–60.

⁵⁹ M Lewis, 2005, *Understanding attitudes to asylum in the UK*, by (jointly funded by the CRE and published by ippr); H Crawley, 2005, *Evidence on attitudes to asylum and immigration: What we know, don’t know and need to know*, COMPAS Working Paper No. 23, Oxford: University of Oxford.

⁶⁰ Independent Race Monitor, Annual Reports April 2002–March 2003, paragraph 34, 2003–04, paragraph 91, 2004–05, paragraph 7.1, page 33. See: http://www.ind.homeoffice.gov.uk/aboutus/reports/independent_race_mon

In relation to the PCC, the CRE is pleased that it has produced guidance on reporting of refugees and asylum seekers in 2003.⁶¹ However the CRE does not consider that the guidance has been sufficient to prevent negative and prejudicial reporting, particularly in tabloid media or that it has been successful in reducing community tensions.

As a result, the CRE notes that it wrote to the PCC on 21 April 2006 asking that the Code of Conduct governing the conduct of members of the press be amended in order to seek to avoid media reporting that inflames community tensions and may discriminate against racial groups. Two amendments were suggested:

- the inclusion of the concept of “gross exaggeration” in the Clause 1 accuracy clause to avoid exaggerated reporting which may increase tensions; and
- an amendment to clause 12 which prohibit discrimination against an individual. The CRE called on the prohibition to be widened to any discrimination against racial, ethnic or religious groups.

The CRE is concerned that there have been a number of complaints made to the PCC in the last five years or individuals that consider groups (such as asylum seekers or gypsies) are being discriminated against in media reporting. The response of the PCC has always been that the non-discrimination provision only protects the rights of individuals that are named in articles, and references to groups are not protected.⁶² The PCC has repeated this argument in its response to our letter dated 21 April 2006, refusing to amend the PCC.⁶³

The CRE considers that although it is important to uphold the media’s right to freedom of expression, the PCC equally has an obligation as the regulator to ensure that media reporting is not only non-discriminatory against individuals but also wider racial or religious groups, particularly where reports may be likely to incite racial or religious hatred.

The CRE notes that there are positive examples of race reporting, some of which are celebrated annually at the CRE’s Race in the Media Awards.⁶⁴ Moreover, projects can be identified which aim to foster a more informed and positive debate on race issues, including asylum and immigration, at the local level. One such project is run by the *Leicester Mercury* newspaper, which has formed a group drawn from the local community to give advice on editorial issues.⁶⁵ On a national level, the Society of Editors has published a booklet to help those writing about our changing and diverse communities to avoid the pitfalls of stereotyping, inaccuracy and giving needless offence to certain groups.⁶⁶

7. FAR RIGHT POLITICAL PARTIES

Although the effect of far right parties and the response (or lack of) of the government to such parties is not one of the main issues the inquiry has indicated it is focusing on, the CRE considers it to be an important issue affecting the treatment of asylum seekers.

Under article 4 of the UN CERD, parties to the Convention commit to condemn all propaganda and all organisations which attempt to justify or promote racial hatred and discrimination in any form and “undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination . . .”

It is the CRE’s view that asylum and immigration, as currently debated by the media and political leaders in the UK, is an issue around which extremist opinions and activity can crystallise. Analysis of the May 2006 elections shows that asylum was an issue that was exploited by the far right in order to make electoral gains. The CRE’s monitoring of racial tensions through its regional and local networks indicates strongly that hostility to asylum seekers (and new migrants generally) is a significant race relations issue, and that attacks on asylum seekers, refugees and new migrants occur regularly. The CRE considers that political leadership, at both the national and local level, is therefore needed to shift the negative tone of the debate on asylum and immigration and to counter myths and disinformation exploited by extremists.

The CRE also considers that the way in which mainstream political parties debate immigration has implications for good race relations. For this reason, at previous elections, the CRE has written to mainstream political parties to remind them of their obligations under the Race Relations Act and asking them to provide positive political leadership on race issues.

⁶¹ 23 October 2003.

⁶² See for example the PCC Complaint *Ryder v The Sun* which involved a complaint of an individual against a Sun campaign against Gypsies and Travellers.

⁶³ Letter from the PCC to the CRE, dated 10 May 2006.

⁶⁴ See: <http://www.rima.org.uk/>

⁶⁵ The editor of *Leicester Mercury* created an informal discussion group to advise the local media. Attendees included the leader and chief executive of the city council, the chief executive of the local racial equality council, police, representatives from the city’s council of faiths, academics, school principals and governors, and staff from local TV and radio stations. The group works with the local paper to challenge negative local press coverage of newer ethnic minority communities.

⁶⁶ Society of Editors/Media Trust, 2005, *Reporting Diversity—how journalists can contribute to community cohesion* <http://www.communities.gov.uk/index.asp?id=1502400>

In 2005 the Safe Communities Initiative⁶⁷ within the CRE produced a toolkit on Defeating Organised Racial Hatred for local authorities, schools and community organisations. The CRE is concerned that good race relations can be threatened during elections as far-right parties seek to exploit tensions around immigration and other issues. The pack emphasises the role of local government and community groups in countering organised racial hatred. It provides resources to assist local authorities in the use of the law as a tool in combating organised racist groups, and in myth-busting on targeted groups, including immigrants and asylum seekers. It has received positive feedback from local authorities and voluntary groups, who have stressed the value of myth-busting materials for the purposes of promoting good race relations work.

11. Memorandum from the Coventry Peace House

STATELESSNESS

PROBLEM

There is no governmental system to deal with statelessness. There is no procedure to recognise statelessness and there is no procedure to permit stateless people to stay in the UK other than as destitute or under section 4 having signed that they will go back (which most are too frightened to do)

EVIDENCE

I co-ordinate a voluntary night shelter for destitute asylum seekers, staffed by volunteers and funded by donations. We take people from removal centres if they can get bail or are given temporary admission and most of them have been either returned to their country of origin without a travel document or refused a travel document by their embassy.

Case study one

Adil from Chad was refused asylum having gone through the standard systems with NASS support and so in order to survive he changed his documents to read that he had permission to work. This was discovered in a raid at his factory and he was placed in a removal centre and later returned to Chad without papers. He was beaten by immigration at the airport in Chad and returned to the UK. The UK immigration service said they would file a new claim on his behalf. The beating left him with a swelling on his face. He was eventually given bail (14 November 2005) and later had the swelling removed in hospital. It was discovered to be cancerous and he has just finished radiotherapy. After a lot of pressure Social Services have given him temporary support but he still has no decision from the Home Office.

Case study two

David from Liberia was detained and while in detention was refused a travel document. He has since been released to us on condition he signs twice a week at Solihull (a £3 bus ride away). A telephone interview with the Liberian embassy was arranged at one of his signing appointments. They refused to accept he was from Liberia. Immigration have reduced his signing to once a week. He is still destitute.

WHY THIS MIGHT BE HAPPENING

Because the numbers of people who cannot be returned is so great the Government do not want to deal with it.

There is also the issue that people are often refused asylum on the grounds that the Home Office do not believe they are from the country they say they are from. Where should they then return them?

A BASIC PROCEDURE WOULD HELP

If there was some system by which a person's statelessness was acknowledged it would be more just. For example, after three attempts to obtain a travel document over a six month period a person should be deemed stateless and given permission to stay or after being returned following deportation a person should be given permission to stay. There is nothing.

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⁶⁷ The CRE's Safe Communities Initiative was a three-year project, which ran from March 2003, and was set up to provide information and advice on promoting good community relations, and to help prevent and resolve disputes or tensions as early as possible. Asylum and immigration was one of the key themes of this initiative, which looked closely at experiences from the Caia Park Estate in Wrexham following the disorder involving Iraqi Kurds and Welsh residents.

12. Memorandum from Refugee Action

INTRODUCTION

In January 2006, Refugee Action commissioned national research into destitution among rejected asylum seekers. At time of writing, the fieldwork has been completed, but we are awaiting completion of the final report, which is due to be launched publicly in Westminster on 7 November 2006.

What follows, therefore, is a summary of the key preliminary findings, presented in the context of Refugee Action's experience and concerns. We have included a number of direct quotes sampled from the research interviews, which powerfully convey the impact of destitution on those affected.

Refugee Action intends to use the research findings as the departure point for a constructive dialogue with policymakers, with a view to finding an effective and lasting solution to the problems identified in the report.

A copy of the full report will be available to the Committee on request.

REFUGEE ACTION

Refugee Action is an independent national charity working with refugees to build new lives in the UK. Established in 1981, we provide practical advice and assistance for newly arrived asylum seekers and long-term commitment to their settlement through community development work.

Our work has included the reception and settlement of thousands of newly-arrived refugees from Vietnam, Bosnia and Kosovo. We provide asylum advice from ten regional offices covering the North West, East Midlands, South West and South Central. In the financial year April 2005 to March 2006 we gave asylum seekers support in more than 29,000 advice sessions.

Refugee Action also works with refugees in the community, helping them to develop new roots, participate in the wider society and set up their own community organisations. In the last financial year our community development officers worked with 248 refugee community organisations and refugee-led groups, more than 147 voluntary and statutory organisations, and a diverse range of local consortia, networks, forums and funders.

Our Choices service provides independent advice to refugees and asylum seekers considering returning voluntarily to their country of origin. In the last financial year Choices received 2,891 enquiries.

BACKGROUND TO THE RESEARCH

Generally, rejected asylum seekers have had state support withdrawn unless they agree to sign up to return home voluntarily. Even if they agree to sign up to get "Section 4 support" (offered under s 4 of the immigration and Asylum Act 1999) support is not guaranteed, and is offered in vouchers. As a result many asylum seekers, who are often terrified at the prospect of returning home, are being left in a kind of limbo, banned from working yet unable to access benefits.

Refugee Action has become increasingly concerned about the growing numbers of asylum seekers who are becoming destitute. In a recent Refugee Action survey, almost one in three of our clients said they had experienced homelessness and 57% had had a period when they had no money to live on. Forty per cent said they had a health problem. In the financial year 2005–06, approximately 40% of requests for help from our clients came from asylum seekers who were destitute.

Our caseworkers are encountering high levels of despair and desperation among many clients. Even among our vulnerable client group, the extent of this desperation is unprecedented and alarming. Threats of self-harm are increasingly common, and in some cases clients have carried out these threats. While we and other welfare agencies do all we can to mitigate the impact of destitution on these clients, we cannot resolve their predicament.

According to the National Audit Office, more than 200,000 rejected asylum seekers in the UK have not been removed and cannot be accounted for.

Refugee Action is concerned that Government policy has created a new and growing underclass, excluded from mainstream society, who have no contact with the authorities, no access to mainstream support services, and little prospect of a resolution of their situation.

Much of the existing evidence about destitution is anecdotal. Before Refugee Action carried out its research, a number of other small regional surveys were carried out, including research by the Leicester Refugee and Asylum Seekers' Voluntary Sector Forum in February and March 2006. Surveys from eight agencies in Leicester, including Refugee Action, revealed that during the period of the survey 308 asylum seekers reported that they were destitute, with one in three reporting that they had slept on the street on one or more occasions. This represented a 212% increase in the number of people sleeping rough identified by a similar survey in 2005.

To extend the scope of the available evidence, Refugee Action decided to carry out research on a national scale.

DEFINING DESTITUTION

While there are a number of routes to destitution at different stages of the process—for example due to bureaucratic and administrative issues—the research focused on end-of-process individuals who are deliberately excluded from support, or the means to support themselves, as a matter of Government policy. Destitution is intended to have a punitive effect, designed to encourage rejected asylum seekers to take up voluntary return.

Some asylum seekers who became destitute earlier in the process or because of problems with accessing asylum support, plus some who have signed up to s4 support were also included.

DESTITUTION AND HUMAN RIGHTS

Refugee Action believes that the use of destitution as an instrument of government policy is incompatible with the right not to be subject to cruel, inhuman and degrading treatment, as defined in Article 3 of the European Convention on Human Rights.

It is also inconsistent with the Government's conviction that rough sleeping is unacceptable in UK society. In December 1999, launching *Coming in from the Cold*, a report by the government's Rough Sleeping Unit, the Prime Minister Tony Blair said: "On the eve of the 21st century it's a scandal that there are still people sleeping rough on our streets. This is not a situation we can continue to tolerate in a modern and civilised society."

THE RESEARCH

This research is the first in-depth survey of destitution to be carried out on a national scale. The research was funded by the Tudor Trust and carried out by a team of five consultants with extensive experience in the field of asylum and human rights.

Refugee Action is working in partnership with Amnesty International, which simultaneously carried out a parallel study on a smaller scale in London. The research was informed by a steering group which included a representative from the Immigration Legal Practitioners Association.

Between January and July 2006, the research team interviewed 124 asylum seekers in Bristol, Derby, Leicester, Liverpool, Manchester, Nottingham, Portsmouth, Plymouth and Southampton.

The research was based on a comprehensive in-depth questionnaire which sought to build up a detailed picture of destitution, including:

- gathering profile data about the destitute asylum-seeking population in the UK;
- explore the root causes of destitution;
- document how destitute asylum seekers are surviving;
- record the impact on asylum seekers' physical and mental health;
- investigate why destitute asylum seekers are not accessing Section 4 support;
- explore the extent to which the quality and availability of legal representation was a contributory factor in asylum seekers becoming destitute; and
- examine whether the use of destitution as an instrument of government policy was proving effective in its aim of encouraging voluntary return.

The interviewees were identified through our One Stop Shop advice services in each of these regions and through a range of third parties including partner agencies, church groups and drop-in centres.

The interview questions were prepared with the help of a respected barrister in the field and the completed interviews reviewed by two solicitors of many years' experience.

WHO WERE THE RESPONDENTS?

The top five nationalities interviewed were as follows: Democratic Republic of Congo, Zimbabwe, Somalia, Iraq (mostly Kurdish) and Sudan.

Of those interviewed, 73% were male, and 27% were female.

Sixty per cent were single, and most were young; 44% were aged between 21 and 30, and 34% were aged 31 to 40. These findings are consistent with the demographic composition of the wider asylum seeking population.

There were a significant number of very young people, some of whom arrived in the UK as unaccompanied asylum-seeking child and became destitute after turning 18. Several of the women interviewed were pregnant and some had children.

Many respondents were legacy or backlog cases, having arrived in the UK between 1999 and 2004.

IMPACT OF DESTITUTION

On average those people interviewed had spent 21 months being destitute. Rough sleeping was common. Sixty per cent of respondents had slept on the street on at least one occasion, and 30% had done so frequently over sustained periods. Approximately 10% were street homeless at the time they were interviewed. Common locations for rough sleeping included tents, back gardens, cars, garages, bus stations, train stations and public parks.

As with non-refugee homelessness, the problem is sometimes hidden as people in this desperate situation turn to a variety of improvised and temporary sleeping arrangements. Most are highly dependent on friends from their own communities and other asylum seekers and refugees (who are still in receipt of NASS support or on benefits) for providing a floor, sofa or mattress to sleep on. Often, they move from place to place, staying with different friends and contacts for a few days at a time. Approximately 10% of those interviewed are sleeping in rooms within a house offered by volunteers, or rooms owned by or accessed through Church and community run projects.

Many interviewed reported on the day of their interview that they did not yet know where they would be sleeping that night. Several people interviewed reported being physically attacked and verbally abused whilst sleeping rough. Many fear approaching the police to report such incidents and seek to avoid contact for fear of being picked up, put in detention and deported.

Destitute asylum seekers are doubly excluded because they are often not using overnight hostels and provision for indigenous homeless due to anticipated and actual hostility towards them from other homeless people. There is also no entitlement in some instances where the hostel requires the person to be eligible for benefits.

Many destitute asylum seekers interviewed are wary of those involved with drugs and alcohol abuse and associate (rightly or wrongly) indigenous homeless people with this. Not wanting to get involved or risk arrest, they tend to avoid other homeless groups.

Most people we interviewed were entirely dependent upon finding sources of and receiving donated food and clothing to survive. They were getting these from a variety of sources, including:

- The British Red Cross;
- Church groups and faith projects;
- Refugee Community Organisations; and
- Local and national refugee support organisations or groups (for example Refugee Action or Nottingham Refugee Forum).

An international aid worker whose organisation is looking at ways to help destitute asylum-seekers in the UK told the research team: “Giving food to destitute asylum-seekers here is not very different from handing out food from the back of lorries in the Sudan. The humanitarian need is the same.”

SAMPLE RESPONSES

“I was so desperate that I did something that I’m ashamed of. I was so hungry that I went into a police station and asked them if I could spend a night in a cell. They said no as I had not done anything wrong. They were very polite to me. I was so desperate that on the way out I deliberately smashed a police car headlight so that they would have to arrest me. I spent a week in jail. The judge at the trial was very sympathetic. I know it was wrong to do this but I was so desperate. The food was actually quite good.”

“I came here three years ago when I was 17. They disputed my age but they put me in NASS accommodation for a couple of months. The landlord then told me that my case had failed and I was evicted. I spent the next two years living on the streets. Sometimes I slept in parks, sometimes in abandoned cars. My friend worked at a carwash and he let me sleep in the cars there sometimes. One night I got picked up by the police and ended up in detention at an airport. They were going to deport me. I ended up crying to this security guy when they told me I would be getting sent back to my country the next day. I begged him to make a phone call and double check for me about my case. He did and found that I hadn’t been refused, in fact I had been given Refugee Status. NASS had made a mistake.”

HEALTH

The insecurity of sleeping arrangements coupled with the inability to get quality sleep, rest and food is contributing to permanently high stress and anxiety levels coupled with a fear of harassment and deteriorating health. 83% of respondents had experienced serious health problems since their arrival in the UK, and more than half had experienced mental health problems.

HOW PEOPLE FEEL ABOUT THEIR SITUATION

Interviewees often expressed a sense of rising desperation and hopelessness. Many reported that they have contemplated suicide.

Many interviewed expressed growing anger and disillusionment with how the asylum system and UK is treating them. Many recognise deterioration in their mental and physical health, attributing this in part to their experiences in country of origin but especially as a result of their treatment and circumstances in the UK.

Many describe high levels of tiredness, loss of self-esteem and sense of worth, and feeling let down. Many interviewees describe themselves as “hanging on” as long as possible whilst realising that their health is deteriorating, they are getting older, and their lives, aspirations and windows of opportunity are passing by. Many interviews conveyed feelings of shame and loss—of not contributing to their families and UK society, of disrupted education and careers, loss of dreams and hopes, not starting families or being able to support their existing family.

SAMPLE RESPONSES

“Destitution—it sounds like (meaning) people have been put in the bin and are scavenging. It makes me sound like an animal. Perhaps that is what I am now. All I am.”

“I’m on anti depressants. I’m completely worn out. Completely hopeless. I am very fearful—if they don’t let me stay then my life will be ended because I will die for sure. I also fear for my health because of where I live. Sometimes I don’t have a proper bed. And I am frightened. Sometimes I think I am going to die, I can hear my heart beating so hard. I fear I may be at the end already when this happens.”

“Sometimes I feel life is useless. It’s very dangerous for me. I have lost everything valuable to me and have been rejected here. I have no money and no support. I don’t know where my family is—what is the sense of life. It is empty.”

“I thought I would get humanitarian support here. Now I understand there are no human rights here for asylum seekers.”

“The system is really bad. Solicitors disappear at a certain point and then you have to pay. NASS kick you out and you have to live like an animal. People will start killing themselves if they have no hope of a life. At least enable us to work so we can live like human beings.”

“I can say thank God I am alive but the situation is very bad. I can’t work, I can’t do anything. I have nothing. It is hitting my heart. Imagine keeping me in this situation for three years!”

“I know I am not the same person and I ask myself if I ever will be again.”

“I don’t sleep. I have panic attacks and hate living. I regret every day that I came to the UK. I would go back to Somalia. I don’t know my fate—where my life is leading.”

“I have left my child behind and I don’t know where he is. I feel despairing. I don’t know where to turn.”

“I get depressed. I have a specialist visitor who chats with me—sometimes I have thought about suicide. I think I must give up sometimes—I feel less than human and have had enough of life.”

“I’m depressed. I feel very tired and felt suicidal once. But if I die? What about my children? It’s better for my children to know that I am alive and for them to know that we are suffering and struggling together. I just give them love. I can’t afford to help them in other ways.”

“The life I live, I find myself depressed, abandoned, alone, a nothing.”

“If it wasn’t for my mother, I would have committed suicide. It’s the only thing left to do.”

“I feel very depressed. When I came here I was 18. Now I am 24. I have no happiness or good memories.”

“I get very down and feel very bad at times. I end up accusing myself and think it would be better to be dead. I end up feeling suicidal. I am always worrying about everything. I’m not the same as I used to be. I taught for 13 years, and here I have done nothing. I feel desperate. I feel like I ran away from a life which was too dangerous, into captivity.”

“Often I don’t sleep and don’t eat. I feel headaches all the time. When I feel headaches, I remember what happened to me in Somalia and I remember what happened in the UK and I talk to myself like a crazy person. Often I feel like I am mad. My head pounds and I get flashbacks to that time, and wonder where my child is.”

“I don’t sleep. Whenever I hear somebody knocking, I think that is my end. Whenever I hear somebody shouting then I think that is the end for me.”

“I feel that I am waiting for nothing, stuck in a limbo, in-between. I can’t work, I can’t go home, I can’t get any support. English people have been so helpful and friendly but I feel as if I am wasting my life.”

ASYLUM APPLICATION

Most had applied for asylum soon after arrival in the UK. Just 14% said they knew anything about the asylum process before they submitted their application.

Various forms of persecution, political instability, conflict, abuse or imprisonment were the driving forces behind the vast majority of respondents' asylum applications.

When asked why they sought asylum, 78% of respondents made one or more references to the following words: "police, beating, rape, killed, prison, murder, war, abuse, militia, politics, kill, soldier, arrest, persecution".

LEGAL REPRESENTATION

Refugee Action is concerned that for many asylum seekers, restrictions on legal aid entitlement and a lack of access to legal provision are significant contributory factors leading to destitution. Since April 2004, there has been a maximum legal aid entitlement of five hours for the time allowed to prepare an initial application to the Home Office. Any further funding is merit-tested by the Legal Services Commission, demanding an anticipated 50% success rate, but also not available to most lawyers except through specific application, which can often take too long or be refused routinely. Legal aid for appeals is also merits tested and must be similarly authorised by the LSC.

In every region in which we work, specialist immigration solicitors have been forced to reduce capacity or close as a direct result of the cuts. For example, in Plymouth, three out of five solicitor firms have decided to close. In a two-week period in November 2004, less than 20% of clients in Nottingham were able to find a solicitor willing to look at their case. This affects large numbers of people. Our Nottingham office had 284 enquiries relating to solicitors between September and November 2004 and gave more in-depth advice to 225 of those. In Leicester, 20 clients a week say they are having difficulty accessing legal representation.

We believe that many asylum seekers are unable to find solicitors who can adequately represent them within these new constraints. We are concerned that applicants who could have been granted refugee status are being refused and are unable to appeal.

The impact of the cuts is exacerbated by the dispersal system. It is rare that a client is able to stay in contact with their original solicitor after being dispersed to another region. It is equally rare that they are able to find a new solicitor who is prepared to take their case, since the limit of legal funding has often already been reached.

In addition, an increasing number of clients tell us that their solicitor refuses to represent them at the appeal stage. The majority were unable to find alternative representation, either because there was not enough time or because there were no other solicitors with capacity to take on new cases. As a result, they did not lodge appeals and were refused asylum. We are concerned that asylum seekers are unable to access this safeguard based not on the merit of their appeal but on simple logistical and financial difficulties.

These concerns were borne out to a considerable extent by the findings of the research. Many respondents reported that problems with their legal representation, as well as their experience of the determination process, had undermined their faith in the system and left them with a sense of injustice. This in turn contributed to a distrust of Section 4 and further exacerbated their unwillingness to consider taking up a voluntary return package.

Some 78% did not feel their legal representative had presented their case fully and properly, and 87% felt they were treated unfairly during the asylum process.

Most did not have a legal representative at initial application stage. Those who complained of poor representation at their initial interview found that this had repercussions for the remainder of the process and continued to blight their case at appeal stage.

Many also complained about poor standards of interpretation at this critical stage, which they believed had damaged their case and prevented them from receiving a fair hearing. Fifty per cent were unhappy with the way their story was interpreted at first interview.

In addition, the research team drew the following conclusions:

- Dispersal arrangements can contribute to the difficulty of finding and keeping a lawyer.
- Actual or perceived lack of funding appears to impact significantly on the amount of time asylum seekers are being allocated by their lawyers. In particular, time spent early on in taking full and adequate statements, and pursuing potential discrepancies in accounts (caused, *inter alia*, by lack of documents, trauma and human memory error) means that cases are being put forward which are inadequately written up and presented.
- Whilst solicitors may be operating inside guidelines, there is significant anecdotal evidence that their interventions are more reactive than proactive. Failure to pursue evidence, for example, is resulting in cases being presented only partially thus jeopardising a fair hearing.

- Asylum seekers are being asked to undertake tasks which should more properly be undertaken by solicitors. These include: writing their own statements, pursuing evidence pertinent to their claims and attending and representing themselves at their appeals.
- There is some evidence of poor practice in the area of appeal representation, with significant numbers of asylum seekers not being provided with a case conference prior to the hearing date.
- Failure by the solicitor to ensure adequate interpretation at a variety of stages of the legal process is resulting in, for example, asylum statements being written and not read back to clients.
- There is anecdotal evidence that lawyers are jeopardising cases by both losing documents and missing deadlines.

We recognise that asylum seekers who have been rejected are unlikely to see their legal representation, or the system in general, in a positive light. With a view to securing a more objective interpretation, Refugee Action commissioned two experienced immigration lawyers to assess the merit of respondents' cases and examine the availability and quality of their legal representation. However, due to the unavailability of relevant documents in many cases, and the subjective nature of the evidence available, it often remained difficult to make conclusive statements about the merit of individual cases.

This notwithstanding, our legal consultants identified up to 70% of cases they believed would merit further examination by a specialist immigration lawyer. Where possible, these cases will be referred by Refugee Action to a solicitor for an initial assessment, with a view to securing legal funding from the Legal Services Commission.

While it is possible that a number of these cases may not qualify for protection under the terms of the Refugee Convention, our researchers were left in no doubt that the fears expressed by the vast majority of interviewees were genuine. The majority of respondents were from countries characterised by conflict, political instability or widespread human rights abuses, and their experiences in their countries of origin have left many with very understandable fears about the prospect of returning.

STATUS

Two thirds of respondents (59%) did not know what their asylum status was. Many were diligently presenting themselves weekly to the local immigration office in an effort not to break the law. Whilst they may have come to the end of their asylum claim and exhausted all asylum rights, they did not perceive themselves as being illegal and were confused about their status. 26% were awaiting acceptance of a fresh claim.

SECTION 4

The purpose of Section 4 support is to provide "short-term" support to people who are destitute and who, through no fault of their own, are unable to leave the UK.

To qualify, the person must demonstrate that they are taking all reasonable steps to leave the UK, or that they are unable to leave the UK by reason of a physical impediment to travel or for some other medical reason. Section 4 is also granted where the person is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return available, or to those who are judicially reviewing a Home Office decision or have made a fresh claim accepted as having merit.

Successful section 4 applicants receive £35 in vouchers per week and are housed in accommodation contracted by NASS with private and public providers. The Government has stated that the political intention behind the limited support is to "convey the message of return".

Some 15% of respondents were in receipt of Section 4 support. More than one in 10 did not know that Section 4 was available. Among those who knew about Section 4, by far the most common single reason they could or did not receive it was that they were unwilling to sign up to return home. When asked directly what would happen if they did return, almost half (60 people) said they believed they would be killed or would "disappear". Others believed they would be jailed or that it would be otherwise dangerous. Most were fairly specific about the risks they faced.

However, some nationalities had signed up for Section 4 in significant numbers. In the case of Somalis, 69% of those interviewed were receiving Section 4 support. Given the collapse of government in Somalia, there is effectively no authority available to issue documents, and often no safe route into the country. As a result, it is almost impossible to organise the return of Somalis. Refused Somali asylum seekers therefore feel reasonably confident about signing up for Section 4 support, in the knowledge that they are unlikely to be called upon to return. There is, however, no way on or out for those who do: they will simply stay on vouchers and in temporary accommodation for the foreseeable future. The research found no evidence of Section 4 encouraging people to consider voluntary return in any meaningful sense.

IS RETURN AN OPTION?

The vast majority of those interviewed were convinced that returning to their country of origin was not an option. Nearly all interviewees were confident they would be killed or otherwise in danger if they were forced to return.

Many were from countries to which there is little prospect of facilitating either forced or voluntary repatriation. Refugee Action is aware that in practice the Home Office is not returning people to some countries, either because there is no safe and viable route or because the Embassy in practice refuses to issue a travel document. For example, a letter dated April 2006 from the International Organisation for Migration (IOM) London states that they have been unable to help any Eritrean rejected asylum seekers return voluntarily since at least August 2004.

Most were resigned to staying in the UK even if they have no status or means of supporting themselves. Some respondents, even at the end of the process, remained hopeful that something would change enabling them to have a better, more stable and secure life. However, many are desperate and losing hope, and a large number spoke of having considered taking their own lives.

SAMPLE RESPONSES

"They could send me (back). Maybe they will. I'm tired of fighting. If I go though, I will die quickly rather than a bit slower (in the UK)".

"They will kill me, straight; they killed my mother and my son. Better to move about like a nomad in England where I am safe but there is no-one with a gun".

"I'd rather die."

"I don't want to stay in the UK. As soon as it changes at home I am going back. But at the moment I can't go back."

"I can't go back. I was raped and would be killed."

"It is dangerous there (home), but this life is hell. I would rather die in my own country. It was better there—at least I had a house."

"I can't go back—it's too dangerous. There is only one thing that can happen if I go back to DRC—to die."

"I've got nothing there, not even my family. I've suffered a lot. Even here is better than what I went through."

"To do what? Go to prison and get killed? You can only understand it if you were there. Do you think I want to be here?"

"Beyond any doubt at all I would be killed. I would scarcely get through the airport before I was arrested, and that would be it."

"I am still terrified. I have lost one daughter. Now I have a son. I can't lose him too."

"I can't go home now. I prefer to die here, this is better than go back to somewhere where I lost all my family and where they will kill me. If they try to force me back I prefer to die here."

"It is a bad life there. The people who abused (raped) me are still in the village. I fear everyone knows about what the soldiers did to me."

"You arrive in the daytime—you die in the night. They want to know why you left the country and they kill you."

"When you get to the airport they want to find out where you have been and about you (why you have been out of the country). They would put me in detention then anything could happen. Even children can kill you—they have power."

"If I go back I am at risk—prison, murder, disappearing. They would remember me. The authorities would not like that I left and would know I have been here. They would ask what I have been doing for six years. They can kill you like a mouse life is nothing."

"Because of the war, because I am from a minority clan and because my mother and father are dead."

"They ask you to sign to go back, something about £3,000, a story going round. But if I go back I die."

IS DESTITUTION "WORKING"?

Present Government policy in relation to end-of-process asylum seekers is demonstrably failing to achieve its aims. Significantly, destitution does not appear to have encouraged the people concerned to return to their countries. In fact the opposite seems to be the case, in that destitution has pushed them out of the system to such an extent that return is made less likely, not least because vulnerability is increased.

The lack of continuity of support involved in Section 4 also undermines the aims of Government policy. At a time when rejected asylum seekers need to reflect, make hard decisions or take decisive action, they find themselves not only adjusting to their new and difficult situation but facing eviction and destitution. This compounds their difficulties in getting good and timely advice. It forces them to focus on the immediate crisis rather than how to shape their future rationally.

Asylum seekers are confused and angry about what has happened to them. Many have found it impossible to understand why or how the system is run the way it is, and so are deeply anxious about entrusting themselves to it again:

“When I came here they said tell everything in confidence but I said so many things to the UK government. The day I went back I would not get a travel document, the British government will tell everything, that president is still there.”

The situation is exacerbated by the fact that, for many, conditions in their home country, the lack of safe routes available and difficulties in obtaining the necessary documents mean that the possibility of return in the near future is remote. At present, Government policy represents a refusal to formally acknowledge this “limbo” status, for which the provisions of Section 4 are clearly inadequate and inappropriate. Many of the respondents in Refugee Action’s research fall into this category. A solution must be found for these individuals that can allow them to begin to rebuild their lives and regain some sense of dignity and purpose.

POLICY RECOMMENDATIONS

Refugee Action is exploring possible solutions to the problems identified by the research, with a view to entering into a constructive dialogue with policymakers. At time of writing these were in the process of being finalised. However the key points may be summarised as follows:

- No rejected asylum seeker in the UK should be forced into destitution at the end of the asylum process where appeals have been exhausted.
- Grant temporary, renewable terms of leave to remain for individuals who the Home Office has little prospect of removing. Nationalities to whom this may apply include, for example, Iraq, Somalia, Eritrea and Afghanistan (in the case of single women or female headed households).
- Rejected asylum seekers should continue to be entitled to S95 benefits until such time as their case is resolved. They should not be required to apply for a separate form of support, as is currently the case with Section 4.
- Introduce a programme of backlog clearance according to specific criteria. There are a number of ways in which this might be achieved, and the following are intended as suggestions for consideration by government. However the backlog is resolved, we think it will be necessary to include some of the following measures.
- To re-establish contact with the backlog of end-of-process individuals, the government could introduce an incentive-based package which offers the possibility of support and a fair and humane resolution of their case. This could include the potential for renewable, temporary leave to remain on the following grounds:
 - ✓ Compassionate: for example, the length of time the person has been in the UK and the extent to which they have integrated into the community.
 - ✓ Skills-based: discretionary regularisation based on the assessment of experience and skills which might meet the needs of the UK economy.
 - ✓ Humanitarian: Rejected asylum seekers who do not qualify for protection under the Refugee Convention but are from unstable countries with poor human rights records. For example, failed Zimbabweans.
 - ✓ Provisions for vulnerable groups: for example, vulnerable women and people who arrived in the UK as minors.

This should take place in the context of:

- ✓ Legal advice made available to all those at the end of the process, in order to ensure that their substantive claim has been fully and fairly heard and that humanitarian protection issues have been considered.
- ✓ A fair and robust returns policy: Above all, this means extending voluntary return packages and assisting people to come to terms with their situation through a supported caseworker approach (see below).

Introduce a positive casework approach to end-of-process asylum seekers: While the package outlined above might take the form of a backlog clearance exercise, these measures should be built into the system to prevent future backlogs accumulating. The New Asylum Model, which is based on end-to-end contact with a single caseworker, offers an opportunity for end-of-process support packages to be embedded in the system. We urge the government to invest in a positive casework approach to people at the end of the process, based on models such as the work of the Hotham Mission in Melbourne, Australia.

THE HOTHAM MODEL

The Hotham Mission in Australia has developed a casework model for working with asylum-seekers that has proved particularly effective in helping them to remain engaged in the asylum process even at times of their potential removal from the country. This engagement is underscored by the principle that the casework offered is:

“Based on a professional human services response to the unique issues that they (asylum-seekers) face.”⁶⁸

Overall the model seeks to provide a supportive safe space for asylum-seekers while they await a final decision. It is about building up trust between the caseworkers and the asylum-seeker through a consistent supportive approach that seeks to: “Empower the asylum-seekers and facilitate the best possible immigration outcomes, whether they be settlement or return outcomes.”⁶⁹

This casework model has several key aspects that contribute to its success:

- Intensive casework is provided to asylum-seekers from the early stages of their arrival in the country.
- Detailed assessments of the needs of the clients based on an understanding that there are often a number of inherent vulnerabilities exhibited by asylum-seekers such as the effects of past trauma, trauma in flight, family separation, fear and uncertainty.
- Provision where appropriate of housing, medical assistance and counselling

Appropriate referrals are made to other welfare agencies, legal advisers and statutory providers while retaining casework support and co-ordinating provision by other providers.

- Ongoing or continuous casework support throughout the entire period that the asylum-seeker is in the country: “lasting through the period during which the application and any appeals are examined until the person either receives a more permanent residence permit, or is expelled, repatriated voluntarily or resettled into a third country” (defined as the Reception Stage).⁷⁰

The casework support seeks to prevent problems arising or developing and prepare the person for what may be crisis points, such as the possibility of return. The Project has found that keeping the asylum-seeker fully informed about their situation and helping them understand what is happening to them and why, enables them to take some control and make their own decisions. This understanding and engagement is in stark contrast to the confusion and withdrawal from the system that we witnessed in so many of those interviewed for this research (see findings).

A key outcome of the approach adopted by the Hotham Mission is a higher degree of voluntary repatriation and compliance with return schemes:

“Actively engaging and informing clients allows for a range of practical steps to be introduced around their welfare and return concerns.”⁷¹

Of the asylum-seekers that the Hotham Mission has worked with in the last five years using this casework model 84% have returned voluntarily.⁷²

The Hotham Mission casework model seems to offer an alternative to forced removal by preparing, supporting and empowering asylum-seekers throughout the asylum process, increasing the likelihood that they will comply with decisions and better cope with return or settlement.

13. Memorandum from Medact

Medact welcomes this opportunity to provide evidence on provision of healthcare for asylum seekers and refugees. Medact is a UK based health charity, with a health professional membership, which undertakes education, research and advocacy on the health implications of conflict, development and environmental change. The Medact Refugee Health Network has a membership of 277 UK health professionals and academics working with refugees and asylum seekers.

⁶⁸ Mitchell, Grant—Hotham Mission Asylum Seeker Project Description May 2006.

⁶⁹ Mitchell, Grant—Hotham Mission Asylum Seeker Project Description May 2006.

⁷⁰ Reception is defined as “The starting moment a person enters a country and presents his/her claim for asylum to a national authority, lasting through the period during which the application and any appeals are examined until the person either receives a more permanent residence, or is expelled, repatriated voluntarily or resettled into a third country”. PERCO (Platform for European red Cross Cooperation on Refugees, Asylum-Seekers and Migrants) Guidelines on the Reception of Asylum-Seekers for National Red Cross and Red Crescent Societies (Geneva 2001).

⁷¹ Mitchell, Grant—Hotham Mission Asylum Seeker Project Description May 2006.

⁷² Source: Mitchell, Grant—Hotham Mission Asylum Seeker Project Description May 2006.

SUMMARY

Medact submits that access to healthcare for failed asylum seekers is negatively affected by current practice, to such a degree that this amounts to an effective denial of healthcare.

Key factors are:

- that the International Covenant on Economic, Social and Cultural Rights (ICESCR) is not incorporated in UK domestic law;
- that restrictions on the right to the highest attainable standard of health for failed asylum seekers is unjustifiable under international human rights law.

We submit that effective denial of healthcare for failed asylum seekers is based on the following:

- efforts to ensure that legislation—which complies with international human rights law—is applied correctly in practice;
- lack of any other healthcare alternatives;
- denial of access to healthcare under the presumption of non-payment;
- confusion over the definition of a “failed” asylum seeker; and
- the legitimisation of discrimination and racism.

Specifically the amendments to Charges to Overseas Visitors have the potential to violate the following articles of the European Convention on Human Rights in the following ways:

Article 2—the right to life: violation based on the potential for this policy to lead to maternal and infant mortality and suicides

Article 3—the prohibition of torture and other inhuman or degrading treatment: violation based on withdrawal of services and denial of access to healthcare whilst in detention.

1. Provision of health care for Failed Asylum Seekers

1.1 The right to health and health care is enshrined in several international human rights instruments, and is clearly stated in Article 12 of the ICESCR. Other international treaties that contain provisions on the right to health are the Convention on the Rights of the Child (Article 24), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5 (e) (iv)) and the Convention on the Elimination of All Forms of Discrimination Against Women (Article 11.1 (f) and Article 12).

1.2 The ICESCR General Comment 14 clarifies the scope of Article 12 and sets out the State’s responsibilities. Essential elements to the right to the highest attainable standard of health are health services that are accessible, affordable, available and of good quality.

1.3 However, as the ICESCR is not incorporated into UK domestic law, it cannot be brought to stand in domestic courts. Presently the UK Government respects its obligations under the ICESCR by considering its responsibilities/obligations when forming new policies; this does not ensure sufficient protection for vulnerable or irregular groups.

1.4 Healthcare entitlement for asylum seekers is described under policy and guidance provided by the Department of Health. Both asylum seekers who receive support from the National Asylum Support Service (NASS) and those who do not, are entitled to free primary and secondary care while their claims are being processed. If their claim and all appeals are rejected they are classified as a “failed” asylum seeker, and are no longer entitled to free secondary care which includes hospital treatment. The Table of Entitlement to NHS Treatment, however, states that “ . . . *immediately necessary treatment to save life or prevent a condition from becoming life threatening should always be given to asylum seekers without delay, irrespective of their eligibility for free treatment or ability to pay. However, if they are found to be chargeable, the charge will still apply and recovery should be pursued as far as the trust considers reasonable*”.⁷³

1.5 Human rights experts state that rights can only be limited with proportional, justifiable reasons: “*Limitations on rights are considered a serious issue under international human rights law, regardless of the apparent importance of the public good involved. When a government limits the exercise or enjoyment of a right this action must be taken as a last resort and will only be considered legitimate if the following criteria are met*

1. *The restriction is provided for and carried out in accordance with the law;*
2. *The restriction is in the interest of a legitimate objective of general interest;*
3. *The restriction is strictly necessary in a democratic society to achieve the objective;*
4. *There are no less intrusive and restrictive means available to reach the same goal; and*
5. *The restriction is not imposed arbitrarily, i.e., in an unreasonable or otherwise discriminatory manner.*⁷⁴

⁷³ Table of Entitlement to NHS treatment, found at www.dh.gov.uk/assetRoot/04/13/33/33/0413333.pdf (view 31 August 2006).

⁷⁴ Gruskin, S and Tarantola D *Health and Human Rights*, in Grodin, Gruskin, Annas and Marks (eds) (2005) *Perspectives on Health and Human Rights*, Taylor and Francis Group, New York.

Restricting the right to healthcare for failed asylum seekers therefore contravenes international human rights law.

1.6 The Charges to Overseas Visitors policy does not fulfil the above criteria—and is therefore not a justifiable restriction on the right to health—for the following reasons:

- the restriction is not in the interest of a legitimate objective;
- since the objective is not legitimate, it cannot be described as strictly necessary in democratic society; and
- the restrictions are imposed in an entirely discriminatory manner that targets a vulnerable section of the community.

1.7 The objective behind the restrictions has been described as addressing “health tourism” and abuses of the NHS, although the UK government has been unable to provide evidence on health tourism. Neither is there evidence to suggest that asylum seekers come to the UK for benefits of any kind; claiming asylum is a fundamental human right. The methods used to combat health tourism are restrictive and intrusive.

2. *Effective Denial of Healthcare*

Under Article 12 of the ICESCR States are required to provide for “the creation of conditions which would assure to all medical service and medical attention in the event of sickness”.⁷⁵ The Department of Health’s Charges to Overseas Visitors Policy violates international human rights law by placing obstacles in the way of a group of people being able to access the right to the highest attainable standard of health. The practical implications of this are described below.

2.1 Denying access to health care under the presumption of non-payment

2.1.i Failed asylum seekers are ineligible for free secondary care; any new treatment must be charged for, and the patient expected to pay for the services rendered. This applies for conditions such as cancer, diabetes and HIV/AIDS; a failed asylum seeker diagnosed as HIV positive is expected to pay for costly ARV therapy.

In practice this means that those who are suspected as being unable to pay will be refused treatment from the outset, as hospital trusts and others know they will not be reimbursed. Alternatively they may cancel any future treatment or care once they are informed of the immigration status of the patient.

Examples: An Iranian asylum seeker with multiple medical problems and needs, was scheduled for surgery; it was then revealed that his asylum claim had failed and the surgery was cancelled as the constant day care needed after the operation was refused by the overseas manager.

A pregnant asylum seeker from the Democratic Republic of Congo was denied antenatal care unless she signed an undertaking to pay for it.

(Case studies from Medact Monitoring Survey)

(Please also note submission of evidence from the Medact Reaching Out Maternity Project on this same issue.)

2.1.ii Fearing debt collectors or further invoices many asylum seekers go underground or only present to accident and emergency departments at later and more severe stages of illness. This can result in substantial periods of time without medication, a lack of antenatal care, and a loss of contact with health workers.⁷⁶

2.2 No other healthcare alternatives

The NHS being the primary provider of health services in the UK, once asylum seekers have been refused care from the NHS, there are virtually no alternatives. The only other option is a private GP or hospital, which is far beyond the means of the majority of asylum seekers. Requests for doctors to see clients at no cost in a private capacity have proved unsuccessful as any treatment or investigation required as a result would need to be obtained privately and so require payment. Doctors have told us it would be unethical to see a patient who they would effectively be unable to treat. Research conducted by *Medicins du Monde* identified a need to set up an alternative health facility for those who could not access NHS care and set up Project London in 2005.

⁷⁵ ICESCR, Article 12.

⁷⁶ Medact Reaching Out Project.

2.3 Misapplication of rules

2.3.i As the Department of Health has acknowledged on several occasions, there is much confusion among medical professionals and administrative staff regarding rules and amendments concerning entitlements for different groups of asylum seekers and other overseas visitors. There is a lack of clarity as to who is eligible for free care, with the result that hospital staff are interpreting guidelines on an ad hoc basis, and may apply the rules according to their trust's policy and budget.

Example: An Ethiopian asylum seeker with severe mental health problems was transferred to a psychiatric hospital from an A&E department. The consultant of the psychiatric hospital decided that this patient should be discharged. He said if she did not leave of her own volition then he would call in security guards to forcibly remove her. The distressed young lady was to be left outside on the street. This action was against Department of Health rules and was illegal under the Mental Health Act.

2.4 The term “failed” asylum seeker

2.4.i Confusion around the definition of a “failed” asylum seeker is described in the following quote from a solicitor: *“There is clear confusion amongst many as to what exactly a ‘failed asylum seeker’ is. For example, if someone has a legitimate fresh claim, for example because the situation in their country of origin worsens before they are removed, or new information is discovered which demonstrates the risk they would be under, are they ‘failed’? The only way to make such a claim is to write a long letter to the Home Office. The Home Office practice is not to respond or recognise this communication. After a year or two, they write saying they will not recognise the representations as an ‘asylum claim’, and you have to take them to court over it. In the meantime, the person is in limbo as to status—and therefore as to entitlement to medical status. An ‘asylum’ seeker is entitled but what if they don’t fit into the usual ARC-carrying, first time applicant? The rules themselves are not clear, but more importantly, the people—‘overseas officers’ etc—understanding of immigration law, and therefore incapable of understanding the situation. This is typical of healthcare access problems we get: there are large numbers of cases which are not ‘obvious’ especially to a non-lawyer, and are generally refused outright”.*⁷⁷

2.5 Legitimising discrimination and racism

2.5.i The Charges to Overseas Visitors Policy is fundamentally a discriminatory policy, as it differentiates who should have access to health care based on their immigration status. While this policy has focused on failed asylum seekers, it is certain to make it more difficult for asylum seekers and other migrant groups to obtain secondary health care. Whilst we understand that the UK government is not under an obligation to provide free medical care for anyone, we believe them to be obligated to ensure the right to the highest attainable standard of health for vulnerable and marginalised groups.

Despite clear instructions from the Department of Health in *“Implementing the Overseas Visitors Hospital Charging Regulations: Guidance for NHS Trust Hospitals in England”* (ch 4 article 4.3) that the way to avoid accusations of discrimination is to ensure that all patients are asked the same questions, we know this is not happening in the hospitals about which we have received complaints. Despite requests the Government has failed to carry out any form of equality impact assessment either before or after the implementation of current regulations.

2.5.ii The Charges to Overseas Visitors Policy encourages negative stereotypes that are portrayed in the media, and fans racism. The notion of asylum seekers as health tourists is propagated, although there is no evidence to suggest this. Medact has previously been asked by the BBC to comment on a story about health tourism and maternity services; on being told that we work only with asylum seekers the journalist commented that “surely it was the same thing.”

2.5.iii This policy contradicts racial equality and social inclusion policies. It further isolates minority and vulnerable groups from mainstream healthcare and social services.

Medact documented the case of an asylum seeker denied ongoing hospital treatment for a renal condition. When a refugee agency contacted the hospital regarding this patient, the hospital staff member stated the asylum seeker “should not even be in the country!”

Additionally, an asylum seeker from Somalia awaiting the result of an initial claim went to a GP for medication for TB. The GP asked why the client had come to the UK for treatment of his TB and expressed the view that he should return to Somalia to continue his treatment.

⁷⁷ Solicitors Case study, January 2005.

3. *The right to health and the European Convention on Human Rights (ECHR)*

3.1 In the Human Rights Act that enforces the European Convention of Human Rights in UK domestic courts, there is no specific reference to the right to health. However the right to health is protected by other Articles in the ECHR, namely the right to life (Article 2), the prohibition on torture and other inhuman and degrading treatment (Article 3) and the right to private and family life (Article 8). The right to non-discrimination (Article 14) can also be used. Jurisprudence from the European Court of Human Rights has shown these articles to be applicable in protecting and enforcing the right to health.

3.2 The European Court of Human Rights has defined denial of treatment as “actual bodily harm or intense physical or mental suffering”.⁷⁸ To give rise to a breach of Article 3 the suffering needs to have reached a minimum level of severity. The threshold of suffering deemed inhuman or degrading has been described by a UK court as resulting from a denial of services. The Supreme/High court ruled that to withdraw support from asylum seekers, hence leaving them destitute, amounted to a violation of Article 3. Asylum seekers living in destitution were ruled to be suffering from inhuman and degrading treatment. Mental anguish caused by the stress of not being able to access healthcare for oneself or ones children might also be considered applicable under Article 3. Section 55 gives the power to remove all forms of support by the Home Office if an asylum seeker did not claim asylum at the first opportunity. The current proposal to remove access to primary care from failed asylum seekers would undoubtedly result in a denial of care.

4. *A Positive Obligation to protect from violations of Article 3*

4.1 The UK and European member states are required to take positive steps to ensure that individuals do not suffer from what would amount to cruel or inhuman treatment, or from suffering caused by a disease that would amount to such. Article 3 was successfully applied in this respect in the UK in *Z and others v United Kingdom*. In this case the UK government failed to act to remove children from horrific living conditions where they suffered emotional and physical abuse that amounted to a violation of Article 3.

4.2 In determining whether or not a positive obligation exists, a fair balance has to be struck between the general interest of the community and the interests of the individual. Removing access to secondary care from asylum seekers has a negative effect on the community. Asylum seekers seeking GP appointments who have been sent away can only wait until their condition deteriorates to such an extent that they can attend the A&E department of a hospital. As it costs more to treat someone in the later stages of an illness this becomes more expensive for the NHS.

The clearest example of this is diabetes. If a patient receives regular insulin to control the disease, infections, blindness and other more expensive complications are avoided as is a considerable amount of individual pain and distress.

The evidence is heavily in favour of providing preventative health care to failed asylum seekers. If the UK is taking steps that effectively contribute to an individual suffering from inhuman or degrading treatment, they are violating Article 3 of the European Convention of Human Rights.

5. *Asylum Seekers in detention*

5.1 Presently there are 11 detention centres in the UK holding asylum seekers. Those detained include many survivors of torture in contradiction of Home Office guidelines. Survivors of torture carry many physical and psychological wounds that can be exacerbated in detention conditions, and many have been held incommunicado in their country of origin. The experience of detention in UK will undermine their mental health, being extremely stressful and possibly triggering memories and flashbacks.

5.2 The European Court of Human Rights has ruled that limited access to health care whilst in detention amounts to a violation of Article 3.⁷⁹ These also revealed that poor detention conditions can amount to a violation of Article 3.

6. *Health Impact assessment of the policies*

6.1 The original justification for introducing charges to overseas visitors was to clamp down on health tourism which, it was claimed was putting a substantial strain on services.

No clear evidence has been provided that health tourism exists as a substantial problem within the NHS. The majority of asylum seekers failed or otherwise have been shown not to travel to the UK with any knowledge of, or intention to use, the NHS.

6.2 Given this lack of evidence, it is difficult to gauge if there has been a decrease in the costs associated with this perceived problem. However it is possible to make preliminary assessments as to how much the restrictions on health care for failed asylum seekers will cost the NHS in the long term. Communicable diseases such as TB and HIV could have a significant impact on future health costs. Babies born outside

⁷⁸ *R(Q) v Secretary of State for the Home Department* CO/0-113/2003.

⁷⁹ *Case of Popov v Russia* Application No 26853/04 July 2006.

the NHS system may not have access to a birth certificate. In such cases the necessary immunisations and child protection mechanisms cannot be brought into play having a profound impact on the safety and wellbeing of the child.

If people are left untreated and their condition worsens, it will often prove more expensive to treat their final condition than their original presenting complaint. While adding to the physical and mental suffering of already vulnerable people such measures are also adding a further financial burden to the NHS.

Medact alongside many other organisations including many of the Royal Colleges has asked the government to carry out a health impact assessment of current and proposed legislation to evaluate the possible health implications for individuals and the community. They have so far failed to respond.

7. Recommendations

7.1 Medact joins other NGOs in calling for the incorporation of the ICESCR into domestic law. With the incorporation of the ICESCR into domestic law, there will be greater protection of these rights in the UK. The government has said that it is the duty of governments to form policies that provide health, education and housing. However government policies cannot always be guaranteed to protect the rights of vulnerable groups. Human rights of vulnerable or debatable groups may take a back seat to other concerns. Without access to the courts there is little room for addressing gaps in legislation.

7.2 Medact requests that a full impact assessment be carried out of current and proposed legislation. This should consider the impact on individuals and possible equality and human rights implications of this and future health legislation.

7.3 Medact makes no comment on UK immigration policy but believes that the ability to access health care can never be used as a tool of social policy to deter immigration.

2 October 2006

14. Memorandum from Barnardo's

INTRODUCTION

1. Barnardo's helps the UK's most vulnerable children have a better start in life, and therefore the chance of a better future. As the UK's leading children's charity, we work directly with over 120,000 children, young people and their families every year. We run 370 projects across the UK, including counselling for children who have been abused, fostering and adoption services, vocational training and disability inclusion groups.

2. Every Barnardo's project is different but each has the same goal: protecting, nurturing and providing opportunities for the most vulnerable children and young people, over the long term, enabling them to transform their lives and fulfil their potential.

3. Currently 26 of our services across the four UK nations have contact with asylum-seeking or refugee children. Some of these services specialise in this area; others have found that in focussing on the most vulnerable children in their neighbourhood they are increasingly working with asylum seekers. Examples of our work include: offering foster placements to unaccompanied asylum-seeking young people; leaving care schemes where some of the care leavers are asylum seekers; family support with interpreting services; group work with asylum-seeking children; work in schools; support to asylum seeking families living with HIV or AIDS; services for families in temporary accommodation.

4. Barnardo's believes that asylum-seeking families and their children are among the most disadvantaged groups in this country. In a country with a long tradition of welcome, it is deeply disturbing that so many of them struggle to get basic services for their children and experience near destitution because of welfare restrictions. We are therefore glad of this opportunity to give evidence to the Joint Committee on Human Rights.

5. In considering the human rights issues raised by the treatment of asylum seekers we draw on the Children Act 1989, the Human Rights Act 1988 and the UN Convention on the Rights of the Child. Our experience is that despite the commitment and best intentions of many professionals working with asylum seekers, there are a number of broader policy issues which make delivering support very difficult. Even where policies are in place which have proper regard to children's rights, their implementation in practice often falls short.

ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

6. All our services for asylum seekers report high levels of poverty and frequently inadequate accommodation. One service in Manchester working with families living with HIV, of whom the majority are asylum seekers, made this comment: "Our families are often in substandard housing without cots or beds for children to sleep in, cut off from power supplies at regular intervals and in receipt of food vouchers rather than cash benefits to meet their subsistence needs. Sometimes the properties are infested with cockroaches.

Families receiving financial support from NASS have benefits suspended if there is a change in their circumstances such as being moved to new housing. Bureaucratic processes lend themselves to a raft of errors with vital papers being mislaid in connection with immigration issues.”

7. Many of these families slip through basic safety nets. Where an application is made under human rights legislation for humanitarian protection (typically on medical grounds, such as a child being HIV positive) a family can be left with no access to public funds and ineligible for support under NASS. The parents are not entitled to take paid employment. In our view the Children Act 1989 and Human Rights legislation place a responsibility on local authorities to provide financial assistance to the family, but it is often very difficult to persuade a local authority to do this.

8. When a family has reached the end of the appeals process and their application is deemed to have failed, there may be many reasons why they remain in this country. Often the family receives section 4 support from NASS or the local authority, typically issued in the form of food vouchers. In many cases these vouchers are refused by shops. For example one large supermarket refused to let a parent buy baby milk, when it was essential on health grounds for the mother not to breast feed. Vouchers cannot be used for some basics like feeding bottles and household necessities.

9. Barnardo’s has always been concerned about the potential impact of section 9 of the Asylum and Immigration (Treatment of Claimants) Act. Our report “The End of the Road”, published in autumn 2005, summarised the results of research with 33 local authorities, 18 of which were involved in the government’s pilot of section 9.⁸⁰ A key finding from the report pointed to potential breaches of children’s rights and conflict between different pieces of legislation. In particular the local authority staff interviewed for the study had not been given any guidance from DfES on how to undertake human rights assessments, or how they could work with families affected by section 9 without risking a breach of their duties under the Children Act 1989, or the Human Rights Act 1998. The government evaluation of its own pilot of section 9 has not yet been published and the provision has not been implemented nation-wide; alternatives need to be considered.

10. The right to adequate accommodation is fundamental. However, recent developments have made achieving this more difficult. The dispersal accommodation contracts with private and public providers for asylum seekers expired recently, resulting in new contracts known as “target contracts”. Although NASS laid down some principles like “minimum disruption” the experience of some Barnardo’s services is that these were sometimes not adhered to. In reality many families have been moved out of their geographical area, children have lost their school place, and new housing sometimes did not provide basics like a bath. In spite of dispersal policies stating that people who are HIV positive should not be moved beyond reach of their treatment centres without proper planning, families have been moved at a few days notice. One service comments “We have many letters on files where we have written to housing providers who are not providing furniture and equipment which complies with NASS requirements, such as provision of a cot. We also have to advocate on issues including unsatisfactory standards, such as damp rooms, and broken boilers.”

11. Families are often placed in “hard to let” properties in disadvantaged areas where the host community itself feels deprived and less accepting of newcomers into the area. Racial harassment is experienced by many of the families we know.

12. Each time a family moves, there is a temporary suspension of their benefits while a new post office is sorted out. A service comments “Very often, this leaves the family with no support. A typical helpline response from NASS is that a payment will be made to them within three to five working days and that they should remain indoors for its delivery. If you ask what the family should do in the meantime, you are advised that they should find a voluntary agency to give support. No mention is made of section 17 of the Children Act and any responsibility social services would have. This explains why so many families come to us for emergency money (which we don’t have) and for food.”

THE PROVISION OF HEALTHCARE

13. Families in our services often experience disruption in relation to health care as a result of dispersal or the renegotiation of the housing contracts. Although housing providers are required to assist with GP registration, this is sometimes no more than tokenism. A recent example is a service in the northwest working with a mother of a three year old who had been moved between four local authorities in the last year. She had been unable to register with a GP, and so her child had not had access to a health visitor even though he has developmental problems.

14. Since 2004 when the rules were tightened, asylum seeking families whose claims have been rejected are not entitled to secondary health care. We are aware that senior doctors sometimes have an informal commitment to treat in spite of legislation or hospital administrators’ policies. However, relying on informal goodwill is clearly unsatisfactory and current government policy should be urgently reviewed.

⁸⁰ A summary and the full report are available at www.barnardos.org.uk/theendoftheroad

TREATMENT OF CHILDREN

15. We make four overall comments:

- Asylum-seeking children are children first and foremost and UK policy should protect their welfare as a first principle. The overarching legislation and policy in this country should be the Children Act 1989 and the initiatives launched under “Every Child Matters”. But asylum-seeking children commonly receive different treatment from citizen children, and their immigration status appears to take priority over their rights as children.
- Like the Joint Committee, Barnardo’s has criticised the reservation entered by the Government to Article 22 of the UN Convention on the Rights of the Child, which secures the applicable rights of the Convention to children seeking refugee status, whether accompanied or unaccompanied.
- A central difficulty is the fit between children’s legislation and immigration law. Important areas of legislation such as section 9 or section 17 of the Children Act 1989 are often not seen as applicable. There are other complex areas where asylum-seeking children may well be entitled to assessment under the Children Act—such as families with disabled children. However NASS, not the local authority, then has to meet the accommodation and support needs identified in the assessment; there is little evidence that NASS is meeting these needs.

16. Multiple moves can have a profound effect on children who are already traumatised by loss and experiences in their country of origin. Children who are moved from area to area have their schooling disrupted and find it harder to develop a sense of belonging to a community. It is harder for them to sustain friendships and a sense of security. If psychological support or counselling has been secured, this is disrupted.

17. Asylum seeking children of compulsory school age have the same entitlement to education as UK nationals but their education rights and entitlements to free school meals are often not respected. Accessing a school place can be very difficult. Bureaucratic processes mean that schools sometimes do not allocate places as quickly as they could because they need documentation which is lodged with the Home Office. Many schools and governing bodies do not realise their responsibilities to asylum-seeking children.

18. Issues to do with free school meals, transport, parental choice over schools and school uniforms are confused and policies are frequently inconsistent between authorities. For example although local authorities can provide school uniforms, many do not in practice and others only do so at key stages in a child’s school life. Many children have to move schools repeatedly and need new uniforms each time. For families on or below benefit levels or those on section 4 support, transport costs hit hard.

19. Many of the children we work with have secured nursery placements which are then lost when they move area. A parent might register their child for their entitlement of five sessions of 2½ hours a week in one area only to find that when they move they have missed the deadline for registering in their new neighbourhood.

20. Barnardo’s has a number of services working with unaccompanied asylum seekers. Unaccompanied asylum-seeking children are subject to many of the same pressures, and the same uncertainty about their future. In addition they face the isolation of arriving in this country without the support of parents or family. Services working with unaccompanied asylum seekers leaving care report that such young people are often denied the stability fundamental to well being. This is often related to issues such as a shortage of foster parents or suitable residential placements, difficulties finding ethnically matched foster placements and a lack of information exchange.

USE OF DETENTION AND CONDITIONS OF DETENTION AND METHODS OF REMOVAL OF FAILED ASYLUM SEEKERS

21. Our overarching concern is that the UK continues to detain families with children who have come to the end of the asylum seeking process. We believe that the government should urgently trial alternatives to this practice.

22. We are also concerned about the methods used when children leave this country. For example:

- Children are sometimes taken suddenly from their beds by police in the middle of the night or early hours of the morning to be driven to an Immigration Detention Centre. They can then be deported, with little chance to collect any belongings that might be necessary in the country to which they are going.
- Some children who have been born in the UK are sent to countries which have a high risk of tropical diseases such as malaria and typhoid without having the appropriate immunisations.

TREATMENT BY THE MEDIA

23. We know from our practice that many asylum-seeking children and young people show extraordinary resilience and motivation. They often manage to overcome the traumatising experiences they have had in their country of origin and are highly motivated to achieve academically and socially. They frequently make a very positive contribution to school and community. The hostile attitudes in many sections of the press do them a grave disservice and should be challenged.

24. Finally, we note that all sections of the media frequently get terminology wrong. The term “illegal asylum seeker” is often used in error and terms like “asylum seekers”, “people on work permits”, “illegal immigrants” and “refugees” are commonly confused.

September 2006

15. Memorandum from John Horgan

1. INTRODUCTION

I am making this submission as a public citizen.

I intend in this submission to focus on the human rights impact of Section 9 Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Specifically, I will examine whether any human rights violations may have occurred in practice during the recent Section 9 pilot programme.

2. EXPERIENCE OF THE PILOT PROGRAMME

The Home Office’s stated aim with the introduction of Section 9 was to change the behaviour of failed asylum seekers.⁸¹ However, the pilot programme undertaken in the Greater Manchester, Leeds and London areas has proved an overwhelming failure in this respect. As at January 2006, only one family out of 116 had left the UK as a result of Section 9. In addition, at least 32 families had gone underground with no support, housing or access to health or welfare services, rendering them—and especially their children—in an exceptionally vulnerable position.⁸²

In theory, it seems reasonable to assume that such a powerful deterrent would have proved effective in influencing failed asylum seekers to avail themselves of the voluntary return programme. However, in practice, the Section 9 pilot appears to have achieved less than a 1% success rate. The question must then be asked as to how such a wide variation between theory and practice came about.

One possible answer would appear to lie in the fact that Section 9 contains an implicit assumption that because a failed asylum seeker does not have a “well-founded fear of persecution”, they do not have any genuine fear at all. It takes no account of the extent to which a subjective fear may influence—even dictate—the behaviour of failed asylum seekers. This point is made—and backed up with references to medical research—by the European Council on Refugees and Exiles (ECRE):

“The psychological stress of the threat of return caused to asylum seekers whose applications have been rejected, refugees, and those living under less secure subsidiary forms of status, are enormous.”⁸³

The experience of the pilot has also suggested that many failed asylum seekers have both a genuine and overwhelming fear of return, even when it is not grounded in the objective conditions existing in their country of origin. When this happens, they may well perceive that their best interest—and, crucially, that of their children—lies in resisting return at any cost.

This point is borne out specifically in evidence submitted by Bolton MBC as part of the Home Office Evaluation of the Section 9 Pilot:

“Families did not believe that the Home Office has taken their circumstances fully into account and that they are not able to return, in addition that they have been here so long and that their children some who were born here and gone to schools here can not return. Families simply stating repeatedly that they felt they can not return because they would be putting them selves in danger and that they would be putting their children at risk and threat.”⁸⁴

A similar outlook was also encountered in other pilot areas:

“Of the 35 families who were involved in the Refugee Council/Refugee Action outreach programme: — All believed it was unsafe for them to return to their home country.”⁸⁵

⁸¹ Home Office Press Release (1 December 2004), *New Laws to Crack Down on People Trafficking and Asylum Abuse*.

⁸² Refugee Council/Refugee Action (January 2006), *Inhumane and Ineffective—Section 9 in Practice*, pp 2–3.

⁸³ European Council on Refugees and Exiles (June 2005), *The Return of Asylum Seekers Whose Applications have been Rejected in Europe*, p 15.

⁸⁴ Reply to Question 25, Section 9 Local Authority Feedback Questionnaire, completed by Bolton MBC.

⁸⁵ Refugee Council/Refugee Action, as above, p 7.

It should also be noted that the Refugee Council and Refugee Action have estimated that 80% of families they worked with who were affected by Section 9 included a parent with mental health issues, including medically diagnosed post traumatic stress disorder.⁸⁶

3. CONCLUSION

The experience of the pilot, then, points towards the possibility that a substantial number of failed asylum seekers may, for reasons of mental well-being, have lacked a genuinely free choice as to whether or not to return voluntarily to their country of origin. As such, they will not have enjoyed meaningful access to any alternative means of support there. I would suggest that in such instances, there may be a prima facie case to the effect that Section 9 is tantamount to destitution “by deliberate action of the state”,⁸⁷ and as such, is in breach of Article 3 ECHR according to the terms of the recent *Limbuela* judgment.

The JCHR has already expressed its concern that the lack of a sufficiently robust process may lead to human rights violations in practice.⁸⁸ I submit that the process is deeply flawed, in that its human rights assessment appears to contain no means of identifying those numerous individuals whose mental health issues impact significantly on their decision-making ability in relation to voluntary return.

I further submit that if the human rights assessment is amended in light of the above, the same amendments should be incorporated into the human rights assessment for support under Section 4 Immigration and Asylum Act 1999.

14 September 2006

16. Memorandum from Dr Helen Bolderson

ASYLUM SEEKERS’ ACCESS TO FINANCIAL SUPPORT

Introduction

1. Articles 21–24 of the Refugee Convention⁸⁹ confer rights to elementary education, public relief, labour legislation and social security (the latter “subject to any appropriate arrangements for the maintenance of acquired rights”).⁹⁰ These rights are to be made available to “refugees lawfully staying in the territory” of the Contracting State.

2. Article 23 confers rights to public relief and assistance and Article 24 to social security. In the UK, people who are formally recognised as refugees are entitled to these provisions but these rights are not recognised as applying to asylum seekers.

3. This submission to the Committee is made in order to bring attention to the following:

- (a) The arguments that can be advanced for extending the provisions covered by the Convention’s welfare rights to asylum seekers who are claiming that they fall within the definition of a refugee under Article 1 A (2) of the Convention. Current legislation means they can only receive non-mainstream and less favourable financial assistance from the Home Office or, in certain circumstances, none at all (see para 6 below).
- (b) The situation of asylum seekers who are claiming that it would be a breach of the ECHR⁹¹ for them to be removed from the UK but who may not meet the descriptions of a refugee under Article 1 A (2) of the Refugee Convention; they too are confined to accessing the Home Office support system.
- (c) The plight of “failed asylum seekers” who, for a variety of reasons, some beyond their control, are still present in the UK and have no, or very limited and conditional, access to any benefits.

4. The current provisions for asylum seekers’ financial support and, in some cases, the total withdrawal of benefits or the conditions attached to receiving them, are causing hardship and destitution. They need to be addressed in the light of the scope of the Refugee Convention’s welfare rights and the role of international human rights law.

5. Part I of the submission summarises current policies governing the provisions for financial assistance, the extent of their departure from previous arrangements, their impacts, and issues about the legal challenges made to them. Part II shows why there might be an argument for extending the welfare rights in the Refugee Convention to “presumptive” Convention refugees although the widening of the term “asylum

⁸⁶ Refugee Council/Refugee Action as above, p 5.

⁸⁷ *R (Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66, House of Lords, 3 November 2005, para 7.

⁸⁸ House of Commons/House of Lords Joint Committee on Human Rights (2 February 2004), *Asylum and Immigration (Treatment of Claimants, etc.) Bill*, Fifth Report of Session 2003–04, paras 44–45.

⁸⁹ UN Convention Relating to the Status of Refugees, 1951 and its Protocol of 1967.

⁹⁰ Refugee Convention, Article 24(1)(ii).

⁹¹ Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, as amended by Protocols Nos 3, 5, 8 and 11.

seeker” complicates this (paras 17–19). Part III touches on alternative sources of welfare rights for asylum seekers and debates about the extent to which they fall within the remit of sovereign states or need to be fashioned and protected by international human rights law based on concepts of human indivisibility.

I POLICIES AND DESTITUTION

Public Assistance and Social Security Provisions for Asylum Seekers

6. In the UK social security benefits have been withheld from asylum seekers since 1996. This has been achieved by two means: first, by the withdrawal of benefits and access to local authority housing from particular sections of asylum seekers, who were made ineligible in 1996⁹² and then again in Section 55 of the Nationality, Immigration and Asylum Act (NIAA), 2002⁹³ which came into force in January 2003; and second, by the introduction, in 1999, of a highly conditional and unfavourable parallel welfare (“support”) system for all asylum seekers, provided by the Home Office’s National Asylum and Support Services (NASS) which allowed no access to any of the UK’s mainstream benefits.⁹⁴ In 2004⁹⁵ people whose claim to asylum had failed became categorised as “failed asylum seekers”. Many in this group are unable to return to their home country for political, bureaucratic or short-term humanitarian reasons. The 2004 legislation made support from NASS to this group highly conditional.

Destitution as a Result of these Policies

7. These measures, particularly S 55 of the NIAA, have caused widespread destitution amongst asylum seekers, and their effects were thus described by Stephen Sedley L J

A major flow into the courts of asylum seekers denied benefit or housing under the new system and now without food or shelter and frequently ill . . . To rescue them, judges of the administrative court have made 800 emergency orders for interim payment of benefit. Every week about 60 more orders are having to be made.⁹⁶

Denial and Downgrading of Benefits: a Sharp Departure from the Past

8. Withholding or reducing benefits from asylum seekers marked a sharp break with a long tradition from 1905 onwards when an exemption from immigration control was made for those seeking political asylum, who were to be allowed to enter even if they were to be a charge “on the rates”.⁹⁷ The 1905 Act that included the exemption lapsed in 1914 and was repealed in 1920 and asylum was not mentioned again on the face of an Act until 1993. It maybe that asylum seeking “aliens” continued to be allowed to claim relief from the Poor Law:⁹⁸ at any rate, they were able subsequently to claim from the centralised assistance scheme that became part of the social security system in 1948.

Until 1980 the largely discretionary National Assistance and later Supplementary Benefit could be claimed regardless of nationality or normal residence although “visitors” entrance to the UK was only granted on the condition that they would be able to maintain themselves.⁹⁹

9. Reforms to social assistance in 1980 and 1986 led to a more regulated assistance scheme in the shape of Income Support. Immigrants who had been granted a right of abode in the UK had a right to Income Support¹⁰⁰ but Regulations in 1987¹⁰¹ specified disqualifications from benefit for several groups: people with limited leave under the immigration rules who were subject to the condition that they did not have recourse to public funds; those who remained in the UK beyond the period covered by their limited leave; people subject to a deportation order; and illegal entrants. However, even within these groups some were able to qualify for urgent needs payments, at a rate of 90% of income support, if there were special circumstances.

⁹² Social Security (Persons Abroad) Miscellaneous Amendment Regulations, S.I. 1996, No 30; Asylum and Immigration Act, SS 9–11.

⁹³ S 55 stated that provisions of support could not be provided if a person’s claim was not made as soon as reasonably practicable after the person’s arrival in the United Kingdom.

⁹⁴ In 1999 the claim was made by the Immigration and Nationality Department (IND) of the Home Office that NASS (then the Asylum Support Service) would provide benefits comparable in value to income support but a breakdown of the value of the constituent parts of the “support package”, did not bear this out. Further, the definitions of need were much harsher than those applied in income support. Thus cars or other vehicles, goods, and land, were to be taken into account and jewellery worth over £1,000 had to be declared (The Asylum Support Regulations SI 2000 No 704 2000 6 (5) and Application Form attached, Note 8.). Author’s correspondence with Robert Eagle, IND, July 1999.

⁹⁵ Asylum and Immigration (Treatment of Claimants) Act 2004 Section 9.

⁹⁶ Sir Stephen Sedley (now Sedley LJ) Lecture delivered to Legal Action Group, cited in House of Commons Home Affairs Committee, Asylum Applications, January 26th, Second Report of Session 2003–04 Vol I para 194.

⁹⁷ Aliens Act 1905 S 3.

⁹⁸ Awaits further research for confirmation.

⁹⁹ Lynes, Tony (1974) *The Penguin Guide to Supplementary Benefit*, Harmondsworth.

¹⁰⁰ Shephard, Gillian Under Secretary at Department of Social Security, House of Commons *Hansard*, Vol 174 Col 407W. 1989–90.

¹⁰¹ The Income Support (General) Regulations 1987 Regs 21 and 70, S.I. 1967.

10. Asylum seekers were not separately mentioned in the Regulations until 1993¹⁰² but in practice received urgent payments. The ‘habitual residence test’ introduced in 1994¹⁰³ as “part of a process of narrowing access to benefits”¹⁰⁴ made inroads on universal access to assistance but asylum seekers were specifically exempted from this test.¹⁰⁵ Thus, although the 1905 exemption from the conditions imposed on immigrants had never been revived in immigration law, the social security system, even in its tighter, regulated, form in the 1980s, gave asylum seekers preferential treatment over that of some other immigrants until 1996.

Legal Challenges to Withdrawal and Downgrading Policies

11. The welfare rights written into the Refugee Convention appear to have had little effect in preventing or challenging the benefit exclusions and reductions to which asylum seekers were subjected. Recent legal challenges to the exclusionary policies have, instead, concentrated on the destitution that they are seen to cause.¹⁰⁶ Prior to the Human Rights Act¹⁰⁷ the Courts drew on English common law to outlaw the inhumanity of withholding relief that saves from starvation,¹⁰⁸ but since then the Courts have been able to declare whether a measure passed by Parliament is in breach of Article 3 of the ECHR. The usefulness of the ECHR, has, however, depended on finding indicators of outcomes (such as “destitution”) that equate with the outlawed treatment (such as “inhumane” treatment) as well as agreement on appropriate meanings of “treatment”. The difficulties are summarised in the following passage about Art. 3:

There is a spectrum of treatment which would engage Art 3. At one end of the spectrum is state-authorised violence: the paradigm case of violation of Art 3. At the other end of the spectrum are executive decisions in the exercise of lawful policy objective with such severe consequences for individuals that the Court would be bound to limit the State’s right to implement the policy on Art 3 grounds.¹⁰⁹

II THE ARGUMENT FOR ASYLUM SEEKERS AS “PRESUMPTIVE REFUGEES”

The usage of the term “refugee” in the drafting of the refugee Convention

12. One reason for the exclusion of asylum seekers from the Refugee Convention’s welfare rights is that it is not clear whether these rights apply to recognised refugees only, ie those who have formally been given refugee status, or whether they extend to asylum seekers who are awaiting determination of their claim.

10. The Refugee Convention uses the term “refugee” throughout and there is no mention of “asylum seekers”, a term which did not exist at the time. However, not all the rights in the Convention have been interpreted as applying only to refugees. For example, in relation to Article 33 which prohibits the expulsion or return (*refoulement*) where there is a threat to life or freedom on account of race, religion, nationality or membership of a particular group or political opinion,¹¹⁰ it is accepted that the prohibition must cover asylum seekers as well as recognised refugees.¹¹¹ The United Nations High Commissioner for Refugees (UNHCR) was given legal opinion in 2001 that *non-refoulement* was not limited to those formally recognised as refugees since the Convention did not define a “refugee” as someone formally recognised as such.¹¹² This opinion confirms an earlier UNHCR guideline that:

“a person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognised because he is a refugee”.¹¹³

¹⁰² The Income Support (General) Amendment No 3 Regulation, Reg 2. S.I. 1679, 1993.

¹⁰³ The Income-Related Benefits Schemes (Miscellaneous Amendments) (No 3) Regulations 1994.

¹⁰⁴ ‘Statement by the Secretary of State for Social Security in accordance with Section 174(2) of the Social Security Administration Act 1992’ in Social Security Advisory Committee (1994) *Report on Income-Related Benefit Schemes (Miscellaneous Amendments) (No 3) Regulations 1994*, Cm 2609.

¹⁰⁵ *Ibid*, para 9 (2).

¹⁰⁶ Bolderson, H (2006) “Exclusion of Vulnerable Groups from Equal Access to Social Security: the case of asylum seekers in the UK” in Redel, Eibe (ed) *Social Security as a Human Right: Drafting a General Comment on Article 9 ICESCR*, Springer.

¹⁰⁷ Human Rights Act 1998.

¹⁰⁸ The judgement rested on a case in English Common Law of 1803, viz: “As to there being no obligation for maintaining poor foreigners before the statutes ascertaining the different methods of acquiring settlements, the law of humanity, which is anterior to all positive laws, obliges to afford the relief to save them from starving”. Lord Ellenborough, CJ in *R v Eastbourne (Inhabitants)* (1803) 4 East 103.

¹⁰⁹ Dubinsky, Laura and Middleton, Joseph “Public Law Update” 25 June 2004 *New Law Journal*.

¹¹⁰ Refugee Convention, Art 33 (1).

¹¹¹ However in contrast to the implicit right to *non-refoulement* contained in ECHR Article 3, which is absolute, the Convention’s right to *non-refoulement* is qualified by Article 33 (2) which states that a refugee may not claim the benefit of *non-refoulement* if there are reasonable grounds for regarding him or her as a security threat.

¹¹² Lauterpacht, Elihu and Bethlehem, Daniel *The Scope and content of the principle of “Non-Refoulement”*: *Opinion (UNHCR, 2001) para 90*.

¹¹³ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (UNHCR, 1992) para 28.

On this view, and in relation to the application of Article 33(1) of the Convention, therefore, an asylum seeker is presumed to be a refugee. The UNHCR has continued to “favour the granting of full benefit entitlement to all asylum seekers”.¹¹⁴

13. However, for the purposes of the welfare provisions in the Convention, UK governments have reserved the term “refugee” for people who have been formally determined and recognised as refugees and have treated “asylum seekers” as a separate category.

14. In defence of this position it might be argued that the Convention attaches qualifications to the welfare rights in Articles 21, 23 and 24 and that these could be seen as justifying the differentiation made between refugees and asylum seekers. Thus, whereas the right to elementary education in Art 22 applies to “refugees” (unqualified) the rights to housing, public relief, labour legislation and social security apply to “refugees who are lawfully staying in the territory” of the receiving state. However, an argument can be made, based on a reading of the drafting process of the Convention, that it was not the intention that refugees whose status had not been officially determined should be deprived of these welfare provisions.

15. The term “lawfully staying in their territory” arose in the drafting of the Convention out of a compromise between the French delegate who required the insertion of a residency condition for access to benefits and the delegate from the USA who felt that the French terms describing residency were too restrictive. Eventually the term “lawfully staying” was adopted to cover “any refugee who, with the authorisation of the authorities, is in the territory of a contracting State otherwise than purely temporarily”.¹¹⁵ “Lawfully staying” meant lawful presence, ie presence that was not just “purely temporary”, a term, that was however reserved to denote a momentary visit to a country eg that of a performing artist.

16. It is therefore at least reasonable to suppose that the drafters of the Convention had in mind that the welfare provisions would encompass people claiming asylum and lawfully present but not yet formally recognised as refugees. It may also be noted, in support of the argument here, that ‘temporary admission’ which is the thinnest of immigration statuses¹¹⁶ was held, in a recent legal judgement in *Szoma* in the House of Lords,¹¹⁷ to mean that a person was “lawfully present” in the UK. Some support for extending the Convention’s welfare rights to asylum seekers may also be gained from Fitzpatrick’s suggestion that the Convention, whilst suffering many limitations, can be revitalised by “progressive interpretation”,¹¹⁸

The construction of the term “asylum seeker”

17. The term “asylum seeker” is of relatively recent origin and according to Stztuki¹¹⁹ appears to have been first used in the late 1970s in the Conclusions of the Executive Committee of the High Commissioner’s Programme (ExCom) and in 1981 in Resolutions of the UN General Assembly (GAOR). It is not clear when the term “asylum seeker” was first used in the UK but by 1981 the language of “aliens seeking political asylum” had been replaced by “asylum seekers”, in the public, but strictly speaking non-statutory, Immigration Rules of that year,¹²⁰ and continued into subsidiary social security legislation¹²¹ and primary immigration legislation in 1993.

18. The 1993 Asylum and Immigration Act, which incorporated the Convention into domestic law, gave no definition of an “asylum seeker” but a “claim for asylum” was a “a claim made by a person . . . that it would be contrary to the United Kingdom’s obligations under the [Refugee] Convention for him to be removed from, or required to leave, the United Kingdom”.¹²² The term “asylum seekers” was extended in legislation in 1999¹²³ and 2002¹²⁴ to include, additionally, those who were making a formal claim that it would be a breach of the ECHR Article 3—which gives an unqualified and absolute injunction that “no-one shall be subject to torture or to inhuman or degrading treatment”—to be removed or required to leave the UK.

¹¹⁴ Asylum and Immigration (Treatment of Claimants, etc) Bill, 2004 : Briefing on Proposed Amendments 12 and 13 for the Lords Committee, 15 June. 2004.

¹¹⁵ *The Refugee Convention 1951: The Travaux Préparatoire Analysed with a Commentary by the late Dr Paul Weis*, Cambridge International Documentary Series Vol 7 1995, p 378.

¹¹⁶ See Sawyer, Caroline and Turpin, Philip (2005) “Neither Here Nor There: Temporary Admission to the UK” *Journal of International Refugee Law*, 17:4 December 2005, pp 688–728.

¹¹⁷ *Szoma v. Secretary of State for Work and Pensions* [2005] UKHL.64, reversing a Decision of the Court of Appeal [2003] EWCA Civ 1131.

¹¹⁸ Fitzpatrick, Joan (1996) Revitalizing the 1951 Refugee Convention *Harvard Human Rights Journal* Vol 9 pp 229–253, p 23.

¹¹⁹ Stzuki, Jerzy (1999) “Who is a ‘Refugee’? The Conventions’ Definitions: Universal or Obsolete?” in Nicholson, Frances and Twomey, Patrick *Refugee Rights and Realities: evolving international concepts and regimes*, Cambridge University Press.

¹²⁰ Proposals for Revision of the Immigration Rules, 1981, Cmnd 8683.

¹²¹ The Income Support (General) Amendment No 3 Regulations 1993.

¹²² Asylum and Immigration Appeals Act, 1993, S.1.

¹²³ Immigration and Asylum Act 1999, Part VI Support for Asylum Seekers, S 94 (1).

¹²⁴ Nationality, Immigration and Asylum Act, 2002, S 18 (1)(3).

19. It appears that, as a result, since 1999, it has no longer been necessary for “asylum seekers” to meet the circumstances that merit a person being a refugee under Article 1 A (2) of the Refugee Convention: if they do not satisfy Article 1 conditions they will not be covered by the Convention’s rights, but as “asylum seekers” they are included in provision made by NASS, the Home Office’s welfare support services.

III STATE SOVEREIGNTY, REFUGEE LAW AND HUMAN RIGHTS LAW

20. These definitional changes were made in default of a) any revision of Article 1 of the Refugee Convention that might have included more grounds for refugee status or b) any upgrading or greater use of forms of status based on humanitarian grounds. The wider uses of the term asylum seeker appears to have arisen out of the necessity to ensure that, at best, all these claimants would be subject to the highly conditional and below subsistence Home Office welfare support system.

Alternative Sources of Rights for Asylum Seekers

21. One effect of widening the term “asylum seeker” is that it weakens the argument made above that asylum seekers are presumptive refugees and therefore entitled to the welfare rights in Articles 23 and 24 of the Refugee Convention. Some asylum seekers whose claims conform to the refugee creating situations described in Article 1 of the Refugee Convention may be so, but others are not. Regardless of the argument, the question arises whether and how and in what measure “non-Refugee Convention” asylum seekers, and “failed asylum seekers” should have rights to assistance and social security. Is conferment of entitlement to their benefits to be left to the receiving state? Can the avoidance of destitution amongst them be assured by challenging policies that have caused it, using the ‘thin’ or ‘negative’ but absolute rights conferred by Article 3 of the ECHR? Can their welfare rights be protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR) which is not incorporated into UK law and has relatively weak enforcement measures? Is it sufficient to leave welfare rights for asylum seekers to the European Reception Directive¹²⁵ that at least has the effect of making the NASS provisions mandatory, for eligible applicants.

22. None of the above provides the assurance of equal treatment with nationals of the receiving state, given in Articles 23 and 24 of the Refugee Convention. In these requirements equality takes on the meaning of equivalence, a concept that is close to that of human indivisibility and central to the idea of human rights. Although international human rights law was in its infancy when the Refugee Convention was formulated, it had roots in human rights instruments and human rights figures in its preamble. However, a right to be granted asylum (as distinct from the right to seek and “enjoy” it) was withheld from the Declaration of Human Rights in 1948, the Conference on Territorial Asylum in 1968, and from the Convention itself.

State Sovereignty or International Human Rights Law?

23. One reason for the failure to confer a right to asylum has been the notion that states are sovereign, in particular in their right to control their borders. However, as Henkin¹²⁶ suggests, this notion is increasingly anachronistic “after half a century of international human rights law and increasing collective interventions”. He argues that refugees now flee “systematic patterns of gross violations of human rights”. The refugee problem is therefore part of “the human rights problem” and refugee law should therefore “be integrated into human rights law”.

24. In the above Henkin is arguing about a right to asylum. It is not clear however, to what extent social policies, such as financial support for asylum seekers, can be subject to human rights law. There are debates in the disciplines of social policy and political science about the compatibility of rights for everyone arising from claims on common humanity, and therefore in principle non-negotiable, and non-transactional, and those rights that are seen to be attached to solidaristic transactions within communities arising from social transactions rather than claims.¹²⁷ The latter, communitarian, view does not easily accommodate the idea that it is discriminatory, on the grounds of common humanity to deprive asylum seekers of the benefits enjoyed by citizens and residents of a receiving country. In contrast a more liberal and inclusive view of welfare holds that national boundaries are merely functional and that the basis of welfare lies in the universality of the human rights that promote individual agency.¹²⁸ On that view welfare rights for asylum seekers could, in principle, be made part of human rights law. But it would require a reconciliation of indivisibility (at the heart of human rights) and categorisation (at the heart of refugee law).

¹²⁵ Council Directive 2003/9/EC 27 January 2003: The Reception Conditions Directive OJ L31 6 February 2003.

¹²⁶ Henkin, Louis “An Agenda for the Next Century: the Developing Regime” 27th and 28th January 1995 University of Virginia School of Law, pp 115–120.

¹²⁷ Alasdair Macintyre, *After Virtue: a Study in Moral Theory* (Duckworth, 1985); Bhikhu Parekh, “Three Theories of Immigration”, in Sarah Spencer (ed), *Strangers and Citizens* Oram Press, 1993.

¹²⁸ Alan Gewirth, *Human Rights: Essays on Justification and Applications* (University of Chicago Press, 1982); Raymond Plant, “Free Lunches Don’t Nourish: Reflections on Entitlement and Citizenship”, in Glenn Drover and Patrick Kerans, *supra* note 12; Robert Goodin, “What is so Special about our Fellow Countrymen?,” 98 (July) *Ethics* 663–686; Baldwin, T “The Territorial State”, in Gross Hyman and Ross Harrison (eds), *Jurisprudence: Cambridge Essays* (Cambridge University Press, 1992).

SUMMARY

25. The establishment and implementation of full rights to welfare for asylum seekers is urgent. Those who are awaiting determination of their claim to refugee status depend on below subsistence provisions made by the Home Office. A case can be made, that, as presumptive refugees, they should be entitled to the Refugee Convention's non-discriminatory and inclusionary welfare rights.

26. However, the category "asylum seeker" also includes people whose claim to asylum does not lie in Refugee Convention grounds but on grounds that their removal from the UK would be in breach of Article 3 of the ECHR. The Refugee Convention's welfare rights do not cover them but they are legally present in the country on temporary admission. They too have access only to the unfavourable NASS support.

27. People whose request for asylum has been turned down are "failed asylum seekers". If they are not detained, or removed, for whatever reason, they continue to be "temporarily admitted" and legally present, but are likely to find themselves with no, or only extremely limited, rights even to NASS provisions and are in danger of destitution unless they work illegally in the informal economy.¹²⁹

28. UK governments have not taken the view that the Refugee Convention rights should be the source of rights for the first group of asylum seekers (above par. 25) and it is not obvious from what source rights should be derived for the second or third group (above, pars. 26 and 27). A source of enforceable rights to welfare needs to be found, and their content agreed. The Refugee Convention's rights to financial support are targeted on a category, which reduces their scope, and they therefore sit uneasily with human rights, but in their content the Convention's rights do not discriminate between strangers and nationals. A principle of non-discrimination may provide a basis for the development of rights to financial assistance for legally present non-nationals and non-residents that are equivalent to those available for nationals or residents of the receiving country.

21 September 2006

17. Memorandum from the London Detainee Support Group

1. EXECUTIVE SUMMARY

Asylum seekers are often arbitrarily detained for long periods where there is no prospect of imminent removal due to the impossibility of obtaining travel documents. Long-term detention of asylum seekers with deportation orders is particularly common. Torture victims and unaccompanied minors are often inappropriately detained. Delays by NASS in processing applications for support also lead to unnecessarily prolonged detention.

2. London Detainee Support Group (LDSG) is a registered charity providing non-religious, non-judgmental emotional support and practical assistance to immigration detainees held at Harmondsworth and Colnbrook Immigration Removal Centres (IRCs). In 2005–06 LDSG assisted 619 immigration detainees, and as a result we are in a good position to comment on the impact of detention policy and practice on detainees. LDSG's key activities are:

- Maintaining a pool of around 80 volunteer visitors speaking all main detainee languages, each visiting weekly individual detainees to provide emotional support;
- Assisting detainees with practical difficulties related to their detention, eg accessing legal advice or other specialist service providers, applying for support from the National Asylum Support Service (NASS), or resolving welfare problems.

3. LDSG welcomes this inquiry, and in particular the identification of detention as an area likely to raise human rights issues. Due to the extreme vulnerability of many asylum seekers, LDSG believes that the rapidly expanding use of detention is of serious concern. LDSG welcomes the Committee's examination of whether detention may in some cases be arbitrary, and therefore breach the right to liberty under Article 5 of ECHR.

4. There is a lack of adequate safeguards to ensure that detention is not arbitrary. The provision for automatic bail hearings for all detainees in the 1999 Act, never implemented, was repealed by the 2002 Nationality, Immigration and Asylum Act. Moreover, there is no statutory time limit on detention. As a result, many detainees are detained for prolonged periods with little or no judicial scrutiny of their detention, in particular where linguistic or mental health factors prevent detainees from applying for bail themselves. Due to reductions in legal aid available for asylum cases since April 2004, detainees find it problematic to access legal advice in order to make bail applications. Detainees also face administrative delays in the listing of bail applications, as the Asylum and Immigration Tribunal (AIT) does not have sufficient resources to meet its obligations to list within three working days. *Bail hearings should be held automatically for all detainees one week after they are detained, and at regular intervals thereafter. A statutory limit on detention*

¹²⁹ See Sawyer and Turpin, above, note 28.

should be introduced, in line with many other EU states. The Legal Services Commission should ensure that funding is available for representation of all detainees throughout their detention. Increased resources should be made available to the courts to ensure that bail hearings are listed within three days.

5. Many asylum seekers are detained for long periods with no prospect of imminent removal. The immigration authorities of a number of countries of origin of asylum seekers will not in practice accept the return of undocumented nationals, because they do not consider the EU letter issued by the UK government to be sufficient identification, and will not themselves issue emergency travel documentation to allow return. However, the Immigration Service has in many cases refused to release detained undocumented nationals of these countries. LDSG has supported asylum seekers detained for prolonged periods from a number of countries for a number of countries to which such removals appear to be impossible, including Iran, Somalia, Cote d'Ivoire, Cameroon, Ethiopia, Mauritania and Niger, or prohibitively slow (eg Algeria, India). In addition, we have supported many long-term detainees who have been refused travel documents by countries including China and Liberia which will only rarely issue travel documents. *Where travel documents have been refused by the country of origin, release should be automatic.*

Three long-term detained undocumented Mauritanian nationals were in contact with us between summer 2005 and spring 2006. None were taken to the Mauritanian Embassy for emergency travel documents. Two were flown to Mauritania, but were refused entry on the grounds that the EU letter was not acceptable identification. In one case, the detainee reported that the Mauritanian immigration authorities were angry with the UK for persisting with removals, when they had made clear that the EU letter was not acceptable. All three were eventually released on bail, after 11, 10 and six months respectively.

C, an undocumented asylum seeker from Cote d'Ivoire, was detained for Fast Track consideration of his asylum. He had no history of criminality or absconding. His asylum was refused after one month, but his detention continued, despite there being no progress in obtaining travel documents. On two occasions he was given removal directions. He reported that he was taken by escort staff from the detention centre, driven in a van for several hours, and taken back to the detention centre. He was released on Temporary Admission after over six months.

No removals of undocumented Ivorian nationals have been possible for at least three years; all Ivorian detainees in contact with LDSG were released around June 2004. Since that time, we have supported 15 undocumented Ivorian detainees, of whom 13 have been released, and two (both with deportation orders) remain in detention.

6. Asylum seekers who have been given deportation orders are often detained indefinitely where travel documents are unobtainable. LDSG has supported many detainees who have served short prison sentences for minor non-violent offences, and been issued deportation orders. Where deportation is impossible to carry out, either because the receiving country as a matter of policy does not issue travel documents (see above), or because the deportee has been long-term resident in the UK and cannot prove any connection with their country of origin, extreme long-term detention is common, even where the detainee is cooperating with the documentation process. Both the Immigration Service and the AIT consistently show great reluctance to release on temporary admission or bail in these circumstances, despite the evident impossibility of removal, the stated reason for detention.

D, an asylum seeker from Algeria, was detained for over two years, following a six month sentence. He was very anxious to return, and was fully cooperating with the removal process, but travel documents were not obtainable. He was refused bail, and remains in detention.

LDSG is also aware of undocumented Algerians currently detained for periods of respectively 18 months, 15 months, 10 months, and in four cases for between four and six months. LDSG is not aware of any undocumented Algerians who have been removed or deported since 2003.

7. This issue has become more serious since the media coverage of spring/summer 2006, and detainees previously released on the grounds that deportation was impossible have been redetained, despite there being no progress in their cases.

B, an asylum seeker from Iran, was detained for two years on the end of a short prison sentence, pending deportation. He was desperate to return to Iran, but it was clear from the monthly reports on his case that he received from the Immigration Service that no progress was being made on his case. He was finally released on bail by the AIT, but was redetained two months later, following the media coverage of the issue. The reasons for detention he received were identical to those he had been given during his previous detention, and it was clear that no progress had been made in obtaining travel documents.

8. LDSG has been told by experienced legal advisers of a perceived "tariff", whereby un-deportable detainees must wait in detention for approximately nine months before AIT will consider bail. Factors such as risk of absconding or re-offending are given substantial weight at bail hearings, although the deportee is detained purely for administrative immigration reasons, and has finished their criminal sentence. *The punitive use of immigration detention as an improvised extension of the criminal justice system should cease. Where deportation is not possible, release should be automatic, regardless of previous immigration history or offences.*

9. Arbitrary detention of asylum seekers who cannot be removed also leads to breaches of Article 8. The Immigration Service justifies the separation of families by the detention of one member as necessary for immigration control. LDSG has supported many detainees separated from their families for long periods, where it was evident that removal was impossible. LDSG has also supported detainees who were held in different detention centres to their families, in breach of guidelines.

X was an undocumented Liberian asylum seeker. He was distressed by detention, as his wife was seven months pregnant when he was detained, and he was her only support in the community. He was released five months later, having missed the birth of his first child.

10. The detention of torture victims remains routine, in contravention of Home Office policy that it will not normally be appropriate. LDSG has supported many torture victims in detention with medical reports supporting their claims to be victims of torture. LDSG is concerned that adequate procedures do not exist to prevent or curtail the detention of torture victims. They are not routinely released, even where Healthcare staff within the detention centre report evidence of torture to the Immigration Service. Torture victims are regularly detained for Fast Track consideration of their asylum case, because asylum seekers are not asked about their claim or health issues at the screening interview at which the decision to Fast Track is made. The Fast Track procedure itself does not allow sufficient time for medical reports to be obtained, and many solicitors do not make referrals to Medical Foundation for the Care of Victims of Torture, citing lack of time. Our volunteer visitors have frequently reported the extreme distress caused by immigration detention to torture victims with experience of imprisonment in their country of origin. *Asylum seekers claiming to be victims of torture should be screened out of the Fast Track procedure. Asylum seekers with medical evidence of torture should not be detained under any circumstances.*

B had been imprisoned for six years in Iran, and tortured for long periods. He had extensive scarring on his body. He came to the UK via Austria, so the Immigration Service hoped to remove him to Austria under the Dublin Convention, and detained him in order to pursue this. However, the Austrian authorities refused to accept him, and he remained in detention. Bail was refused because he did not have sureties. Detention caused him extreme distress, because it reminded him of his experiences in prison in Iran. He repeatedly self-harmed, and on one occasion attempted to hang himself. He was finally released on Temporary Admission after more than three months in detention.

11. Inadequate age assessment procedures cause large numbers of unaccompanied minors to be wrongly detained as adults, until paediatric reports confirm their claims to be minors. 40% of age-disputed minors detained at Oakington were subsequently found to be under 18 and released. LDSG is concerned that the Immigration Officers, on whose judgement asylum-seeking minors are treated as adults, do not have adequate training or qualifications to make such judgments. As a result, serious risks are taken with the wellbeing of vulnerable children.

X claimed to be 17. He was assessed as an unaccompanied minor by social services, and placed in a home. However, at his screening interview, the Immigration Service disputed his age, in breach of their own procedure. They arranged for a second age assessment by a different borough, which concluded that he was not a minor. He was refused asylum on the Fast Track procedure, and his duty solicitor dropped him, informing him that there were no grounds for a further appeal. He found detention a traumatic experience, and felt very isolated as there were no other detainees of his age.

LDSG referred him to a civil solicitor to judicially review the decision to detain, and he was released back to the care of social services.

12. Delays by the National Asylum Support Service (NASS) in processing applications for Section 4 support from unremovable detainees can prevent detainees from applying for bail, and unnecessarily prolong their detention. Immigration detainees applying for bail must supply the address at which they will be living if they are released. Asylum seeking detainees who are cooperating with the removal process or who cannot be removed (eg due to outstanding judicial reviews or health conditions) can apply to NASS for Section 4 support. NASS state that detainees applying for Section 4 support should supply the date of the bail hearing, so that a decision can be made in time, and an address provided for the hearing if appropriate. However, NASS do not automatically consider applications from detainees as Priority A (for which decisions take an average five days. NASS stated at a stakeholders meeting on 27 July 2006 that Priority B applications take an average of 15 working days. In one case, NASS required 6 months to make a decision on a Section 4 application. Bail applications should be listed after three working days, so in many cases detainees do not receive a decision from NASS in time. *NASS should treat all Section 4 applications from immigration detainees as Priority A, as administrative delays can prevent detainees from seeking judicial oversight of their detention, and lead to breach of Article 5.*

18. Memorandum from the Terrance Higgins Trust

1. INTRODUCTION

1.1 Terrence Higgins Trust (THT) is the largest HIV charity in the UK, with 22 centres across England and Wales. We offer a wide range of services to, and campaign on behalf of people living with, affected by and at risk of HIV or sexual ill health. In addition to mainstream services, THT provides a range of specialist services designed to meet the needs of particular client groups.

1.2 In recent years, a growing number of THT's clients have been from migrant communities, often Black African and often recently arrived in the UK. This reflects the changing shape of the UK HIV epidemic, which in turn mirrors the ongoing global situation.

1.3 For migrants living with HIV, problems caused by poor access to services, discrimination, and the use of negative stereotypes by the media are often exacerbated by multiple and interlinked prejudices.

1.4 Since the introduction in 2004 of new rules governing access to NHS healthcare for failed asylum seekers and some other categories of migrant, THT has become aware that a number of our migrant and BME clients are experiencing difficulties in accessing HIV care. Evidence from other organisations working in both health and migration has showed that these issues are not limited to the HIV sector.¹³⁰

1.5 Terrence Higgins Trust strongly welcomes the Committee's timely inquiry into the treatment of asylum seekers in the UK. Although the Committee's terms of reference are focused on asylum seekers and failed asylum seekers, nearly all of the issues raised in this submission are relevant to a range of categories of migrant. This written evidence will focus on the provision of HIV care for asylum seekers, failed asylum seekers and other migrants.

2. PROVISION OF HEALTHCARE

2.1 *The situation up to April 2004*

As the Committee will be aware, prior to April 2004, NHS treatment of all kinds was available free of charge to anyone who could show that they had been in the UK for more than 12 months. It was also available free to anyone currently applying for asylum or for leave to remain.

2.2 The Regulations governing NHS charging, and a number of key exemptions to them, were set out in the NHS Act 1977 and the NHS (Charges to Overseas Visitors) Regulations 1989. The exemptions included universal free treatment for a range of conditions on public health grounds. These included TB and all sexually transmitted infections except for HIV. For HIV, the initial test and counselling was free but you had to wait 12 months to access free NHS treatment.

2.3 However, in response to media and political agitation about "treatment tourism" and the cost to the NHS of people allegedly coming to the UK for the primary purpose of exploiting the UK health system, new restrictions were imposed from April 2004. This was despite the lack of any research showing the existence or extent of such behaviour.

2.4 Asylum seekers, by definition, are seeking protection in the UK from persecution in their countries of origin; their motivation in coming to the UK has never been proved to be linked to accessing NHS health care. For HIV, cited as an example of extensive treatment tourism, the only piece of extant research indicated that the reverse was true, and that most recent migrants with HIV were unlikely to be aware of their status until they had been in the UK for more than nine months.¹³¹

3. THE SITUATION AFTER APRIL 2004

3.1 After the introduction of new charging regulations in April 2004, failed asylum seekers, those seeking leave to remain under the European Convention on Human Rights (ECHR) and any undocumented migrants are now liable to be charged for any NHS services other than those provided in an emergency or those outlined in the 1989 exemptions.

3.2 This means that although access to an HIV test and associated counselling remains free, the new interpretation of residency means that failed asylum seekers who are unable to return to their country of origin cannot now access free HIV treatment, nor can undocumented migrants. Those with an "*immediately necessary or life-threatening*" problem, will be treated and then charged, and unless they receive treatment that is included in the 1989 exemptions, they are now not entitled to free NHS hospital care.

3.3 Managed HIV care is not only less expensive than emergency care, it also reduces the infectivity of the patient and can enhance the efficacy of treatments for other conditions such as TB.

¹³⁰ Refugee Council (2006) *First do no harm: denying healthcare to people whose asylum claims have failed*.

¹³¹ Terrence Higgins Trust and George House Trust (2003) *Recent Migrants using HIV Services in England*.

4. THE IMPACT OF THE NEW REGULATION

4.1 Making people who are not “lawfully resident” in the UK liable for NHS hospital charges has effectively denied necessary health care to many failed asylum seekers and undocumented migrants. These people often have no income, no recourse to public funds and are unable to pay charges.

4.2 In restricting access to free secondary care, the British Government is failing to meet its obligation to guarantee “the prevention, treatment and control of epidemic, endemic, occupational and other diseases.”¹³² (Article 12.2 International Covenant on Economic, Social and Cultural Rights). It also fails to guarantee equal access to health care for all people in the event of sickness.

4.3 The only way for failed asylum seekers to continue receiving free HIV care is to have been tested and be under the care of an HIV/GUM specialist while applying for asylum. However, given that some people may not have been aware of their HIV status while applying for asylum, access to HIV care remains a problem for a number of people.

4.4 The Government has argued that the new regulations do not deny access to healthcare and that they only represent “clarification” of existing regulations.¹³³ The rules do allow hospitals to first provide the care and then issue a bill, which they may decide to write off if it is obvious that the patient is destitute. However, this is often not clear to patients, often does not happen and THT is aware of a number of cases where:

- the patient has been refused treatment because the hospital believes they are unable to pay;
- the patient has been asked to pay in advance of treatment;
- the patient is legally entitled to free care, but has been wrongly asked to pay;
- the patient has ceased necessary treatment on receipt of a bill.

4.5 In addition, this inconsistent and often incorrect interpretation of the regulations may be contributing to growing fears and misconceptions amongst migrant communities about entitlement to care. These fears may in some cases lead to patients choosing not to come for care, because they are afraid they will receive a bill they cannot pay.

4.6 The Health Protection Agency’s annual report in 2005 showed that “BME populations and BME heterosexual men in particular, are consistently diagnosed later in the course of their HIV infection than their white counterparts.”¹³⁴ THT is concerned that the current regulations on charging for HIV treatment will not encourage those from high-risk migrant communities to come forward for HIV testing and treatment before they become seriously ill.

4.7 THT is also concerned with the practice of some hospitals defining “emergency treatment” as that available through accident and emergency units for “life threatening situations” only. This means that while individuals will be treated for life threatening opportunistic infections, they will not be treated for HIV, ie the underlying cause. In the case of HIV, this means that people get more and more ill until treatable as an emergency, and have a far higher viral load than if they were on treatment.

4.8 It is difficult to precisely quantify the effect of the changed regulations, because the populations affected are by definition hard-to-reach, and the possible effect of the regulations may be to discourage migrants from contact with services. However, THT is able to provide several anonymous case studies on this issue, which illustrate some of the problems with the current system for a range of migrants. These cases have been reported through our regional offices in the last twelve months.

5. CASE STUDIES

5.1 *Inappropriate charging for treatment*

Ms A arrived in the UK legally three years ago with a working holiday visa. She has lived and worked here for all of that time, until early this year when she discovered she was pregnant. Antenatal testing showed she was HIV positive, and she left her job to care for herself. She took advice from a solicitor who felt that given her situation she should apply for asylum on health grounds; the National Asylum Support Service (NASS) agreed and are supporting her during her asylum claim. However, when Ms A was 32 weeks pregnant, she was moved to a different town by NASS. Within a week she had developed severe pre-eclampsia and had to have an emergency delivery. The baby was ill and premature and placed in special care. Despite being in the process

¹³² United Nations (1976) *International Covenant on Economic, Social and Cultural Rights Geneva*.

¹³³ HM Government (2005) *Government response to the Health Select Committee’s Third Report of Session 2004–05 on New Developments in Sexual Health and HIV/AIDS Policy*.

¹³⁴ Health Protection Agency (2005) *Mapping the Issues*.

of an asylum application and therefore entitled to access free NHS care, she received a bill for her obstetric treatment, her baby's special care treatment, and the hospital are pursuing the GUM for details of her treatment there.

Ms A feels she has been treated very badly by the Patient Advice and Liaison Service (PALS), who are, strangely, the hospital department also responsible for pursuing payments. She is unsure how they became aware of her HIV status but believes they treat her badly because of this.

The hospital has told Ms A that she must prove she is in the UK legally. Although she has provided a copy of her letter from the Home Office, PALS say they need a copy of her passport, which she does not have. Ms A has also been told she has to pay because she is not a "real" asylum seeker.

5.2 Refusal of treatment

Ms B was a visitor to the UK. Towards the end of her visit, she became seriously ill, was diagnosed with TB, and admitted into hospital. She was too unwell to travel, although she wanted to return home to her job and her family. She was treated for TB and then discharged, but was still unable to return home and had no access to money in the UK. By this time her visitor's visa had expired. Ms B was subsequently also diagnosed with HIV. The hospital refused to place her on anti retroviral therapy unless she paid for the treatment or made an application to the Home Office on human rights grounds. Although she desperately wanted to go home, she was still too unwell to travel, and had no prospect of recovery without HIV treatment. Her health deteriorated. She later presented at a different hospital with pneumonia and other life threatening illnesses. She was immediately admitted and it was discovered that her immune system was extremely weakened: her CD4 count, a test for the number of healthy immune cells in the blood, was one. She was eventually given anti retroviral drugs.

5.3 Patient stopped treatment on receipt of bills

Ms C was a visitor to the UK who subsequently submitted a claim for leave to remain on human rights grounds. The hospital refused to give her HIV treatment unless she paid. Ms C became seriously ill as a result of remaining untreated and was admitted into hospital where she was placed on antiretroviral therapy. After she was discharged, she started receiving hospital bills of several thousand pounds. Ms C was unable to pay as she had no income or savings. She was very ill and could not return to her home country. The outcome of this case is unknown as Ms C stopped attending the hospital for treatment and monitoring.

6. DISPERSAL OF ASYLUM SEEKERS

6.1 THT has in the past been concerned about the impact on individuals' health of NASS' policy to disperse asylum seekers around the UK. Concerns centred on:

- the lack of consideration of HIV status when the town of dispersal was selected;
- lack of consultation with clinical staff when deciding whether it was appropriate to disperse someone;
- lack of facility for onward referral to ensure continuity of care for asylum seekers receiving HIV treatment;
- provision of inadequate or unsuitable accommodation after dispersal;
- lack of basic training on HIV for NASS staff.

6.2 In December 2005, NASS produced an updated Policy Bulletin on the dispersal of asylum seekers with healthcare needs, which aimed to address many of the issues above.¹³⁵

6.3 THT has welcomed this new bulletin and hopes it will be successful in addressing past problems. However, it is still too early to assess whether the new recommendations and guidelines within it are being implemented in practice.

7. RECOMMENDATIONS

- THT strongly recommends a review of NHS charging systems and the institution of specialist training for those responsible for administering charges.
- In the longer term, THT believes that any link between immigration status and health care entitlement should be removed. Free primary and secondary medical care should continue to be provided until someone is removed from the UK.

¹³⁵ NASS (2005) *Policy Bulletin 85: Dispersing Asylum Seekers with Healthcare Needs*.

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- THT believes that there should be a further additional amendment to the 1989 Regulations, to include HIV alongside all other STIs for free treatment to all on public health grounds. This will help to protect the basic human right to life of migrants to the UK.
 - THT also recommends that the definition of “emergency treatment” is revised to include people whose HIV disease is severe enough to need combination therapy, according to BHIVA guidelines.
 - THT recommends that NHS staff be provided with training to ensure that asylum seekers are treated with due respect, and not turned away without treatment or incorrectly charged for treatment.
 - THT recommends that policies regarding the dispersal of vulnerable asylum seekers be kept under regular review and that at an appropriate time, a further assessment of the impact of the revised policy bulletin is undertaken.
 - THT finally recommends that all NASS staff are given basic training on HIV, sexual health and related issues, in order to ensure that all asylum seekers are properly supported to remain healthy, and are treated with dignity and respect.

September 2006

19. Memorandum from the Southampton and Winchester Visitors Group

SWVG works with asylum seekers and refugees who are in particular difficulty or distress, mainly in Southampton. Referrers include Social Services, Primary Health Care, Refugee Action, Southampton City College, the Ribbons Centre, the Red Cross, local Doctors, local vicars and one of the city’s MPs. Each trained visitor “befriends” one or more clients, meeting them regularly to talk and listen, to discuss problems and, where possible, to offer practical help. During the past year 38 volunteers have helped 69 clients, two-thirds of them men, from 21 different countries. Due to legislative changes in 2004 SWVG has had to expand its remit to include helping clients who have been made destitute to find shelter, food and support. SWVGs ASSIST scheme raises money from local churches, charitable trusts and other organisations as well as individual donors in order to provide temporary support (a small room and £20 subsistence money each week) for the most desperate of our destitute clients.

OUR HUMAN RIGHTS CONCERNS RELATING TO THE CONDITIONS OF LIFE FOR (REFUSED) ASYLUM SEEKERS IN SOUTHAMPTON

(Due to the nature of our work we are most qualified to offer evidence relating to (i) access to accommodation and financial support and (ii) the provision of healthcare.)

1. Under asylum support regulations introduced in 2004, asylum seekers who have lost their claim for refugee status or temporary leave to remain are immediately made destitute; all financial support is halted, they are removed from their accommodation and are not eligible for medical care (except in an emergency). We have witnessed the distress and hardship of this first hand. Forbidden by law to work, these men and women are either forced to sleep rough or are thrown on the mercy of their friends or acquaintances who generously share cramped accommodation and sparse food.

2. In the past year 46 of our clients have been destitute. Of these, 35 have been in receipt of subsistence support from SWVG, 20 were additionally provided with rent for a small room. Our resources are limited, there is a shortage of affordable accommodation in Southampton and there is a limit to how much money we can raise. We do not have the capacity to assist all in need. This year we have reduced, discontinued or refused assistance to 10 clients. We have no idea what will become of those whom we cannot help but fear that the only realistic means of survival for some will be to beg, work illegally or even be drawn into crime. We are particularly worried about women in this situation, who are at risk of sexual exploitation.

3. SWVG is very concerned about the effects of enforced destitution on the health and mental welfare of vulnerable men and women who may have already experienced abuse, trauma, and often torture. Many of our clients feel trapped and powerless, living in harsh conditions and unable to provide for themselves. Depression is widespread amongst our clients. Made to wait for months and even years for their cases and appeals to be processed by a seemingly arbitrary and erratic system, many clients are isolated and distressed. They are left to wait with their memories and worries, not only for their own welfare but that of the loved ones they have left behind, unable to make a life here yet unable to return to their homeland. Evidence of this has been documented in the recent report (September 2006), *Mental Health, Destination and Asylum Seekers* commissioned by SERAC and the South East Development Centre (19 of our clients were interviewed for this research).

4. It seems unreasonable and unjust to present asylum seekers with two options: return to your country of origin and possibly face persecution, torture, incarceration or death, or stay in the UK and face destitution and social isolation; especially considering the origins of many of our clients (we currently are working with 15 clients from DRC, 10 from Zimbabwe, seven from Ethiopia, six from Eritrea and six from Iran). For many of our clients who have been refused asylum it is impossible to return to their country of

origin. Many countries refuse to accept returning asylum seekers if there are any doubts about nationality. China will not accept any returning asylum seekers and other countries may choose to withdraw the necessary travel documents. A country like Zimbabwe is too dangerous for returning asylum seekers and the government has temporarily suspended removals. Yet in all these cases, people who have been refused asylum are left destitute.

5. The paltry five hours of legal aid that asylum seekers are entitled to means that most are not able to present a properly prepared case to the adjudicators, which exacerbates feelings of powerlessness and impotency. Legal practitioners whom we have consulted tell us that it takes a minimum of 18 hours to properly prepare a case—and that is if the case is straightforward. With the support of SWVG, some of our destitute clients have successfully made fresh applications for asylum and been granted Leave to Remain. The number of initial IND refusals that are eventually overturned by appeal or by fresh application (in many cases after months or years of destitution) confirms the flawed nature of the system.

6. In our experience the current situation for asylum seekers in the UK seems to contravene Article 3, Article 5, Article 14 and Article 25 of the International Declaration of Human Rights.

CASE HISTORIES¹³⁷

1. Edward was referred to SWVG on humanitarian grounds by one of Southampton's MPs. He has been in the UK for seven years. Eritrea, his country of origin, will not accept him back because efforts to trace his family have been unsuccessful and therefore he cannot provide the necessary three witnesses to his nationality. In the UK he has worked whenever permitted—for a long time he has not been permitted to work—and about a year ago his meagre savings ran out leading to his destitution. He is in poor physical health with an eye condition and psychiatric problems. He has no alternative but to stay with a violent "friend" who attacked him (a police incident). At this point he was referred to SWVG. He has no support except that which we offer—temporary payment of rent on a small room and £20 a week subsistence. But we cannot continue this indefinitely. His life is in limbo: unable to survive here but unable to return to his country of origin.

2. Emilia was found crying at the back of a Southampton Church. She was destitute after a failed application for asylum. She arrived in the UK in December 2003, fleeing Kenya where a government sponsored cult called Mungiki killed her husband in front of her eyes and then kidnapped her. They later murdered her mother, father and brother. She does not know where her children are. While in captivity she was abused and beaten so badly that she is now partially paralysed, is doubly incontinent and suffers from depression. She is now on her fourth appeal.

"God keeps me going", Emilia states, "If I did not have faith I do not think I could have survived. Now if only I was allowed to work, then I would not have to be all day with my memories and I could help myself."

3. Charles was an active member of the opposition in Zimbabwe and fled the country in fear for his life. He will not agree to voluntary return to Zimbabwe as he has been unable to contact his mother for years and he has no other relations in Zimbabwe. He also says he is safer here as he fears being arrested upon return. He has only two weeks of ASSIST accommodation left and then he will have to fend for himself as SWVG has too much demand on its funding. As he is a Zulu and other Zimbabwean he knows will not let him stay with him. He has asked the Home Office to put him back in detention rather than spend a winter on the streets but this request has been refused.

4. Damon is also from Zimbabwe. He has exhausted his contacts for shelter and is trying to apply for Section 4 support. He has an interview in April with the Home Office concerning his case. He has no solicitor at present. He is also fearful of arrest if he returns to Zimbabwe.

5. Theo has been in the UK for four years. He fled DRC after his mother and father were killed and he was imprisoned. His application for asylum was refused, as was his appeal. He was sleeping rough in Southampton, terrified of possibly being arrested, after being turned out of his Congolese acquaintance's flat by the landlord. He has depression, quite severe at times, which requires medication. He was beaten in prison (in DRC) and has a visible lump on his skull from the beating to his head with the butt of a gun. This has caused, among other things, a haemorrhage in his left eye, which blinded him. He is very affected by what happened to his parents. His wife "disappeared" and his three children (one of whom has typhoid) are staying with his sister (who has five children of her own) in the DRC. This causes him a lot of anxiety. His appeal has been refused and there is no more legal aid available to him. We have been visiting him for a year and without our assistance he would be living on the streets.

¹³⁷ All names have been changed.

CONCLUSION

In our experience the human rights of asylum seekers are not upheld in the UK. The above demonstrates this. Current policy is a breach of the fundamental human rights of asylum seekers because it subjects them to inhuman and degrading treatment. Denied the right to safety, to accommodation and sustenance many of these most vulnerable people are homeless, powerless and subject not only to the trauma of displacement but also to the inadequacies of the UK immigration system. It is a terrible limbo in which most of our clients exist, one that is not conducive to justice, integration and healing, one that does not reflect the values of respect that the UK claims to promote. As illustrated, current UK policy concerning asylum seekers does not uphold the basic tenets of the International Declaration of Human Rights.

20. Memorandum from the Warwickshire Monthly Meeting Asylum Group (Quaker)

The Asylum Group of Warwickshire Monthly Meeting of the Society of Friends (Quakers) was set up in May 2003 with a remit to educate members of the Monthly Meeting about current asylum issues and provide information about new developments. The group regularly addresses Monthly Meeting or organises training sessions, as well as reporting to Monthly Meeting in session on a regular basis.

Those participating in the WMMAG include at least one member with current professional experience in the field and several who are engaged in voluntary action through ad hoc church or human rights groups in the region.

The core of our submission relates to our concerns in the area where use and conditions of detention and methods of removal interface with the treatment of children—specifically the concept and functioning of Yarl’s Wood Immigration Removal Centre. However, we begin with observations about the Section 9 and Section 10 provisions of the 2004 Asylum and Immigration Act. Following our submission on Yarl’s Wood, we conclude with an area not separately identified in the terms of reference, which is the “reporting condition”, or the duty to sign regularly at the regional Immigration and Nationality Department Enforcement Unit as a condition of continued access to support and as an administrative control mechanism facilitating pre-deportation detention. Most controversially, Section 35 of the 2004 Act makes it a criminal offence to fail to co-operate adequately with one’s removal from the UK, and the Enforcement Unit reporting Centres have become the main vehicle for removal. The consequences of this situation for the mental health of asylum seekers need to be considered.

1. SECTION 9

1.1 The WMMAG is not aware of Section 9 actually having been implemented in our region. However, at the time of piloting last year the intention to implement appears to have been communicated to all families falling within its scope regionally (and possibly nationally), despite the fact that the West Midlands area was not within the pilot. This caused great anxiety and distress to the families concerned until welfare advisers could explain to them that implementation did not affect them. However, it was hard for welfare advisers to affirm that they had full trust and confidence in the IND, when no letter of amendment was sent out to those concerned. In short, the episode was unsettling and disturbing.

1.2 Furthermore, although more recently there appears to have been a statement of intent not to implement Section 9, none of our members has seen a report of the outcome of the pilot (in the North West and the South East), and there has been no amendment to the Act. In this area, as in many others, there is a lack of transparency and clarity about the law and its implementation, and this lack in such a crucial area affecting family rights is a matter for grave concern. None of us can reassure families that Section 9 will not be implemented in the West Midlands, and yet we can only presume that failure to implement reflects government concern about the practical effects of the legislation in relation either to existing UK law or to the European Convention on Human Rights.

1.3 A practical and legal problem relating to concerns about Section 9 is the definition of the family. Since the introduction of Section 9 disquiet has focused on the potential plight of legally married parents and their children, as it is these families who are targeted by the legislation. However, asylum accommodation and support is already routinely withdrawn from single parent families where the asylum case is deemed to have failed, and practitioners within our group continuously deal with considerable numbers of such families. Furthermore, a considerable percentage of families viewed by the IND as “single parent” consist in reality of an undeclared co-habitation with a partner, who may be either another asylum seeker or a recognised refugee. These couples with children often fear to declare themselves as such because they will be found to be in breach of National Asylum Support and IND rules. They also fear the consequences of attempting to get married at a registry office. There is justification to this fear since registrars are known to have been pressurised to notify such attempted marriages to the Home Office. Although the government has been forced to withdraw an earlier power to grant or deny permission to marry where one or more asylum seeker partners is involved, the effect of current legislation and rules is that such couples are often deterred from marrying, although they have children.

1.4 However, UK welfare law sanctions support of the family irrespective of marital status. In practice, this means that in many families involving unmarried couples the apparent “single parent” is able to access community care support through Social Services, although local authorities do not appear to have been given an adequate budget to supply this support, and there are consequent delays. Furthermore, in a number of cases community care has been awarded to the child or children, but denied to the single parent, in an apparent attempt to respect the Children’s Act. Meanwhile, the paradoxical effect of Section 9 on those families affected by it, ie those where the parents are married and live within the pilot areas, is reportedly that they go underground and remove themselves from access to support of any kind.

1.5 To summarise: in the West Midlands we believe that families where partners are legally married and therefore liable to be affected by the provisions of Section 9 are not so affected, although they may be living in fear of a potential implementation of the provision, the government not choosing to be transparent in this matter. On the other hand many single parent families suffer from periodic destitution while trying to access community care. Cohabiting partners with children may access community care, but at a maximum this is only for the apparent “single parent” and the children. It does not include the other partner. In a number of cases in the West Midlands community care has been granted to the child or children only. Clearly this situation cannot be to the benefit of such children. Nor can it be to children’s benefit if, for fear of Section 9 implementation, their legally married parents decide that the whole family should go into hiding.

2. SECTION 10

2.1 The WMMAG is not aware of any case in which Section 10 has been implemented in our area. We believe this is because no voluntary sector agency has been willing to participate in a contract to carry out its provisions under the tutelage of the Immigration and Nationality Department. We believe that the voluntary sector has concluded that the work in question is effectively mandatory and not voluntary because it is directed by the IND. Indeed, the contract contains a requirement for the putative contractor to take part in this compulsion by reporting those who fail to turn up for work.

2.2 However, the intention to make “Hard Cases” (Section 4) Support dependent on mandatory unpaid work is still explicitly stated in the application form for Section 4 support currently provided by NASS. Presumably this means that the government is still hoping to find contractors who will agree to be a party to its novel re-definition of voluntary work as mandatory unpaid work. We hope that such a subversion of language will never happen and also that mandatory paid work will be seen to be in clear breach of national and international law. The failure to recognise this explicitly already is most disquieting.

2.3 It is our perception that there are currently more “failed” asylum seekers who are in receipt or potentially in receipt of Section 4 NASS support than there are “asylum seekers in process” on mainline Section 95 support. Included in “potential” recipients are those who may have been refused support on the grounds of errors in their application forms, but who are free to re-apply in the future. It is important to be aware that Section 4 beneficiaries are on a voucher regime, normally at a reduced level of £35 per week (there is variation between different contracts). Given the preponderance of failed asylum seekers over those in process, this effectively means that vouchers have crept back into the system through the back door, despite the recognition by the government in 2002 that vouchers are unfairly prejudicial when imposed as the sole means of exchange.

2.4 In short, Section 10 has remained unimplemented, but continues to be referred to on the Section 4 application form as a reality. This attachment to mandatory unpaid work is strange and hard to justify. In any case, even without Section 10, Section 4 is deliberately discriminatory towards its beneficiary asylum seekers who are deemed to have “failed”, even though it is a condition of receipt of Section 4 support that the applicant, or their representative, demonstrate that the ECHR would be breached by the Home Office’s failure to support.

3. YARL’S WOOD IMMIGRATION REMOVAL CENTRE AND THE TREATMENT OF CHILDREN

3.1 Six members of the WMMAG took part in a visit to Yarl’s Wood IRC. This was organised and accompanied throughout by Reverend Larry Wright, the chaplain (“religious affairs adviser”). The visit followed on from a talk given to a WMMAG invited group in October 2005. At any given time there is usually at least one West Midlands family detained at Yarl’s Wood. The Centre has a capacity of 400. At the time of the visit it was holding 250, 150 of whom were single women, while the other 100 consisted of family groups, including about 40 children. It is a reflection of Yarl’s Wood’s function as a general immigration removal centre that no figures were offered as to what percentage of the detainees are asylum seekers as opposed to immigration overstayers. Yarl’s Wood is at the end of a long rough road, which was not shown on our road map, and could certainly be described as remote. Somewhat surreally, it lurks at the back of an industrial estate on a wind-swept plateau. Security is understandably high, following the fire which destroyed the main block (for single males) in 2002. The majority of families pass through Yarl’s Wood and out to release or deportation in seven days. However, it is common for families to be detained for 4-6 weeks, and in at least one case six months has been known.

3.2 One of the senior staff we met was a psychiatric nurse by training and had many years experience in residential psychiatric service and prison service work. Many of the staff are from prison service backgrounds. Residential management is in the hands of a woman with a background in supermarket management. All staff are employed by the contractor, Global Solutions and every aspect of their work is highly audited.

3.3. It was emphasised to us that nothing in anybody's professional background prepares them for the reality of having to detain children. The staff and the chaplaincy seemed to be doing all they could to make the regime as family friendly as it could be in the circumstances. Colourful and imaginative murals decorate the long stretches of bleak, windowless H-block wall, topped by low ceilings and divided by impenetrable metal doors, opened by large sets of clanking keys. Such decoration is commendably multi-cultural and multi-faith. There is more than one a children's library and one or two play areas. There is a video room, an art room, etc.

3.4 However, it is hard to address the distress, confusion and bewilderment of the families and children. In fact, their arrival is usually as much a surprise to the staff as it is to them. Detainees are moved in and out of Yarl's Wood by the UK Immigration Service (UKIS), who have no instructions to inform the in situ Global Solutions staff in advance of arrival or departure. Much less does UKIS concern itself with needs-centred or psychiatric casework. Yarl's Wood staff frequently find themselves listening to detainees' stories and pleas for help without being tasked to do anything about them. There is no availability of health information on the detainees or their children.

3.5 It was, indeed, at Yarl's Wood in September 2005 that a father committed suicide in order to allow his son's case to be more favourably treated as an unaccompanied minor asylum seeker by the UK authorities. The staff, as well as the inmates, had been deeply marked by this incident.

3.6 It is worth noting that detention for families and children was abolished in Australia in June 2005 in the wake of the Palmer Enquiry into the deficiencies in the provisions of mental health care. The *British Medical Journal* editorial of February 2006 recommended that the UK follow suit.

3.7 It should further be noted that all forms of family unit are potentially affected by detention, whether it be married parents or single parents or co-habitees with children. No family is safe from the attention of the IND's enforcement officers. The same applies to individuals without families or separated from them by their quest for asylum in the UK.

3.8 It is the view of the WMMAG that to keep children and their parents in Yarl's Wood or any other detention centre for over a week is to expose them to undue risks of excessive stress and mental ill health. The problem is compounded at Yarl's Wood by the excessively grim environment, both inside and in the visible surrounds, an austerity that is alleviated, but cannot be removed, by the commendable initiatives of many of the staff.

3.9 Similarly, to attempt to use force in the removal of parents and children is expose the children to a degree of trauma such that this could cause long term damage to their mental health and well-being.

3.10 We also observe that there is a lack of sufficient communication between immigration staff who are based at removal centres like Yarl's Wood and personnel whose responsibility it is to exert maximum pressure on children and their parents to board the plane at the airport. On a number of occasions practitioners have found that late representations sent by fax to immigration at a detention centre have not been forwarded to immigration staff at the airport and families have remained thanks to their own physical and mental resistance, actual release from detention being accomplished only once they have returned from the airport and it has been discovered that there are merits in representations. This greatly adds to the stress experienced by not only the deportees but also a number of the residential and immigration staff at centres like Yarl's Wood.

3.11 The setting and implementation of quantitative performance targets for deportations is a practice which is bound to come into conflict with human rights and civilised mores. A decent and humane society is something which will be achieved primarily by qualitative, not quantitative performance. The government, as is well known, has leant towards the opposite view.

4. REPORTING CONDITIONS AND SECTION 35 OF THE 2004 ACT

4.1 Over the last two years it has become an almost universal requirement for both asylum seekers and failed applicants to report at the regional reporting centre, in our case the IND Midland Enforcement Unit at Solihull. Previously, reporting was mostly to local police stations. This centralisation has created extreme inconvenience for those who may have been "dispersed" anything up to 45 miles from Solihull. However, for those receiving NASS Section 95 or Section 4 support, reporting is a condition for continuation of the support. However, an increasing number of those who are being summoned to sign receive absolutely no

benefit or service from the Home Office. Many are refusing to sign, but many others feel obliged to report because of their hope that, if they are still in the consciousness of the IND, they may at a later stage benefit from a change of heart on their refusal. Our practitioners report that hardly a week goes by without a new rumour of an amnesty running like wildfire through the large and, to the general public largely hidden, contingent of refused asylum seekers.

4.2 The requirement to report and sign up at Solihull, monthly, weekly or even two to three times a week at the whim of the IND, is the source of quite incalculable stress for those who feel practically or morally obliged to do so. Many—possibly now the majority—of removals to detention centres happen during the course of signing. The reporting cycle is therefore a source of very real dread for a significant number of failed asylum seekers. Every time the requirement falls due they fear that they may not be coming back from Solihull. There is certainly enough enforcement action to justify this fear. Yet, they may equally dread the consequences of failing to report, and option taken by a significant and growing number. They will become clandestine, stripped of an identity.

4.3 Such a posing of an “intolerable dilemma” by the government is undoubtedly a threat to the mental health of asylum seekers

4.4 This threat has been compounded in our area by a drive to make asylum seekers sign requests for travel documents to their embassy. To fail to comply, the Midland Enforcement Unit has stated, is for the asylum seeker to find himself in breach of Section 35 of the 2004 Act. It is emphasised in standard form letters that such requests are purely prophylactic, and amount to a recognition by the asylum seeker that they must be ready to leave the country as soon as they have run out of appeals. Yet, it is hard to see why someone with a genuine fear of persecution should cooperate prophylactically in their own removal.

4.5 In one case known to the WMMAG a woman had a breakdown at the Solihull centre as a result of the pressure she was being put under. After this she had to be hospitalised for several weeks and a neighbour had to look after her children. This did not prevent the MEU sending threatening letters to her address about her failure to attend.

4.6 This attempt to impose criminalisation on failed asylum seekers, without any regard for their health and wellbeing, is symptomatic of an asylum system which has become unacceptably harsh and disrespectful of human rights, whether at an individual or family level. Yet, the Home Office continues to claim that all administrative measures are pre-screened for compliance with the ECHR.

4.7 The health effects are incalculable. Many of the large body of asylum seekers fear that the next signing on could be the last, and some may be unable to sleep normally for several days before their appointment.

4.8 The willingness of the Immigration and Nationality Department to have recourse to abuses of procedure is also a matter for grave concern. No practitioner can rely on the IND to play fair and issue a refusal of a fresh asylum claim ahead of the appointed day for reporting. It has therefore happened on a number of occasions that the first the client or the client’s rep (if any) knew about such a refusal was the client’s summary arrest at the reporting centre.

4.9 There is mounting evidence from feedback from asylum seekers that a number of immigration officers at the MEU have been trained in interrogation and low-level torture tactics, indeed that the use of these procedures is systemic. Typical reports are that the failed asylum seeker has been told that there is a plane waiting to take them away; they are left in isolation for periods varying between one and three hours; they are verbally insulted; they are asked minute details about their case over and over again; they are threatened with future summary removal, etc. All this takes place in a context where it is well known to the asylum seekers that reporting is an integral part of the removal process.

WMMAG finds that the systematic use at the Midland Enforcement Unit of behaviour which might be classed as cruel or inhuman is a matter for the gravest concern.

5. CONCLUSION

The asylum, or more particularly the post-asylum procedure, does not withstand scrutiny in terms of fairness and transparency. Much of what goes on is deeply threatening and alarming to the “user” group. Any semblance of respect for families and children appears to have been squeezed out of the system. Such limited succour as can be accorded to post-asylum seeker families and children is offered by the asylum-serving voluntary and church sector and individual employees in defiance of the hostile intentions of government and its largely untutored electorate towards this sadly disempowered client group.

September 2006

21. Memorandum from The Reaching Out Project, Medact

1. ABOUT THE REACHING OUT PROJECT

The Reaching Out Project aims to improve access to maternity services for marginalised women from black and minority ethnic communities, including refugees, asylum seekers, women with little or no English and women with insecure immigration status. The project is based in London and operates across England.

The Reaching Out Project is engaged in campaign work and development of information resources. It does not provide clinical services or support to individual women.

The project is based with the national charity, Medact. The project is funded by the Department of Health under section 64 funding for voluntary organisations.

2. FOCUS OF THE SUBMISSION

This submission addresses human rights concerns relating to the conditions of life for asylum seekers and failed asylum seekers in the UK, focusing on item (ii) the provision of healthcare. In particular, this submission addresses the issue of maternity care for failed asylum seekers.

3. SOURCES OF INFORMATION

This submission is based on information obtained during consultations with marginalised women from black and minority ethnic communities, advocates working in voluntary organisations, health workers and policy makers. We have published the findings of consultations undertaken in the period May—July 2005.¹³⁸ We are currently undertaking a second series of consultations and will be publishing a campaign document in late 2006 and consultation report in 2007.

We have drawn upon published research and official figures where these are available. Official figures on the experiences of maternity care of failed asylum seekers are limited. There has been no formal assessment of the health impacts of the regulations governing access to maternity services for women from overseas.

4. HEALTH AND HUMAN RIGHTS

4.1 *ICESCR and domestic law*

We refer to the Medact submission for discussion of the rights of failed asylum seekers. We note that the International Covenant on Economic Social and Cultural Rights has the potential to provide significant protection to this marginalised group when incorporated into domestic law.

4.2 *Maternity care and human rights*

4.2.1 *Maternity care can prevent intense suffering and death*

Timely maternity care can be life saving for both mother and baby, and also provides the opportunity for the mother and baby to be screened for conditions that may cause intense suffering if left undetected and unmanaged (for example, pre-eclampsia, eclampsia, gestational diabetes, cardiac disease, HIV). The importance of pregnant women making early contact with the maternity services, and maintaining regular contact thereafter, has been recognised by both the Department of Health in its National Service Framework for Children, Young People and Maternity Services, and the National Institute of Clinical Excellence in its Guideline on Routine Antenatal Care.

Studies of refugee women in London and Dublin have found higher rates of some obstetric complications, and higher perinatal mortality than the general population. The fact that this population may be at particular risk of poor outcomes emphasises the importance of timely access to antenatal care.¹³⁹

There is a considerable body of evidence about the serious risks to maternal and infant health where a woman does not receive antenatal care:

- Late booking or poor attendance for maternity care were identified as key risk factors in the latest report on maternal deaths,¹⁴⁰ affecting 20% of women who died. Newly arrived asylum seekers and refugees were found to be seven times more likely to die than White women and more than half of the migrant women who died had major problems accessing maternity care.

¹³⁸ A Gaudion, *Report on preliminary consultations: May–July 2005*, Medact 2006, available at http://www.medact.org/content/reaching_out/Report%20on%20preliminary%20consultations.doc

¹³⁹ Jones J (1999). *Refugees and Asylum Seekers in Enfield and Haringey: A Health Needs Assessment*. Enfield and Haringey Health Authority, 1999. Lalchandi S *et al.* (2001) *Obstetric profiles and pregnancy outcomes of immigrant women with refugee status*. *Irish Medical Journal* 94(3): 79–80.

¹⁴⁰ Confidential Enquiry into Maternal and Child Health. (2004). *Why Mothers Die 2000–02*. London: RCOG Press.

- A study that compared the perinatal outcomes of undocumented migrants with and without antenatal care in California found that women who received no antenatal care were four times more likely to deliver a low birthweight baby, and more than seven times more likely to give birth prematurely.¹⁴¹
- Where the mother is HIV positive, there is a 30% risk of transmitting the virus to her baby if she receives no treatment. This risk can be reduced to 1-2% through appropriate management during pregnancy and delivery.¹⁴² HIV infections are disproportionately concentrated in the migrant population.¹⁴³ Many women only become aware of their HIV status through antenatal testing.

4.2.2 Denial of maternity care is a breach of human rights

A healthcare system that effectively denies timely and full maternity care to vulnerable women who cannot pay, including “failed” asylum seekers, puts individual women and babies at risk of avoidable suffering and death. As such, in every such case there is a potential breach of ECHR Article 3 (within the broad definition of “treatment” set out in *Ireland v UK* and *Pretty v UK*), and in the most extreme cases, Article 2.

As discussed below, assertively charging a vulnerable pregnant woman for care for which she cannot pay amounts to an effective denial of maternity care.

5. UK POLICY FRAMEWORK

5.1 *Regulations and guidance*

In England, failed asylum seekers are entitled to free NHS maternity care if the care commenced before their claim was rejected. If the maternity care commenced after their claim was rejected, they are liable to pay for that care.

Maternity care is considered “immediately necessary” treatment, which means that the hospital trust cannot delay or withhold the treatment while establishing the patient’s chargeable status or ability to pay. The Department of Health’s Guidance¹⁴⁴ states that “because of the severe health risks associated with conditions such as eclampsia and pre-eclampsia, maternity services should not be withheld if the woman is unable to pay in advance” (Guidance page 42). The hospital is required to raise an invoice and pursue the debt, but there is a procedure for writing off the debt if it proves unrecoverable.

The Department of Health has confirmed that maternity care, for these purposes, includes antenatal care, care during birth, hospital-based postnatal care and community-based postnatal care provided by midwives employed by the hospital trust. It also includes HIV treatment during pregnancy. It may not include other services, such as mental health care.

Similar charges for maternity care apply in Scotland, Wales and Northern Ireland. It remains unclear as to the scope of maternity care which these jurisdictions consider to be “immediately necessary” treatment to be provided irrespective of the woman’s ability to pay.

5.2 *Distinguishing failed asylum seekers from “health tourists”*

Pregnant, failed asylum seekers cannot be considered “health tourists”, that is, as women who have come to the UK with the express purpose of using free NHS maternity services. They should be considered as individuals who are living in the UK but are liable to pay for care because of their immigration status.

6. DETERRENT EFFECT OF CHARGING FOR CARE

Charges for a “package” of maternity care vary between hospitals and range from approximately £1,500 to in excess of £3,000. These packages generally cover a normal birth, with additional charges for other services, such as a caesarean section and additional nights in hospital.¹⁴⁵

Trusts are required to issue invoices in all cases.¹⁴⁶ They do not have discretion to waive the charge where the woman is manifestly unable to pay for care. Instead, the trust must take “all reasonable measures” to recover the debt and, where the debt is deemed to be unrecoverable, it must be written off and formally recorded as a loss.

¹⁴¹ Lu M *et al* (2000). Elimination of public funding for undocumented immigrants in California: A cost/benefit analysis. *American Journal of Obstetrics and Gynaecology* 182(1): 233–239.

¹⁴² British Medical Association. (2005) Written submission to the Health Select Committee inquiry—*New developments in HIV/AIDS and sexual health policy*. See: www.bma.org.uk (accessed March 2006).

¹⁴³ Health Protection Agency. (2005) HIV and sexually transmitted infections in the UK. See: http://www.hpa.org.uk/publications/2005/hiv_sti_2005/pdf/MtI_FC_Part_4_BME.pdf

¹⁴⁴ Department of Health (2004). Implementing the Overseas Visitors Charging Regulations. Guidance for NHS Hospital Trusts.

¹⁴⁵ Reaching Out Project research.

¹⁴⁶ NHS Finance Manual, chapter 5. Available from: [www.info.doh.gov.uk/doh/finman.nsf/4db79df91d978b6c00256728004f9d6b/3b47a919af6bd210802570bb005db6e6/\\$FILE/Chap%205%20-%20Losses.doc](http://www.info.doh.gov.uk/doh/finman.nsf/4db79df91d978b6c00256728004f9d6b/3b47a919af6bd210802570bb005db6e6/$FILE/Chap%205%20-%20Losses.doc) [Accessed September 2006].

Many women are intimidated by the prospect of incurring a debt of several thousand pounds when they know it will be impossible to repay it. They therefore choose not to receive care they cannot afford, and “disappear” from the maternity services.¹⁴⁷

Some women may be able to raise part of the sum required to pay for their care, but feel they have no option but to discontinue the care when the money runs out.¹⁴⁸

Women who receive no antenatal care because they cannot afford to pay may return to the hospital to give birth unbooked, or they may give birth at home.¹⁴⁹ Where a woman does receive maternity care and then receives a bill, she may feel her only option is to go into hiding and thus break off contact with postnatal and child health services.

7. BREACH OF THE REGULATIONS AND GUIDANCE

Compliance with the regulations and guidance varies across health services and between individual staff, and breaches of the regulations and guidance are regularly reported by advocates.¹⁵⁰

Many failed asylum seeker women have been told that they must pay for maternity care prior to care being provided.¹⁵¹

Many other failed asylum seeker women have not been told that they cannot obtain care prior to payment, but have been unable to obtain an appointment with a midwife until the issue of payment has been resolved with the Overseas Visitor Manager.¹⁵²

Some failed asylum seekers women and their advocates have experienced harassment from Overseas Visitor Managers and hospital finance departments when they are unable to pay for care.¹⁵³ This consists of rude and, in some cases, abusive treatment in meetings with the Overseas Visitor Manager; repeated phone calls, often very aggressive in character; and threats to bring in debt collectors prior to the birth. In some cases, the Overseas Visitor Manager has rung the woman’s GP during the meeting and advised the GP that the woman is not entitled to free care.¹⁵⁴ For some women, this has resulted in loss of access to primary health care services.

A number of advocates have reported difficulties in negotiating for individual women to obtain care in accordance with the regulations.¹⁵⁵ Advocates have reported extremely unpleasant meetings and phone conversations, lack of response to letters, and substantial delays.¹⁵⁶

Factors which may be contributing to non-compliance with the regulations and guidance:

- Individual trusts do not receive funding for providing maternity care to women who are not entitled to free NHS care. If the woman is unable to pay for care, the trust receives no payment for those services. This creates a strong financial disincentive for a trust to provide care to a woman who is unable to pay.¹⁵⁷
- There is little evidence to suggest that Overseas Visitor Managers are sanctioned for breach of the regulations or for harassment of patients.¹⁵⁸
- There is limited awareness of the relevant regulations and guidance amongst health workers, advocates and women from black and minority ethnic communities. Consequently, there are few people who are in a position to challenge actions which are in breach of the regulations.¹⁵⁹
- Failed asylum seekers rarely complain about substandard treatment.¹⁶⁰

Harassment can result in the woman feeling unable to return to the hospital for further care, or returning only to give birth.¹⁶¹ Difficulties in negotiating access mean delays in accessing antenatal care and, consequently, delays in identification of health problems and commencement of treatment.

¹⁴⁷ Reaching Out Project research; Citizens Advice Bureau, *Shaming destitution: NASS section 4 support for failed asylum seekers who are temporarily unable to leave the UK*, CAB evidence briefing June 2006; N Kelly and J Stevenson, *First do no harm: denying healthcare to people whose asylum claim has failed*, Refugee Council June 2006; A Benjamin, *Forced to go it alone*, *The Guardian*, 14 December 2005.

¹⁴⁸ N Kelly and J Stevenson, *First do no harm: denying healthcare to people whose asylum claim has failed*, Refugee Council June 2006.

¹⁴⁹ Reaching Out Project research; N Kelly and J Stevenson, *First do no harm: denying healthcare to people whose asylum claim has failed*, Refugee Council June 2006.

¹⁵⁰ Reaching Out Project research.

¹⁵¹ Reaching Out Project research; N Kelly and J Stevenson, *First do no harm: denying healthcare to people whose asylum claim has failed*, Refugee Council June 2006.

¹⁵² Reaching Out Project research.

¹⁵³ Reaching Out Project research.

¹⁵⁴ Reaching Out Project research.

¹⁵⁵ Reaching Out Project research.

¹⁵⁶ Reaching Our Project research.

¹⁵⁷ Reaching Out Project research.

¹⁵⁸ Reaching Out Project research.

¹⁵⁹ Reaching Out Project research.

¹⁶⁰ J McLeish, *Mothers in exile: maternity experiences of asylum seekers in England*, Maternity Alliance, 2002.

¹⁶¹ Reaching Out Project research.

8. MENTAL HEALTH SERVICES

The scope of maternity care which is classed as “immediately necessary treatment” excludes many related health and social services, including mental health services. As a result, many pregnant failed asylum seekers with severe mental illness are unable to access mental health services because they are unable to pay. This creates serious health risks for the woman and her baby.

9. RECOMMENDATIONS

The International Covenant on Economic Social and Cultural Rights has the potential to provide valuable protection to failed asylum seekers and should be incorporated into domestic law.

Recommendation 1:

That the International Covenant on Economic Social and Cultural Rights be incorporated into domestic law.

Policy making on access to health care should be based on sound evidence.

Recommendation 2:

That a Health Impact Assessment be carried out on the current regulations on access to maternity care for women from overseas.

Pregnant women who are unable to pay for care should not be charged for care. Women who have already passed a test of destitution should not be required to prove to a health service that they are unable to pay for care.

Recommendation 3:

That failed asylum seekers who receive section 4 support from NASS be entitled to free maternity care.

Recommendation 4:

That failed asylum seekers who receive section 95 NASS support or support from local authorities be entitled to free maternity care.

The deterrent effect of charges should be ameliorated by providing trusts with the discretion not to raise an invoice where a woman can demonstrate that she cannot pay. Factors contributing to breach of the regulations and guidance should be addressed.

Recommendation 5:

That hospital trusts be given discretion to waive charges for any “overseas visitor” who can demonstrate that she is unable to pay for her maternity care.

Recommendation 6:

That financial arrangements be changed to remove disincentives for trusts to provide maternity care for women who are unable to pay.

Recommendation 7:

That Overseas Visitor Manager training and performance management be reviewed to promote thorough knowledge of the regulations and guidance, improved compliance with the regulations and guidance, and courteous treatment of patients.

Disputes about access to maternity services should be resolved speedily in order for women to obtain timely antenatal care. Current processes would be significantly improved by the formal involvement of a senior officer from the maternity service.

Recommendation 8:

That within each hospital, a senior officer from the maternity service be designated as a contact person for women encountering difficulties in negotiating access to maternity care.

Pregnant women and new mothers should have access to mental health services to protect their health and the health of their baby.

Recommendation 9:

That pregnant failed asylum seekers and new mothers be entitled to free mental health care.

22. Memorandum from the Lambeth Primary Care Trust

A. EXECUTIVE SUMMARY

This is a submission presented by the Refugee Health Team (RHT) for Lambeth, Southwark and Lewisham (LSL), hosted by Lambeth PCT.

The RHT LSL provides health care to refugees and asylum seekers and facilitates access to other NHS services. In addition, the team provides health promotion activities and information for the client group, and also support for mainstream primary care.

This submission includes a section presenting factual information about the case of an asylum seeker the team encountered in 2006. The name of the asylum seeker concerned has been changed to Mr A.

Following a road accident, Mr A was admitted to hospital where he received treatment for a complex ankle injury. He was subsequently discharged without any arrangements or liaison with primary care or Social Services being made to ensure he received appropriate continuation of care and support.

This presentation has selected two areas of concern relating to the conditions of life for Mr A and it focuses on:

- The provision of health care.
- Access to accommodation and financial support.

The lack of proper assessment before his discharge from hospital led to a deterioration of Mr A's health to such an extent that he verbalised intentions of committing suicide.

The delay in provision of suitable accommodation and subsistence had a clear negative impact on Mr A's health and wellbeing.

The case demonstrated that some principles and articles from the following Conventions might have been infringed:

- Universal Declaration of Human Rights: Article 14, Article 22, Article 25.
- European Convention on Human Rights and Fundamental Freedoms: Article 3.
- International Covenant of Economic, Social and Cultural Rights: Article 2, Article 3, Article 9, Article 11, Article 12.

The recommendations are

1. To ensure hospital discharge is done following a proper assessment of the patient, especially if there are special needs and the life of the person could potentially be at risk. A proper assessment should be done regardless of whether the person is an asylum seeker or a failed asylum seeker.

2. To ensure Social Services are aware of the Community Care Act 1948, and how this applies to asylum seekers and failed asylum seekers, in order to avoid unnecessary delays in the decision making process.

3. More integration and coordination between hospital and primary care services where asylum seekers are involved, as they may have multiple needs and language needs.

4. Clarity about NASS and Social Services responsibilities for asylum seekers who have put in a fresh claim.

B. A BRIEF INTRODUCTION TO OUR ORGANISATION

Details about the submitter: The Refugee Health Team LSL (Lambeth PCT)

The Refugee Health Team (RHT) for Lambeth Southwark and Lewisham (LSL) is multidisciplinary and provides a holistic health service to refugees and asylum seekers across Lambeth, Southwark and Lewisham boroughs. The team, based in Kennington, is hosted by Lambeth Primary Care Trust but is also funded through Southwark and Lewisham PCTs.

The team provides a specialised service that includes nurse-led clinics offering full health assessments, health advice and access support services, signposting to other specialist services, health promotion programmes, and complementary therapy.

The team also supports front-line NHS and non-NHS staff working with asylum seekers and refugees, through support and advice on individual cases, training, information, resources and capacity building in Refugee Community Organisations (RCOs).

Areas of expertise:

- Nurse-led clinical services for asylum seekers and refugees that provide full health assessments, immunisations, treatment for minor ailments, chronic condition management, triage and referral to other specialist services. Provided as an outreach service in NHS and voluntary sector venues.

- Outreach services in community settings that offer health access support, advice and information, and signposting/referral services for refugees and asylum seekers.
- Advocacy and follow-up for complex cases and socially excluded/isolated individuals.
- Mental health gateway services (Lambeth only) providing initial assessment for asylum-seekers/refugees in psychological distress, brief culturally sensitive interventions and referral/triage.
- Multilingual health promotion sessions/programmes for individuals and groups at RCOs, hostels, local colleges and community events.
- Complementary therapy and training in stress/chronic pain self-management for refugees and asylum seekers.
- Capacity building in health care in RCOs.
- Training for NHS and RCO staff on issues relating to refugee and asylum seeker health needs, entitlements and rights.
- Strong user involvement initiatives including client focus group work.
- Information and resources in a variety of formats for service users as well as service providers working with refugees and asylum seekers.

C. FACTUAL INFORMATION FOR MR A'S CASE

I. Clients details

For this document the name of the client has been changed to Mr A.

- Mr A is a 32 year old asylum seeker from Iran. He entered the UK on 16 October 2002 and applied for asylum on 17 October 2002.
- The Home Office refused his application on 12 December 2002 and a refusal letter was served on 16 December 2002.
- He submitted an appeal against the decision, which was dismissed on 14 October 2003.
- On 6 January 2004 leave to appeal to Immigration Tribunal was refused.
- Mr A's representatives submitted a further (fresh) application for asylum on 24 May 2004, which is still under consideration (as stated in a letter from the Home Office dated 22 February 2006 and addressed to Mr A's local MP).

II. Case factual information:

5. 16 July 2006: message left on RHT LSL health worker mobile phone mentioning Mr A, his social circumstances and his contact number. However, the caller did not leave a number. The health worker thought the call may be from a Social Services Department.

6. 17 July 2006: RHT LSL health worker called Mr A, and Mr A informed the RHT LSL health worker of the following (as noted in client file):

- He was discharged from hospital on 04 July 2006 and brought back to his address which is a room situated at the top of a two-floor flat;
- He is attending the hospital by ambulance as an outpatient on a weekly basis, and he has a fixator in his leg; he uses crutches to walk;
- He has no family or friends and has no access to financial assistance; he has no food; and
- He is not registered with a GP and does not have a HC2 Certificate.

7. 19 July 2006: Mr A sent a text to RHT LSL health worker as follows: "Hi M how are you? I thing you forget me like everybody. I really need help. Because no family, no relative, no friend. What can I do? I haven't food. Mr A".

On 19 July 2006, the following activities took place:

- RHT LSL health worker replied by text to Mr A, to reassure him that the team would contact him again;
- RHT LSL worker was advised to contact NASS to discuss Mr A's case;
- RHT LSL worker contacted NASS to check the Mr A's eligibility to NASS support under "special needs" and he was advised to contact Migrant Helpline;
- RHT LSL health worker visited Mr A at his home at about 4.00pm. The visit was to collect relevant documentation and provided Mr A with something to eat—food was provided by a local Day Centre. Relevant documentation was faxed to Migrant HelpLine;
- Migrant Helpline said that after checking with NASS, Mr A was not eligible for NASS support, despite the fact that Mr A has an outstanding fresh claim for asylum;

- One of the letters collected from Mr A, dated 28 June 2006, was from a Hospital Orthopaedic Department. It contained the following information:
 - On 21 June 2006 Mr A was the victim of a road accident and suffered a complex pylon fracture of his left ankle. Consequently, he was admitted into hospital,
 - On 27 June 2006, he had an operation on the fracture. An external fixator was fitted to his left ankle, due to remain on for a minimum of three months. He was advised to use crutches to mobilise and not to put weight on his left foot.

8. 20 July 2006: The RHT LSL contacted the hospital social services and the community Social Services, and the team was informed:

- That Mr A is not entitled to normal community care package as he does not have National Insurance Number.
- That he should have been assessed formally by a social worker in the hospital, but this did not happen.
- That now he needs to be assessed by the Social Services community team prior to a decision being made about whether they can provide some funds for him.
- Mr A's solicitor was contacted to find out about Mr A's case and a message was left to contact RHT LSL health worker.

The RHT LSL nurse home-visited Mr A to assess him in order to facilitate the referral to social services by providing relevant information. The nurse also provided some food to Mr A.

9. 21 July 2006: The RHT LSL posted and faxed a letter to Social Services requesting a health care assessment and support under National Assistance Act 1948 for Mr A. Letter was copied to Local PCT PALS (Patient Advice and Liaison Service). A call was made to Social Services to confirm that they received the fax, and they said they did receive it.

It was also identified that Mr A had a GP.

10. 25 July 2006: RHT LSL health worker received a message left by Mr A on 24 July 2006 at 5.45 pm, saying that the food brought by the nurse has finished and he had nothing to eat. The following actions were taken:

- RHT LSL called Social Services and informed them that Mr A had no food and that he had no carer. The On-Duty Worker said that she would chase up the case.
- RHT LSL health worker visited Mr A and delivered him some food.
- RHT LSL faxed to Mr A's GP Practice the letter dated 28 June 2006 from the Hospital Orthopaedic Department and requested a GP to visit Mr A.

11. 26 July 2006: GP Practice contacted the RHT LSL and said that a GP will do a home visit that day to Mr A. Mr A was informed about this.

12. On 27 July 2006, RHT LSL contacted Mr A's solicitor. The solicitor said that he was waiting for a Home Office decision on Mr A's fresh claim, and that NASS has discretion to decide about Mr A's eligibility for support.

The following actions were taken by RHT LSL:

- Contacted Mr A to check how he is, he confirmed that he was visited by a GP and another visit will be carried out today.
- Three letters were sent to charities asking for support for Mr A.

13. 1 August 2006: the RHT LSL health worker received another text from Mr A. saying "... what happening there, why nobody help me, maybe I am not human. Thank you A".

Later that day, an RHT LSL worker telephoned Mr A. During this conversation, Mr A mentioned that he was thinking about ending his life. The following actions were taken by the RHT LSL:

- Letter to Social Services was faxed again, and talked to Social Services worker who promised that she will talk to the manager and let us know about their decision.
- The RHT LSL worker visited and brought some food to Mr A.

14. 2 August 2006: the RHT LSL reviewed the case and the conclusion was that Mr A's mental health had deteriorated. The following actions were taken:

- Second letter was written and faxed to Social Services stressing again the situation of Mr A, and explaining that Mr A's mental health was also deteriorating. Fax was followed up by a phone call to Social Services and they confirmed receipt of the fax.
- RHT LSL nurse referred client to Community Mental Health Team (CMHT), they confirmed that referral was received.

15. 4 August 2006: two social workers from the Young Adults Team visited Mr A at his home and carried out an interview. They gave Mr A £10.00 and promised to contact him on the following Monday 7 or Tuesday 8 August.

- CMHT confirmed that Mr A was given an appointment on 9 August. Mr A needed somebody to escort him to the CMHT appointment. The RHT LSL arranged transport for Mr A to attend this appointment.

16. 8 August 2006: the RHT LSL contacted Mr A, to find out if he had received any news from Social Services, he said that he has not heard from Social Services.

17. 9 August 2006: the RHT LSL provided Mr A with the funding provided from a Charity. Mr A attended his appointment with CMHT.

18. 11 August 2006: RHT LSL contacted Mr A to confirm that Social Services had returned the documents they had collected from him the previous day. He confirmed they had.

19. 14 August 2006: the RHT LSL received another text from Mr A saying “. . . please call the Social Services and ask them why they do not look after me”. This text was followed up by repeated phone calls by RHT LSL to Social Services.

20. 16 August 2006: the RHT LSL contacted CMHT to find out about Mr A’s assessment. The CMHT asked about Mr A’s immigration status and said they required proof of his status. CMHT agreed to consider the case and they will discuss next week.

21. 17 August 2006: the RHT LSL was informed by Social Services that they accepted they had a duty of care for Mr A, and would provide him with accommodation and subsistence.

22. 22 August 2006: the RHT LSL received another text from Mr A saying that he does not feel well and he has not heard from Social Services or the CMHT.

Third letter was sent to Social Services. This was followed up by phone calls.

23. 24 August 2006: the RHT LSL was contacted by Social Services saying that they will pay for housing and the Asylum Team will provide vouchers. The RHT LSL asked if there were any arrangements had been made to assist Mr A to collect vouchers, as his mobility was severely restricted.

Mr A sent text to RHT LSL saying that his medication was finishing, the RHT LSL contacted the GP and informed them of the situation.

24. Between 25 August 2006 and 30 August 2006, the RHT LSL contacted the Social Services team to find out about any progress on the case.

25. On 31 August 2006 Mr A called the RHT LSL and said that he was “going crazy” “had not eaten for four days” and would do “something in two hours”.

The following actions were taken:

- RHT contacted Social Services and explained the situation. Social Services contacted Mr A and said that they will provide £60 fortnightly. Firstly, however, a Social Services worker needed to escort Mr A to collect an ID card, after which an arrangement would be made to provide food/shopping every two weeks.
- RHT LSL contacted Mr A and informed him of the above conversation, but he said that he “did not believe anymore in Social Service as they promised but no-one comes out”. He also said that he was “going to do it tonight”. It was explained to Mr A that the RHT LSL may need to contact the emergency services to take him to hospital. Following the conversation, the Police were contacted.

26. 1 September 2006: the RHT LSL contacted the CMHT and it was said that Mr A was sent a letter with an appointment for 11 September 2006.

- Mr A contacted the RHT LSL and wanted to know about the Social Services support, Mr A was given the number of Social Service duty person and told he could contact Social Service directly.

III *Areas of concern for asylum seekers and failed asylum seekers*

27. From the above facts it is evident that Mr A was discharged from hospital without any prior arrangement for his continuation of care with primary care, neither his support needs (accommodation and subsistence) arranged with the local Social Services.

28. This section presents two areas of concern relating to the conditions of life for Mr A (asylum seekers with fresh claim), it focuses on:

- The provision of health care.
- Access to accommodation and financial support.

The Provision of Health Care

29. On 4 July 2006, Mr A was discharged without a proper assessment of his health and social needs. Mr A's GP was not contacted by the hospital, the GP only knew about this client when the RHT LSL contacted him on 25 July 2006, and this took place after RHT LSL visited Mr A and managed to identify Mr A's GP.

30. Mr A had access to hospital care as he was usually taken on a weekly basis for outpatient treatment. But his health care in the community was not co-ordinated until the RHT LSL communicated with the GP. This situation could have been better managed if the GP Practice and the RHT LSL had been contacted before he was discharged.

31. Due to his health condition and lack of appropriate subsistence and support, Mr A's mental health was deteriorating to the point that in his own way he was thinking of committing suicide.

Access to accommodation and financial support

32. It was clear that Mr A was not allowed to put weight on the leg that has the fixator *in situ*. He was not able to negotiate the stairs. However, he was discharged to an accommodation that was not suitable for his level of need.

33. In relation to access to subsistence, from the above factual information, it is apparent that no provision was made to ensure Mr A was provided with necessary subsistence once he was discharged from hospital. This situation led to Mr A to be left without any food for days, as he stated in some text messages to RHT LSL.

34. Mr A's access to community Social Service care took time. According to the factual information, the RHT faxed a letter to Social Services on 21 July 2006. But it was not until the 31 August 2006 that the RHT LSL was told that arrangements were being planned, even though Social Services said that they agreed to support Mr A on 22 August 2006. By 31 August 2006, Mr A's mental health had already deteriorated.

35. Social Services were aware of Mr A's mental health deterioration as RHT LSL sent its second letter on 1 August 2006 stressing again the need to support Mr A and stating that Mr A mental health was greatly affected by his accommodation and financial conditions. A referral to CMHT was also done on 2 August 2006 about Mr A's mental health state.

36. It is clear that access to suitable accommodation and subsistence is key for any person to recover from any health condition, such as in the case of Mr A. The delay in the provision of this basic support affected this person to such an extent that he verbalised intentions of committing suicide.

37. The situation of delays in the provision of suitable accommodation and subsistence put staff in the RHT LSL in a difficult situation of providing Mr A with food. Staff had to donate money to buy for Mr A, until the Social Services managed to arrange the support.

Relevant conventions:

- Universal Declaration of Human Rights: Article 14, Article 22, Article 25.
- European Convention on Human Rights and Fundamental Freedoms: Article 3.
- International Covenant of Economic, Social and Cultural Rights: Article 2, Article 3, Article 9, Article 11, Article 12.

D. RECOMMENDATION FOR ACTIONS

38. To ensure hospital discharge is done following a proper assessment of the patient, especially if there are special needs and the life of the person could potentially be at risk. A proper needs assessment should be done regardless of whether the person is an asylum seeker or a failed asylum seeker.

39. To ensure Social Services are aware of the Community Care Act 1948, and how this applies to asylum seekers and failed asylum seekers, in order to avoid unnecessary delays in the decision making process.

40. More integration and coordination between hospital and primary care services where asylum seekers are involved, as they may have multiple needs and language needs.

41. Clarity about NASS and Social Services responsibilities for asylum seekers who have put in a fresh claim.

42. Failed asylum seekers should be entitled to access NHS primary and secondary health care and social care while they are in the UK.

23. Memorandum from Doctors for Human Rights

FAILED ASYLUM SEEKERS AND HEALTHCARE—CURRENT REGULATIONS FLOUT INTERNATIONAL LAW

In restricting the access of failed asylum seekers to free secondary healthcare the British government is violating the right of failed asylum seekers to the highest attainable standard of health, guaranteed by the International Covenant on Economic, Social and Cultural Rights.¹⁶² This covenant, along with the International Covenant on Civil and Political Rights and the Universal Declaration on Human Rights, forms the International Bill of Human Rights and was ratified by the UK in 1976. Although not yet justiciable (liable to court trial or legal decision) in the UK, the International Covenant on Economic, Social and Cultural Rights is no less binding on governments than international law that has been incorporated in domestic legislation, such as the Convention against Torture or the European Convention on Human Rights. The Committee on Economic, Social and Cultural Rights, which monitors states' compliance with the covenant, found no factors that might prevent full implementation of the covenant at its last review of the UK in 2002.¹⁶³

The International Covenant on Economic, Social and Cultural Rights puts governments under a specific obligation not to limit equal access to health care for all people. This obligation arises from the combination of article 2.2, which says that parties to the covenant guarantee that its rights will be exercised without discrimination of any kind, and articles 12.2 (c) and (d), which cover “The prevention, treatment and control of epidemic, endemic, occupational and other diseases” and “The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”¹⁶⁴

At the time of the Committee on Economic, Social and Cultural Rights' monitoring report on the UK in 2002 Doctors for Human Rights named asylum seekers as a vulnerable population that must be protected from discrimination and criticised the UK's continuing failure to make the covenant justiciable by incorporating it within national law in conformity with Article 2.1.¹⁶⁵ The monitoring committee's final report criticised “*de facto* discrimination in relation to some marginalised and vulnerable groups” and asked the UK to ensure that its obligations under the covenant were taken into account in national legislation and policy on health and education.¹⁶⁶ Yet within two years the government had blocked access to free NHS hospital health care for most failed asylum seekers and expressed an intention deny them access to free NHS primary care.

A large though difficult to quantify proportion of failed asylum applicants are, despite having faced appalling experiences, rejected by an evaluation process that the United Nations, Amnesty International, and the House of Commons Home Affairs Committee have judged inadequate.^{167, 168, 169} Because failed asylum seekers are not allowed to work and earn money denial of access to free secondary health care is, *de facto*, denial of access. Health security is one of the core elements of human security.¹⁷⁰ Given that many of these people have faced the insecurity of physical harm, are by definition denied security of residency, and as a result of government policy have no economic security, denial of access to health care by one of the richest countries on earth is inhumane because it jeopardises their health and illegal because it violates international law.

Where do these regulations leave doctors? Conforming with legislation that denies access to health care goes against the instincts of many doctors, affronts common decency, and infringes international and domestic ethical codes. But it is in its violation of international law that the regulations offend most. The intentions of the authors of the International Covenant on Economic, Social and Cultural Rights, that no discrimination should exist in health care provision and that national legislation should be enacted that

¹⁶² United Nations. International Covenant on Economic Social and Cultural Rights Geneva: UN 1976 <http://www.ohchr.org/english/law/cescr.htm> (accessed 30 June 2006).

¹⁶³ United Nations. Concluding Observations of the Committee on Economic, Social and Cultural Rights : United Kingdom. 05/06/ 02. E/C.12/1/Add.79. Paras 10, 14, 24, 25, 30, 44, Geneva: UN, 2002 [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/619d3c786801bc2cc1256bbc00568cea?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/619d3c786801bc2cc1256bbc00568cea?Opendocument) (accessed 30 June 2006).

¹⁶⁴ United Nations. International Covenant on Economic Social and Cultural Rights Geneva: UN 1976 <http://www.ohchr.org/english/law/cescr.htm> (accessed 30 June 2006).

¹⁶⁵ Physicians for Human Rights-UK. Report to CESCR : Response to the UK Government's Fourth Report. Sn 4-5. St Albans: PHR-UK, 2002. <http://phall.members.gn.apc.org/HealthRprt.pdf> (accessed 30 June 2006).

¹⁶⁶ United Nations. Concluding Observations of the Committee on Economic, Social and Cultural Rights : United Kingdom. 05/06/ 02. E/C.12/1/Add.79. Paras 10, 14, 24, 25, 30, 44, Geneva: UN, 2002 [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/619d3c786801bc2cc1256bbc00568cea?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/619d3c786801bc2cc1256bbc00568cea?Opendocument) (accessed 30 June 2006).

¹⁶⁷ UN Refugee Agency. Quality Initiative Project; Third Report to the Minister. London March 2006 <http://www.ind.homeoffice.gov.uk/aboutus/reports/unhcr> (accessed 30 June 2006).

¹⁶⁸ Amnesty International. Get it right: how Home Office decision making fails refugees. London: Amnesty International, 2004. <http://www.amnesty.org.uk/content.asp?CategoryID=838&ArticleID=838> (accessed 30 June 2006).

¹⁶⁹ House of Commons Home Affairs Committee. Asylum Applications Second Report of Session 2003-04, Vols 1 and 2. Paras 118–149. London 2004. <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/218/21802.htm> (accessed 30 June 2006).

¹⁷⁰ Commission on Human Security. Human Security. p 96. New York: UN, 2003. <http://www.humansecurity-chs.org/> (accessed 30 June 2006).

render it a unlawful, have been, as a matter of policy illegally frustrated.^{171, 172} The UN General Assembly, commenting on each individual's responsibility to protect human rights, concluded that everyone has the right to the lawful exercise of his or her profession and an obligation to comply with relevant national and international standards of occupational and professional conduct or ethics.¹⁷³

In its 2002 report the Committee on Economic, Social and Cultural Rights, the world's most authoritative body on health rights, urged the UK government to ensure that health professionals be educated in economic, social, and cultural rights and the public be informed of the requirements of the covenant, but neither recommendation has been followed.¹⁷⁴ The government needs to observe its obligations under the International Covenant on Economic, Social and Cultural Rights. In the meantime health professionals who have cooperated in limiting access should understand they have unknowingly been made complicit in the abuse of a fundamental human right.¹⁷⁵

October 2006

24. Memorandum from the Law Centre (NI)

SUMMARY

In this evidence, we draw the Committee's attention to the following issues relating to the treatment of asylum seekers in Northern Ireland.

- Northern Ireland presents unique issues in relation to the treatment of asylum seekers, including:
 - the adverse impact of the lack of a Public Inquiry Office in Northern Ireland;
 - the impact of a land border with another EEA state;
 - the legal status of Irish-born children of asylum seekers; and
 - the policy of removal of asylum seekers out of the juridical area to Scotland or England (paras 2.1–2.50).
- Concerns over the provision of accommodation and financial support for asylum seekers (paras 3.1–3.7).
- Problems associated with inadequate and/or delayed provision of health care to asylum seekers and particular issues presented by those asylum seekers with mental health needs (paras 4.3–4.5).
- The failure to respect the rights of children of asylum seekers and unaccompanied minors (paras 5.1–5.2) with particular emphasis on the detention of the children of asylum seekers (para 5.3).
- The impact of removal from Northern Ireland to detention in GB on asylum seekers and their families (paras 6.1–6.5).

1. INTRODUCTION

1.1 Law Centre (NI) is a public interest law non-governmental organisation. The Law Centre works to promote social justice and provides specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. Five specialist lawyers carry out our immigration and asylum work and we represent in a substantial number of all immigration appeals in Northern Ireland. We are the main advisers on immigration law in Northern Ireland. We operate an advice line five days a week and answer queries in relation to all aspects of immigration law. We also facilitate the Immigration Practitioners' Group which consists of lawyers and voluntary sector organisations. It meets regularly to discuss all aspects of immigration law and practice in Northern Ireland. This submission has been informed by the work of our immigration practitioners.

1.2 Below we highlight some of the unique issues pertaining to Northern Ireland in the treatment of asylum seekers and respond to the particular issues raised by the Committee with reference to examples from our casework. These case studies are intended to convey some of the ways in which we believe the treatment

¹⁷¹ United Nations. International Covenant on Economic Social and Cultural Rights Geneva: UN 1976 <http://www.ohchr.org/english/law/cescr.htm> (accessed 30 June 2006).

¹⁷² United Nations. The domestic application of the Covenant: E/C.12/1998/24, CESCR General comment 9. UN. Geneva. 1998. [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4ceb75c5492497d9802566d500516036?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4ceb75c5492497d9802566d500516036?Opendocument) (accessed 7 July 2006).

¹⁷³ United Nations. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Art 11. Adopted by General Assembly December 1998. Geneva:UN, 1998 <http://www.ohchr.org/english/law/freedom.htm> (accessed 30 June 2006).

¹⁷⁴ United Nations. Concluding Observations of the Committee on Economic, Social and Cultural Rights : United Kingdom. 05/06/ 02. E/C.12/1/Add.79. Paras 10, 14, 24, 25, 30, 44, Geneva: UN, 2002 [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/619d3c786801bc2cc1256bbc00568cea?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/619d3c786801bc2cc1256bbc00568cea?Opendocument) (accessed 30 June 2006).

¹⁷⁵ United Nation. Final report on the question of the impunity of perpetrators of human rights violations. Para 133-6. Commission on Human Rights. Geneva:UN 1997 <http://www.hri.ca/forthecord1997/documentation/subcommission/e-cn4-sub2-1997-8.htm> (accessed 30 June 2006).

of asylum seekers in Northern Ireland fails to comply with the obligations assumed by the UK under international human rights law. We have allocated fictional names to these case study examples in order to protect the privacy of those concerned.

2. THE NORTHERN IRELAND CONTEXT

2.1 It is difficult to establish the exact number of asylum seekers and refugees living in Northern Ireland. In 2004, the Refugee Action Group estimated that there were perhaps around 2,000 refugees here. This number included those who had received refugee status, those who had claimed asylum in other parts of the UK and those who had claimed asylum in Northern Ireland.¹⁷⁶

2.2 In its figures for the first quarter of 2006, the Home Office has stated that it was supporting 135 asylum seekers through National Asylum Support Service (NASS), with an estimated 10 others receiving subsistence only support from NASS.

2.3 For a number of reasons, Northern Ireland has different issues in the treatment of asylum seekers compared to the rest of the UK. Geographically, it is the only part of the UK to share a land border with another EEA state. This can lead to individuals who are legally seeking asylum in the Republic of Ireland finding themselves, unwittingly or unintentionally, in Northern Ireland, resulting in their detention. Northern Ireland is also unique within the rest of the UK in that a child born in Northern Ireland may be eligible for dual citizenship (of both the Republic of Ireland and the UK). This entitlement means that a child born in Northern Ireland may, legally, be an EEA citizen, residing in another EEA country from the one where they are a citizen. The child may, therefore, be entitled to rights that the child of an asylum seeker born in Wales, England or Scotland would almost certainly not be able to access. However, the Home Office has at times appeared to be unaware of these rights and has removed children who are EEA citizens and may be legally entitled to remain in the UK.

2.4 Northern Ireland is also somewhat distinct from the rest of the UK in the provision of Home Office/IND services to asylum seekers. Unlike the rest of the UK, there is no Public Enquiry Office in Northern Ireland. We understand that the existing NASS agent in Northern Ireland, the Northern Ireland Council for Ethnic Minorities (NICEM), will discontinue its work of providing services to asylum seekers from the end of March 2007 and there is some uncertainty as to how Home Office services will be delivered in Northern Ireland after this time. While there is increasing uncertainty on future provision of services to asylum seekers within Northern Ireland, the Home Office is nevertheless currently investing significant resources to establish a sizeable enforcement presence in Northern Ireland from 2007. Law Centre (NI) believes that the provision of the full range of Home Office services to asylum seekers in Northern Ireland, including the establishment of a Public Enquiry Office, is vital to meet the needs and human rights of asylum seekers in Northern Ireland and to expedite the processing of asylum claims.

2.5 Finally, asylum seekers in Northern Ireland are subject to removal across the Irish Sea, most commonly, to the Dungavel Removal Centre in Scotland, following initial detention by the Police Service of Northern Ireland (PSNI). This not only separates them from their legal representatives and places them in a new juridical area but also separates them from any friends, family and community they may have begun to establish in Northern Ireland.

2.6 As throughout the UK, asylum seekers form one of the most vulnerable groups within Northern Ireland. Law Centre (NI) has sought to challenge the treatment of asylum seekers by Government in Northern Ireland through a range of legal avenues, including judicial review, to protect the rights of those fleeing persecution in their country of origin.

3. ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

3.1 *Lack of Public Enquiry Office:* The provision of support for asylum seekers in Northern Ireland has been adversely affected by the closure of the Public Enquiry Office in 2001. Asylum seekers often have to claim asylum through a third party and can experience many problems due to delays in obtaining an interview; this can seriously impact on their ability to access services and support at a later stage. One of the most common situations Law Centre (NI) deals with is assisting asylum seekers whose attempt to claim asylum on entry into the UK through Northern Ireland has been delayed due to the lack of the Enquiry Office. This delay has, on occasion, resulted in a claim for asylum being refused on the grounds, *inter alia*, of the time delay between entry and interview.

Adam

Adam, a young man from Eritrea was forced to flee to Djibouti due to his Ethiopian descent during ethnic violence in 1998. On arrival in Northern Ireland in 2005 he was unable to register for asylum status immediately due to the lack of a suitable immigration enquiry office presence. His inability to claim asylum status immediately on arrival in Northern Ireland was considered to be a failure to make a prompt claim and constituted one of the grounds for the rejection of his asylum claim. After the withdrawal of NASS support following the rejection of his asylum claim, Adam was

¹⁷⁶ *Forced to Flee*, Refugee Action Group (2004).

ineligible for any support, other than under section 4 of the Immigration and Asylum Act (1999). A further rejection of his Section 4 “hard case” support claim left Adam destitute and dependent on the generosity of local charity.

3.2 *Accommodation:* Since April 2000, the provision of accommodation for asylum seekers in Northern Ireland has been the responsibility of the National Asylum Support Service. Accommodation has been provided by the Northern Ireland Housing Executive, initially under a three year contract that has now been extended for a further 12 months until early 2007. There is currently some degree of uncertainty over future provision of accommodation within Northern Ireland. This arises both from the uncertainty associated with the need for renewal of the Housing Executive contract next year and from the current Review of Public Administration in Northern Ireland which has yet to set out the policy for future provision of all accommodation across Northern Ireland.

3.3 The Northern Ireland Housing Executive is at present providing 82 designated accommodation units for those claiming asylum.¹⁷⁷ Forty of these units are occupied by single asylum seekers in (generally) multiple occupancy housing, while forty-two units are occupied by family groups. The accommodation for a family group varies with the size of the family but all are self-contained units. The Housing Executive also tries to maintain a reserve of housing stock to meet any sudden influx of asylum seekers. Those asylum seekers who are living in Northern Ireland are currently concentrated within Belfast and the Greater Belfast area as this allows asylum seekers to more easily access services.

3.4 We understand the Northern Ireland Housing Executive, in partnership with, the NASS agent, NICEM, do try to ensure that accommodation is tailored suitably to the needs of the most vulnerable persons, particularly family groups and those suffering from health problems, including mental health problems.

Christopher

Christopher, a single male asylum seeker in his thirties, from the Darfur region of Sudan arrived in Northern Ireland in November 2005. On his arrival in Belfast he was housed in a Housing Executive unit along with a number of much younger male asylum seekers. Over the course of the following six months Christopher became more and more withdrawn, suffering from severe depression. Law Centre (NI) staff, working with Christopher’s GP and Housing Executive officials, have been trying to provide more suitable accommodation, but due to a lack of a decision from NASS on changing his accommodation, Christopher is still unable to move.

3.5 We consider that continued investment in accommodation suitable to the needs of asylum seekers, including families and those with special requirements would not only positively meet the needs of our clients, like Christopher, but would also be a more cost effective means of accommodating asylum seekers: it currently costs almost six times more per week to detain a family group than it does to provide them with suitable accommodation.¹⁷⁸ We discuss the particular issues relating to detention at Section 5 below.

3.6 *Financial Provision:* In relation to the provision of financial assistance Law Centre (NI) recognises and welcomes the provision of “hard case” support to failed asylum seekers who are otherwise in danger of destitution. However, the current process of applying for “hard case” support is lengthy and the delays in processing these claims, can lead to asylum seekers becoming destitute, homeless and utterly dependent on charity.

3.7 Law Centre (NI) would welcome reform of the process for allocating “hard case” support. The current system can be too protracted. Law Centre (NI) has experience of decisions on whether to provide support taking six weeks. Given that the allocation of assistance under this provision is determined on the basis of the claimant facing real destitution within 14 days, a process that takes many weeks to navigate has the potential to deprive claimants of basic human rights.

Benjamin

Benjamin, a young man from North Africa arrived in the UK in 2003. He claimed asylum in 2004 after suffering a severe bout of mental illness. His initial application for asylum was rejected. This meant Benjamin was forced to remain as a voluntary in-patient in a mental hospital while “hard case” support from NASS, including accommodation was pursued. The process of applying for support was held up repeatedly by errors in the handling of the application by IND. As a result Benjamin had no option but to stay on his ward surrounded by individuals suffering from serious mental disorder despite being assured by doctors that he was fully recovered from his illness. After a couple of months Law Centre (NI) was able to arrange funding for Benjamin that allowed him to leave the ward.

¹⁷⁷ Figures provided by NIHE at 26 September 2006.

¹⁷⁸ On 16 June 2006, Immigration Minister Liam Byrne disclosed that the average direct cost (not including overheads) of holding an individual in an immigration removal centre for one week is £812.72 The weekly cost of holding a family is likely to be higher than the average, given additional staffing costs, *Alternatives to Immigration Detention of Families and Children*, Refugee Council (2006). Family accommodation has been provided at approximately £170 per week in Northern Ireland (Source NIHE as at 29 September 2006).

4. THE PROVISION OF HEALTHCARE

4.1 Asylum Seekers experience similar health problems as the rest of the population. In addition, they are also liable to suffer from a range of particular, physical, mental and emotional health problems, caused by the conditions they have fled from, the abuse and poverty they have suffered and the conditions they have experienced while fleeing and encountered when reaching the UK. In the UK in 2005, 2,786 victims of torture from over 100 countries were referred for the first time, to the Medical Foundation.¹⁷⁹ These new referrals were coping not just with past trauma, but with the pain of exile too.

4.2 The NHS was established on the principles of quality care that meets the needs of everyone, that is free at the point of need and based on a patient's clinical need, not their ability to pay. These continue to be the guiding principles of the NHS. Policy guidance from the Northern Ireland Department for Health, Social Service and Public Safety in June 2003 outlines that asylum seekers should be provided with the same access to healthcare as other citizens and that healthcare providers should be mindful of and sympathetic to their particular needs.¹⁸⁰ Law Centre (NI) welcomes this commitment and wishes to see the commitment fully reflected in health care provided to all those seeking asylum in the UK. This has not, however, been our experience in a number of cases with asylum seekers in Northern Ireland. Our concerns, focus on the lack of adequate health care, often associated with a delay in accessing health care; the particular problems experienced by asylum seekers presenting with mental health needs; the lack of health services to failed asylum seekers; the impact of removal and detention on the health of asylum seekers and the potential impact on the health of asylum seekers arising from the threat of deportation. These concerns are illustrated in a number of case studies set out below.

4.3 We have seen many cases where the provision of healthcare to asylum seekers has fallen significantly short of what would be accepted as a minimum standard of care under international human rights standards (eg International Covenant on Economic, Social and Cultural Rights, Article 12). We believe that many of the problems faced by asylum seekers in accessing health services would be resolved by the allocation of greater resources towards services that meet the specific needs of asylum seekers.

Bernadette

Bernadette, a young woman from sub-Saharan Africa was trafficked into the UK by a European man called "John" in return for her being his "girlfriend". He subsequently abandoned her. As a child Bernadette had been subject to sexual abuse before being sold to a local chieftain as a bride. On arrival in Northern Ireland, as an unaccompanied minor, delays in the provision of services by social services meant that Bernadette had to wait many months before being able to see a GP. When she was finally able to see a GP she was diagnosed as being HIV positive and suffering from serious mental health conditions brought about by the traumatic nature of her experiences. Despite these factors the Home Office still tried to proceed with the removal of Bernadette to her country of origin where there was insufficient health provision to meet her clinical needs.

4.4 One area of particular concern is the provision of treatment of asylum seekers with mental health conditions. The Refugee Council has highlighted the issues involved:

Refugees and Asylum Seekers commonly experience significant mental health problems . . . Once in the UK, the stress caused by poverty, living in a hostile environment and attempting to adapt to a new society can themselves cause or contribute to significant mental health problems.¹⁸¹

We have considerable experience representing asylum seeking individuals with mental health issues. Our clients often suffer from trauma, depression and shock and have to come to terms with the loss of or separation from loved ones.

Colin

Colin was an Iranian Kurd living in an Iraqi refugee camp who fled to Northern Ireland after his family were killed and his home destroyed. Colin is currently on medication as he suffers from depression and insomnia as a result of his experience in Iraq. He has not found the medication helps him but when he goes to the GP he finds it extremely difficult to talk to him as they had to communicate using the Language Line system. The GP has repeatedly increased Colin's dosage as Colin cannot explain to him his concerns. Investment in better services for the provision of health care for asylum seekers across Northern Ireland, targeted at meeting their distinct needs, would have a significant impact on the experiences of individuals like Colin.

4.5 We consider there to be a pressing need for increased awareness among service providers of the specific issues asylum seekers present with, the targeting of services to match the needs of asylum seekers eg counselling services, and greater allocation of resources to frontline services. (For example, we are aware of only one counsellor currently providing services to asylum seekers in Northern Ireland and this service is provided on a voluntary basis).

¹⁷⁹ Taken from the Medical Foundation website www.torturecare.org.uk/about_us/introduction last accessed 26 September 2006.

¹⁸⁰ *Asylum Seekers and Refugees: Policy Guidance on Access to Health and Social Services*, (DHSSPSNI, June 2003).

¹⁸¹ N Kelley, and J Stevenson, *First do no harm: denying healthcare to people whose asylum claims have failed*, Refugee Council, 2006, 10.

4.6 Moreover, we also have experience of the difficulties facing people who have a failed asylum claim in accessing the most basic of health care. This has included pregnant women seeking pre and post natal care; access to GPs for the children of people with a failed asylum claim and the lack of provision for individuals coping with the implications of having fled their country of origin while suffering from serious, even terminal, medical conditions such as HIV/AIDS.

4.7 Finally, we have general concerns about the apparent disregard, in a number of instances, by the Home Office of its obligations under Article 3 of the European Convention on Human Rights in assessing the deportation of asylum seekers. The threatened deportation of an HIV sufferer to a country lacking the capacity to guarantee suitable medical support, for example, in Bernadette's case, raised Article 3 (ECHR) issues.

4.8 We recommend that priority should be given to providing training and information for health care providers; improving access to support services such as interpreters and better treatment, including counselling, for the specific issues faced by asylum seekers. This would significantly improve the experience of asylum seekers in Northern Ireland.

5. THE TREATMENT OF CHILDREN

5.1 The United Nations convention on the rights of the Child (UNCRC) requires state Parties to ensure that "in all actions concerning children, the best interests of the child shall be a *primary consideration* [our emphasis]." ¹⁸² Further, the Convention behoves states to protect the rights set out in the Convention for *each child* within its jurisdiction without discrimination of any kind' (Article 2(1)). These rights include the right to be free from arbitrary interference with his or her privacy or home (Article 16); the right to education (Article 28); the right to be protected from physical or mental violence, injury or abuse (Article 19); the right to the highest attainable standard of health (Article 24) and the right of a child "not to be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child" (Article 9). Moreover, the Convention obliges states to afford "appropriate protection . . . in the enjoyment of the rights" in the Convention to children seeking refugee status (Article 22). While the UK has assumed obligations under the Convention as a matter of international law, we have been deeply concerned by the UK's retention of its wide-ranging reservation to the Convention in respect of immigration matters. The UN Committee on the Rights of the Child has argued that this reservation is "against the object and purpose of the Convention" and has highlighted the "unequal enjoyment" of rights by asylum seeker and refugee children in the UK. The Committee has recommended that the UK adopts the "best interest of the child" as a "paramount consideration . . . notably . . . in immigration practices" and we would urge reconsideration of the merits of maintaining this extensive reservation in place. ¹⁸³ It is further recalled that the rights under the European Convention on Human Rights must apply to all persons within a state's jurisdiction without discrimination on any ground (A. 14).

5.2 The Immigration Law Practitioners' Association has argued that:

children who are subject to immigration control are currently treated as migrants first and foremost. Their needs and vulnerabilities as children are routinely ignored . . . While children are living in this country, they must be afforded equal rights and treatment under UK law. The emphasis should be placed on ensuring that the policies and practice of immigration control is compatible with our national and international obligations towards children as one of the most vulnerable groups in our society. ¹⁸⁴

Law Centre (NI) has provided legal representation in a number of cases where we considered the treatment of children of asylum seekers or of unaccompanied asylum seeking minors engaged the state's obligations under international human rights standards. Our concern is focussed on the adequacy of services for children of asylum seekers and unaccompanied minors and the detention of children. These are highlighted in the cases of Evan and Sara's Children set out below.

Evan

Evan was an unaccompanied asylum seeking minor from China who arrived in Northern Ireland at the age of 14. Despite speaking little English and there being a Chinese community in Belfast, Evan was placed with a non-Chinese family in the rural Northern Ireland and did not go to school for over a year after his arrival, because of delays in the assessment of his personal education needs.

5.3 We have been pleased to note the significant reduction in the level of detention of minors in the last six months. ¹⁸⁵ Nevertheless, we would argue that all detention of asylum seekers should be halted, and an immediate cessation of the practice of detaining children. We note that the UN Committee on the Rights

¹⁸² Article 3(1) UNCRC.

¹⁸³ UN Committee on the Rights of the Child, *Concluding Observations: United Kingdom and Northern Ireland*, 31st Session, CEC/C15/Add.188, 9 October 2002 at paras 6, 22 and 26.

¹⁸⁴ H Crawley, *Child First, Migrant Second; Ensuring that Every Child Matters' ILPA*, (2006).

¹⁸⁵ As at 24 June 2006 the UK government was detaining 1,825 individuals on purely immigration grounds, 1% of whom were children (this is actually below the average for the 4th quarter of 2005 where 6.7% of individuals released were children). Of the fifteen children in detention five had been detained for between one and two months, the other children were detained for up to one month. UK wide figures—Home Office IND figures for Q2 2006.

of the Child has recorded its concern that “the detention of [children claiming asylum, either with their families or on their own] is incompatible with the principles and provisions of the Convention”¹⁸⁶ (Article 37(c)) and we would recommend an urgent review by the Home Office of this practice and the need to maintain a reservation to the Convention in respect of Article 37(c). The case of Sara’s children illustrates the need for an urgent response to this practice.

Sara’s Children

Sara’s two young girls came to Northern Ireland with their mother after fleeing Eritrea, Sudan and Malta.* In the course of their stay in Northern Ireland the two girls started school and, following their mother’s marriage, began integrating into the community. One morning at 7 am after dressing in their school uniform they were preparing for school with their mother, a large number of immigration officials and police officers appeared at their front door. The two girls were separated from their mother and taken to a PSNI detention suite in Belfast prior to removal to Scotland where they were placed in social services care. At no point were they allowed to see their mother or their step-father. After being in social services care for four days without any contact with their mother or step-father they were returned to Belfast and reunited with their step-father after Law Centre (NI) had successfully challenged their removal. Their mother remained in detention in Dungavel for a further week. The impact of such a brutal and arbitrary process on two girls aged 10 and younger was extremely traumatic and both are currently undergoing counselling.

* Upon her arrival in Malta, Sara and her family were detained in a prison on the island. Fearing for the safety of her family Sara escaped from Malta and next arrived in Northern Ireland.

6. THE USE OF DETENTION AND CONDITIONS OF DETENTION AND METHODS OF REMOVAL OF FAILED ASYLUM SEEKERS

6.1 Due to the absence of a holding centre in Northern Ireland, asylum seekers in Northern Ireland were, until recently, detained in prison. Law Centre (NI) and other organisations campaigned vigorously against the practice of detention in prison and strongly welcomed the decision to abandon this practice in January 2006. However, we are deeply concerned that this practice has been replaced by the process of removal to Scotland or England, following initial detention in PSNI detention suites. The majority of those claiming asylum in Northern Ireland who are subject to detention, are detained in the Dungavel Removal Centre in Scotland.

6.2 This forced removal outside the jurisdiction is not only traumatic for individuals and family groups but also deprives asylum seekers access to their legal representatives in Northern Ireland. The Law Centre has built a high level of expertise in representing asylum seekers in Northern Ireland, with particular specialism in the European law aspects of the rights of Irish-born children. For asylum seekers with Irish-born children, the loss of this expert legal advice is particularly troubling. We understand the policy of removal will continue to be applied following the establishment of a new Enforcement Office in Belfast in the summer of 2007.¹⁸⁷

6.3 Law Centre (NI) has serious concerns about the provision of services for asylum seekers following detention. In our experience, this has included failure to routinely provide interpretation services and access to legal advice. Moreover, the removal of asylum seekers out of Northern Ireland to Scotland means that a different legal representative has to take on a case with a very short timeframe, which can have serious consequences for the individual. Given the experience of our clients in Dungavel Removal Centre, we have further reservations about the adequacy of legal provision made available to our clients while being held there. We consider that the removal of asylum seekers to Dungavel engages the guarantees under a number of provisions of the ECHR, including Articles 3, 6 and 8.

Sara

Sara, from Eritrea, fled with two children from the civil war in Eritrea and was officially recognised by the United Nations High Commission for Refugees as a refugee in Sudan. After being detained in Malta she fled to Northern Ireland, where she met and married another asylum seeker.

Under the terms of the Dublin Convention the Home Office subsequently made a decision to remove Sara to Malta without informing the Law Centre who had been acting as Sara’s legal representatives in relation to her asylum claim. The Immigration Service called at her home just after seven in the morning and lifted her and her two children who were in their school uniform getting ready for school. Sara and her children were separated and placed in two prison vans. At the police station, Sara tried to commit suicide. No medical assessment of her condition was made, no doctor or other clinician called and she was not taken to hospital. Sara, separated from her children was removed to Dungavel Removal Centre in Scotland. On arrival Sara was not re-united

¹⁸⁶ Supra n 7 at paragraph 49.

¹⁸⁷ Immigration Stakeholder Forum Meeting of 19 September 2006.

with her children, who were placed into social services care. The authorities in Dungavel were not told about Sara's suicide attempt and as a result, another 24 hours passed before she received medical attention as part of the routine procedures applied to new detainees.

Law Centre (NI) was granted an emergency High Court injunction suspending their removal and compelling the Home Office to transfer the family back to Northern Ireland. The children were brought back to their stepfather after four days with Sara being reunited with them a week later.

6.4 The treatment of Sara and her children raises many issues. No regard was given to the health and well being of Sara and the children before removal. If Sara's GP had been consulted she would have advised of the risk of self harm if Sara was removed from NI and separated from her husband. The lack of medical assessment and treatment following her suicide attempt was a clear breach of her human rights, the authorities in Dungavel should have been told of her suicide attempt so she could receive treatment and be monitored. The approach of the immigration service in this case reveals flaws in their procedures and a cavalier approach to the vulnerabilities of those being removed.

6.5 *Irish Born Children*: There are a number of other cases where families have been removed from Northern Ireland unlawfully and we have successfully arranged for their return. In light of this we believe it is likely that at some point Home Office/IND officials will attempt to remove a family group that includes one or more Irish Born Children. These cases are particularly complex and will raise very sensitive issues within Northern Ireland. Yet officials at Home Office/IND still do not appear to recognise or have any safeguards in place, for the protection of the rights of these children.

7. TREATMENT BY THE MEDIA

7.1 Research by the UNHCR showed that four out of the five national tabloid papers in the UK have appeared to follow a determinedly anti-asylum approach to reporting over the five years from January 2000 to January 2006. Fortunately, in Northern Ireland the prevailing attitude of the media is more sympathetic to asylum seekers. This is, in large measure down to work done by local organisations with the media including the publication and joint launch by the Refugee Action Group with the National Union of Journalists of *Forced to Flee* which set out dispassionately facts and myths on asylum seeking.

7.2 Over the period from January 2005 to September 2006 using the same approach, as the UNHCR study, to print media in Northern Ireland found that stories relating to asylum seekers and refugees were predominantly more sympathetic. Of 30 stories from the *Belfast Telegraph* (the leading regional daily paper) in the period from January 2005 to September 2006, 29 were sympathetic to the plight of asylum seekers with the other being neutral in tone. A 2002 survey by Amnesty International on attitudes towards refugees and asylum seekers in Northern Ireland¹⁸⁸ showed a generally sympathetic attitude towards the plight of asylum seekers. Given these findings, it is clear that Northern Ireland should remain a part of the UK where asylum seekers continue to be welcomed.

8. CONCLUSION

8.1 Northern Ireland raises a number of unique issues in the treatment of asylum seekers. Unfortunately, as evidenced, these are not acknowledged by Home Office/IND. Their failure to recognise these issues could lead to potential violations of an individual's human rights. We would also argue that the state must assume its obligations under international human rights law to guarantee the rights enshrined therein to *everyone* within its jurisdiction without discrimination. The benefits of treating asylum seekers in Northern Ireland in a manner compatible with these obligations would not only be cost-effective but would also bring positive benefits to Northern Ireland, culturally and economically.

September 2006

25. Memorandum from Barbara Barnes

Provenance: volunteer teacher of English, visiting the home of asylum seeker referred to as A (mother at home with young children). Weekly visits over more than three years made under auspices of LASSN (Leeds Asylum Seekers' Support Network). Name of Client can be supplied if required but not included as permission to supply her name has not been sought (can be if needed). Visitor is a retired teacher and school inspector (Ofsted no 30982).

¹⁸⁸ *Refugees and Asylum Seekers: Northern Ireland Public Attitudes Survey*, Amnesty International, (2003).

(i) ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

Concern 1: the (reasonable) wishes and opinions of resident asylum seekers disregarded

Illustration: Family A were settled in a pleasant house in a cul-de-sac, with enclosed garden, friendly neighbours and had two downstairs living rooms enabling one to be used for eating (they then had four children). On the birth of the fifth child, their keyworker informed them they had to move to a bigger house with an extra bedroom. The house allocated was within half a mile but on a corner of a through road, near a pub, with the garden more open to the view of others—and there were bricks thrown in the garden. The family's doubts about this move, their recognition of possible trouble with neighbours and the vulnerable site were disregarded. From the first night in the new accommodation there was minor harassment—teenagers banging on the door, pizzas delivered that were not ordered, cans thrown into the garden. This died down in winter but resumed with lighter nights. On 1 April 2005, one family from further down the street accused one child in my client's family of destroying a child's tent—my client thinks this was an April Fool's prank that got out of hand. However, the key-worker, who knew of the harassment, ordered my client to pack clothing and they were removed on grounds of their own safety, to Hillside Induction Centre, and the house was boarded up, including the letter-box. (Later I learned that the authorities had not informed the PO of the whereabouts of the family, so all mail, including that from their solicitor in London, was returned to sender).

The family were in the Induction centre for nearly 60 days before accommodation could be found for them. This was in a different part of Leeds and meant a change of school, and it was too far for them to attend their previous church where they had friends and where the two youngest children had been christened. Moreover, the house they moved to was not only smaller than the second house, it was smaller than the original one!

Concern 2: Accommodation is re-allocated if family detained (even if later released) and their belongings disposed of without consultation or permission

Illustration: With no warning, (see iv) client A and family were detained when reporting to Home Office (under false assurance it was to do with their housing). They had only what they stood up in. While they were being interviewed—in fact being detained,—officers entered their home and packed some clothing—but did not consult as to what was needed, so eg the baby's buggy was left behind, as was a file of legal papers. The family were then taken to Yarl's Wood. Local friends tried unsuccessfully to persuade the housing authorities (who must comply with orders from NASS) to keep the home for their return, but no one could be sure if that would happen or how long it would take. After several weeks, the house was re-allocated to another family. In this case, local friends intervened and stored the family's belongings for them (the keyworker was kind and helpful): the usual practice is to dispose of any personal belongings remaining in the house, including TV, videos etc to charity shops—even if the family is still in UK and may be released. This is what happened in this case. But as their house was gone, they have had to be given emergency accommodation in another town, and the children are still missing their old home and their school friends.

Concern 3: Restrictions on "emergency accommodation" aggravate trauma for families, including children, released from detention

Illustration: After three weeks, asylum-seeker A and her five children were suddenly released from Yarl's Wood without being told where they were going. They were taken to a flat above a shopping precinct in Bury. The flat is in itself quite spacious, however, there is nowhere for the children to play as there is a busy street outside. But to make matters worse, in NW Consortium at least, accommodation classified as "emergency" means there is no access to schooling or a GP, there is no washing machine and TVs are forbidden. In theory, the family is in such accommodation for a few days or weeks: in my client's case, it has been already a month, with no information about a move.—and no schooling for the children.

(ii) THE PROVISION OF HEALTH CARE

Concern 4: Home Office officials at Waterside Court, Leeds insensitive to health care needs of child

Illustration: My client's four year old son was due to have a dental operation at Leeds Infirmary to remove 10 teeth. While the family's lawyer was confident that a summons to Waterside Court for the whole family was "innocent", I was not so sure so wrote to Waterside Court (Tracey Whittlestone) to inform them of this operation, which was a week after the date on which the whole family had been summoned to report. I received a written acknowledgement of my letter. When in fact the family were detained, I asked how the child was now going to get his operation and was informed he would not get it but "there are dentists in Pakistan". The child's toothache continued to such an extent he had to have stop-gap treatment in Yarl's Wood.

(iii) THE TREATMENT OF CHILDREN

Concern 5: The effect of dawn raids on children

Illustration: In May 2006 five police in several vehicles arrived in the early hours of the morning, without notice to detain my clients. They live in a small cul de sac and one neighbour, felt to be a member of the BNP was seen to video the arrival and departure of the police. They had a warrant with the clients' names and four of their five children. The adults and children were made to sit on the sofa while the officers searched and packed their belongings in large checked plastic carriers (which they left). When my client tried to explain that their lawyer had made an application to the HO, and he wanted to contact him, he was told, by all means do so, but he won't be in his office at this time of day. Eventually one officer rang someone on his mobile, then he informed the family that there was no room for five children on the plane to Pakistan that day but he would get them another time, and they left, with no apology for their intrusion. It may be that they realised that their warrant was inaccurate as it did not include one of the children.

This was the first time the family, resident in UK for nearly four years, had experienced anything frightening by the police/authorities in this country. When later I was talking of this to the head teacher of the school where three boys attended, he told me that the teachers of the boys had noticed that they seemed to need a lot of reassurance over the previous weeks, and now he understood why.

Concern 6: The effect of sudden detention on children

Illustration: On 12 July, 2006, the family's minister and myself took the family to report to Waterside Court as they had been told by letter to do. The minister and I asked to attend the interview with them, worried about this summons: we were assured that it was only about accommodation, that the room was not big enough for a large family, officials and us, and that they would only be about 20 minutes. The boys were dressed only in shirts and shorts, expecting to go back to school in the afternoon. Nearly an hour later, we were informed that the family had been detained and the mother and children already on their way to Yarl's Wood.

When I visited the family the next day in Yarl's Wood, having delivered to the authorities there a pile of cards and gifts from their horrified friends at the school, the refund of money sent for a planned school trip and hastily written school reports for the children, I met a traumatised mother who was not aware that she and her children were due to be removed from Yarl's Wood at midnight that night for Heathrow. She did not know this because the letter given her by authorities at Waterside Court had been covered with vomit from the children who were travel-sick on the journey. The children themselves were bewildered and wanting to know when they would get home (Leeds). In the event the lawyer and/or the local MP managed to have this removal deferred on that occasion.

Concern 7: Detention of children for five weeks

Illustration: Following the above detention at Waterside Court, this family was detained at Yarl's Wood for five weeks. Despite kindness from some staff there, notably from the Chaplain and his team, and assurance made to me that they had schooling (even in summer holidays), the incarceration of children, without warning, preparation, not knowing for how long it will last and what the outcome will be is not only an injustice but is damaging to their self-esteem and their mental and emotional health. Eg: If detainees are to catch a morning flight from Heathrow, they are removed from Yarl's Wood at midnight—no matter if there are children to wake or not. In addition, the distress of those families involved can be heard by others in the block.

When my clients were released from Yarl's Wood, it was sudden (three working days before a bail hearing at Yarl's Wood that I was to attend) so that once again the children could not be prepared: nor did any of the family know where they were going—they were taken to emergency accommodation in a strange town that afternoon, and are still there. (see concern 3)

Concern 8: No schooling or GP services for family while in "emergency" accommodation

Illustration: See concern 3. As I write, 23 September 2006, the four boys who should be at school cannot attend, have little to do, and cannot even watch TV—all because of regulations about conditions attached to "emergency accommodation".

(iv) USE OF DETENTION

Concern 9: The use of detention for families, without necessity, preparation, proper support while there, and post-detention care to alleviate emotional scars

Illustration: It was unnecessary: There was no evidence in the case of this family of any non-compliance with directives from Home Office or Immigration. To detain this family was not only inhumane it was unnecessary. They had nowhere to go, relied on NASS housing and support, and they have five children. School records show above average attendance for the school age children.

They could not prepare: The family were deceived into attending Waterside Court so were not prepared for detention—they were not allowed to pack their belongings, and important items were omitted by the officials who did undertake to pack what they deemed was sufficient and appropriate.

Detention/dawn raids are traumatic and there is no support or proper consideration of the effects of Home Office procedures and delays on applicants and their families.

This family suffered the trauma and indignity of a dawn raid, of being finger-printed and photographed then a month later, they were detained for five weeks in Yarl's Wood. I visited them twice in that period and telephoned often. The mother's ability to telephone others depended on a phone card system there which had very expensive rates, effectively curtailing time available to her to be supported and to talk to friends of her choosing. The main feature of their time there was not knowing what was going on. (Inept legal support is another problem, not covered here). Inevitably the anxiety of this situation told on the children. At length they were released without warning and without knowing where they were going. This "not knowing what is going to happen—or when" is still their experience in emergency accommodation where the children are denied schooling and a GP—and even access to their own TV.

29 September 2006

26. Memorandum from the National Asylum Commission

We understand that the Joint Committee on Human Rights is conducting an inquiry into the treatment of asylum seekers.

We are co-chairs of the National Asylum Commission, which is to be launched in the House of Commons on 18 October 2006. The Commission will be undertaking an independent review of the UK asylum system over the next 18 months and is due to report in April 2008. The Commission will operate on a themed basis through a call for evidence, public hearings and research. As you will see from the list below, the planned themes of the Commission cover some of the same areas of the JCHR inquiry:

- Access to the asylum determination process.
- The operation of the asylum determination process.
- The asylum appeals process.
- The treatment of vulnerable groups in the asylum process.
- The detention of asylum seekers.
- Material support and accommodation for asylum seekers including those at the end of the asylum process.
- The removal of refused asylum seekers.

Clearly as the Commission is yet to be launched we are not in a position to make submissions to the JCHR inquiry. However, we would be most interested in keeping up to date with the Committee's inquiry.

Sir John Waite
Co-Chair

Ifath Nawaz
Co-Chair

September 2006

27. Memorandum from Psychologists Working with Refugees and Asylum Seekers (PSYRAS)

Section (iv) the use of detention and conditions of detention and methods of removal of failed asylum seekers.

1. EXECUTIVE SUMMARY

1.1 We recognise that the forced detention and removal of asylum seekers is a legal and sometimes necessary process. However, we have concerns relating to the manner in which this is done and how it impacts on individuals' mental health.

1.2 This memorandum of evidence will present case studies from our patients in order to highlight issues in the manner of detention and removal of asylum seekers, which we believe are in conflict with best practice, and may be in contravention of a range of human rights.

- the sudden arrest without warning of vulnerable individuals;
- the withdrawal of medication in detention and transfer of care between mental health professionals;
- the detention of individuals with a history of traumatic experiences; and
- loss of contact with detainees immediately prior to removal.

2. SUBMITTERS

2.1 Mary Robertson is a Consultant Clinical Psychologist employed by the Camden and Islington Community Mental Health and Social Care Trust. She is the clinical manager of the Traumatic Stress Clinic, a national centre, which specialises in the assessment and treatment of Post Traumatic Stress Disorder. She primarily works with refugees and asylum seekers at the clinic. She holds a Master of Arts degree in Clinical Psychology. She is registered as a Chartered Psychologist with the British Psychological Society and as a Clinical Psychologist with the Health Professions Council in South Africa. Over the past twelve years, she has specialised in working with Post Traumatic Stress Disorder in a range of different contexts. Prior to her current position she managed the Trauma Clinic, Centre for the Study of Violence and Reconciliation, in South Africa.

2.2 Jane Herlihy is a Clinical Psychologist employed at the University of Bristol and the Trauma Clinic, London, where she conducts research into the asylum process. Previous to these appointments she worked in the Refugee Service at the Traumatic Stress Clinic (see above). She holds a Master of Philosophy in Psychology and a Doctorate of Clinical Psychology. She is a member of the British Psychological Society and is registered with them as a Chartered Clinical Psychologist. She has also worked with refugees at the Medical Foundation for the Care of Victims of Torture and has published research into memory processing with refugees from Bosnia and Kosova.

3. FACTUAL INFORMATION—TWO CASE STUDIES

3.1 Case Study 1 (Not printed).

3.2 Case Study 2 (Not printed).

4. SPECIFIC RECOMMENDATIONS

Our specific concerns regarding the removal process, as illustrated by the case studies are as follows:

4.1 *Sudden arrest without warning*

4.1.1 The mental health implications of this are:

4.1.1.1 Such arrests and detention may be reminiscent of previous traumatic experiences and can trigger flashbacks, nightmares, physiological arousal and emotional distress.

4.1.1.2 Vulnerable individuals with PTSD and other mental health problems need time to prepare psychologically for any stressful event. The sudden nature of the arrest and removal does not allow for this and such individuals will suffer increased distress as a result.

4.1.1.3 The process prevents a satisfactory termination of treatment with mental health professionals, who may have been involved in their care over a long period. Managed ending of therapy is recognised by clinicians as an essential aspect of treatment.

4.1.2 Recommendations:

4.1.2.1 Vulnerable individuals should not be arrested without warning.

4.1.2.2 Vulnerable individuals in treatment should be allowed sufficient time to end treatment with mental health professionals.

4.2 *Continuation of care*

In some cases, clients who are taking essential medication for the treatment of physical and mental disorders are denied continued treatment as illustrated in case study 2. Even where care is continued in detention, attention is not given to patients' medication upon removal and return. Routine practice in any mental health setting is that when patients move, their care is transferred between professionals. As illustrated in both case studies, provision was not made for this.

4.2.1 The mental health implications of this are:

4.2.1.1 Sudden withdrawal from medication may provoke Discontinuation Syndrome. The form varies according to the medication. The sudden withdrawal of Lithium in an individual with Bipolar Disorder, for example, can provoke a manic episode. Clients with PTSD are often prescribed SSRI's (Selective Serotonin Re Uptake Inhibitors). The dangers of sudden withdrawal from this medication includes increased suicide risk and other distressing side effects.¹⁸⁹

4.2.1.2 Where psychological care has been provided, vulnerable clients may not be appropriately identified as needing care in the country of removal, and may suffer exacerbation of symptoms and increased distress and risk.

4.2.2 Recommendations:

4.2.2.1 Individuals on medication must be allowed to keep their medication with them when detained.

4.2.2.2 Arrangements need to be made such that there is no interruption in the medication regime upon return.

4.2.2.3 Where the same medication is not available, clinicians should be given sufficient time to change patients from their current medication to one that is available in the country of return.

4.2.2.4 Mental health professionals should be given time to prepare reports and contact local mental health practitioners, where available, to arrange for appropriate transfer of care.

4.3 *Detention of vulnerable individuals*

We are pleased to note that Home Office guidelines recommend that torture survivors should not be subjected to detention. However, some of our clients, whilst not meeting the legal definition for torture, have had other experiences which also make them vulnerable to the conditions of detention (see case study 1).

4.3.1 The mental health implications of this are:

4.3.1.1 Situations that remind PTSD sufferers of past experiences can trigger intense psychological and physiological responses, as if individuals are re-living their previous experiences.¹⁹⁰

4.3.1.2 One of the hallmarks of PTSD is increased arousal and a heightened sense of threat.¹⁹¹ Consequently any fearful situation can trigger heightened distress and the exacerbation of symptoms.

¹⁸⁹ Medicines and Healthcare Products Regulatory Agency.

¹⁹⁰ American Psychiatric Association. (1994). *Diagnostic and Statistical Manual of mental disorders*. (Fourth ed). Washington DC: American Psychiatric Association.

¹⁹¹ Ehlers, A and Clark, D M (2000). A cognitive model of posttraumatic stress disorder. *Behaviour Research and Therapy*, 38, 319–345.

4.3.2 Recommendations:

4.3.2.1 Detention of vulnerable individuals with a known or suspected history of traumatic experiences, particularly those diagnosed with PTSD should be avoided as far as possible.

4.4 *Loss of contact immediately prior to removal*

Both case studies indicate a practice of moving the individual to another location in the last 24 hours prior to removal, in such a way that it becomes impossible to contact them.

4.4.1 The mental health implications of this are:

4.4.1.1 this practice means the loss of legal representation, mental health support and loss of contact with significant friends and family. We know that social support is a key protective factor for vulnerable individuals, particularly at times of heightened stress.¹⁹²

4.4.2 Recommendations

4.4.2.1 All people must retain their rights to legal representation

4.4.2.2 Vulnerable individuals have a particular need for contact with mental health professionals and social support systems throughout their time in detention and through the process of removal.

28. Memorandum from Refugee Resource

Refugee Resource is a well respected Oxford based charity which runs an employment service, counselling and therapeutic activities, and mentoring for refugees and asylum seekers in Oxfordshire.

We also provide training and consultation for service providers working with this group. Over the last year, we have also run a media project to promote more accurate and positive images of asylum seekers and refugees.

We are submitting evidence relating primarily to access to accommodation and financial support, the provision of healthcare, the treatment of children and treatment by the media.

1. ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

We have been very concerned about the increasing number of our clients falling into destitution. Some include people whom the Government has not granted refugee status and yet has ruled that it is not safe for them to be returned home. In many cases, they have no permission to work and are not allowed to receive benefits. Many are having to resort to desperate means in order to survive. If the Government cannot return people home, it is inhumane not to allow people the means to work and to support themselves rather than face the prospect of destitution.

What follows is a list of eight real life examples and groups of examples from our contact with asylum seekers in Oxford of people whose access to accommodation and financial support has been denied or compromised.

- A. Some of the “failed” asylum seekers that we have seen have been unprepared to sign the Section 4 form agreeing to go back voluntarily because they fear that it lays them open to the possibility of being returned to death or persecution. Whether or not these fears are rational—and in some cases they clearly are—it is not surprising that they don’t want to sign the form. Not signing the form often means that they either become destitute or have to resort to illegal work, or in the case of some of our clients consider suicide.
- B. The money they receive if they are prepared to sign the form is less than standard benefits (£35 per week) and is inadequate. It is also in the form of vouchers which severely restricts access because they don’t get change if they want to spend less than the value of the voucher and can only purchase items in certain places.
- C. The accommodation they are offered if they are prepared to sign the form is not in the South East and therefore means that they have to break any contacts they have made with the local community etc. This restricts their access to emotional support.
- D. A lot of people we see have never heard about Section 4 money (it is not well publicised). On one occasion when a client applied for NASS money, after a period of surviving through the help of friends, then NASS refused to pay on the grounds that they must have other means of support.

¹⁹² Brewin, C (2003). *Posttraumatic Stress Disorder: Malady or Myth?* London: Yale University Press.

This is an example of (what ought to be) an *objective* process of entitlement determination becoming *subjective* to the assessor and whatever assumptions they wish to make—we believe that there should not be that much discretion within the system.

- E. Another example of a failure to receive benefits is of a man who lost his appeal on the grounds that the Home Office did not think he came from Burundi. He says he has a Burundian birth certificate. When he asked why his NASS benefits had been stopped (when his case was exhausted) he was told by NASS that it was because he needed to go back to Burundi. However the Home Office will not send him back to Burundi because they don't think he is from there.
- F. Another example of the system affecting someone's access to benefits and adequate accommodation is the case of a man from Zimbabwe who has been unsuccessful in his asylum claim and is married to a Nigerian woman who has refugee status here in England. They have two young children. He is one of those who has been told he must return voluntarily to Zimbabwe and he is not being forcibly deported. He has been told he must return to Zimbabwe and apply for residency from Zimbabwe on the basis of his marriage. He believes that it is not safe for him to return to Zimbabwe and that if he went back he would be prevented from applying for residency and may be killed. His wife is desperately afraid that she will be left alone with her children. She has already suffered the loss of her entire first family and is traumatised and grief-stricken. This family of four live in a tiny housing association flat, which has only one bedroom, and an open plan kitchen/sitting room. The husband is not allowed to claim benefits or work. He would like to work and it is despairing for him to be unable to do so. The wife therefore works long hours in an unskilled capacity to support all of them. She is always depressed and exhausted. The husband is frustrated and unhappy watching his wife overworking while he longs to support them. They have stressed that they do not wish to be on benefits or take anything from our system. All they want is for the man to be allowed to work. We believe he would take any job that would not require him to abandon his family.
- G. 11 Zimbabwean cases in Oxfordshire
Justice Collins' ruling in August 2005 that Zimbabweans who have had unsuccessful asylum claims would be reviewed on a case by case basis has meant that large numbers of Zimbabweans have been without support in the meantime. At one point it was estimated that there were at least 550 nationally. They were not allowed to work and not eligible for Section 4 support from NASS. Many have fallen into destitution and are desperate. This year there have been at least 11 people in this situation in Oxfordshire. Some of the women have had no other option than becoming call girls in order to survive. A great number of Zimbabweans who have recently lodged their asylum claims (at least 75 nationally in records kept since January 2006) have been electronically tagged by the Home Office). This situation has led to unprecedented hardship for this group of Zimbabweans as most are not in receipt of any support. The anguish, pain and emotional stress they are enduring, cannot be emphasised enough. Most of those tagged are living in rented accommodation—what happens when they run out of money for rent and food? The means of self-support have been drastically curtailed of late and they have become desperate.
- H. One final (but large category in our experience) is of people who have experienced problems with their benefits and accommodation because of the sheer inefficiency and lack of human responsiveness in the Home Office and NASS systems. We have come across many examples of clients whose papers appear to have been lost in the system, or who experience inexplicably long delays between hearings and receiving the results of those hearings. Due to documents being lost by the Home Office it can sometimes be difficult for clients to prove ID when collecting payments they are entitled to. In another case a man who was waiting for confirmation that he could work from the Home Office had to endure a job that he was not happy with for over a year because he did not have the documentation to apply for other jobs.

2. THE PROVISION OF HEALTHCARE

We have not come across any instance of people being unable to access primary health care in Oxfordshire, although we did have one instance of a surgery that was unprepared to make use of interpreters, even though there is an interpreting service available to them.

3. TREATMENT OF CHILDREN

We have come across one instance of a single mother having to choose between going back to her home country with the child who has been born since she has been in this country or surrendering them up for adoption so that they can stay (and thereby be safe from the perceived dangers back in the home country) whilst having to return herself (or also, in this instance, considering suicide). In another example a "failed" asylum seeker has been living entirely off the benefits that were available for her child.

We have also come across many examples where the decision to take away the right for under 18 year old unaccompanied asylum seeking children to remain in this country has clearly and adversely affected their security at a critical stage of their development into adulthood.

4. TREATMENT BY THE MEDIA

Refugee Resource has been and remains very concerned about the treatment of asylum seekers and refugees in the media. Representations in the national media have been almost exclusively negative, focusing on the portrayal of asylum seekers as predominantly single men, who are not to be trusted, inclined towards crime or potentially violent. The media portrayal has been exacerbated by politicians conflating terms such as “asylum”, “illegal immigration”, “combating terrorism” and “being tough on crime”, thus encouraging the media to associate issues that are not connected.

It is difficult to provide statistical evidence of the direct link between this media portrayal and political rhetoric and its effect on the lives of our clients. However, our organisation has substantial anecdotal evidence of the impact on individual asylum seekers. For example, clients of ours have brought into the office examples of negative newspaper coverage (for example, the “Swan Bake” story) and have reported high levels of distress caused by them. After the 7 July bombings, several young asylum seekers were subjected to verbal harassment in parks in Oxford.

Our staff have also become increasingly concerned at the level of negativity in the national media regarding refugees and asylum seekers and the lack of distinction between them and other migrant workers. This has been exacerbated by recent terrorist incidents. During counselling sessions clients have reported experiencing verbal abuse which we believe to be related to public perception influenced by the media. Our employment services were also concerned with the negative impact of media reporting and the way it may discourage employers in the future to employ refugees.

We would like to submit evidence of media work that we have undertaken in Oxford in order to provide evidence of the kinds of initiatives that we think are required to rectify the damage done by the treatment of asylum seekers in the media. We have attached examples of this media work in hard copy.

Media project in Oxford

In partnership with Oxfordshire Racial Equality Council, Asylum Welcome and Oxfordshire County Council’s Traveller services, Refugee Resource led the delivery of a training programme to develop skills in working effectively with the media. Training was aimed at spokespeople from organisations working with those disadvantaged in the media including refugees and asylum seekers. The training programme was highly successful and there was excellent representation across a range of ethnic groups, age and gender amongst the participants. In one participant’s words: “This widened the range of experience and culture from which comments were made”.

Two former media professionals (a broadcaster and a journalist) with refugee backgrounds were employed as joint project coordinators. Their shared experience with one of the beneficiary groups was of great benefit in understanding the specific issues faced by refugees and asylum seekers in relation to the media. Both reported that they had developed confidence and skills related to project development and communication that will be of value in gaining future employment.

Refugee Resource and Asylum Welcome worked together to produce a media calendar highlighting important days in the year, for example, 10 December Human Rights Day, and 8 March International Women’s Day, so that we could have a planned approach to linking media stories with these important dates.

We worked with the *Oxford Mail* to cover the issue of families that are separated due to war and persecution. The aim was to make a link with Human Rights Day as well as the time of year when families are coming together for Eid, Diwali, Hanukah, Christmas. The *Oxford Mail* produced two large articles with positive and balanced stories and useful information to educate people on asylum issues. We also worked with the *Oxford Mail* on articles for International Women’s Day on the specific issues facing refugee/asylum seeking women; and for International Families Day on the issues facing young asylum seekers. Everyone involved was pleased with the coverage. Of significance was the fact that the asylum seekers involved were happy with the result and with the way their interviews were conducted. The media project funders, Government Office of the South East, and ChangeUp partnership have described the project as “exemplary good practice”. The final ChangeUp infrastructure development report for Oxfordshire recommends rolling it out more widely.

Thank you again for requesting this information from our organisation. We do hope that you can use the evidence you receive to reform the system in a positive and respectful way to help provide a fairer and more responsive system for asylum seekers in this country.

Amanda Webb-Johnson
Director of Refugee Resource

September 2006

29. Memorandum by the British Red Cross Society

SUMMARY

1. The British Red Cross is concerned about the welfare of many Families at the end of the Asylum ProcesS who are not eligible for support because their children were born after their claim was refused, or because of section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004. These families are often refused any support by the statutory services and can end up staying in overcrowded and impoverished conditions.

2. We are also concerned about the welfare of asylum seekers who become destitute sometimes due to bureaucratic delays, but more often because they are at the end of the appeal process and have had support withdrawn. The British Red Cross, as a humanitarian organisation, has supplied destitute asylum seekers with food parcels and vouchers for essential items such as toiletries.

3. We are troubled by the numbers of asylum seekers who are unable to access healthcare. We have encountered cases where failed asylum seekers have been refused treatment, or have been sent large hospital bills, despite not being allowed to work or access support.

4. We recognise that end of process destitution arises from refused asylum seekers not wishing to return home, and that this is a difficult issue for any government to deal with. However, our experience shows that even when faced with extreme poverty refused asylum seekers are opting to remain in the UK, rather than return.

5. Nationally, there is a lot of variation in how health and social services are addressing these issues, but a common theme is the difficulty of using local resources to support this group of people.

ACRONYMS

ASU	Asylum Screening Unit
BRCS	British Red Cross Society
ICRC	International Committee of the Red Cross
NGOs	Non Governmental Organisations
s4	section 4 of the Immigration and Asylum Act 1999
JCHR	Joint Committee on Human Rights
NASS	National Asylum Support Service
CAB	Citizens Advice Bureaux

BACKGROUND ON THE BRITISH RED CROSS SOCIETY

1. The British Red Cross Society (BRCS) helps people in crisis, whoever and wherever they are. We are part of a global network that responds to conflicts, natural disasters and individual emergencies. We enable vulnerable people in the UK and abroad to prepare for, and withstand emergencies in their own communities. And when the crisis is over, we help them to recover and move on with their lives.

2. The BRCS is part of the International Red Cross and Red Crescent Movement (the RC/RC Movement), which comprises:

- 2.1 The International Committee of the Red Cross (ICRC).
- 2.2 The International Federation of Red Cross and Red Crescent Societies (the Federation), and
- 2.3 183 National Red Cross and Red Crescent Societies worldwide.

3. As a member of the Red Cross and Red Crescent Movement, the BRCS is committed to, and bound by, its Fundamental Principles. These include humanity, impartiality, neutrality and independence. The principle of humanity is “to prevent and alleviate human suffering wherever it may be found”. Destitute asylum seekers frequently approach the BRCS for assistance. As a humanitarian organisation, we are committed to helping those in need, particularly where there is no alternative means of assistance.

4. The BRCS is not a human rights organisation, and as such, it is not appropriate for us to make a judgement about whether or not legislation breaches human rights law. However, we thank the Joint Committee on Human Rights for this opportunity to describe our experiences working with refugees and asylum seekers throughout the UK.

5. Our experience has been with asylum seekers outside of detention and has been focused on providing orientation and emergency provisions. The evidence below is our experience of the welfare difficulties asylum seekers are facing. Accordingly, we will not be commenting on detention and media treatment.

RESPONSE OF THE BRITISH RED CROSS TO THE INQUIRY ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

6. *The impact of section 55 of the Nationality, Immigration and Asylum Act 2002*

6.1 When section 55 was first introduced in 2003, the British Red Cross and other voluntary agency partners assisted nearly 3,000 asylum seekers who were newly arrived, but unable to access support because they had not applied for asylum immediately. Of these, 61% were sleeping rough and 70% were experiencing difficulties accessing support. The scale of the problem and the voluntary sector's capacity to respond is described in a report by the Inter Agency Partnership of organisations funded to provide asylum support and advice.¹⁹³

6.2 However, since the *Limbuelah* judgement,¹⁹⁴ section 55 has only been applied to in-country applicants wishing to apply to NASS for subsistence support (not accommodation). This has mitigated the impact of this legislation, as newly arrived asylum seekers can again access accommodation.

6.3 However, the Red Cross continues to see a small number of asylum seekers refused access to subsistence only support under section 55, but are accommodated by friends and family. Often the friends and family providing accommodation are in receipt of benefits and so can only provide very limited subsistence support.

6.4 The BRCS has also experienced very small numbers of people without accommodation being refused under section 55 because it has not been understood that their friends cannot support them indefinitely.

6.5 *"V" tried to claim asylum at the Home Office in Croydon the day he arrived in the UK. Unfortunately, it was late in the day on Friday and he was told to return on Monday to register his claim. He lodged his claim on Monday and stated that he had somewhere to stay but did not make it clear that he could not stay there permanently. The Home Office refused him access to support under S55 on the basis that he had not applied as soon as practicable and had someone to stay with. He approached the BRCS for assistance when his friend said he could no longer stay there. He was only able to access support after being referred to a solicitor who was able to challenge the Home Office decision.*

7. *Section 4 support and the impact of section 10 of the Asylum and Immigration (Treatment of Claimants) Act 2004*

7.1 Asylum seekers have reported significant difficulties with the in-kind nature of s4 support. This support has seen the return of a voucher system similar to that previously used to support people under section 95 of the Immigration and Asylum Act 1999 and which was abandoned in 2002—a system where vouchers are issued instead of cash.

7.2 *"Z", the mother of a three month old baby approached the BRCS for assistance when she was accommodated in Stoke under s4. She had to walk 3–4 miles to access the service because lack of a cash element to her support meant she was unable to pay for public transport. She needed assistance to get baby clothes, a buggy, baby oil, nappies and other basic supplies to help her look after her child, as when she first arrived in her accommodation she was only given luncheon vouchers with which to buy food.*

7.3 Our experiences of the difficulties and hardship this form of support creates have been similar to those extensively described by the Citizens Advice Bureaux (CAB) in their report "Shaming Destitution" (2006).¹⁹⁵

7.4 The BRCS has not seen any impact resulting from the section 10 requirement to perform "community activities" in return for S4 support, as it has not been implemented.

8. *Destitution*

8.1 Between January and June 2006, nearly 3,500 asylum seekers approached the BRCS in need of emergency relief from destitution. We also assist asylum seekers indirectly by supplying other agencies seeing destitute asylum seekers. Including those assisted indirectly we expect to have assisted nearly 18,000 asylum seekers by the end of the year.

8.2 Nearly 50% of asylum seekers approaching us for emergency relief need our support through periods of temporary destitution resulting from bureaucratic delays in accessing support. Examples of this include:

- Delays getting benefits and accommodation upon getting leave to remain:

"E" was a single male asylum seeker who was granted leave to remain in July 2006. He approached the BRCS for advice and help after a period of rough sleeping. Although he was in receipt of benefits

¹⁹³ "The impact of section 55 on the Inter-Agency Partnership and the asylum seekers it supports." February 2004.

¹⁹⁴ *SSHD vs Limbuelah* 21 May 2004.

¹⁹⁵ "Shaming Destitution NASS section 4 support for failed asylum seekers who are temporarily unable to leave the UK" CAB June 2006.

he had been unable to find accommodation and was not in "priority need" under the Housing Act 1996. The BRCS provided him with a sleeping bag and referred him to a day centre where he could register as street homeless and apply for hostel accommodation.

- NASS delays in processing s4 applications and in providing accommodation when applications are successful:

'R' was 18 years old and pregnant with a history of TB. She had been staying with friends but could no longer stay due to her pregnancy. Her s4 application took seven days to process.

- Terminations of NASS support despite continuing entitlement:

"C" was a mother of twins and entitled to NASS support. She sought help from the BRCS with clothing and vouchers pending a decision on her NASS application. She was subsequently asked for forms that had already been submitted, and then documents were sent to a post office that had closed down. Such administrative delays have meant that she and her children have had to survive without support for an additional two weeks.

8.3 The majority of asylum seekers we assist are at the end of the asylum process and are not accessing any form of support at all. They cannot access s4 support because they do not meet the criteria and are unwilling to sign up to voluntary return. We have been able to provide basic levels of assistance to people in this situation across the UK: the majority of our financial and material support is allocated to this group whose needs cannot be resolved through rectification of bureaucratic errors and delays. In some cases, we have provided travel tickets so that they can attend day centres to collect food parcels and toiletries. We have also provided shop vouchers so that they can purchase food, or have supplied donated items. Details about the nature of support provided and the numbers it has been provided to are in Appendix 1.* We have allocated £300,000 to address these needs in 2006.

8.4 It should be understood that the services described in Appendix 1 only describe the numbers of people approaching us for assistance. We have no way of knowing how many people may be suffering from destitution who have not approached us. We believe that there is a significant amount of hidden destitution amongst failed asylum seekers and other irregular migrants who are not allowed to work legally or access state support. This is a hidden problem and difficult to quantify since the victims of such destitution are reluctant to make themselves known to the authorities, or even the voluntary sector.

THE PROVISION OF HEALTHCARE

9. *New restrictions on hospital care for failed asylum seekers*

9.1 We have encountered cases where failed asylum seekers have been refused treatment, or have been sent large hospital bills despite not being allowed to work or access support. In some cases asylum seekers refused treatment have been accessing s4 support but as mentioned previously this support is in kind and is only enough to cover subsistence.

9.2 *"U" was a 26 year old failed asylum seeker who moved to London and started to work as a sex worker to survive. After becoming pregnant she was unable to work and had to leave her accommodation; she came to the BRCS for food, clothing, shelter and medical attention. The BRCS were able to provide her with a sleeping bag, a few clothes, some hot food and some vouchers. Since she was pregnant, the BRCS contacted social services for assistance. However, none of the Local Authorities contacted would accept a referral since she could not provide proof of residence in any London borough. The BRCS was able to find her accommodation in a cold weather shelter while her solicitors challenged the refusal of social services, which they did successfully. This was only after she had had to sleep rough in a public toilet after being unable to get to the night shelter in time to get a bed. When U requested medical attention because she was concerned about her pregnancy the BRCS directed her to the local A&E. However, because of the new rules on secondary health care she was turned away because she was unable to pay for treatment. The BRCS was eventually able to get her access to care only by referring her to a sympathetic GP.*

9.3 The Refugee Council's report on their experiences of 37 cases refused access to secondary health care clearly illustrates the impact that this legislation has had on some exceptionally sick and vulnerable people.¹⁹⁶

9.4 *"P" was a six months pregnant failed asylum seeker who approached the BRCS in February 2005. She had been referred to the local hospital for treatment due to complications with her first pregnancy. However, she was refused maternity services, including ante-natal care and was told that she would be charged for the delivery of her baby in May. BRCS referred her to a solicitor who was able to get her treatment on human rights grounds. Although her NHS Trust agreed to provide treatment, she still received invoices for treatment in excess of £2,000, despite only being in receipt of s4 subsistence support.*

* Ev not printed.

¹⁹⁶ *First do no harm: denying healthcare to people whose asylum claims have failed.* Refugee Council June 2006.

9.5 We have also been contacted by senior health professionals with queries about health entitlements for asylum seekers that are making further representations to the Home Office for leave to remain in the UK. Health professionals are not able to judge whether or not such representations constitute an extension of the asylum claim, which would entitle the patient to NHS care.

10. *Proposed restrictions on primary medical services for failed asylum seekers*

10.1 The Red Cross is concerned that further restrictions on access to health care will result in serious illness going untreated and undiagnosed. This may result in increasingly serious health concerns amongst failed asylum seekers. We are particularly concerned in view of the risk of a potential flu pandemic and the impact this may have on this group.

10.2 We have already experienced difficulties with GP surgeries withholding services and there have been cases where staff have said that asylum seekers are not entitled to GP care. Reception staff in GP surgeries have no way of knowing what stage of the process asylum seekers are at and have refused services to asylum seekers on this basis. The proposed restrictions on primary health care may exacerbate such problems accessing care, even for those asylum seekers that are entitled to it.

TREATMENT OF CHILDREN

11. *The impact of section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004*

11.1 To date the impact of section 9 has been limited to 116 families affected by a pilot project to implement this legislation. The intention of the project was to encourage families to leave the UK voluntarily and to withdraw support where families did not take steps to return. Of the 116 families at least 32 went “underground” with obvious implications for their welfare since they are not able to work legally and have no access to statutory support. Of the remaining families only one family returned, three families signed up to voluntary return and twelve took steps to obtain travel documents.¹⁹⁷

11.2 BRCS also assist families at the end of the asylum process who are not entitled to any statutory support, not because of the application of section 9, but because their children were born after their asylum claim was refused. To date, the London office has advised at least 51 such families, and 14 pregnant women with no support. Many social services departments in London have said that they cannot support these cases since the parents should be able to access s4. In some cases social services have said they can only assist the child by taking it into care.

11.3 “S” is a Somali who was refused asylum because immigration officials did not believe she was from a persecuted minority clan because she incorrectly answered three out of 114 questions about Somalia and did not speak the correct dialect. When her claim was refused she was unable to apply for section four support because she was afraid to sign up for voluntary return. “S” stayed with her friends’ family of six (including four small children) in a small apartment. She approached the BRCS after her nine year old son joined her. She said that she felt she had to make herself “invisible” and had become a burden to the family assisting her. She was clearly distressed and felt unable to support her son financially—she did not have the money to pay for a school uniform or for his school meals. The BRCS referred her to a solicitor, and she may be able to access s4 support, having submitted new evidence.

11.4 Families who go underground often stay with friends and sometimes strangers in extremely overcrowded and impoverished conditions.

11.5 “F” is a young pregnant woman in the North West who also has a daughter born after her claim for asylum was refused (February 2005). Despite having a small child and being pregnant with her second child she has been unable to access social services support; either because they say she is the responsibility of another local authority (she has had to move between a number of different addresses where people have let her stay short term), or because they will only assist by paying for her to return home (something she does not feel able to do). “F” and her child continue to be homeless and move from one place to the next sometimes staying with people they do not even know. Their only option for support will be when she is in the late stages of pregnancy when she may be able to access s4 support on the basis that she is unable to travel.¹⁹⁸ *In the meantime, BRCS is extremely concerned about her health and welfare, and that of her daughter and unborn child.*

11.6 BRCS has had some success accessing support for end of process asylum seekers through social services—especially with exceptionally vulnerable cases. However, over the last year some social services have increasingly withheld support for failed asylum seekers. They have taken the view that s4 support is always available to failed asylum seekers, and that if they refuse to return to their country of origin, they are excluding themselves from such support by choice. The only support that has been offered, in cases of emergency, is to take children into care.

¹⁹⁷ “Inhumane and Ineffective—Section 9 in Practice. A Joint Refugee Council and Refugee Action report on the Section 9 pilot” January 2006.

¹⁹⁸ NASS Policy Bulletin 71 “Section 4 of the Immigration and Asylum Act 1999” section 5.6.

12. The effects of end of process destitution on children

12.1 As mentioned previously, BRCS assists families with children who are at the end of the asylum process and are unable to access any support. The BRCS is extremely concerned about the welfare of children in this situation, and has witnessed cases of severe hardship.

12.2 “M” approached the Red Cross with her children after being assaulted by her partner at their home. She had presented to A&E on the day of the assault with injuries resulting from it. The hospital contacted the police on her behalf. She reported the incident and as it was unsafe for her to return to the house, the police provided emergency accommodation for three nights over the weekend. The police directed her to the nearest homeless persons unit who said that she was ineligible for assistance because of her immigration status. At this point we had to put the family up in a B&B for a night pending a resolution. The children were clearly very disturbed by the upheaval, and exhibited clear signs of abnormal behaviour. “M” said she thought this was a result of psychological trauma caused by witnessing the violence against her. The family was then housed by social services temporarily pending an assessment. After two weeks they determined that they did not have a duty of care due to her immigration status and evicted the family. Her solicitor felt unable to challenge the decision as she no outstanding immigration application to the Home Office. Since she had no friends or family in London and did not wish to return to her violent husband, she moved out of London and in with a man in the North of England who agreed to look after her if she became his partner. She regularly calls us to say she would still like to find an immigration solicitor if possible as she does not wish to remain in this relationship. “M” is now pregnant again. We have been unable to find a legal representative willing to take on her case due to the increased restrictions on accessing legal aid.

30. Memorandum from Bail for Immigration Detainees

INTRODUCTION

Bail for Immigration Detainees is an independent charity that exists to challenge immigration detention in the UK. Since 1998, BID has worked with asylum seekers and migrants, in removal centres and prisons, to secure their release from detention.

BID:

- Makes free applications for release, on bail or temporary admission, from immigration detention for asylum seekers and migrants.
- Runs bail workshops in detention centres, publishes a Notebook on Bail and legal bulletins providing information to detainees to empower them to make their own applications for release.
- Encourages legal representatives to make bail applications for their clients, by way of training and the “Best Practice Guide to Challenging Immigration Detention”.
- Carries out research and policy work to push for an end to the use of arbitrary immigration detention.

BID receives hundreds of calls every month from detainees who are unable to exercise their legal rights in detention. BID has substantial experience of detention policy and practice, and our submission focuses on the use of detention and methods of removal of failed asylum seekers. In BID’s experience, the increasing use of detention for asylum seekers, some of whom are very vulnerable, raises significant human rights concerns, including violation of Article 5 ECHR, Article 8 ECHR and Article 3 ECHR. Detention and the increasing brutality are distressing in the extreme to detainees, their families and communities, and those trying to assist them.

BID has published evidence about inadequacies and injustices in detention over the past four years.¹⁹⁹ There is also significant body of evidence documenting problems and human rights concerns about the detention of asylum seekers. For example, HM Inspectorate of Prisons reports over a number of years,

¹⁹⁹ “Working against the clock: inadequacy and injustice in the fast track system”, by BID, July 2006.

“Fit to be Detained? Challenging the detention of asylum seekers and migrants with health needs” by BID, including a report by Médecins Sans Frontières, May 2005.

Justice Denied—Asylum and Immigration Legal Aid—A System in Crisis—Evidence from the front line—compiled by BID and Asylum Aid, April 2005.

“They took me away”—Women’s experiences of immigration detention in the UK, Asylum Aid and BID, September 2004.

“A Few Families too Many: The detention of asylum-seeking families in the UK”, March 2003.

Submission to the United Nations Working Group on Arbitrary Detention, September 2002.

“A Crying Shame: pregnant asylum seekers and their babies in detention” A joint publication by BID, Maternity Alliance and the London Detainee Support Group, September 2002.

comments by the EU Human Rights Commissioner, reports into disturbances and deaths in detention by the Prison and Probation Ombudsman, and research by Amnesty International and Save the Children (to which BID contributed).

In BID's view, there is a lack of political will on behalf of IND and the Home Office to implement the recommendations of official reports and inspections, and a failure to engage with the evidence put forward by NGOs.

BID sincerely hopes that the JCHR inquiry will provide an opportunity to hold Government and private contractors to account for the use of immigration detention and the way in which removals are conducted, and to recommend safeguards that would ensure the routine violations of the human rights of detainees are prevented.

In BID's view, the safeguards in the legal framework for detention would need to include:

- an automatic, prompt, independent review of detention, with publicly-funded legal representation;
- a maximum time-limit on detention;
- provision of legal representation to all in detention; and
- prohibition of the detention of children, torture survivors, and those with serious medical needs.

In addition, it is crucial that the arrangements for monitoring the behaviour of the private contractors running removal centres, escort arrangements and removals from the UK are strengthened.

BID would be pleased to provide further evidence in person to the Committee, or to provide further written information or clarification on any of the material in this submission. We would urge the Committee to take evidence from people who have experienced detention themselves and would be happy to help facilitate this.

SUMMARY OF KEY AREAS OF CONCERN

1. Lack of access to legal representation due to restrictions in legal aid, the merits test and lack of automatic access to bail processes.
2. Detention under fast-track and super-fast track systems.
3. Detention of children.
4. Lack of accountability for detention decisions.
5. Detention of severely mentally unwell people (includes the suicidal) and institutional resistance to evidence of mental health problems.
6. Detention of severely physically unwell people and institutional resistance to evidence of physical health problems.
7. Detention of torture victims and institutional resistance to evidence of torture.
8. Denial of medical care.
9. Institutional failure to address health concerns.
10. Growing incidence of hunger-strikes and incidents of self-harm/suicide.
11. Incidence of long-term detention.
12. Detention of people who cannot be removed to another state.
13. Repeated detention of the same individual without legal justification.
14. Detention of asylum claimants with outstanding appeals.
15. Violence used during removal attempts and arrest.

Submission compiled by:

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1. LACK OF ACCESS TO LEGAL REPRESENTATION DUE TO RESTRICTIONS IN LEGAL AID, THE MERITS TEST AND LACK OF AUTOMATIC ACCESS TO BAIL PROCESSES

Access to quality legal advice and representation is critically important for immigration detainees, who include children, rape survivors, people with complex health needs and those fighting against removal to countries where they will not be safe, such as Iraq, Afghanistan and Zimbabwe.

The Home Office now detains more asylum seekers and migrants than ever before. Their detention is administrative and is not subject to a time limit or automatic judicial scrutiny. Approximately 30,000 people per year are detained under Immigration Act powers—around 2,540 at any one time.²⁰⁰ The Immigration and Nationality Directorate want to increase the use of detained fast track for asylum seekers and further increase detention capacity for removals.²⁰¹

Despite the large numbers of people in detention, accessible, quality legal representation remains out of reach for the majority of detainees, who often rely on help from over-stretched charities and a handful of committed legal representatives. This is causing intolerable suffering and injustice to many seeking refuge in the UK. HM Inspectorate of Prisons has repeatedly expressed concerns about access to legal advice for immigration detainees.

Department for Constitutional Affairs and Legal Services Commission proposals, published in July and due to be implemented in April 2007, will further reduce available legal assistance to all asylum seekers and migrants by imposing a fixed fee for legal work. Experienced, good-quality practitioners are opposing the changes, which they say will prevent a quality job being done by further squeezing the funding available. The proposals will hit detainees particularly hard as the LSC are proposing the introduction of exclusive contracts, citing the fast track as a successful model of service provision. This is in the absence of any publicly available evaluation and despite growing concern about the quality of the fast track suppliers.

The LSC-funded Detention Duty Advice scheme set up in December 2005 in response to lobbying by NGOs, provides 30 minute free advice sessions to a limited number of detainees (usually 20 slots per week per centre are available). While BID welcomes the introduction of this pilot, we are concerned that it is not currently having a significant impact on the need for quality advice and representation.

The use of public funding for appeals and bail applications is subject to a merits test, which requires the supplier to assess the chances of success to be greater than 50%. In BID's experience, the merits test is being wrongly applied in many cases, and many detainees are not advised of their right to a review of the decision not to grant public funding (a process which uses a "CW4 Form" for a paper review of the funding decision).

The lack of access to bail processes, as a result of the shortage of quality legal representation, means that detention may be unnecessarily prolonged, may become unlawful, and is distressing for the individual and wastes public money.

When the repeal of automatic bail provisions in 2001 was considered by the JCHR, a recommendation was made that these issues "be carefully monitored", given that

*"these [judicial review and habeas corpus] safeguards are meaningful and effective only if appropriate legal advice and information are available to detainees."*²⁰²

BID's experience is that the accessibility of legal advice and representation has not been carefully monitored and that, as a result of lack of lawyers, judicial review and habeas corpus are not meaningful or effective safeguards.

For example, at the end of August 2006, 51 of the detainees in contact with BID South have no legal representation; that is no legal representation for their substantive asylum or immigration matter and no legal representation in the matter of exercising their right to challenge their detention. Given the frequency of faulty initial decision making, legal representation can be the only means by which effective scrutiny of decisions can be exercised.

Those without legal representation include the following:

- A 47 year old man who came to the UK in 1978 who has six children, two grandchildren in the UK and his Mother is a British citizen. He has no family in his country of origin. (BID South 116/06)
- A man showing signs of previous torture, who has a British partner. (Bid South 209/06)
- A man detained for five months who has never had access to legal representation. (Bid South 170/06)
- A man who is pursuing an application to the High Court as the Home Office have never substantiated allegations against him. (Bid South 168/06)
- An Iraqi Kurdish man detained on arrival. (Bid South 217/06)
- A man with two children, one of 12 years and one of 18 months; both born in the UK. (Bid South 200/06)

²⁰⁰ Figures taken from IND Quarterly statistics, 1st quarter 2006, and Control of Immigration Statistics 2005.

²⁰¹ See the Home Office Five year strategy, February 2005.

²⁰² Nationality, Immigration and Asylum Bill, Seventeenth Report of Session 2001–02, House of Lords, House of Commons, Joint Committee on Human Rights HL Paper No 132, HC 961, p 32.

- A man detained for four months who is pursuing his own Judicial Review, again on the basis of unsubstantiated evidence against him. (Bid South 151/06)
- A man detained for nine months who has co-operated with requests for information about his identity. (Bid South197/06)

2. DETENTION UNDER FAST-TRACK SYSTEMS

Detained fast track processes currently operate at Harmondsworth, Yarl's Wood and Oakington (where a quick initial decision is made, followed by release to NASS accommodation, or removal in non-suspensive appeals cases). The fast track process at Harmondsworth and Yarl's Wood is a key part of IND's New Asylum Model—the Home Office Five Year Strategy sets out plans to process up to 30% of new cases using detained fast track.

Ministers argue that fast track allows for a greater number of removals of failed asylum applicants and that only suitable and straightforward cases are fast tracked. On 31 January 2006, 18% of those held in immigration removal centres were held for fast tracking²⁰³ and an expansion of fast track is planned to help to speed up the asylum determination process and quickly remove those whose claims are unsuccessful.^{204, 205}

BID believes that the fast track raises significant human rights concerns. In summary:

- the speed of the process makes it impossible to get a fair hearing and the vast majority of asylum claims are refused;
- legal representation via the LSC duty rota is subject to a merits test, leaving many without representation at their appeal; and
- fast track significantly increases the UK's use of administrative detention for the convenience of the state, yet there is no time limit on detention and no automatic, independent review of detention.

Since April 2003 a fast track system has operated at Harmondsworth which detains single male asylum seekers as soon as they claim asylum in the UK. They are held throughout any appeals they make, until they are removed from the UK or given refugee status, humanitarian protection or discretionary leave. There are around 500 beds at the centre, the largest in the UK, and around 200 of these are allocated to fast track cases.²⁰⁶ The process operates a very quick timescale for deciding asylum claims and the vast majority (99%) are initially refused.²⁰⁷ Most go on to appeal, but the majority are refused—of the 290 appeals heard in the first three months of 2006, only 7 were allowed. Official figures disclosed to BID show that in January and February 2006, of 132 appeals, 72 (55%) were made by detainees with no representation. The average length of detention has been disclosed to BID as 69 days for those removed, and nearly 40 days for the 19% of cases initially fast tracked, but later released.

There is a dearth of information about the fast track process and the official evaluation of the pilot phase of the Harmondsworth pilot was never fully disclosed. In response, BID tracked a small sample of cases using volunteer researchers to find out more about the operation of the fast track. Working against the clock: inadequacy and injustice in the fast track system published by Bail for Immigration Detainees (BID) in July 2006 presents evidence from a week of Harmondsworth fast track appeals heard in March 2006.

The evidence gathered shows that the fast track is too fast to give asylum seekers a fair chance to win their case, that the Home Office's own detention policy is violated, and that current rules governing public funded representation leave many detainees without representation at appeals and unable to apply for bail so they remain detained for long periods. The research also uncovered examples of unethical practices by some publicly funded legal representatives that are in breach of the Legal Services Commission and Law Society guidance.

²⁰³ Approximately 2,200 people are detained at any one time. This information provided by Tony McNulty MP, in answer to parliamentary question, Official Report, 17 March 2006: Column 2,599W.

²⁰⁴ "The second aspect to the strategy is that the Government are introducing a new asylum process, building on the major successes that we have had in reducing abuse of the system and speeding up the treatment of applications. The reduced asylum intake will enable us to fast-track almost all new cases and to maintain contact with asylum seekers at key points in the process, so that we are in a better position to remove individuals whose claims are not justified." Charles Clarke MP, Official Report, 5 July 2005 : Column 191.

²⁰⁵ Home Office Five Year Strategy for Asylum and Immigration, announced plans to extend its use, aiming for up to 30% of new claimants to be processed in detention. (see: "Controlling our borders: making migration work for Britain—five year strategy for asylum and immigration", Home Office, February 2005, see: <http://www.archive2.official-documents.co.uk/document/cm64/6472/6472.pdf>)

²⁰⁶ According to figures provided to BID by IND in August 2005, the capacity at Harmondsworth IRC was 501. According to figures provided to BID in response to an FOI Act request in October 2005, fast track capacity at Harmondsworth was 200.

²⁰⁷ For example, according to official figures, during the first three months of 2006, 410 new asylum applications went into Harmondsworth, of which 81% (330 people) received an initial decision. 99% were refused asylum with fewer than 5 people recognised as refugees. See: Table 19, Quarterly Asylum Statistics, 2006 <http://www.homeoffice.gov.uk/rds/pdfs/06/asylumq106.pdf>

Figures disclosed to BID show that, in the first quarter of 2006, only one percent of Harmondsworth fast track claimants received a positive initial decision, compared to 22 percent in the non-detained system.²⁰⁸ The research also found that many detainees are unable to apply for bail due to lack of legal representatives, so they remain detained for long periods. Figures disclosed to BID show that between 1 October 2005 and 31 May 2006, the average length of detention prior to removal from the UK was 68.6 days.

The report calls for an end to detained fast track, and for safeguards to be put in place urgently.

BID has similar concerns about Yarl's Wood, where single women are fast tracked.

There has been no publicly available evaluation of Yarl's Wood fast track. Figures obtained by BID under the FOI Act show that between May 2005, when the fast track centre began to process cases of women asylum seekers, up to the start of September 2006, of the 345 cases heard at the Yarl's Wood Asylum and Immigration Tribunal, 74% of women are recorded as having had legal representation at their appeal (information was not provided as to whether the representatives were paid privately or publicly, or whether the representative was the one allocated at the initial stage via the LSC fast track duty rota). 26% of women did not have any legal representation at their appeal. In 98% of cases (339 women) the appeal was dismissed. Only 2% of appeals were granted.

Women have told BID they didn't have time to prepare their case, were not able to disclose information about rape and sexual violence in time for it to be considered, and did not understand the process. Many are disappointed with the quality and accessibility of the legal representation provided, and when dropped at appeal stage are asked for money by private providers to act in their appeal or in a bail application.

3. DETENTION OF CHILDREN

BID is opposed to the use of detention for families as we believe its use is disproportionate and that children are harmed by the very act of being detained. We are working with the Refugee Council, Save the Children and others to call for alternatives to detention to be adopted, and for the child's best interests to be considered in any decision to detain or remove a family.

BID's evidence and policy expertise was key in developing the recent discussion paper *Alternatives to immigration detention of families and children* by John Bercow MP, Lord Dubs and Evan Harris MP, supported by the No Place for a Child coalition in July 2006. A formal Home Office response to this report is yet to be received.

Within the current policy and practice of immigration control, of which detention is a key part, BID calls for minimum safeguards to be put in place to protect children and their families. These safeguards are vital in order to balance the objective of immigration control with a recognition of the rights and welfare of children. IND recently conducted a limited National Review of Family Removal Processes (which at the time of writing has yet to be published), which provides an opportunity to make the necessary changes to policy and practice.

BID believes that families with children, particularly single mothers, are being targeted for detention and removal because they represent 'soft targets'. In BID's experience, it is common for families to remain in contact with the immigration authorities, as they are accessing services including health and education. BID is concerned that the highly politicised nature of the removal and asylum debate and the significant pressure on IND enforcement staff has resulted in an approach to removals of children and their parents that is neither humane nor dignified. Instead, families are treated like criminals with removal operations containing a level of violence and intimidation wholly disproportionate and inappropriate when dealing with children.

Developing a system of detention and removal that considers the best interests of children should be a key priority for IND. A first and urgent step would be to implement the recommendations of HM Inspector of Prisons for assessment of families to take place before a decision to detain is made.

BID is concerned that the current government approach focuses on unrealistic approaches to voluntary return, or a forced removal. In BID's view, take-up of voluntary return will always be limited by a fear of persecution or ill-treatment in country of origin and the horror of going back to countries characterised by violence, poverty and repression, for example, Iraq, Somalia, Zimbabwe, Democratic Republic of Congo and Iran.

BID is furthermore concerned about the lack of accountability for decisions to detain families. IND Family Removal Policy only mentions the need for a clear audit trail in relation to families who are to be split on removal, suggesting that officers note whether "the family being advised of the voluntary returns

²⁰⁸ In the first three months of 2006, of the 330 initial decisions made at Harmondsworth, 99% were refused and 1% granted. This compares to statistics for the overall decision rate for all asylum claims during the first three months of 2006, where 6260 initial decisions were made, of which 10% were granted asylum, 12% were granted humanitarian protection or discretionary leave and 78% were refused. See p 3: *Quarterly Asylum Statistics, 2006*. These figures do not provide a breakdown of fast track and non-fast track decisions, so these figures will presumably include the cases determined at Harmondsworth IRC during this time. The vast majority (240 cases) of those refused made an appeal. 25 Figures provided to BID by AIT Harmondsworth show that between 1st January and 30 March 2006, 290 appeals were heard, of which seven were allowed, 233 dismissed, 10 withdrawn and 50 adjourned.

programme and if this was rejected;” (Para. 5.4) There is no such requirement or transparency in other family removal cases, and no evidence to show that alternatives to detention have been actively considered, or why such alternatives have been rejected in a particular case.

Many of the families with whom BID has contact were not aware that their case had come to an end until they were arrested early in the morning at their home address. They and their children were shocked and distressed by the arrival of uniformed staff, in the early hours, and report to BID that they did not have time to gather important possessions, documents, medication, contact numbers, and basic childcare equipment. They may not have an opportunity to contact legal representatives or friends, and rarely is an interpreter present to explain what is happening. The journey to the centre is often long and distressing, and BID has been told by mothers that they have been not allowed to have toilet breaks, feed their children or retrieve contact numbers from their mobile phones.

The practice of arresting people in the early hours of the morning when they cannot contact legal representatives and are unprepared for arrest has been condemned by High Court judges but still continues. In a recent example from BID’s work,²⁰⁹ a woman and her child were detained very early on a Sunday morning and a fax sent to the woman’s former solicitor at eight o’clock on a Sunday morning; quite clearly a time at which he was not calculated to be in the office. This fax contained a refusal letter of a fresh asylum claim lodged several months previously. This decision had never before been communicated to either the solicitor or the client. Furthermore, it was known to the immigration authorities that the woman was the sole carer of her partner who suffers from Lymphoma, brain seizures and hemi paresis. In BID’s view, this amounts to a breach of the right to be free from inhuman and degrading treatment and the right to judicial oversight of the detention decision, when legal representatives cannot be contacted.

In some cases, a family has been split by detention when a child or one parent is not at home. The Family Removal Policy provides for a removal to take place where “one part of the family absconds or separates him/herself through their own actions (ie one parent places the children with friends in an attempt to thwart removal).” (Para 5.3)

BID is concerned that the attitude towards families is to treat their actions with suspicion and disbelief, and an assumption that they are trying to thwart removal. The wording of the family removal policy entrenches this attitude, and makes it hard for families to explain where there is a legitimate explanation for a child not being at home, for example.

BID is also concerned at the lack of adequate child protection procedures and training. IND Family removal policy on children at risk is simply “9.1 If an officer involved in family work suspects at any time that a child is or has been the victim of abuse, the police must be alerted immediately.” There is no discussion or recognition in published criteria of the wider child protection issues raised by detention and escorting.

Being detained is a humiliating and degrading experience, particularly for people who have experienced trauma in their country of origin or for those who have been detained previously in the UK and are terrified of being re-detained. The use of handcuffs and officers wearing body armour criminalise families and increase the distress and confusion of children.

BID’s experience is that the current process of detention and removal does not currently consider the welfare of child, and that children and their needs are invisible throughout the process—at the point a decision to detain is made, at the point of arrest and detention, whilst in detention, and during the removal process.

BID notes that the Operational Enforcement Manual does not include children in the category of those who should not normally be detained, nor ask for any exceptional circumstances to be set out to justify detention.

“Families, including those with children, can be detained on the same footing as all other persons liable to detention. This means that families may be detained in line with the general detention criteria (see 38.3).” (OEM 38.9.4).

Similarly, IND’s published Family Removal Policy makes no mention of the interests of children, or the sensitivity with which family detention or removal should be approached. It does not include guidance to officers on gathering possessions or transport to centres. It is only in relation to pastoral visits that “medical or special needs” are mentioned, but no guidance or instruction appears to be offered as to how these issues should mitigate against detention, or, if a detention decision is made, be addressed during the detention or removal process.

“2.1 Pastoral visits provide for the gathering of information regarding the circumstances of the family concerned and ensure that important issues such as medical or special needs are taken into account when deciding on arrest, detention, transportation and/or removal.”

²⁰⁹ Bid South 51/06.

HM Chief Inspector of Prisons noted in her March 2006 inspection report on Yarl's Wood IRC, that there was no evidence that IND was following its operational guidance in relation to ensuring that decisions to detain families with children were taken by high-ranking immigration officers, of at least the rank of inspector or assistant director.²¹⁰

In BID's view, if detention of children is to be used the following minimum safeguards must apply:

- The decision to detain must be made by an independent body, informed by an assessment of the best interests of the child(ren) concerned, and an objectively justified risk of absconding.
- Detention must be subject to automatic, independent review where the burden must be on the Immigration Service to justify detention, rather than on the child to justify release.

4. LACK OF ACCOUNTABILITY FOR DETENTION DECISIONS

The power to detain a person is given to an individual and the decision to detain does not have to be ordered or sanctioned by a court. It is therefore imperative that detention decisions should be reasoned, transparent and capable of being overturned if it transpires the detention decision was incorrect. If the detention decision is not reasoned, transparent and capable of being overturned it risks being arbitrary.

For practitioners dealing with immigration detainees it is hard to get accurate information. The two main departments dealing with detention decisions are the Management of Detained Cases Unit in Leeds and the Criminal Casework Team in Croydon. MODCU in Leeds refuse to discuss cases over the 'phone even when a letter of authority is provided and insist on receiving requests for information by fax (even the question of whether this department is dealing with a particular case has to be submitted by fax.) The fax is then placed in a queue awaiting allocation to a caseworker; it is then allocated to a caseworker and it awaits a response. This whole process can take up to 10 days. Needless to say a person could wrongly be removed from the UK before the fax gets dealt with. The Criminal Casework Team have a recorded message on their phone line saying the Prisons Hotline is now closed. For practitioners this is frustrating; for the friends and family of people subject to immigration detention it makes it impossible to get any information about where people are, why they're detained and what is going to happen to them.

In BID's view, there should be no need to keep information hidden from people in a democratic society where key decisions about depriving a person of their liberty should be subject to scrutiny. Where people do not have access to legal representation and are therefore denied a fair hearing it is all the more important that there should be some accountability for detention decisions.

BID has evidence of a number of cases where forceful representations have been made to the Immigration Service that a key aspect in a case has been overlooked but in all instances the initial decision to detain has been maintained despite evidence indicating release is appropriate.²¹¹ In all of these cases, not only was detention maintained erroneously, but no apology was ever offered for the arbitrary denial of the right to freedom.

5. DETENTION OF SEVERELY MENTALLY UNWELL PEOPLE AND INSTITUTIONAL RESISTANCE TO EVIDENCE OF MENTAL HEALTH PROBLEMS

In BID's experience, it is a common occurrence for people with severe mental health problems to be detained, for evidence of their mental health problems to be ignored, for their problems to remain untreated whilst they are detained and for their detention to continue despite contravening stated Home Office policy. BID is aware that calls on the immigration authorities from health professionals to consider their clients' needs are ignored or disregarded. BID receives a significant number of requests for help from people with histories of severe mental health problems and from people stating they feel suicidal. The Immigration Service and the private companies contracted to run the centres have, in BID's experience, refused to conduct assessments when requested by health professionals. The Operational Enforcement Manual clearly sites people as unsuitable for detention "those suffering from mental conditions or the mentally ill". It is now nearly impossible to get the immigration authorities to recognise that a person has a mental illness, even when health professionals are in daily contact with the immigration authorities. In one recent case, the mental health worker for a man with severe mental health difficulties contacted both Eaton House and the detention centre medical unit with extensive records of his medical needs. She was first of all told he would be assessed by a psychiatrist; this was not done for several weeks. The medical unit then said the man had been seen by a "mental nurse" who said he did not need to see a psychiatrist.²¹² Other cases of mental illness from a sample of cases shows the high incidence of mental health needs amongst detainees, for example:

- A detainee stating suicidal intentions. (Bid South 212/06)

²¹⁰ Report on an Announced Inspection of Yarl's Wood Immigration Removal Centre, 28 February—4th March 2005, para. 4.10, pg. 28.

²¹¹ For example, Bid South 38/05, Bid South 178/05, Bid South 86/06, Bid South 172/05, Bid South 150/06, Bid South 222/06, Bid South 51/06.

²¹² Bid South 158/06.

- A man who prior to detention was in weekly contact with a Community Psychiatric Nurse, and this was disrupted by detention. (Bid South 114/06)
- A man being detained who had previously been sectioned. (Bid South 99/06)
- A detainee attempting suicide by hanging but was found and transferred to another removal. (Bid South 40/05)
- A man who experienced suicidal moods and practiced self-harm. (Bid South 30/05)
- A detainee who was diagnosed as suffering Post-Traumatic Stress Disorder and was receiving treatment prior to detention. (Bid South 233/05)
- A man who attempted suicide. (Bid South 157/06)
- A failed Iraqi asylum-seeker was detained for several months further to serving a criminal sentence. He could not be removed to Iraq. He had serious mental health difficulties and psychological problems but no legal representation.

6. DETENTION OF SEVERELY PHYSICALLY UNWELL PEOPLE AND INSTITUTIONAL RESISTANCE TO EVIDENCE OF SEVERE PHYSICAL HEALTH PROBLEMS

The Operational Enforcement Manual states at Chapter 38 that persons considered unsuitable for detention are people with serious disabilities. In BID's experience, people with serious disabilities are frequently detained with apparently no recognition given to their physical health problems and why these problems make them unsuitable to be detained. In one recent case, a woman and her husband were detained in Yarl's Wood IRC. They had no legal representation and were referred to BID by the Red Cross. The woman was held in a solitary police cell for several days before being taken to the IRC. She then miscarried her baby in detention. Removal directions for the couple were set to a third country. BID applied for bail, and the couple was released.

The following have all been detained recently:

- A man with sickle cell anaemia who had several crises in detention, was once admitted to hospital and returned to immigration detention where conditions aggravated his symptoms. (Bid South 19/06)
- A man who is HIV positive who had a cardiac myxoma, was admitted to hospital and returned to immigration detention. (Bid South 195/06)
- A man awaiting heart surgery, who was previously destitute and also suffering from serious mental health problems in addition to his physical problems. (Bid South 43/06)
- A man suffering from a liver tumour. (Bid South 175/06)
- A woman suffering from the effects of domestic violence. (Bid South 184/05)
- A person previously in receipt of Incapacity Benefit. (Bid South 193/06)
- A person suffering from Hepatitis C. (Bid South 199/06)
- A person suffering from heart and kidney problems. (Bid South 189/06)

7. DETENTION OF TORTURE VICTIMS AND INSTITUTIONAL RESISTANCE TO EVIDENCE OF TORTURE

The Operational Enforcement Manual states that persons who have been previously tortured are unsuitable for detention. The Immigration Service, however, fail to operate these guidelines and thus in many cases, detention of persons where there is independent evidence of torture does contravene a person's right to freedom from cruel, inhuman and degrading treatment. There is no adequate screening process to ensure that people previously subject to torture are not detained. The drive to remove as many people as possible, and detention's part in this drive, is responsible for a culture in which independent evidence is discounted, to the detriment of people's human rights. The response is invariably to disbelieve torture allegations at all cost and maintain detention at all cost.

In one recent case (Bid South 221/06) an individual was forcibly returned to a country in Africa, which didn't accept the documentation used to remove him (an EU letter) so he was returned to the UK. On return to the UK his injuries from the torture he received before he fled persecution had deteriorated to the extent that he was sent to hospital. He was discharged from hospital and required to report after six days. He was re-detained on reporting to the immigration authorities.

8. DENIAL OF MEDICAL CARE

Repeated statements have been issued over the last nine years to the effect that the UK must not be seen as a soft touch for people claiming a fear of political persecution. This has led to benefits being denied, permission to work being denied and a punitive attitude to foreign nationals claiming a fear of persecution. It has also led to people being denied medical treatment in removal centres, presumably with the same inaccurate perception that people are only pretending to be ill, in a similar fashion to only pretending to be in fear of persecution. Some recent examples where medical treatment has been denied include:

- A man suffering from sickle-cell anaemia who was not referred to hospital during a crisis as security personnel were unavailable to ensure he didn't abscond from hospital. (Bid South 19/06)
- Denial of treatment for glaucoma (untreated glaucoma leads to blindness). (Bid South 116/06)
- Denial of anti-depressant medication despite overwhelming evidence of mental health problems. (Bid South 158/06)
- Untreated ankylosing spondylitis leading to a person becoming wheelchair-bound. (Bid South 228/06)

9. INSTITUTIONAL FAILURE TO ADDRESS HEALTH CONCERNS

Many of these health issues described above are explored in more detail in "Fit to be Detained? Challenging the detention of asylum seekers and migrants with health needs" by BID (a copy of the executive summary is enclosed).

In April and May 2004, a general medical doctor employed by Médecins Sans Frontières–UK (MSF) carried out free medical assessments of 13 adults and three children being detained under Immigration Act powers in the UK at the request of BID. All 16 detainees were being assisted by BID to exercise their right to challenge their detention. The medical reports prepared by MSF following the visits were submitted to BID for use in applications for release on bail by an Adjudicator, or release on temporary admission (TA).

MSF were concerned about the health status of the individuals they medically examined, and the apparent lack of mechanisms in place to ensure that members of this vulnerable population are afforded the medical care and protection they need. In order to record these concerns, MSF wrote a report "The health and medical needs of immigration detainees in the UK: MSF's experiences". A copy of the MSF report is included as an Annex to BID's report.²¹³

MSF's key conclusions

- "Fitness to detain": Existing Immigration and Nationality Directorate operational guidelines state that detention is only considered suitable in very exceptional circumstances for those "suffering from serious medical conditions or the mentally ill: those where there is independent evidence that they have been tortured." MSF found no systematic process in place to identify and release such individuals.
- No system of regular review of detainee's health status: MSF observed that initial health assessments of detainees were not carried out in all cases, that identified health concerns were not followed up in a systematic way, that the system was failing to identify torture victims in the detention population, and that despite it being acknowledged by detention centre rules that health status deteriorates during prolonged detention, there was no system of regular review of detainee's health status in place. In these circumstances MSF were unclear as to how immigration staff acquire the evidence needed to ensure that torture victims, and the seriously or mentally ill are not detained.

BID is deeply concerned that the response of IND to the MSF findings has been dismissive. Furthermore, BID is disappointed that the recommendation of the Joint Committee on Human Rights in the report on deaths in custody in December 2004 has not been implemented. JCHR stated that the onus is clearly with the IS in ensuring adequate information exchange, in order that where the detaining authorities ought to know that continued detention represents a health risk, they do.

*"Decisions on continued detention under the Immigration Act must be fully informed by any relevant medical and in particular psychiatric information. Where detaining authorities know, or ought to know (given adequate information exchange) that an immigration detainee is at risk of suicide, serious self-harm or severe mental illness as a direct result of continued detention, they will need to clearly justify such continued detention as compliant with Articles 2, 3 and 8."*²¹⁴

²¹³ The report includes a summary of detainees visited, issues of concern and areas requiring follow up. The MSF report was published in November 2004 and was written by Judith Cook and Sally Hargreaves. The content is the sole responsibility of MSF, and is reproduced with their permission.

²¹⁴ JCHR, Inquiry into deaths in custody, December 2004, p 63.

In the case of Kenny Peter, a detainee who died following a suicide attempt in Colnbrook IRC in October 2004, this information exchange was clearly failing, a fact criticised in the inquest verdict. The Chief Immigration Officer at the port, responsible for conducting detention reviews and authorising further detention in Mr Peters case, was not informed by on-site Immigration Officers, medical staff or Detention Custody Officers of the suicide attempt a week before he again jumped from a landing, later dying as a result of injuries he sustained.

10. GROWING INCIDENCE OF HUNGER STRIKES AND INCIDENTS OF SELF-HARM/SUICIDE

In the last year, there has been an increasing incidence of hunger strikes in the detention centres. In BID's experience, prior to 2006, there would be one or two hunger strikes a year in one or two detention centres. Since January 2006, there have been hunger-strikes in Colnbrook, Haslar and Yarl's Wood. In April 2006, 100 people were involved in a hunger strike in Colnbrook and in July and August 2006, the parents of children held at Yarl's Wood undertook a hunger-strike. Also, in April 2006, 187 people were kept under surveillance in case they harmed themselves; 19 of those people required medical treatment. From April 2005 to March 2006, 231 people self-harmed and needed medical treatment; 1086 were put on self-harm watch. Suicide verdicts have been recorded for two people in immigration detention and a further five inquests are to be heard into deaths over the last two years in detention centres. The conditions in immigration removal centres cannot be conducive to good mental health if so many people resort to denying themselves food and attempting to harm themselves, and in some cases succeeding in suicide attempts. In extreme cases the detention of vulnerable individuals threatens the right to life; in many cases it denies the right to freedom from cruel, inhuman or degrading treatment.

In one recent case, a woman who was detained in Yarl's Wood IRC and was heavily pregnant had attempted to kill herself by hanging in detention. She claimed to be a survivor of rape and torture in her home country. She had inadequate legal representation. After several months in detention, BID became aware of her when she attended a BID workshop. BID took on her bail case, and she was granted bail to live with her husband and young child who live in London and were not detained with her. Shortly after her release, she gave birth to a healthy baby. It was necessary for BID to make urgent out-of-hours representations to her MP as a result of which the intervention of Tony McNulty, Minister for Immigration, was called upon and this client's removal from the UK was stopped.

In another case, a woman who had been detained in Yarl's Wood was in the advanced stages of a hunger strike when her case was referred to BID. With the help of the Bail Circle, who found sureties for this woman, she was released to be cared for intensively in hospital on the first occasion that BID represented her in court. She had been sectioned under the Mental Health Acts and attempted suicide whilst in detention, but her detention had been maintained. The details of her case were given to a statutory body involved with reporting on prison and detention centre conditions. BID referred her to specialist lawyers to assess a potential claim for unlawful detention.

11. INCIDENCE OF LONG-TERM DETENTION

The use of immigration detention, as recognised by both case law and internal immigration service instructions, can only be used when removal is a realistic prospect within a reasonable period. At the end of August 2006, BID South were in contact with 42 people who had been detained for more than six months, with the longest period of detention being 24 months.²¹⁵

Some of the people in long-term detention have partners and families in the UK who are very distressed by the separation from their partners. Others do not have partners, families or anyone to whom they can turn for comfort during a trying time of indefinite detention. Prolonged detention is not sanctioned by law and constitutes a breach of the right to liberty and also the right to enjoy a personal and/or family life. Long-term detention does not assist the Immigration Service to obtain travel documents so it is impractical as well as contributing to a denial of the right to freedom. Long-term detention does not assist in obtaining travel documents in the following ways:

- Some Embassies do not issue travel documents and keeping a person in a secure centre doesn't alter this.
- People are not free to go to approach their Embassies for travel documents if they are detained.
- People miss interviews with their Embassies due to problems with transport and then have to wait several months before another interview can be arranged.

²¹⁵ Figures for length of detention appear as follows: 25 people detained for six to nine months, 6 people detained for 10 to 12 months, 5 people detained for 13 to 18 months: 5 people detained for 19 to 24 months, 1 person detained for 24 months.

- Either people co-operate with attempts to obtain travel documents and the travel documents are forthcoming (but frequently they are not) or they do not co-operate with attempts to get travel documents in which case being held for a long time and threatened with prosecution (under Section 35 of the 2004 Act) doesn't assist either. In the balancing exercise of a person's rights against the exercise of immigration control there is no gain to the exercise of immigration control; there is only the damage done to individuals deprived of their freedom for unnecessarily lengthy periods.
- Several individuals with whom BID has contact have been frustrated by their detention in their attempts to return to their countries of origin.²¹⁶

In March 2006, BID assisted a number of Mauritanian nationals who had been detained for long periods because IND were attempting to remove them on the basis of a letter that would not be accepted by the receiving country. Following concerted pressure by BID, IND conceded that there had been difficulties with the use of EU letters for removals to Mauritania. As such BID was able to secure bail for a number of detainees.

- Mr XXX arrived in the United Kingdom on XXX September 2004. His claim for asylum and subsequent appeal were refused. He was detained on XXX April 2005 for removal. In October 2005, Mr XXX was removed to Mauritania but the Mauritanian immigration authorities would not allow him to enter. The Home Office agreed to release XXX without sureties at a bail hearing on XXX February 2006. He had spent over 10 months in detention.
- Mr XXX arrived in the United Kingdom on XXX September 2005. He was detained in Harmondsworth Immigration Removal Centre where his application for asylum was considered under the Super Fast Track system and was refused. Mr XXX represented himself in his appeal before the Asylum and Immigration Tribunal on XXX October 2005, being unable to find legal representation. His appeal was dismissed. He was taken to the airport for removal on November 2005 and was told at the airport that removal was cancelled. On 4 January 2006, he was flown to Mauritania. On arrival, the Mauritanian authorities would not accept him as he only possessed an "EU letter" and no other documentation. On his return to detention in the UK, he became suicidal. He made requests to be taken to the Mauritanian Embassy but was not taken there. He was granted bail without sureties on XXX March 2006, having spent almost six months in detention.

12. DETENTION OF PEOPLE WHO CANNOT BE REMOVED TO ANOTHER STATE

Immigration detention is permitted by law to prevent unauthorised entry or to effect removal. In BID's experience, there is a pervasive dishonesty amongst the Immigration Service about when removal can and cannot be effected. There are some nationalities that it is extremely difficult to get documents for, such as Liberians, Sierra Leoneans, Congolese and Chinese. There are also some individuals it is very difficult to remove because they were undocumented in the country of origin or their country of origin won't recognise them for other reasons. Wars quite often break out in the countries from which people seek asylum and there is no system of automatically reviewing the detention of all nationals from such a country. This was confirmed to BID South by Brian Pollett of the Detention Services Unit and Iain Walsh of the Asylum Appeals and Policy Unit at the start of August. It is not unusual for more than one removal attempt to fail, because the immigration authorities in the receiving state won't accept the travel documents a person is sent back with. This is particularly the case with European Union letters.²¹⁷

In one case, the person against whom an unsuccessful attempted removal was made using an EU letter was so ill on return to the United Kingdom that he was taken by ambulance to hospital. BID had warned the Immigration Service that this removal could not succeed. BID South records at least 12 others whose removal has been unsuccessful with this form of documentation.²¹⁸ In one case, BID had obtained a letter from the Ivorian Embassy stating that an EU letter would not be acceptable as a travel document. The Home Office's response to this letter was that it could be a forgery.

On return to the UK, once removal has failed the person will be returned to immigration detention, often for several months. Requests for release on temporary admission are refused on the basis that removal is being pursued. The manager of the BID South office has commented that in such cases, after seven years of asking what will be done differently on a second, third or fourth removal attempt she has only ever received one answer that contained any information. In this case, the information was that an interview with another High Commission was going to take place. This was a fruitless interview and did not result in the issue of travel documents.

Sometimes people will be sent to countries with which they have no connection and which do not, unsurprisingly, accept them. The Immigration Service will sometimes use the Chicago Convention as if it were an international Dublin Convention (it is an agreement on civil aviation.) For example, a South

²¹⁶ For example, these include Bid South 129/05, Bid South 81/06, Bid South 198/06.

²¹⁷ A European Union letter is a document stating a person's nationality will be used when travel documents cannot be secured from the authorities in a country to which a person is to be returned.

²¹⁸ others include Bid South 05/05, Bid South 38/05, Bid South 72/05, Bid South 90/05, Bid South 178/05, Bid South 202/04, Bid South 274/05, Bid South 36/06, Bid South 261/05 and Bid South 82/06, Bid South 207/06.

African man has been returned to Vietnam where he was detained for several days then sent back to the UK.²¹⁹ Similar removal attempts have been made, and failed for a Sierra Leonean going to Canada²²⁰ a Liberian going to the United States²²¹ and a Cameroonian sent to Chad under the Chicago Convention.²²² Such exercises seem to be costly attempts to frustrate the grant of bail or temporary admission, timed as they frequently are shortly before or after a listed bail hearing. The practice of detaining people who can't be removed but refusing to accept they can't be removed results in breaches both to the right to liberty and the right to security if they are sent to other states or returned with inadequate documents and from there sent back to the United Kingdom; sometimes suffering ill-treatment in the process, or suffering illness or further detention.

13. REPEATED DETENTION OF THE SAME INDIVIDUAL WITHOUT LEGAL JUSTIFICATION

BID is concerned at the frequency with which individuals can be detained, released on bail or temporary admission and then re-detained, without any change in circumstances requiring detention. Sometimes people spend a couple of weeks on bail, sometimes it's a few days and sometimes it can be a few months. This amounts to a further interference to the individuals' right to liberty. BID South recently counted 25 people who have been released from detention and the re-detained with no change in circumstances.²²³ Out of these individuals it appears only two have been removed, there may have been a possible third removal but this is not confirmed. In all of the cases that didn't result in a removal, detention didn't assist at all in the process; it just cost a lot of money and caused a lot of distress. The re-detention decisions can also justifiably be called arbitrary as there were no changes in circumstances meriting a second or third term in detention.

14. DETENTION OF ASYLUM APPLICANTS WITH OUTSTANDING APPEAL

Article 5 of the ECHR allows for immigration detention to be used to effect removal. Asylum claimants should therefore not be detained if they have had no appeal hearing, otherwise the detention will be in breach of their human right to freedom. This is also borne out by case law (*SSH D ex parte AMIRTHANATHAN*). In BID's experience, people are detained with an appeal outstanding, as 8 recent BID South cases illustrate.²²⁴

15. VIOLENCE USED DURING REMOVAL ATTEMPTS AND ARREST

The use of violence against a person during an attempted removal, or arrest is not permitted by law and internal Immigration Service guidelines do not instruct Immigration Officers to use violence. Private security firms who transport people from removal centres to planes are not authorised to use violence either. It is BID's experience that violence is used against people subject to immigration control during arrest or during removal. This threatens people's right to be free from cruel, inhuman or degrading treatment. Recent cases of those who have been subjected to violence during arrest or removal attempts include:

- A woman who told BID she was lifted up by handcuffs on her wrists and she was repeatedly hit on her back. (Bid South 05/06)
- A man who suffered injury to his shoulder during a removal attempt. (Bid South 178/05)
- Officers stepping on a man's neck during transfer to the punishment wing of a detention centre. (Bid South 158/06).
- A man who was badly assaulted during a removal process. He spent a total of one year in detention. He was bailed with no sureties. (Bid Ox/02/06)
- A man who was badly beaten during removal attempt. He was escorted to airport for removal, he asked the guards if they would uncuff him so that he could go to the toilet. The guards refused to do this and he ended up wetting himself. When the pilot refused to take him on the plane, the guards then took him aside to be assaulted. (OX/98/08)

²¹⁹ Bid South 40/03.

²²⁰ Bid South 73/04.

²²¹ Bid South 47/04.

²²² Bid South 104/05.

²²³ Bid South 25/06, 235/05, 43/06, 47/04, 199/04, 177/05, 38/06, 80/05 (Detained x3), 125/05, 224/06, 61/04, 46/04, 48/05, 04/04, 172/04, 131/04, 63/06, 38/05, 72/05, 83/03, 229/06, 10/05, 221/05, 227/06, 176/06, 221/06.

²²⁴ Bid South 176/06, 163/06, 200/06, 205/06, 168/06, 196/06, 215/06, 220/06.

31. Memorandum from the Refugee Council

ABOUT THE REFUGEE COUNCIL

The Refugee Council is the largest organisation in the UK working with asylum seekers and refugees. We not only give help and support to asylum seekers and refugees, but also work with them to ensure their needs and concerns are addressed by decision-makers.

We welcome the opportunity to respond to the Joint Committee on Human Rights Inquiry into the Treatment of Asylum Seekers. Our submission focuses on the human rights of children and young people seeking asylum in the UK, and the human rights issues raised by the experience of asylum seekers with healthcare needs. We endorse the submission of the Inter Agency Partnership in relation to accommodation and support²²⁵.

1. INTRODUCTION

1.1 Whilst we recognise this inquiry is focused on treatment of asylum seekers in the UK, we feel it is important to acknowledge the impact that the UK's border controls are having on the right to seek asylum itself. The right to seek and enjoy asylum from persecution is a fundamental human right, enshrined in Article 14 of the Universal Declaration of Human Rights, and elaborated in the 1951 Refugee Convention. Yet today, there is no legal way for a refugee to enter the UK to exercise this right²²⁶. As a result, seeking asylum in the UK is becoming ever more perilous, with refugees forced into the hands of people smugglers and traffickers, or taking incredible risks to cross continents and reach safety. We have appended our memorandum of evidence for the Home Affairs Select Committee's Inquiry into Immigration Control should you wish to consider this matter in more depth.

2. CHILDREN SEEKING ASYLUM IN THE UK

2.1.1 *Unequal protection: UN Convention on the Rights of the Child and 2004 Children Act*

We are concerned that the government continues to maintain a reservation to the UN Convention on the Rights of the Child in relation to children subject to immigration control, despite sustained criticism from the Committee on the Rights of the Child²²⁷, UK and international NGOs and the Joint Committee on Human Rights itself, which noted in its 2005 report: "the practical impact of the reservation goes far beyond the determination of immigration status, and leaves children subject to immigration control with a lower level of protection in relation to a range of rights which are unrelated to their immigration status."

2.1.2 We believe that recent attempts by the UK government to "interpret" the UNCRC in domestic asylum policy only serve to illustrate the need for asylum seeking children to have the full protection of the Convention. By way of example, the 2006 Asylum Policy Instruction on Children interprets the best interests principle as follows: "Best interests—Article 3 requires the best interests of the child to be a primary consideration in all actions concerning children. The best interests of the child should be considered in all actions taken by IND, and may mean balancing conflicting rights and interests. In practice this means that children/young people should have a timely resolution to their claim in order to provide some certainty about their future".

2.1.3 Best interests determinations are child and context specific. The notion that "in practice" all asylum seeking children's best interests can be reduced to "a timely resolution" of their asylum claim runs counter both to the principle and to decades of good practice in child protection and child welfare social work.

2.1.4 This reservation has consistently been used to enable policymaking that discriminates against asylum seeking and refugee children, most notably the exclusion of immigration agencies from the duty to safeguard and promote the welfare of children set out at section 11 of the 2004 Children Act. We urge the Committee to continue to press for the reservation to be withdrawn, on the grounds that it is damaging to the safety and welfare of asylum seeking children and young people in the UK.

²²⁵ Refugee Council is a member of the Inter Agency Partnership, along with Refugee Action, Migrant Helpline, Refugee Arrivals Project, Scottish Refugee Arrivals Project, Scottish Refugee Council and Welsh Refugee Council.

²²⁶ There is no provision in UK Immigration Rules for people overseas to be granted a visa to come to the UK to apply for asylum. In theory, overseas consular authorities can refer an entry clearance application to the Home Office in the UK in situations where the refugee is outside his country of origin and can demonstrate a prima facie case that his/her circumstances meet the definition of the 1951 Refugee Convention; that he has close ties with the UK; and that the UK is the most appropriate country of refuge. These rules are contained in the Asylum Policy Instructions. However, as highlighted in a recent study "these instructions are not widely known and the authorities have no policy of actively promoting awareness about their existence and the possibility of applying for asylum from abroad. In practice, due to the very limited number of persons concerned (less than 10 cases each year), the Protected Entry Procedure has very low priority for the authorities."

²²⁷ "The Committee remains concerned that the State party does not intend to withdraw its wide-ranging reservation on citizenship, which is against the object and purpose of the Convention" Concluding Observations of the Committee on the Rights of the Child, October 2002.

2.2 Detention

Refugee Council believes that detention of children for the purposes of immigration control breaches Article 5 of the ECHR, Articles 3 and 37 of the UNCRC and the UN Rules on Juveniles Deprived of their Liberty. Taken together, these standards mean that detention of children can only be considered when absolutely necessary and used as an exceptional measure of last resort.

2.2.1 The most comprehensive review of detention and alternatives to detention, published by UNHCR and covering practices in thirty-four states makes it clear that in destination states such as the UK, there is no evidence to support the claim that detention of asylum seekers is necessary whilst claims are determined, and little evidence that detention is necessary for those whose claims have been refused²²⁸.

2.2.2 The numbers of children detained by the UK, the length of detention, and the comparatively low correlation between detention and immediate removal, all clearly demonstrate that detention is not being used as a measure of last resort. With this in mind, Refugee Council, believes that no child should be detained for the purposes of immigration control, whether alone or as part of a family.

2.2.3 Separated children

Refugee Council works with many young people whose age is disputed by IND staff. Whilst there is a process by which this decision can be reviewed, its immediate impact is that the young person is treated as an adult and may be detained²²⁹.

2.2.4 Specialist Advisers from our Children Panel frequently attend asylum screening interviews with separated children, and in our experience the decision to dispute a young person's stated age is often made on the basis of a brief visual inspection. In 2005, the Home Office "age disputed" 2,425 young people, but failed to provide comparable statistics for the numbers of young people subsequently identified as children. Refugee Council has collated evidence on age disputed applicants detained in a single Immigration Removal Centre, Oakington, and found that of 275 applicants assessed by Cambridgeshire Social Services, 150 were positively identified as children (55%).

2.2.5 Further, Refugee Council is aware of several young people subject to the Dublin II Regulation who have been detained and removed as adults without a proper age assessment taking place. This is of particular concern given that the Regulation stipulates separated children should have their claim for asylum determined in the first EU state where they make an asylum claim, unlike adults, who have their claim determined in the first state they pass through.

2.2.6 Refugee Council believes that the UK should adopt the precautionary principle, and not detain age disputed young people until their age has been properly and fully determined. Further, we believe that the practice of Immigration Officers and Screening Officers should be monitored to ensure that they are following IND policy and treating the applicant as a minor in "borderline cases."²³⁰

2.2.7 Children in families

Over the last four years the number of children detained in immigration removal centres has increased significantly, and snapshot figures indicate that over 2,000 children were detained in 2005. Some families are detained for significant periods: of the 540 children who left detention in quarter four of 2005, 70 had been held for 15–29 days, and 25 for between one and two months.

2.2.8 Successive reports by NGOs, and by Her Majesty's Inspectorate of Prisons, have documented the damaging effect of detention on children, the inadequate conditions in which children are held, and serious weaknesses in child protection procedures in immigration removal centres. Refugee Council, as part of the No Place for a Child coalition²³¹, urges the Committee to recommend that the practice of detaining children in families be ended.

²²⁸ Field, O (2006) Alternatives to Detention of Asylum Seekers and Refugees, UNHCR.

²²⁹ The impacts of a decision to dispute an applicant's age run well beyond the use of detention. Children's claims have more flexible timescales, separate APIs inclusive of child specific forms of persecution and guidance on assessing the credibility of children: putting a child into the adult determination process leaves them at risk of refoulement. Likewise, separated children are supported under the Children Act 1989 by Local Authorities able to meet their care and welfare needs: NASS is not designed to support separated children safely.

²³⁰ IND Policy when Age is in Dispute <http://www.ind.homeoffice.gov.uk/applying/asylumapplications/10902> (accessed 20/9/2006).

²³¹ Other members are Bail for Immigration Detainees, Save the Children Fund UK, Scottish Refugee Council and Welsh Refugee Council. See <http://www.noplaceforachild.org/>

2.3 Destitution

Prior to 2004, asylum seeking families with children under the age of 18 remained entitled to accommodation and support after their asylum claims were refused. In 2004, the Government introduced a provision at section 9 of the Asylum and Immigration (Treatment of Claimants) Act, requiring NASS and Local Authorities to terminate support for these families unless this would lead to a breach of ECHR rights. The stated aim of this policy was to “encourage” families to sign up for voluntary assisted return.

2.3.1 Between April 2005 and the present time, section 9 has only been applied to 116 families in three pilot areas: Central/East London, Greater Manchester and West Yorkshire. Refugee Council has worked with families affected by the pilot in London and Yorkshire, and was one of the agencies (along with Refugee Action) funded by NASS to do outreach work with the families as part of the evaluation process²³².

2.3.2 The families we worked with were desperate and terrified. Over a third of the adults had health problems, and eighty percent had significant mental health needs, ranging from diagnosed psychiatric disorders to people so distressed they wept throughout advice sessions. Many families disappeared, and those who remained in their accommodation were barely able to survive: liable to eviction at any time, dependent on one off payments from their Local Authority and food parcels from charities. We believe that at least four children were placed in Local Authority care as a consequence of the policy.

2.3.3 Refugee Council believes that section 9 is incompatible with human rights standards, in particular Articles 3 and 8 of the ECHR, extremely damaging for children and families, and unnecessary for the purposes of immigration control. We urge the Committee to recommend the immediate repeal of s 9, using the power provided at s 44 of the Immigration, Asylum and Nationality Act 2006. Further, we ask the Committee to recommend a welfare casework approach to working with those whose asylum claims have been refused²³³.

2.4 Access to education

The Refugee Council believes that many asylum seeking children (both separated children and children here as part of a family) experience significant difficulties accessing appropriate education. In some cases, this may amount to a breach of the European Convention on Human Rights (Protocol 1, Article 2), European Council Directive 2004/83/EC, Article 27 of which states that minors must have full access to education “under the same conditions as nationals”²³⁴ and section 14 of the Education Act 1996.

2.4.1 Asylum seeking children frequently experience severe delays and difficulties in obtaining a school place. This problem particularly affects, but is not confined to, children aged between 14 and 16 years of age. In research recently conducted by the Refugee Council, accessing a place was identified as one of the most significant problems encountered by children of this age²³⁵, supporting previous research in 2002 which estimated that as many as 2,100 asylum seeking children were unable to find a school place²³⁶.

2.4.2 A small minority of these children cannot access mainstream education at all. In some Local Authorities they are educated in local colleges which offer specialised courses, whilst in others children are educated in “other than at school” provision which significantly limits access to the curriculum. Refugee Council has worked with children being educated in Pupil Referral Units, solely on the basis of local mainstream schools refusing them a place.

2.4.3 Finally, many asylum seeking children are unable to benefit from Educational Maintenance Allowance (EMA), a benefit widening the participation of young people from lower income families in post 16 full time education. In England, Wales and Northern Ireland, children who have arrived here seeking asylum are not eligible for this allowance unless they have been granted refugee status or humanitarian protection²³⁷. The practical effect of this is to deny EMA to young people whose claims have yet to be determined, the majority of separated children, who usually given Discretionary Leave to age 18, and to young people whose claims have been refused, but are still living in the UK.

2.4.4 Education makes a key contribution to long term outcomes for children and young people, wherever they and their family settle. The Refugee Council believes that asylum seeking young people should have equal entitlement to both education, and benefits supporting education, as UK nationals.

²³² Attached please find Refugee Council’s witness statement for KvAsylum Support Adjudicators and Secretary of State for the Home Office, with detail of our casework.

²³³ Refugee Council believes the model employed by Hotham Mission in Melbourne demonstrates that positive caseworking both ensures protection needs are met and immigration decisions complied with, all within a humanitarian framework. See <http://asp.hothammission.org.au/>

²³⁴ The “Qualification Directive”: On minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise needs international protection and the content of the protection granted.

²³⁵ McKenna, N (2005) Daring to dream: Raising the achievement of 14 to 16 year old asylum-seeking and refugee children and young people, London, Refugee Council.

²³⁶ Rutter, J (2003) Working with Refugee Children, York, Joseph Rowntree Foundation.

²³⁷ The Scottish Executive has amended their Graduate Endowment, Student Fees and Support Regulations to comply with the EC directive to extend entitlement to all those granted subsidiary protection, including those with discretionary leave and exceptional leave.

2.5 Guardianship for separated children

In its 2003 Green Paper, *Every Child Matters* the government rightly identifies separated asylum seeking children as children “in greatest need”²³⁸. Despite this, no agency or individual is charged with assessing and representing their best interests both in respect of their asylum claim and their care and welfare whilst in the UK, a position which in our view is incompatible with Article 30(1) of European Council Directive 2004/83/EC.

2.6 Refugee Council believes that in order to protect the rights of these uniquely vulnerable children, an independent body should be established, tasked with providing legal guardians for all separated children in the UK. The guardians should perform a role similar to that undertaken by CAFCASS for children involved in child welfare proceedings, but exercising additional functions to ensure that all parties involved with the child seek the best possible solution to the crisis facing them.

3. HUMAN RIGHTS AND HEALTHCARE FOR ASYLUM SEEKERS

3.1 The right to health is recognised in a wide range of international human rights instruments, and is most exhaustively defined in Article 12 of the International Covenant on Economic, Social and Cultural Rights, Article 12 of which states that “The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

3.1.1 Article 12 requires states to take steps to “achieve the full realisation” of the right to health, with particular reference to key areas including still birth and infant mortality rates, prevention, control and treatment of diseases and Article 12(2)(d) “The creation of conditions which would assure to all medical service and medical attention in the event of sickness”.

3.1.2 Further, the Covenant “proscribes any discrimination in access to healthcare and underlying determinants of health, as well as to the means and entitlement for their procurement, on grounds national . . . or social origin . . . civil, political, social or other status” (General Comments on the ICESR).

3.2 Health needs of asylum seekers and refugees

Evidence suggests that approximately 20% of asylum seekers have health problems that make their day to day life difficult²³⁹. In addition to having similar health needs to UK nationals from other socio-economically deprived groups, asylum seekers’ health is affected by conditions in their country of origin, the experience of flight, and the poverty and uncertainty they live with on arrival on the UK²⁴⁰.

3.2.1 Women, children and torture survivors are particularly vulnerable. Lack of access to antenatal care, poor nutrition and traumatic experiences all contribute to a maternal mortality rate significantly above UK average²⁴¹. The use of sexual abuse and rape as a form of torture is common, and asylum seeking women may have both psychological and physical health needs arising from this experience²⁴². It is estimated that over 80,000 women and girls in the UK have undergone female genital mutilation (FGM), and many asylum seeking women have sexual and reproductive health needs as a result. Asylum seeking children experience a range of physical problems associated with malnutrition and disease in their countries of origin, exacerbated by poor housing and poverty in the UK²⁴³. Between 5 and 30% of asylum seekers have been tortured, and have significant health and mental health care needs as a result. Torture survivors can experience direct physical symptoms related to fractures, crushed bones, or head injuries, as well as physical symptoms which are caused by intense stress and depression.²⁴⁴

3.2.2 Finally, the experience of persecution, flight, and life in the UK, all contribute to the mental health needs of asylum seekers. “Past experiences of torture, rape, death of loved ones, social upheaval, detention and other forms of persecution give rise to intense ‘crisis emotions’ such as fear, grief and shame and these experiences can both cause mental health problems, or exacerbate pre-existing conditions. Mental distress is a taboo subject in some refugee producing countries, so problems may have been left untreated, and are subsequently intensified with the further trauma of relocation. Once in the UK, the stress caused by poverty, living in a hostile environment and attempting to adapt to a new society can themselves cause or contribute to significant mental health problems. Symptoms include: disturbed sleep, anxiety attacks, violent outbursts, self harm, erratic behaviour and extreme mood swings. The despair people often feel can also trigger them to re-experience past trauma, which in the extreme can lead to Post-Traumatic Stress Disorder (PTSD). Sadly,

²³⁸ Department for Education and Skills (2003) *Every Child Matters*, Cm 5860, London, HMSO, para 2.50.

²³⁹ Burnett, A Peel, M (2001). “Asylum seekers and refugees in Britain: Health needs of asylum seekers and refugees.” *BMJ* 322, pp 544–547.

²⁴⁰ Woodhead, D (2000), *The Health and Well Being of Asylum Seekers and Refugees*, The King’s Fund: London.

²⁴¹ British Medical Association. (2001). *Asylum Seekers and health—A British Medical Association and Medical Foundation for the Care of the Victims of Torture dossier*. [Internet] October 2001. Available at: www.bma.org.uk/ap.nsf/Content/Asylumseekershealthdossier [Accessed 09 May 2006].

²⁴² Peel, Dr M (Ed)(2004). *Rape as a Method of Torture*. The Medical Foundation for the Care of Victims of Torture: UK.

²⁴³ British Medical Association. (2002). *Asylum seekers: meeting their healthcare needs*. BMA: London.

²⁴⁴ Burnett and Peel: 2001.

asylum seekers and refugees are among the highest risk categories for suicide in the UK". Kelley, N and Stevenson, J (2006) *First Do No Harm: Denying healthcare to asylum seekers whose claims have been refused*, London: Refugee Council.

3.3 Access to healthcare

On arrival in the UK, accessing healthcare is seldom if ever a priority, even for asylum seekers with complex health needs. In the critical period after arrival, asylum seekers are understandably focused on the claim for asylum, and securing basic housing and support for themselves and their family. Most asylum seekers will have very limited understanding of the UK system or their healthcare entitlements, beyond the basic information available through Home Office funded induction programmes.

3.3.1 In our experience, once asylum seekers are aware of their health rights they can find it difficult, if not impossible; to find a GP practice that will register them as patients. Whilst asylum seekers' entitlement to primary services is clear, GP's discretion in managing their patient caseload appears to create a barrier to realising that entitlement in practice. GP registration is the gateway to NHS care, and without this, asylum seekers' health needs may go unmet, they may miss out on routine preventive care such as screening or immunisations, or be forced into inappropriate use of NHS services, particularly Accident and Emergency.

3.3.2 The shortfall in interpreting services presents a significant barrier to asylum seekers in need of health care.²⁴⁵ Without access to an interpreter, many asylum seekers are completely unable to get the healthcare they need and translated information, where available, is of limited use. Amongst some groups of asylum seekers such as women, and people from primarily oral cultures²⁴⁶, literacy levels may be very low and interpreting essential.

3.3.3 Finally, mainstream NHS services can be insensitive to the cultural or gender norms of the asylum seeking population, and specialist services are scarce. In areas such as mental health care, this presents particular challenges as "prescribing and administering appropriate treatment for psychological problems and mental illness is much more problematic when there are conceptual and linguistic difficulties in describing symptoms, and cultural differences in the perception of mental health"²⁴⁷

3.4 Denial of secondary healthcare to asylum seekers whose claims are refused

In 2004 the Government introduced the NHS (Charges to Overseas Visitors) (Amendment) Regulation, requiring NHS trusts to charge refused asylum seekers for secondary care. The regulation applies to all asylum seekers whose claims have been refused, including those on s4 support that the government acknowledges cannot return to their country of origin, and those who come from countries such as Somalia, or Sudan, where return is manifestly unsafe.

3.4.1 Despite being justified as necessary to prevent "health tourism" and "abuse" of NHS resources, the Health Select Committee noted that "no evidence exists to objectively quantify the scale of the abuse, either in relation to HIV or more generally" and that "by the Department's own admission, these changes have been introduced without any attempt at a cost-benefit analysis, and without the Department having even a rough idea of the numbers of individuals that are likely to be affected."²⁴⁸

3.4.2 The impact of the regulation has been to leave desperately vulnerable asylum seekers without access to necessary care. Refugee Council has worked with a number of women (including young women under the age of 18) who have been refused maternity care, some of whom have subsequently given birth without the benefit of medical assistance. We have worked with adults with life threatening illnesses such as stomach cancer; disabled torture survivors, frail elders, all of whom are told they can only have the healthcare they need if they are able to pay thousands of pounds.

3.4.3 Refugee Council's experience suggests that the regulation is also have unintended consequences. We have worked with many people who have been wrongly denied primary or secondary care, due to health practitioners misunderstanding the regulation. This is further exacerbating the problems of finding a GP for our clients set out in more detail above.

3.4.4 We urge the Committee to recommend the Government reinstate health care rights for asylum seekers whose claims have been refused, and expand access to interpreting, health advocacy and culturally appropriate services in order to ensure that the health rights of refugees and asylum seekers can be realised in line with Article 12 of the ICESR.

September 2007

²⁴⁵ BMA:2002.

²⁴⁶ Such as the Somali community: Somali has only existed in written form since 1972.

²⁴⁷ BMA:2002.

²⁴⁸ Health Select Committee's (2005) Third Report of the Session 2004-05 on New Developments in Sexual Health and HIV/AIDS Policy, HMSO: London.

32. Memorandum from the Black & Minority Ethnic Health Forum in Kensington & Chelsea and Westminster

I am writing on behalf of the BME Health Forum to provide evidence to assist with your investigation into the treatment of asylum seekers in the UK.

The BME Health Forum is a formal bridging structure—a collaborative partnership network between statutory, voluntary and BME community organisations—that aims to improve health and reduce inequalities for BME communities in the Royal Borough of Kensington & Chelsea and the City of Westminster (KCW). It works within and across the wider health and community systems within KCW bringing together different individuals, groups and organisations from the statutory and community sectors who have a shared interest in the health care needs and provision of services to BME communities.

Members of the Forum have considerable knowledge and information about the treatment of asylum seekers and we would value the opportunity to present verbal evidence to the Committee. Many of our affiliated organisations have members who are or were asylum seekers and it is very likely that some would be willing to give evidence of their personal experiences regarding access to healthcare provision and the quality of the care they received.

THE PROVISION OF HEALTHCARE

In the view of the Forum, the Regulations introduced in April 2004 to make people not lawfully resident in the UK liable for NHS hospital charges have had a particularly harsh effect on failed asylum seekers. The Department of Health's attempt to exclude overseas visitors from eligibility for free NHS Primary Medical Services would result in the withdrawal of most free health care from failed asylum seekers and cause considerable harm to many people who are either claiming asylum and those who are destitute because their claims have been rejected but for whom there is no safe country to which they could be removed. Health care in detention centres consistently fail to achieve the basic standards that are normal in the NHS and we support the recommendation, by Ann Owers that all health care provided in detention centre to asylum seekers should be through the NHS.

We are also concerned about the disruption to family life caused by the NASS system and detention and the trauma to both adults and children which this causes. The lack of continuity of medical care for people with serious medical conditions is a matter of considerable concern to the Forum. An example of this might be the transfer from one NASS address to another, to a detention centre and then back to NASS accommodation. It's almost impossible to ensure continuity of medical care in this common type of situation and liaison between clinical staff and transfer of clinical data between clinicians is extremely poor. In addition attempt by asylum seekers to obtain medical notes to carry with them are often blocked or a fee is charged which is beyond the means of the asylum seeker. Tied to this problem is the difficulty of obtaining appropriate prescribed medicines as a result of movement from one area to another—this is of major importance for people with high blood pressure, diabetes and heart disease.

CASE ONE

The impact of the government asylum policies on vulnerable people fleeing persecution

A male asylum seeker, qualified as a doctor, in his late 40s who arrived to the UK 2½ years ago and applied for asylum on arrival. He was placed in NASS accommodation and given just under £40 a week. Few months later his application for asylum was refused and his support stopped. As he was then destitute and homeless he spent around 11 months sleeping in parks and open spaces. He became very ill but was only able to access health care from A&E. On occasion he collapsed in the streets and passers-by called an ambulance to take him to hospital, where he spent up to two weeks and was discharged back to the street. Even though he was in desperate need for follow-up treatment for an infection after discharge from hospital, he was denied access to health services. His infection became fatal and doctor told him that he will live up to one year. He has now produced new evidence to support his claim and is now back on NASS support but there are fears that he will not live long enough to benefit from a positive outcome. This man's life has been wasted needlessly. If he had had access to follow up treatment from the NHS there is a very good chance that he could have been successfully treated.

ACCESS TO HEALTHCARE FOR THOSE IN THE ASYLUM SYSTEM

Evidence regarding access to health care has been provided by the Health Support Team of the Notre Dame Refugee Centre in Leicester Square. This Centre provides solicitor service, general advice and counselling for refugees and is open on Mondays and Thursdays 11am–4pm as a drop-in centre in Leicester Square.

The organisation has provided a weekly health advice service for 2½ hours every Thursday since September 2005. Many of the service users are homeless on the street or staying with friends and are a fairly transient population, not just in Westminster but London wide. They tend to be either failed initial application asylum seekers in the process of seeing the solicitor at Notre Dame to appeal the decision, or

have already had their appeal failed as asylum seekers. The National Asylum Seeker Support (NASS) provides them with benefits or housing support during their applications but not in-between applications or if their application has been rejected twice.

Health care access for these people depends on the discretion of the health care provider. The Department of Health advises that if an asylum application is pending, the applicant is entitled to primary and secondary care. Access to care for those whose applications have been rejected twice is not always clear-cut and causes confusion for asylum seekers and amongst health care providers.

Many of the asylum seekers using the Centre report previous episodes of torture or rape which often impinge significantly on their health. Other factors affecting their health include poverty, overcrowding, homelessness and lack of education. Some studies have indicated that physical symptoms such as backache or abdominal pains may be reported when the patient is suffering from depression.

The following table show use of the service provided by the Health Support Team since 8th September 2005. The information has been adjusted and this accounts for missing data from the first quarter.

SEPTEMBER 2005—AUGUST 2006

TOTAL PEOPLE SEEN: 173, MALE: 89, FEMALE: 84

COUNTRY OF ORIGIN:

Algeria	1
Angola	4
Benin	1
Burundi	1
Cameroon	3
Congo	131
Guinea	3
Iran	1
Iraq	1
Ivory Coast	11
Sierra Leone	1
Ukraine	1
Uganda	2
Zaire	1

REGISTERED WITH A LOCAL GP

Yes	48
No	80

FIRST LANGUAGE:

English	3
French	152
Farsi	1
Kurdish	1
Arabic	1

HOUSING

Hostel/B + B	4
Homeless staying with friends	81
Living on the streets	18
Staying in a church	4

GP REGISTRATION ADVICE

Register with local GP	41
Register with Gt Chapel St	42
To visit own GP	32
209 Harrow Road Health Centre	4

PROBLEMS PRESENTED WITH:

Abdominal pain	17
AIDS related illness	2
Asthma	2
Back ache	16
Bone fracture	1
Chest pain	4
Depression/mental health	27
Diabetes	5

Diarrhoea	2
Domestic violence (disclosed)	1
Epilepsy	3
Epistaxis (nose bleed)	2
Gynaecological	11
Haematuria (Blood in urine)	2
Haemorrhoids	5
Headache	23
Hepatitis C	3
Hypertension (high blood pressure)	10
Insomnia—difficulty sleeping	10
Joint pain	9
Nausea	1
Oral health problems	12
Ophthalmic	5
Podiatry requirements	3
Pregnant	11
Reynaulds syndrome (rheumatic condition)	1
TB	5
Post traumatic stress disorder	6
Rash	3
Recent A&E admission	5
Recent operation	1
Respiratory problems	8
Threadworm	1

MEAN AGE: 32 YEARS OLD, RANGING FROM 16 YEARS TO 73 YEARS

16–25 years old	18
26–35 years old	30
36–45 years old	17
46–55 years old	9
56–65 years old	0
66–75 years old	1

This information is based on the service user's presentation at the advice session and more than one health issue may have been identified. The data presented is not an accurate reflection of possible diagnosis for each person seen because the Health Support Team provide an advice session and only collect basic data. Many service users do not have a GP and there is limited time to collect information from those who do have GP's. Many service users have not had HIV or hepatitis testing. Individual service users have many problems and consequently, their health is neglected. Even if they are seen by a GP and obtain a prescription, they often are unable to afford to pay for the drugs. The Health Support Team or the Notre Dame Centre provide HC1 forms for all service users seen (if they do not have one) which enables them to obtain free prescriptions, dental and ophthalmic treatment, but only if they are eligible.

PRIMARY CARE

The majority of asylum seekers present to the Notre Dame Centre with health problems that need a medical assessment, treatment and care. Most of them have previously been refused access to primary care and are unable or unsure how to access any services. If the service user is homeless but staying with a friend outside of Westminster, they are advised to register with a local GP and details are provided to them for the area in which they are staying. If they are homeless in Westminster or in need of immediate examination or care, they are advised to register with Great Chapel Street Homeless Medical Centre or with the 209 Harrow Road Health Centre. If they have had difficulty registering with a GP or are asylum seekers whose claim has been rejected, they will be referred to "Project London" in Bethnal Green, a non-governmental organisation set up by Medicine Du Monde, which provides medical support specifically for asylum seekers.

MALARIA PROPHYLAXIS FOR PEOPLE IN DETENTION WHO ARE AT RISK OF DEPORTATION

The Forum is concerned about the refusal of the Home Office to ensure that pregnant women and children, who are returned to countries where malaria is endemic, are at risk of serious illness and death. This is because the children of those awaiting a decision of their claims have no immunity and the parent have lost immunity. Providing long term prophylaxis and treated bed nets would solve this problem. We regard sending destitute people (and their children) who have claimed asylum back to the country from which they have fled a serious violation of their human rights, but added to the risk of serious health problems and death from malaria the situation for these people becomes intolerable.

MENTAL ILLNESS

The Forum has received many reports from asylum seekers and their advocates regarding the severe harm caused to the mental health of asylum seekers by the detention, destitution and the NASS system. We are also concerned that the care of people who have alleged torture is frequently inadequate and insensitive in the primary sector, leading to serious depression, self harm and suicide attempts.

Furthermore, a recent search by the BME Health Forum has indicated that there is a sizeable unregulated migrant community in the Kensington & Chelsea and Westminster area. This population includes failed asylum seekers, overstayers, and others who are in breach of UK immigration regulations. The research identified that many organisations and churches provide a wide range of health related services that would normally be provided by the NHS, to unregulated migrants. These services include:

- Counselling and support for mental wellbeing issues, including depression, anxiety and stress often related to immigration problems.
- Support in accessing services, including interpreting.
- Support in dealing with alcohol and substance misuse problems.
- Information and advice on various health conditions such as diabetes, obesity, back pain, high blood pressure, domestic violence, and family and children issues.

In addition, the groups and organisations including churches that provide services for unregulated migrants, mentioned the very serious distress that unregulated migrants suffer which is related to immigration problems and the associated lack of access to NHS services. The priests and community leaders who work closely with this group have expressed concerns about this humanitarian problem and the urgent need to deal with it. Many talked about the difficulties they faced in coping with these issues without having received any training or funding relevant to this work, although they remain steadfast in their commitment to continue providing services for this group.

This humanitarian issue needs to be addressed. Furthermore, from a pragmatic perspective, the lack of access to primary care services faced by unregulated migrants inevitably increases pressure on A&E and hospitals, because minor health problems that could be easily and cheaply dealt with at primary care level are allowed to develop into emergencies. Currently, the government accepts that unregulated migrants are entitled to emergency health care on a humanitarian basis but has limited their access to primary care—which undermines other efforts to make NHS services seamless and promote community based services. It is clear, that this situation cannot be allowed to continue and that the DH need to ensure that this group, who contributes substantially to our economy without any recourse to public funds, have full access to NHS services. The current situation, not only breaches the basic human rights of unregulated migrants, it is inequitable, expensive and inefficient (see attached a copy of our research report “Minding the gaps” and letter from the Chief Executive of Westminster PCT to the DH regarding this issue).*

CASE TWO

A female asylum seeker in her 20s with no family or friends whose application was refused and consequently became destitute. She slept on the street near bus stops and garages and was raped. She is now on NASS support again as she has made a fresh application. Her traumatic experience of rape is causing her to suffer profound health problems and will have a lasting effect on her. She is absolutely devastated by the attack.

CASE THREE

A CPN whose role is to assess and provide treatment for those suffering with mental illness, within the Primary Care setting reports as follows: “A large proportion of my clients are members of the asylum seeker population. On a number of occasions over the last five years, I have worked with individuals who have been denied asylum, but were in the process of appealing. The extremely protracted and drawn out procedure—some not having their appeals settled almost three years later—causes extreme effect on the claimant’s mental health. The people I have worked with all suffered from severe depression. Many suffered with Post-Traumatic Stress Disorder additionally, and one such client had a psychotic breakdown and ended up detained under Section 2 of the Mental Health Act. It is my firm belief that, for this client, the stress he has endured for three years (and still endures) about the uncertainty of his situation, played a major part in his breakdown. My clients all experienced horrific events in their countries of origin, yet it was the dispassionate treatment they received from the Government that caused them the most distress.”

Aside from the clients’ stress, the issue of failed asylum claims has a number of consequences for statutory services trying to assist these individuals. Unsettled appeals make it very complicated to actually treat those whose mental illnesses are largely affected by their pasts and the uncertainties of their future. As they do not have recourse to public funds, they often rely on the charity of others for their basic needs. Many clients endure tenuous living situations in order to stay in a place where they have some connections to a community

* Ev not printed.

and can receive treatment from psychiatry. It is extremely difficult to treat the symptoms of mental illness effectively when the client has no tangible sense of security for his or her future and has to rely solely on charity to be fed and housed. It takes time to consider appeals, but three years is too long for anyone to await a decision about their future. In addition the Central Asylum Team for Westminster is now defunct and the onus of funding accommodation for mentally ill and vulnerable asylum seekers has fallen on the shoulders of local mental health teams. This is an inappropriate use of NHS resources and something that should be provided by the Benefits Agency.

Her main concern is the undue duress suffered by asylum seekers from having no funds to look after themselves and no opportunity to earn even when they are capable, whilst they wait for years to find out if they are going to be deported back to the countries they fled. She ends: "This would be enough to exacerbate mental illness in anyone, let alone those who have lost their families, their friends, their communities in order to find safety from torture and the threat of being killed."

CPN, Primary Care Liaison Nurse, Community Mental Health Team

DENTAL TREATMENT

Asylum seekers face particular problems of access to dental treatment, particularly because this is on a fee basis for those who are not exempt. The case below indicates the type of problems faced by asylum seekers:

CASE FOUR

"I have a Congolese client that has needed dental treatment and had to leave his mobile phone as collateral with an NHS dentist when he found out that he was due to pay charges. When we took it up with the local PCT, we were advised that the dentist should "pursue payment through NHS channels. I doubt that this is going to mean that the dentist will be willing to release the phone."

Social worker, Victoria CMHT 1, Hopkinson house (basement)

EDUCATION

CASE FIVE

"I work in the Unaccompanied Asylum-Seeking Children's Team in the Royal Borough of Kingston, but am on temporary placement with another team at the moment. I am also a member of the Council of Europe ad-hoc committee on unaccompanied and separated minors in Europe.

In the case of a young person whose case to the UK as a UASC, and has turned 18 (and is therefore a care-leaver), and has been turned down for asylum as an adult:

When that young person is pursuing a course of education, would it not be useful to allow him/her an extension of stay in order to complete a course? I have in mind many diligent students who are pursuing 2-year courses (eg BTEC) and who run the risk of removal just prior to the ending of the course.

Earlier this year we had a client in this situation. She had achieved excellent results so far, and was $\frac{3}{4}$ of the way through her second year of an applied science BTEC. She was awaiting an appeal decision. She went to sign at Electric House in compliance with Home Office request.

On signing, she was detained and informed that she would be removed back to Uganda the following week. Her solicitors could do nothing to prevent this, and she was removed.

In Uganda, she attempted to explain that she had a GNVQ Intermediate (Distinction) and 9 out of 18 modules of her BTEC (also distinctions) but these were not recognised. However, had she completed her BTEC, it would have been recognised.

As the UK had already paid for her education, would it not have been more sensible to allow her to at least complete the course and gain the qualification?

1 October 2006

33. Memorandum from the Children's Society

A. INTRODUCTION

1. *Focusing on children*

1.1 In recent years enforcement measures, such as removal of welfare benefits, which were formerly limited to single people have been extended to children and families. Examples include Section 9 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, the increased use of detention and proposals to introduce forced returns of under 18s. Many of the measures aimed at families have had a

particular impact on the children involved. In our experience children react very differently to adults in the face of trauma and destitution. An oral evidence session focused on the treatment of children would be useful to uncover these issues and consider their impact.

1.2 In the drive to remove greater numbers of asylum applicants, reduce the backlog of claims and restore public confidence in the asylum system the rights of these children receive less attention in public and administrative priorities. The UK's reservation to the United Nations Convention on the Rights of the Child has sent out a powerful signal about how important these children's rights are, and in our experience set up a two tier system which filters down into how asylum-seeking children are treated in practice.

2. *About The Children's Society*

2.1 The Children's Society has been working with refugee and asylum-seeking children for over ten years and our practice base stretches across England, including centres in Manchester, Newcastle, Leeds, Oxford and London. In total we work with around 50,000 children a year and refugee children are one of the four groups of children that we prioritise, providing support, advice and help to access services. Our practice is primarily in the areas of education, accessing welfare, healthcare and support, helping children and families to navigate the asylum system, and dealing with detained cases. We work with both unaccompanied children and asylum-seeking families. The Children's Society is currently chair of the Refugee Children's Consortium which brings together the key voluntary agencies working with refugee and asylum-seeking children.

2.2 Our goal is to ensure that all laws and practices that protect, safeguard, and promote the welfare of children are applied to refugee and asylum-seeking children and young people and that their rights are respected in accordance with domestic and international standards, in particular:

- The 1951 Convention Relating to the Status of Refugees;
- The Children Acts 1989 and 2004;
- The United Nations Convention on the Rights of the Child; and
- The European Convention on Human Rights.

B. ISSUES TO EXPLORE IN DETAIL

1. The exclusion of the National Asylum Support Service (NASS) and the Immigration Service from Section 11 of the Children Act 2004.

1.1 Section 11 of the Children Act 2004 places a duty on relevant agencies providing services to children to have regard to the need to safeguard and promote the welfare of children in discharging their normal functions. The critical services responsible for the welfare and support of refugee children and their families are excluded from the otherwise exhaustive list of those to whom the duty applies in Section 11.

1.2 Article 3 of the Convention on the Rights of the Child (CRC) sets out that the best interests of the child shall be a primary consideration in all actions concerning children and sets out minimum standards to be upheld in actions involving children. We are aware that the Committee has also expressed concerns in the past that this may give rise to "unjustifiable discrimination" in Convention rights.²⁴⁹

1.3 The Government indicated, during the passage of the Children Act 2004 and the Immigration, Asylum and Nationality (IAN) Act 2006 that they would consider the inclusion of refugee agencies in the Section 11 duty, but expressed concern that this would prevent immigration service carrying out its duties (and thus be applicable to the UK's reservation to the CRC). The Refugee Children's Consortium obtained a legal opinion in 2006 which disputes this assertion (attached). In addition we can see no reason for excluding NASS from these duties for the purposes of immigration control and we assert that failure to include these duties may represent a dereliction of duty under Article 3 of the CRC (primacy of a child's welfare).

2. *Detention of children*

2.1 Asylum seeking children in the UK can be obtained solely for administrative purposes and without time limit. Article 37 of the CRC sets out that detention should be only as a measure of last resort and for the shortest possible amount of time. This is the standard to which the Home Office says it will adhere as a matter of policy, unless necessary for the purposes of immigration control. It has been virtually impossible to determine whether this is the case in the past because of lack of statistics (only snapshot statistics were available) and although this has now improved there is a need for a more comprehensive picture to ensure that this practice is being adhered to. In our experience children can be detained for some considerable time because of administrative error. In the first quarter of 2006 50 under 18s were detained. Of those, 25 were detained for 14 days or less, 10 for between 15 and 29 days, and 15 for between one and six months.²⁵⁰

²⁴⁹ Joint committee on Human Rights, Scrutiny of Bills: Fifth Progress Report, Twelfth Report of Session, 2003–04, HL Paper 93, HC 603.

²⁵⁰ Home Office Asylum Statistics, Q1 2006.

2.2 We also have concerns about the treatment of children in detention.

2.3 Article 24 of the CRC sets out that the state should strive to ensure pre and post-natal healthcare for mothers and basic nutritional standards. We have concerns that this is not being met in Yarl's Wood. We have received reports from our project workers of pregnant women being unable to eat outside of mealtimes, delays in accessing medical advice, and lack of access to milk and medicine.

2.4 We also have concerns that, contrary to Article 31 of the CRC, children in detention have inadequate opportunities to play or access fresh air. This particularly applies to short term holding facilities.²⁵¹

2.5 Article 37 also states clearly that children should be separated from adults. We have strong concerns about age disputed minors, as current practice is that they are detained with adults, but we are aware of cases where they are later found to be children. Young people should not be placed with adults where their age is in doubt, under any circumstances.

2.6 We work with children and families who are detained during our involvement with them, and we are concerned about the processes applied to them, which can lead to their separation from one another. In extreme cases we work with children who are in detention without their parents. In the case of Roma families this can be particularly pertinent where family relationships are disputed and we are not convinced the processes are always correctly applied. We are not convinced that CRC Article 9, that a child should not be separated from parents unless necessary for the best interests of a child, is being correctly applied, nor are we convinced that this is consistent with the right to family life set out in Article 8 of the ECHR.

3. *Section 9 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004*

3.1 We have consistently held that Article 8 of the ECHR is undermined by this measure. We do not accept it is necessary, proportionate or humane. We also contend that the Government's argument in defence of Section 9, that it is a parents choice whether to take reasonable steps to return home and hence exclude themselves and their children from the application of Section 9, is against Article 2.1 of the CRC that children are protected against punishment or discrimination on the basis of their parents actions.

3.2 Since the introduction of Section 9, Section 44 of the IAN Act 2006 was introduced which provides for its repeal. We understand a decision on Section 9 will be made on the basis of the Home Office's evaluation of the policy, conducted earlier this year. We have attached our witness statement for a judicial review application which sets out the Impact of destitution on children, and hope the Committee can press for this policy to be repealed.

3.3 We have similar concerns about the impact of Section 4 of the Immigration and Asylum Act 1999, which was intended to support failed asylum applicants who are temporarily unable to leave the UK for short time periods and was generally envisaged to apply to single people. However we are aware this is no longer the case. In June this year, Citizens Advice published a dossier of evidence which sets out the extent of administrative failure in relation to Section 4, and provides further evidence that children are supported under this measure (493 Section 4 recipients had dependent children at the end of February 2006).²⁵² The IAN Act 2006 prohibits Section 4 support being provided in cash (support is in the form of vouchers) and s4 support is very basic. We have serious concerns about the ability of families, particularly those with young children, to use vouchers, and are happy to elaborate on these difficulties further.

4. *Education*

4.1 Both refugee and asylum seeking children face difficulties accessing, fully participating in and achieving in education. Article 22 of the 1951 Convention sets out that refugees should have the same access to elementary education and remission of fees but it is in practice difficult for them to achieve this. In particular children who have been in the asylum system for some time before being granted status find it very difficult to resume a disrupted education.

4.2 Children in our experience face varying educational problems based on their geographical location in the UK, but there is no question that it is very difficult for children who are seeking asylum to achieve these rights set out in Article 29 of the CRC, and for some children they are unachievable. The problems children face include lack of school places, lack of language support and lack of financial assistance. Financial assistance at secondary level is very important and well documented, and lack of entitlement to Education Maintenance Allowances discriminates unfairly against asylum-seeking students and those with Discretionary Leave/Humanitarian Protection.

4.3 In addition many young asylum-seekers are prevented from entering higher education by prohibitive foreign student fees and lack of access to student loans (if they have been in the UK for less than three years). These young people do not have equal access to education on the basis of capacity or merit. It is our contention that the residency requirement is unduly prohibitive to asylum-seeking students.

²⁵¹ More information is given in HMIP inspection reports.

²⁵² Dunstan, R. *Shaming Destitution*, Citizens Advice (2006).

4.4 We are deeply concerned that children are taken out of school to attend official appointments. The Government should ensure at a very minimum that children are not being pulled out of school to attend official appointments.

5. *Legal advice*

5.1 Under the present system for legal aid funding children, young people and families we work with are struggling to access free and good quality legal advice, undermining Article 6.3 (c) of the ECHR which sets out an entitlement to free legal advice if the interests of justice require it. Since 2004 we have come across numerous cases of young people being unable to find legal advice, particularly where they have had to change solicitors through no fault of their own, and then been unable to find a new solicitor because of lack of funding. In one case, for example, of a girl having to pay £3600 to take her case forward.

5.2 In our experience children can become virtually invisible throughout the asylum process because of difficulties in articulating their claim to solicitors in the short time period funded by legal aid. Unaccompanied children face particular difficulties making themselves heard, and need a guardian in order to do this effectively in legal and other proceedings, in accordance with the freedom to be heard in judicial and administrative proceedings (Article 12.2 of the CRC).

5.3 Legal advice is particularly necessary in detention. Article 37 (d) of the CRC sets out children's rights to prompt access to legal advice to challenge the deprivation of liberty. Since 2004 our staff report spending a large amount of time finding a solicitor for a child (in one case earlier this year our staff contacted 17 firms to find a solicitor for one child, with three staff members and one volunteer becoming involved in the case) and this is often hardest when they are detained. We are seriously concerned that the commitment to access to legal advice will not be realised under the proposals from the DCA and LSC. Article 5 of the ECHR sets out the right to take proceedings which enable people to challenge the lawfulness of detention and ensure a speedy decision. These rights are virtually unenforceable without a lawyer.

6. *Good character test*

6.1 The Immigration, Asylum and Nationality Act 2006 makes acquisition of British nationality subject to a good character test for any person over the age of 10 years old. We have strong concerns that a failure to meet this would leave children stateless without the right to acquire a nationality set out in Article 7.1 of the CRC. Children in the UK are recognised as immature by virtue of their age until they reach 18 and we believe it is inappropriate to judge a child's character, at this point of recognised immaturity, in order to make a decision, which could leave them stateless for the rest of their lives.

C. ADDITIONAL CONCERNS

1. We have additional concerns regarding the proposed return of unaccompanied children, and the processing for removing children and young people who are subject to the Dublin II regulation. No detail is given here as this appears to be outside of the scope of the enquiry but we are happy to elaborate further if it is felt to be relevant.

2. We hope the Committee will take this opportunity to consider the impact of future measures, such as the UASC reform programme, the impact of the Carter Review on legal aid availability and the Qualifications Directive which will significantly change the treatment of asylum-seeking children and young people in the UK.

D. FURTHER INFORMATION

1. The Children's Society are happy to offer expert evidence to the inquiry and to respond to any queries arising from this submission.

September 2006

34. Memorandum from the Zimbabwe Association

The Zimbabwe Association was formed in 2001 in response to the severe problems facing Zimbabwean asylum seekers in the United Kingdom.

Main areas of concern for the Zimbabwe Association include:

- (i) Inappropriate use of detention: Inadequate screening of torture victims, particularly in fast-track cases where nationality has been disputed, has led to an inappropriate use of immigration powers to detain torture victims, in some cases for lengthy periods of time.

- (ii) Excessive violence and vindictive behaviour on removal: Reports have been received by us regarding the harsh treatment by escorts who have used more force than might be considered appropriate.
- (iii) Treatment while in detention: Disturbing reports of the difficulties in accessing adequate medical treatment while in detention persist, in addition to the continued detention of people who are not fit to be detained.

INAPPROPRIATE USE OF DETENTION

An example of such a case is that of a Zimbabwean, who was detained for three months. He travelled to the UK on an SA passport and was detained after claiming asylum. He told the detention centre that he had been tortured but no follow up was made to investigate whether there was any substance to his claims. After being granted bail, his case went before an Immigration judge and he was found credible and his appeal allowed. The Home Office appealed against this decision but later withdrew their application and he was granted five years.

EXCESSIVE VIOLENCE AND VINDICTIVE BEHAVIOUR ON REMOVAL

An example of this violence is shown in the events surrounding the attempted removal of three Zimbabwean women in May 2005. Although they were being removed on the same flight they were taken to the airport in separate vehicles, each with their own escorts. The first woman walked a few steps towards the plane and then refused to go further; her escort beat her and when she fell to the floor she was kicked and had her braids pulled off. The captain of the plane refused to take any of the women. The other two women were also beaten and injured by their escorts after the removal had been stopped.

In another removal attempt during the same period a woman was violently treated by her escorts. When she lodged a complaint about the treatment, her escorts lodged a counter complaint. The case was first heard at a Magistrate's Court and then at a Crown Court in Isleworth. The woman won her case.

TREATMENT WHILE IN DETENTION

Poor treatment in detention is illustrated by the case of a Zimbabwean woman who arrived in the UK on an SA passport and was detained for five months. Her mental condition deteriorated significantly while in detention leading to two attempts at suicide. After her eventual release (as a result of medical intervention) she spent some time in a hospital mental health department.

The Zimbabwe Association is also very concerned about the desperation of some Zimbabwean asylum seekers. The constant fear of removal and uncertain, stressful existence as an asylum seeker in the UK has led to the following deaths and suicide attempts.

- (a) a 79 year old woman opponent of the Mugabe regime burnt herself to death in May 2002 having been refused political asylum in the UK. At the time of her death, removals to Zimbabwe had been suspended;
- (b) a man drowned himself in Salford Canal in September 2005. He was terrified of being returned to Zimbabwe. At the time of his death he was in a strong position to lodge a fresh asylum claim;
- (c) a young woman was so afraid of being returned to Zimbabwe that she threw herself off a five storey block of flats following the resumption of removals to Zimbabwe in November 2004. She was badly injured;
- (d) a young woman who had failed in the asylum process became destitute. She moved from place to place before eventually being taken in by another asylum seeker in whose home she died;
- (e) a former hunger striker died in November 2005. She had not been well since her release from detention after five months.

Sarah Harland
Coordinator
Zimbabwe Association

October 2006

35. Memorandum from Citizens Advice

INTRODUCTION

1. This paper represents the submission by Citizens Advice to the inquiry by the Joint Committee on Human Rights (JCHR) into the treatment of asylum seekers in the UK, announced on 26 July 2006. Citizens Advice is the national body for the 460 Citizens Advice Bureaux in England, Wales and Northern Ireland.²⁵³ In 2005–06, these bureaux dealt with a total of 5.25 million advice enquiries, including 88,600 relating to immigration, nationality or asylum. Of the latter, we estimate that some 15–20,000 related to asylum.

2. In this submission, we confine our comments to (a) the provision of welfare support and accommodation to asylum seekers by the National Asylum Support Service (NASS); (b) the provision of welfare support and accommodation to some failed asylum seekers only by NASS (and, to an even smaller number, by local authority social services); and (c) the associated destitution and homelessness of a large and, until very recently, rapidly growing number of failed asylum seekers.²⁵⁴

SUPPORT FOR ASYLUM SEEKERS

3. The extremely poor performance of NASS in its early years is, of course, well documented. As the Committee will be aware, in July 2003 an independent review of NASS, established by the then Immigration Minister in March 2003, concluded that NASS had been “set up on a simplistic view of the scale and nature of the job it was being remitted to do”, and “needs urgently to improve its operational performance and standards of customer care, to get better at working with its partners and stakeholders, and much slicker at sorting out basic processing errors”.²⁵⁵ The then Minister’s immediate acceptance of all the review’s key findings and recommendations, and the associated development of a “major programme of work” to improve the performance of NASS, reflected a sea change in the Government’s stated perception of and approach to the NASS system. We are pleased to be able to note that, since 2004, and with the notable exception of the provision of section 4 support to failed asylum seekers (see below), there has been steady and substantial improvement in the accessibility, service delivery and overall performance of NASS.

4. From our perspective, three key factors in this very welcome transformation in the administrative performance of NASS since 2004 have been:

- An expansion and marked strengthening of the organisation’s senior and middle management teams which, in recent years, have included a number of high calibre managers, some of whom have had relevant prior experience (outside IND) of delivering essential public services.
- A new and commendably constructive approach (led by senior managers) to engagement with national-level stakeholders such as Citizens Advice. After an uncertain start, the quarterly National Asylum Support Forum (NASF), established without much enthusiasm by senior IND officials in July 2003, has proved to be an extremely valuable forum for discussing both operational and policy issues.²⁵⁶
- The devolution of many operational casework functions to greatly expanded regional NASS offices. As well as facilitating productive contact between NASS regional officials and local stakeholders (such as CAB advisers), this regionalisation of NASS and the associated local recruitment has undoubtedly helped in changing the inward-looking and stakeholder-averse culture that so deformed the organisation during its early years.

5. The greatly enhanced calibre of the NASS senior and middle management teams, including a willingness to learn vital lessons from the organisation’s previous mistakes, has undoubtedly been a key factor in ensuring that a number of major work projects—such as the transition to new accommodation contracts, and the transfer of some older cases from local authority support to the NASS system (the Interim Scheme Project)—have been successfully completed with relatively little disruption and/or hardship to supported individuals and families. In marked contrast to the early years of NASS, such projects have included: effective prior consultation with and provision of both advance information and feedback to relevant stakeholders; the early establishment of project-specific communication channels (eg dedicated telephone helplines and email inboxes) to deal with the inevitable enquiries and casework problems; and meaningful post-completion evaluation.

²⁵³ CABx in Scotland belong to a separate organisation, Citizens Advice Scotland (CAS).

²⁵⁴ Previously a distinct directorate within the Home Office’s Immigration & Nationality Directorate (IND), in July 2006 NASS was technically dissolved as part of a major re-organisation of IND reflecting the introduction of end-to-end case management and single caseownership of both asylum determination and support functions under the New Asylum Model (NAM). However, for the purpose of simplification, in this submission we continue to refer to NASS.

²⁵⁵ A Review of the Operation of the National Asylum Support Service, July 2003.

²⁵⁶ The NASF will meet for the last time in October 2006. The Home Office IND is in the process of reshaping its arrangements for stakeholder engagement, to reflect the New Asylum Model in particular, and—together with various other IND stakeholder groups—the NASF is likely to be subsumed into a new forum with a wider scope.

6. However, as with nearly all public services, casework errors and communication failures continue to occur. And, given the total dependency of asylum seekers on NASS for meeting their essential needs, the low level of NASS subsistence support, and the resultant inability of NASS-supported individuals to build up any significant financial reserves, the impact of such casework errors and any delay in their resolution can be severe.

7. In the following case, for example, the CAB client—a single woman from Ethiopia—was left without any subsistence support for eight weeks due to an incorrect termination of her support by NASS and subsequent failures of communication both within NASS and between NASS and the client's NASS-contracted accommodation provider.

The client first sought advice and assistance from the CAB on 26 July 2006, after attending the local Post Office as usual to collect her weekly NASS subsistence support only to be told that there was no money for her as her support had been terminated by NASS. The client had, a few weeks previously, been refused asylum by the Home Office but had lodged an appeal against this refusal with the Asylum & Immigration Tribunal (AIT).

On 26 July, the CAB faxed to the NASS Restart, Investigation & Cessation Enquiries (RICE) team a letter challenging the termination of support, enclosing evidence of the client's in-time appeal to the AIT, and requesting urgent re-instatement of the client's support.

On 9 August, not having had any response from NASS, a CAB adviser telephoned the RICE team, only to be told that the CAB's fax had been received "yesterday" (ie 13 days after it was faxed to the RICE team), and would be processed in due course. On 16 August, the CAB received a fax from NASS stating that the RICE team had now instructed the NASS casework team to restart the client's support.

However, on 25 August the client returned to the CAB as she had still not received any subsistence support. A CAB adviser telephoned the RICE team, to be told that NASS was awaiting confirmation from the client's NASS-contracted accommodation provider that she was still living at the same address. Under pressure from the CAB adviser, the RICE team agreed to contact the accommodation provider that day and to send Emergency Support Tokens (ESTs) to the client "next week".

By 1 September, no ESTs having been received, the CAB telephoned the RICE team once more, to be told that the accommodation provider had still not provided the requested confirmation. The CAB therefore telephoned the accommodation provider, and was assured that the confirmation would be provided to NASS by email "as soon as possible". On 6 September, the CAB telephoned the RICE team to enquire as to progress, to be told that the RICE caseworker dealing with the client's case was off sick and that no one else could deal with the matter in his absence. The CAB adviser asked that ESTs be sent to the client in the meantime, but this was refused.

On 7, 8 and 11 September, the CAB made further telephone calls to both the RICE team and the accommodation provider, but by 13 September no ESTs had been received and the client's regular support had still not been re-instated. The CAB therefore telephoned the RICE team once more, to be told that the requested confirmation had now been received from the accommodation provider and that a caseworker would deal with the client's case that day.

Finally, on 15 September 2006, a full eight weeks after the incorrect termination of her support by NASS, the client received the missing subsistence support (in the form of ESTs) and her regular support was re-instated with effect from the following week. Throughout this eight-week period, the client had depended on NASS-supported friends for food and other essential items. Whilst such generosity and humanity is to be applauded, it is clearly unacceptable that vulnerable individuals should have to rely on other, equally vulnerable individuals, to the obvious hardship of all concerned.

8. It should be noted that the above client was dependent upon the West Midlands-based CAB for advice and assistance, as there is no NASS-funded "one stop service" (OSS) outlet in the area—the nearest OSS outlet (run by the Refugee Council) being in Birmingham, some 45 miles away from the client's accommodation. Whilst the overall improvement in the accessibility and service delivery of NASS has of course reduced the overall level of demand for the advice and assistance services of the OSS outlets, in our view the coverage and capacity of the OSS system remains inadequate.

9. At the time of writing, the picture is complicated by the ongoing transition to the New Asylum Model (NAM) processes, under which asylum support functions as well as asylum determination are the responsibility of a single, dedicated caseowner. In general, we welcome and support the development of the NAM, which we believe offers considerable potential for improvement in the timeliness, quality and sustainability of IND decision-making, in the delivery of welfare support to asylum seekers (and failed asylum seekers who are unable to leave the UK), and in the integration of refugees. We have, in particular, welcomed the external recruitment of some NAM caseowners, which we consider to be crucial to ensuring that NAM is more than simply "old wine in new bottles". For, as well as having a catalytic effect on skill levels, to the benefit of all, such external recruitment should help drive the necessary step change in organisational culture and levels of professional commitment.

10. However, given their wide-ranging and clearly demanding role, we have concerns about the likely accessibility of NAM caseowners to CAB advisers and other advisers/representatives. A CAB in the West Midlands, for example, reports being completely unable to get through to the Solihull-based caseowner (to

discuss support-related issues) in each of the three NAM cases with which it has dealt to date. And we have concerns about the seemingly rapid pace of transition to NAM and the resultant incomplete preparation and prior training of staff. For example, the same CAB in the West Midlands reports getting through to a member of the Solihull NAM team (not the caseowner) to discuss the incorrect termination of one of its client's subsistence support, only to be told: "we do not know how to do re-instatements [of support] yet, as we have not been trained on that".

11. We recognise that the transition to NAM is a major work project that poses considerable challenges both to senior IND managers and to casework level staff. Accordingly, we hope very much that the above issues will prove to be "teething" problems that will resolve as the NAM processes bed down and the training and induction of staff is completed. At this stage, it is simply too early to make a meaningful assessment of NAM, but we remain hopeful that its full implementation will bring about yet further improvement in the delivery of welfare support to asylum seekers.

SUPPORT FOR FAILED ASYLUM SEEKERS

12. As the Committee will be aware, in June 2006 we published a report, *Shaming destitution: NASS section 4 support for failed asylum seekers who are temporarily unable to leave the UK*. This noted that, since 2003, there has been a 15-fold increase in the number of failed asylum seekers applying for and being granted section 4 support. Somewhat uncharacteristically—in terms of recent performance, at least—the NASS senior management team failed to respond adequately to this increase and, during 2005, inordinate delay and error in the processing of applications and the delivery of section 4 support became commonplace.

13. *Shaming destitution* acknowledged that, from late 2005 onwards, senior NASS managers began to take action to improve the performance of the centralised section 4 team, and we are pleased to be able to note here that there has been steady improvement throughout 2006. However, the number of individuals on section 4 support has continued to increase—to some 6,500, plus some 1,000 dependants, as of late July 2006. And it is deeply disappointing that, as of late July, the average turnaround time for the 50% of section 4 applications not designated as "Priority A" was still 15 working days—ie 10 days longer than NASS's own target of a maximum of five working days.²⁵⁷

14. At the same time, *Shaming destitution* noted that the section 4 support regime has evolved into one very different to that conceived by Ministers in 1999 and 2000. Intended as a short-term and discretionary support system for a very small number of "hard" cases, it is now a relatively large-scale and largely long-term regime with statutory qualification criteria. As well as calling for the section 4 support levels and entitlements (such as access to NHS care) to mirror those of mainstream (section 95) support for asylum seekers, the report suggested that, under the New Asylum Model, it should be the responsibility of the caseowner to identify, in advance, those failed asylum seekers who require ongoing support. In other words, for those failed asylum seekers who cannot leave the UK for (temporary) reasons beyond their control, the transition from mainstream (section 95) support to section 4 support should be both automatic and seamless. And such support should continue until such time as the individual is removed or makes a voluntary departure from the UK.

15. In this context, *Shaming destitution* further suggested the Government needs to do much more to encourage, incentivise and assist failed asylum seekers to opt for voluntary assisted departure, which is both more effective and considerably cheaper than enforced removal. In particular, the report recommended permanent enhancement of the package of reintegration assistance available from the International Organisation for Migration (OIM) under the VARRP programme of voluntary assisted returns. During 2006, the Home Office and IOM have operated a Pilot Enhanced Returns Scheme, under which returnees receive reintegration assistance up to the value of £3,000—three times the usual package of £1,000. Since the publication of *Shaming destitution*, the Home Office has stated that, in the first six months of 2006, there were "4,940 VARRP applications, which produced 3,276 departures. During the same period in 2005 there were 1,446 VARRP departures, which equates to a 127% increase in performance. It is likely that around 25% of the increase in performance is attributable to improvements in the volumes and nature of marketing and promotion of [assisted voluntary return], 75% of the increase is thought to be due to the availability of the [enhanced] package of reintegration assistance".²⁵⁸

16. This is not to suggest that failed asylum seekers who are unable to leave the UK, for reasons beyond their control, should remain on section 4 support indefinitely (or, indeed, for any substantial period). On the contrary, *Shaming destitution* suggested that, where it is clear that it is not going to be possible for a failed asylum seeker to leave the UK—voluntarily or otherwise—for some considerable time to come, he or she should be granted some form of leave to remain in the UK (with a right to work and so support him- or herself).

²⁵⁷ Source: NASS management information given to members of the NASF at its quarterly meeting on 27 July 2006. Priority A cases are those where the applicant is street homeless and/or heavily pregnant or with serious health problems, or has children. As of late July 2006, NASS claimed to be meeting the five-day turnaround target in respect of the 50% of applications so designated.

²⁵⁸ Undated Home Office IND briefing note, provided to stakeholders at the 3 August 2006 meeting of the IND Asylum Processes Stakeholder Group.

17. We are firmly of the belief that implementation of these recommendations would result in significant financial gains to the Home Office IND, and so to the taxpayer. More importantly, from our perspective, the management of “claimants and their cases right through to integration or removal” under the New Asylum Model (as intended by the Home Office), and the provision of support and accommodation to those who cannot leave the UK for temporary reasons beyond their control until such time as they are able to leave the UK, voluntarily or otherwise, as recommended by Citizens Advice and others, would ensure that failed asylum seekers are no longer left in legal limbo, facing homelessness and destitution unless they are to engage in illegal employment (to the benefit of rogue employers) and/or criminal activity.

18. In recent years, Citizens Advice Bureaux have reported being approached by, and attempting to assist, a growing number of such individuals. In some cases, the CAB may be able to advise on and assist with an application to NASS for section 4 support. Alternatively, where the individual concerned has evident community care or mental health needs, the CAB may be able to assist with a claim to social services. However, in a great many cases the individual does not obviously meet the narrow qualification criteria for either NASS section 4 support or social services support. In such cases, there is depressingly little that a CAB can do, other than to try and ensure that the individual accesses such charitable support as may be available locally. For example:

Gateshead CAB reports being approached in July 2006 by a young failed asylum seeker from Azerbaijan. Homeless and destitute, the client had spent three of the previous five nights in police cells, and the other two sleeping rough in a local park. In August 2006, the same bureau was approached by a single Congolese woman with a two-year-old child, whose NASS support and accommodation had been terminated some weeks previously following the final refusal of her asylum claim. The client had left her child with a NASS-supported friend, but had no accommodation herself and was sleeping rough. The local NASS-funded “one stop service” had advised (but not assisted) her to make a claim to social services, but this had been denied. The bureau reports the client being “very distressed”.

Oldham CAB reports being approached in June 2006 by an Iraqi Kurdish man whose NASS section 4 support had recently been terminated on the grounds that he could return to the Kurdish region of Iraq; believing that it was still unsafe for him to return to any part of Iraq, the client had appealed unsuccessfully to the Asylum Support Adjudicators, and was now homeless and destitute. In August 2006 Hull CAB reported dealing with two cases of female failed asylum seekers from Congo, both homeless and destitute and relying on a local church group for donations of food. And, in the same month, both Swindon CAB and Stoke-on-Trent CAB reported being approached by a number of Iraqi men who are unwilling to sign up for voluntary assisted return to Iraq and who, unable to seek NASS section 4 support as a result, are homeless and destitute.

Destitution and homelessness of failed asylum seekers

19. Such homelessness and destitution of failed asylum seekers is not a new phenomenon. On the contrary, for much of the past 20 years or more, most failed asylum seekers have been left in legal limbo, without access to welfare support and other essential services (such as health care) yet with no great likelihood of either enforced removal or voluntary assisted departure from the UK. What has changed is the scale of such destitution, and this is for three reasons:

- the substantial increase in the number of new asylum claims since the late 1980s;
- an equally substantial fall in the proportion of claimants granted asylum or some other status since that time; and
- the relatively low number of enforced removals and voluntary assisted departures of failed asylum seekers throughout all but the last few years of this 20-year period.

20. From about 4,000 claims per year during 1985–88, the number of asylum claims rose significantly during 1989–91 before falling back slightly in 1992 and 1993. It then increased substantially in both 1994 and 1995, and then—after falling back in 1996—rose steadily each year from 1997 to 2000, when it reached 80,315. In 2002, it peaked at 84,130—some 21 times the number of claims in 1988 (3,998).

21. Over much the same period, the proportion of claimants granted asylum or some other status (such as, formerly, exceptional leave to remain and, currently, humanitarian protection or discretionary leave) fell substantially. In the three-year period 1988–90, for example, no less than 85% of all Home Office initial decisions were to grant asylum or exceptional leave to remain (ELR), with the result that a total of only 2,091 claimants (not including dependants) were refused asylum in those three years—and, of these, a (small) proportion will have gone to win an appeal or other legal challenge.

22. However, from 1991 onwards the refusal rate rose substantially, and since 1994 it has remained high, at about 75–80%. In 2003, the refusal rate was 83%, and in 2004 it was 88%. As a result, over the three-year period 2002–04, for example, a total of 149,520 claimants (not including dependants) were refused asylum—some 71 times the number in the period 1988–90. And, although the number and proportion of appeals allowed by the IAA/AIT has increased—from about 4% in the mid-1990s to some 20% in recent years—the fact remains that, since 1993, when universal appeal rights were first introduced, most appeals against a refusal of asylum have been unsuccessful.

23. Furthermore, for much of the last 20 years the number of failed asylum seekers leaving the UK, through either enforced removal or voluntary departure, remained relatively insignificant. In 1994, when there were 16,500 initial refusals of asylum by the Home Office, there were only 2,219 enforced removals and voluntary departures—a (somewhat crude) “departure rate” of about one in seven. By 2001, the number of removals and voluntary departures had risen four-fold to 9,285 but, as there were 92,420 refusals of asylum in that year, the “departure rate” had actually worsened, to just one in ten. It is only since 2003—and the steady decline in the number of new asylum claims—that the “departure rate” has reached significant levels (in 2005, it was up to more than one in two). But by then, of course, the Home Office was faced with a massive (albeit officially unannounced) removals backlog established over the previous 15 years or more.

24. For the combined effect of the above factors—the rise in the number of asylum claims over a period of some 20 years, the fall in the proportion of claimants granted asylum or some other status (including after appeal) over the same period, and the low and mostly stagnant “departure rate” of those refused asylum—has been to increase the number of failed asylum seekers in the UK by some 250,000 since 1997, and by some 310,000 since 1993. And these (admittedly somewhat crude) estimates do not include dependants.²⁵⁹

25. Clearly, of the estimated 310,000 failed asylum seekers (plus dependants) who have not been forcibly removed or recorded as having made a voluntary departure since 1993, a number will have voluntarily left the UK without notifying the authorities, others will have eventually obtained some form of temporary or permanent leave to remain in the UK (perhaps following a further legal challenge), and some will have died. It is unlikely that anyone will ever be able to establish just how many have actually done so, but it seems reasonable to us to conclude that most of the 310,000 (and their dependants) remain in the UK.

26. Of those that do remain in the UK, there can be little doubt that many are now in employment—which of course means that they are working illegally. In many cases, this will be with the complicity of their (frequently exploitative) employer. Anecdotal evidence from CAB advisers and others suggest that such employment is often extremely low paid: Oldham CAB reports failed asylum seekers working for as little as £1 per hour in local restaurants. It is in no one’s interest that rogue employers are thus able to boost their profits and undercut more scrupulous employers (not least by the non-payment of tax and National Insurance).

27. However, some failed asylum seekers are unable to secure such employment, and others are unfit to work on account of their age or poor health. Indeed, anecdotal evidence from CAB advisers and others suggests that a significant proportion of failed asylum seekers have mental health needs.

28. As one local authority has noted, this “raises legal and financial issues for local authorities” —who must deal with claims for support from individuals who are destitute and have community care or mental health needs, including pregnant women and older people—and “some authorities report spending over £1 million per year on providing services [to people from abroad who are subject to immigration control and have no access to public funds, including failed asylum seekers]”.²⁶⁰ And, as the same local authority notes, “specialist knowledge is needed to respond to the demand for services from [such individuals], who may present through a variety of channels”, not least because a “failure to provide services, where there is entitlement, could result in judicial review and claims for damages”.²⁶¹

29. There is also, as noted in *Shaming destitution*, a significant impact on the NHS, with failed asylum seekers who are unable to access free secondary and even primary care attending already overstretched A&E departments in relation to health issues that would normally be addressed by, for example, a GP. And we are deeply concerned by the risks posed to pregnant women, unborn children, new mothers, and babies by the policy and practice of imposing financial charges even for “immediately necessary treatment” such as essential maternity care.

30. However, given the much-circumscribed duties of local authorities, NHS Trusts and other statutory bodies in this area, the steady growth in the number of destitute failed asylum seekers has arguably impacted more on voluntary and faith sector groups and agencies, including Citizens Advice Bureaux. In towns and cities throughout the UK, this disparate collection of groups and agencies—some newly established in direct response to the evident needs of destitute failed asylum seekers and their dependants—now provides a range of skeleton support services, including: free soup kitchens and basic food parcels; free or cheap hot meals; social drop-ins; free legal advice and assistance with, for example, applying for NASS section 4 support or

²⁵⁹ The estimates of 250,000 and 310,000 failed asylum seekers are obtained by summing the number of initial Home Office refusals of asylum over the relevant period and then subtracting (a) the number of successful appeals to the IAA/AIT and (b) the number of enforced removals and voluntary departures. All base figures are taken from Home Office statistical bulletins, and relate to principal asylum claimants only (ie they do not include dependants).

²⁶⁰ In general, local authorities have no duty or power to provide for failed asylum seekers. However, Social Services authorities do have duties to carry out assessments of need under community care legislation and, where children are involved, under child protection legislation.

²⁶¹ *Destitute People from Abroad without Access to Public Funds (PWAFF): Establishing a local authority advice network*, LB Islington, 2006.

seeking support from local authority social services; donations of second-hand clothing and footwear; overnight accommodation; purchase of tickets for essential travel on public transport; and small cash donations.²⁶²

31. However, such provision by the voluntary and faith sectors is, of course, both limited in its nature and highly variable in its coverage and extent. In Stoke-on-Trent, for example, where the local CAB estimates there are currently living some 300 unsupported failed asylum seekers, the only such provision (other than the legal advice and assistance provided by the CAB) is a free hot meal offered on just one day a week (Thursdays) by a local church group.

CONCLUDING REMARKS

32. To our mind, it is simply unacceptable that Government policy and practice tolerates such homelessness and destitution, the resultant risk to the well-being of the men, women and children concerned, and the associated detriment to social cohesion and public policy more generally. That the New Asylum Model aims to reduce and perhaps even eliminate the future incidence of such destitution, by “aligning [negative] decision making and removal [or voluntary departure]”, is to be warmly welcomed, but it remains to be seen whether this laudable aim will be achieved to any significant degree.²⁶³ And implementation of the New Asylum Model will do nothing to reduce the existing population of destitute failed asylum seekers—which, as noted above, is sizeable.

33. In its review of IND published in July 2006, the Home Office set itself an objective to “deal with the legacy of older cases that have yet to be fully resolved . . . within five years or less”. In Parliament, the Home Secretary suggested that this “legacy” could amount to some 400-450,000 cases (though, as will be clear from the estimates we use above, we consider this to be an overestimate—unless, that is, it includes dependants).²⁶⁴ How this will be achieved has yet to be explained, though the IND review hints that some, at least, “may be granted leave”. Given the current rates of removal and voluntary departure, we believe that the number granted leave will in fact need to be substantial if this self-imposed objective is to be met. And that is perhaps less an administrative challenge than a political one.

Richard Dunstan
Social Policy Officer
Citizens Advice

September 2006

36. Memorandum from Medical Justice

I am writing on behalf on the Medical Justice Network to provide evidence to assist with your investigation in the treatment of asylum seekers in the UK.

The Medical Justice Network is a voluntary sector organization which provides medical and legal support for people detained in Home Office removal centres, who suffer from medical problems which are not being adequately managed by Home Office staff, their agents or contractors. MJ campaigns for appropriate and adequate medical treatment in detention, proper reporting of allegations of torture and removal from detention of those, whose health or medical history suggests that detention would cause serious harm. We are pressing the Home office for proper governance of medical care in detention and adequate public scrutiny of those governance arrangements.

Members of Medical Justice have gained substantial experience from their frequent visits and contact with both detainees and detention centre staff. Our medical and legal members would be grateful for the opportunity to present verbal evidence to the Committee, as would some of our members who were formerly detainees.

The areas where we can be most helpful are as follows:

- (ii) the provision of healthcare;
- (iii) treatment of children; and
- (iv) the use of detention and conditions of detention and methods of removal of failed asylum seekers

Asylum procedures and the determination of claims insofar as they directly affect the treatment of asylum seekers.

²⁶² For detailed descriptions of this support work see, for example: *Destitute and desperate: a report on the numbers of “failed” asylum seekers in Newcastle upon Tyne and the services available to them*, Open Door (North East), April 2006; *Filling the Gaps: Services for Refugees and Asylum Seekers in Derby*, Refugee Action/Refugee Housing Association, January 2006; and *A report of destitution in the asylum system in Leicester*, Leicester Refugee and Asylum Seekers’ Voluntary Sector Forum, June 2005.

²⁶³ Introduction to *The Government Reply to the Fifth Report from the Home Affairs Committee Session 2005–06 HC 775: Immigration Control*, Home Office, September 2006, Cm 6910.

²⁶⁴ Fair, effective, transparent and trusted, Home Office, July 2006; and Hansard, House of Commons, 19 July 2006, col 323.

THE PROVISION OF HEALTHCARE

Inadequate healthcare provision may breach ECHR rights to respect for private life and physical integrity (Article 8), freedom from inhuman and degrading treatment (Article 3), the right to life (Article 2) and to freedom from discrimination (Article 14). It may also raise issues under Article 12 ICESCR, right to adequate health, taken together with the right to freedom from discrimination in the exercise of Covenant rights in Article 2.2 ICESCR. Regulations introduced in April 2004 to make people not lawfully resident in the UK liable for NHS hospital charges are said to have particularly affected failed asylum seekers. Department of Health proposals to exclude overseas visitors from eligibility for free NHS Primary Medical Services would, if implemented, effectively withdraw most free health care from failed asylum seekers.

TREATMENT OF CHILDREN

Children of asylum seekers are potentially subject to a number of breaches of their human rights and in the past the JCHR has criticised the reservation entered by the Government to Article 22 of the UN Convention on the Rights of the Child (CRC) which secures the applicable rights of the Convention to children seeking refugee status, whether accompanied or unaccompanied. In this inquiry the Committee would welcome evidence on human rights problems faced by asylum-seeking children, including in relation to education.

USE OF DETENTION AND CONDITIONS OF DETENTION AND METHODS OF REMOVAL OF FAILED ASYLUM SEEKERS

Detention of failed asylum seekers pending deportation is lawful under Article 5 ECHR unless it can be shown to be arbitrary, or to amount to unjustified discriminatory treatment under Article 14 ECHR, but concerns have been expressed that use of detention for certain categories of asylum seekers is in practice arbitrary and can therefore be considered to breach the right to liberty. There are also concerns that asylum seekers who have been subject to torture in their countries of origin are being detained, contrary to Home Office guidelines, and that some asylum seekers are being detained in prison, and not immigration removal centres, even though this practice has in theory been discontinued. Treatment of asylum seekers in detention will engage the State's positive obligations to protect a range of Convention rights. Criticisms of the methods used to remove failed asylum seekers have included suggestions that families and other vulnerable groups are being targeted and that unnecessarily heavy handed methods are used.

We have been particularly concerned about the following issues and have raised these issues with many organisations including the Home Office, the Healthcare Commission, the National Patients' Safety Agency and the private contractors who provide services. It is a rule of the contractors that they will provide no information whatever about any aspect of the services.

1. *Harm caused by inappropriate re-feeding regimes for people in detention who have been on hunger strike*

This matter is now subject of work being taken forward by the Prison Healthcare Policy Unit at the Department of Health and we are attempting to establish a dialogue and provide advice to Dr Mary Piper who is leading on this work.

2. *Malaria prophylaxis for people in detention who are at risk of deportation*

The Home Office claims that malaria prophylaxis is being offered to vulnerable persons (especially pregnant women and young children) who are returning to high risk areas. We have been informed that further guidance is being worked up on this issue in conjunction with the Health Protection Agency's Advisory Committee on Malaria Prevention. However, MJ doctors are very concerned about the considerable risks posed to children and pregnant women who have no or little immunity and are at great risk serious illness or death if they are sent to a malarial area without appropriate prophylaxis or bed net protection. There is evidence from MJ doctors that many people are being removed from the UK without adequate protection. Some of our patients have become seriously ill; it is possible that others may have died or will do so as a direct result.

3. *Recognition of persons who fit criteria as "not fit to be detained/removed from UK" by reason of medical or psychiatric illness*

Although the Home Office claims that fitness to detain and/or remove from the UK, is taken into account at key stages in the process, we have substantial evidence from doctors and detainees, that medical assessment, adequate recording of clinical data, action on serious clinical conditions and maintenance of adequate medical notes are all major problems in detention centres. Systems in detention centres consistently fail to achieve the basic standards that are normal in the NHS.

This is a great deal of research evidence regarding the toxic effects of detention itself on mental health and both detainees and MJ doctors can attest to the harm to health by caused by detention—especially of torture survivors and the medically and psychiatrically ill. We have evidence in the form of case histories and statistics for approximately 50 statements about torture and organic medical care. Please also see our letter to BMJ which describes 57 cases (<http://bmj.bmjournals.com/cgi/eletters/332/7536/251#138925>).

MJ is also concerned, that due to failures of communication between Home Office Directorates and between Directorates and their contractors that there is a failure of detaining authorities to receive or respond appropriately to medical information when this is received. The following three examples illustrate this point:

- Issuance of removal directions by the Home Office immediately after being informed by a detention centre doctor that a detainee was unfit to be detained and unfit to be removed.
- Failure of detaining authority (usually MODCU) to take any meaningful action with regard to such cases.
- Attempts to re-detain asylum seekers shortly after their release to receive medical care (granted to access medical care not provided in detention).

4. *Recognition of persons showing evidence of a history of torture*

Although independent evidence of torture should be a key factor that weighs heavily against detention the systems in place for ensuring that information about such evidence is communicated to caseworkers and those managing a person's detention consistently breaks down. The detention centres' system for recording statements of torture often fails to identify such people and reports of such allegations fail to be referred to MODCU. This is either because the person (1) is not asked if they have been tortured, (2) makes an allegation but it is not recorded, (3) the allegation is recorded but the allegation is not passed onto MODCU.

Independent Doctors MJ doctors have recorded the following data in relation to the failure of IND to implement its own policy on the detention of people who allege torture and people with serious medical and psychiatric conditions:

- Failure by officer authorising detention to discover, consider, record or act on medical information which should be recorded on IR91 form.
- HMIP report into Yarl's Wood visit on 13–16/2/2006: Progress report, item 2.30 and Recommendation item 3.4.
- IR91 of asthmatic patient CBN (user of inhaler) for whom this information was not recorded. See case CBN.
- Six patients who stated to detaining officers that they were taking medicines prescribed for them for serious medical conditions (4 HIV+ on anti-retrovirals, one severe hypertensive on blood pressure tablets). They were not permitted to collect the medications and were deprived of them for extended periods. See cases ABC.
- Detention of a person referred to and accepted by the Medical Foundation in violation of Home Office procedures.

MJ consider that many of these problems are caused by very poor contract compliance due to poor enforcement by the IND. Failure of detention centre clinicians to record statements by patients which are relevant to their health or detention status, to adequately examine them or to transmit such information to responsible authorities. Failure of contract monitoring to detect, act effectively about, or prevent such events. The following cases illustrate this point:

- Rule 35 at Oakington (revealed at the case of D&K—contractor has forbidden clinical staff to evaluate detainees' claims of torture).
- Torture reports by patients at long admission clerking inaccurately recorded:
 - (a) Two cases where the box is neither ticked yes nor no.
 - (b) Two cases where the box is ticked no, but the detainee states has no recollection of the question being asked, has stated to independent doctor that they were tortured and would have said so during the clerking had they received such a question, and in whom physical examination revealed evidence consistent with a history of torture.
 - (c) Two patients who have a clear recollection of having been asked the question and replied in the affirmative, where the answer is recorded as "no".
- Failure of detention centre clinicians to adequately examine patients or draw reasonable inferences:
 - (a) A man whose fingernails were removed from both hands (3R, 2L) with partial and deformed nail regrowth, whose torture question was recorded as "no".
 - (b) A man with 10 lesions typical of cigarette burn, recorded first as "no torture", then as "shrapnel wounds".

- Failure of reporting system to reliably transmit relevant medical information to responsible detaining authorities:
 - (a) 3 month delay before receipt of notification of torture claim form by MODCU (2 cases).
 - (b) Numerous cases where medical evidence which had never previously been considered eventually resulted in a grant of bail, temporary admission or leave to remain.

MJ believes that arrangements for effective governance of the implementation of the Rules, Manual and Standards in relation to torture survivors and people with serious medical and psychiatric conditions are essential. The following measures are required:

- (a) All reports of medically relevant information to detaining authorities should be recorded and acknowledged. This system may have been previously agreed but is not happening at 3 DCs visited by Independent Doctors.
- (b) Detainees should be given a copy of their torture allegation report and—when it arrives—acknowledgement by detaining authorities eg MODCU.
- (c) Process of reporting and outcomes should be audited by independent body.
- (d) Contractors managing detention centres should be informed that the reporting of torture is mandatory and that appropriate rewards for success and punishments for failure will result.

5. *Protection of medical confidentiality for hospitalised detainees and during outpatient care*

Although the Home Office claim that the usual arrangements for protecting patient and medical confidentiality in the NHS apply in fact medical consultations at hospitals are frequently carried out in the presence of security guards and patients are often handcuffed. Doctors often need to be very assertive to ensure that handcuffs are removed during consultation. Guards often have greater access to the patient's medical notes than the patient or medical centre staff. Access for detainees to their own patient's notes is in our experience often denied or they are asked to pay a fee which is beyond their means because they are destitute.

6. *Transfer of detainees—medical unsuitability for handcuffing*

The Home Claim that detainees are only handcuffed while under escort on the basis of a risk assessment of both the detainee and their location and that medical concerns are fed into the assessment. This is often not the case. There is consistent evidence of inappropriate handcuffing and “handling” of detainees. The handcuffing of children is permitted by Home Office rules and MJ can provide a copy of these rules (Memorandum of Understanding) for the detention centre at Yarl's Wood.

7. *Further Evidence to Support Claims Made by MJ*

MJ believes that institutional medical abuse is a “normal” component of service provision for detained refugees without status. We have case histories and statistics for all of the following statements about the “care” of refugees during, within and after detention. In many cases, our findings are supported by detention centre medical notes. In all cited cases, we have explicit written permission from patients or their parents to reveal otherwise confidential medical information, or have suitably anonymised the data.

CHILDREN: RECURRENT VIOLATION OF LAW AND MEDICAL ETHICS

1. Drugging of a child by escort during failed removal attempt using medicine not licensed for paediatric use.
2. Compelling two children to witness violence against their father during removal at the airport.
3. Prolonged (1/12) detention of two children although their father could not be removed for medical reasons, released without reason or accommodation.
4. Detention of two children without their father, who was moved to another detention centre.
5. Written undertaking between detention centre and local health services that handcuffing of children on transfer to or maintenance in hospital shall be at the decision of a detention centre manager.

TORTURE: ROUTINE FAILURE TO OBEY DETENTION CENTRE RULE 35

1. Detention of torture survivors (in many cases, as subsequently accepted by the courts on the basis of previously unavailable medico-legal reports).
2. Failure to consider possibility of torture in decision to detain.
3. Failure by detention centre clinicians to document blatant evidence of torture.
4. Failure by IND to monitor performance of that contractual obligation.
5. Failure of Enforcement to act upon reports of torture.

MEDICAL ILLNESS: ROUTINE FAILURE TO OBEY DETENTION CENTRE RULE 35

1. Refusal to permit collection of essential medicines on detention.
2. Failure to diagnose or accept presence of severe illness by detention centre clinicians by conducting an adequate history and examination and/or obtaining patient's previous medical notes.
3. Failure to treat or refer for necessary secondary serious illness during detention.
4. Harmful attempts by enforcement to re-detain detainees who have been released on medical grounds.
5. Failure of detention centre clinicians to liaise with NHS primary care on release.

PSYCHIATRIC ILLNESS: FAILURE OF DETENTION CENTRE STAFF AND EXTERNAL PSYCHIATRISTS UNDER CONTRACT TO DIAGNOSE FLORID PSYCHIATRIC ILLNESS

1. Attempts by IND to remove floridly psychotic patients from the UK.
2. Traumatization by experiences of detention, very frequently resulting in serious depression, self harm and suicide attempts.

The attached statement by Mr XXX²⁶⁵ illustrates and encapsulates many of the issues raised above. Secondly the attached information about Ms YYY²⁶⁶ illustrates the failure of the Home Office and Social Service to recognise the corrosive nature of the asylum system on the mental health of people who have sought asylum.

APPENDIX

MY ORDEAL IN UNLAWFUL IMMIGRATION DETENTION

The immigration and nationality directorate detained me on the 29 December 2005. Before my detention an immigration officer from the Croydon Enforcement Unit, named Mr Emmanuel Okonji, interviewed me. This interview took place at the Lewisham police station at about 8.00 pm. I told the officer that I suffered from sickle cell anaemia and as was clear to see, I had a disability that causes me constant, considerable pain. I pleaded with him not to detain me because detention would adversely affect my health. I pledged to comply with any restrictions placed on me, and accept any alternative to detention, but it was all to no avail. The immigration officer considered detention as the first and only option in dealing with my case, and he vehemently ignored all my pleas. Now from a more informed point of view, it takes all my powers of restraint not to curse Mr Okonji, as he deliberately acted in error, and violated the IND's own published public policy on detention, which stipulates that people in my condition of health are "considered unsuitable for detention". This deliberate and criminal negligence of duty by Mr Okonji rendered my detention unlawful, and therefore a breach of my fundamental human rights under article 5 of the ECHR.

On authorising my detention, the officer should have—in accordance with IND detention policy, and refugee convention rules—immediately arranged a medical examination, within 24 hours, especially as I had verbally informed him of the condition of my health, and disability. But once again Mr Okonji erred in that regard, as I was not seen by a doctor until the 31 of December, two days later. Further breaching my rights under article 25(1) of the UDHR. I would like to say here that had the immigration officer been competent or human enough to use his discretion, and employ other alternatives available to him, he would have saved me the six months of hell that befell me at the hands of the IND, and the four detention centres I encountered during the traumatising ordeal of detention.

²⁶⁵ Appendix.

²⁶⁶ Ev not printed.

DOVER, 1 JANUARY TO 20 FEBRUARY 2006

I was moved to HMIRC Dover on the morning of the 1 January. On arrival, and reception I once again told the nurse who interviewed me of my health conditions, and that I was already experiencing more pains in my joints than was normal, I pointed out that this was always a symptom of an impending crisis, and begged her to arrange an appointment for me to see the doctor immediately, but she told me I would have to wait till the next day like all the other new detainees. I was put in a room with a chain smoker, despite the fact that I clearly marked “non smoker” in the reception form. The Cells were four by eight foot spaces, with only a single window that one could not open because of the winter cold. Despite several complaints, I remained in the smoke filled room for six days before I was moved to an individual cell. By this time I was already suffering my second crisis. In the height of winter, these cells had single glazed windows, and were heated by a single seven inch diameter pipe, that ran across the rear end of the cell. This is a pathetic excuse for heating to say the least, and it is simply wicked to keep human beings in such deplorable conditions. The cold I was exposed to, caused a rapid deterioration of my health, and within the first week I had suffered two severe crises, accompanied by painful joint swellings, and inflammation. The pain became so bad that I was reduced to tears, and suffered chronic insomnia. I became highly dependent on addictive painkillers, and many times I overdosed on these painkillers so as to induce drug fuelled stupors and unconsciousness, which became my only escape from the excruciating pain, and despair. Over the weeks that followed, I began to experience side effects of these medications, and I developed a fear that I would never leave Dover alive. That was the beginning of other even worse treatments that I was to encounter. Above all, this centre had no disabled accessible facilities, and in all my seven weeks stay, I could not have a bath, and (I am unable to use a shower). Detaining me in such a centre denied me of my rights under the equal opportunities act, and discriminated against me (on the basis of my immigration status), in the enjoyment of my rights to equal protection by the law. Hence violating my rights under article 14 of the ECHR, and article 7 of the UDHR.

Detaining me in such deplorably harsh conditions constitutes a violation of the prohibition of torture, cruel, inhuman, and degrading treatment, as enshrined in article 3 of the ECHR, and article 5 of the UDHR. I believe I have the right to declare here that the Dover immigration removal centre is unfit for human beings and should be immediately closed down.

May I add, that I repeatedly begged the doctor at Dover healthcare to write to the immigration service and certify that I was unfit for detention, (especially after he had to keep increasing the dosage for painkillers) but he refused, saying it was against immigration rules. When I asked that he give me a medical report of my condition, to take to court for a bail hearing, he refused. When I asked that he provide me with my medical records he refused saying he would only release it to a solicitor. I argued that since I had no solicitor, I had the right to personally collect my medical notes but he said that was “impossible”. This recalcitrant and unethical attitude of the doctor was the norm in all detention centres in which I stayed.

DONCASTER, 21 FEBRUARY TO 26 MARCH 2006

I was transferred to HMP Lindholme, Doncaster to be further interviewed by the caseworkers at the Leeds office of the IND. My ordeal at Dover had so reduced my well being that I arrived there still in constant pain, and already addicted to painkillers. I had not had a bath in over eight weeks of detention and there was no end in sight as this centre also lacked disabled accessible facilities. By this time my joints had become so stiff from constant swelling that I could no longer bend over to put on my own stockings. I continued to write the IND pleading for my release on temporary admission, and informing them of my deteriorating health, but still they refused. Finally, matters came to a head on Saturday 11 March, 2006, when I suffered a complete breakdown, because the painkillers were no longer helping due to its abuse. The nurse and manager refused to call an ambulance, until fellow detainees started threatening violent action, because they saw my intense suffering. The pain paralysed me in bed, and I was in tears for the three hours it took for the manager to comply with the threats of the detainees, and call an ambulance. I was admitted to the Royal Doncaster Infirmary for four days until 14 March, when I was discharged. Upon discharge, immediately I was shackled to a guard, and escorted to a waiting prison van, to be returned to detention. All this time I was thinking, and trying to remember if I had lost any part of my memory—I could remember no trial and conviction. I couldn't remember committing any crime, for which I deserved this kind of treatment. I must add here that throughout my hospitalisation, two guards witnessed every medical examination, and treatment carried out by the doctors and other staff. I ate, slept, and carried out other private actions in the full glare of male and female guards, denying me my rights to privacy under article 12 of the UDHR.

When I was returned to the centre, I found my property left in my room missing. My clothes, shoes, personal effects, and all immigration correspondence had mysteriously disappeared. I complained to the management, but they could not locate any of the missing items, neither did they tell me the name of the officer who was on duty when my property went missing. I was only told that the cleaners cleaned out my room, and accidentally threw away all my property because they thought, “you weren't coming back”. I find this claim incredible; surely immigration had no such ideas, so why should the centre? I was promised “adequate compensation” if I did not pursue the claims any further, but I have yet to receive any payment (another breach of my rights not to be denied my property, and in the case of any violation, my right to an effective remedy).

Two weeks after my discharge I suffered a relapse, and this time also, the night manager vehemently refused to call an ambulance, his excuse being “it was too expensive for immigration to maintain 24 hour guards at the hospital”. My cell mates got into an argument with the manager, and the manager produced a baton, and threatened to beat Mr A (my room mate). This only aggravated the situation as Mr A called his bluff, and the argument degenerated into a protest as other detainees joined in, and before the officers could calm the situation it had become an out of control, semi-violent unrest, and they were forced to barricade themselves in my room. After a while, I called my room mate Mr A, and pacified him, and he in turn pacified and managed to disband the mob that had gathered outside, and they allowed the officers to leave the wing unharmed. I endured the night as I had managed so many times before, in the hope that the day manager would have more sense and humanity and get me to a hospital. But I was surprised when he made it his first and only priority to get immigration to transfer me “out of his centre”. So it was that I had no medical attention throughout the Sunday the 26 March. Instead I was bundled into a prison van at 7.00 pm, and driven down to Colnbrook IRC, London. En-route, the van stopped over to pick up another detainee. I was subjected to five gruelling hours, in the back of a prison van, in the middle of a sickle cell crisis, without any medication, or medical attention. Bestial and barbaric are truly understatement, for this malevolent violation of my right, “to be treated with humanity, and with respect for the inherent dignity of the human person” as enshrined in the Universal Declaration of Human Rights.

HARMANDSWORTH, LONDON 7 APRIL TO 1 MAY 2006

This centre must be the single most evil establishment after Guantanamo Bay, Cuba. It is the UK’s very own version of the 20th century concentration camp, *Auschwitz*. Little wonder it was here I witnessed a fellow human beings despair culminating in a suicide attempt. The first of many to come. Here I suspect because of the high rates of suicides, the medical personnel refused to issue any prescription medication to detainees. So they issued a timetable for medication. I had to climb two flights of stairs to get medication despite my complaints about my disability on stairs. This meant that I could only obtain medication during working hours, and none during the night, which was when I suffered most. The regime was so strict and uncompromising that if I overslept past 8.00 am; I had to wait till 12.00 noon, to get any form of medication. The staff were so blatantly; racially abusive that it beat any civilised imagination. I must admit that my time in this centre was the lowest in point of my existence, and I actively contemplated suicide during my numerous sleepless nights, especially after witnessing other attempts by more desperate detainees. Once again the methods of healthcare continued to violate my rights to proper medical treatment. I should add that I continued to request my medical records and reports and I continued to meet a brick wall of refusals, just as I had in Dover and Doncaster before.

COLNBROOK IRC, LONDON, 1 MAY TO 30 JUNE 2006

This centre is nicknamed the “suicide centre” by detainees as it has a record in the number of attempted suicides. This is natural when you consider that it houses detainees who have been in detention for as long as five years. Indeed I was regarded as a “baby in detention” when I complained that I had been in detention for over four months. My ordeal continued here, as I carried on struggling through each day of pain and despair. By this time my mind was no more than a blur of pain, despair, and drug addiction. I was breathing secondary smoke all day long and I had long lost my appetite. It was here that I was finally taken to see a specialist haematologist, a request that my GP had made to immigration since 13 February 2006. On the 20 May, 2006, I was once again true to fashion handcuffed to a guard and taken to the Hillingdon hospital, (escorted by two other guards, apart from the one I was shackled to). I was forced to answer all the doctors’ questions, and reveal confidential medical information in front of these spectators from the detention centre. The doctor was hindered in carrying out a more invasive, and comprehensive examination, because the guards refused to remove the cuffs even for me to take off my jacket. This was an intentional; violation of my convention rights to privacy, and I am ashamed that it was committed so brazenly, and without any form of restraint or remorse.

I made an official complaint about this incident, because I felt very strongly about the violation of ethics of the medical profession that I had always respected up until that day. In true fashion, the IND said it was standard procedure gave me another lame excuse. Even now I still find it amazing that almost every right enshrined in the various conventions of which the UK is a signatory, (rights which its government solemnly pledged to uphold), are being routinely violated by the IND. I cannot bring myself to believe that the IND is a “para-state” of the British government, a champion of international justice, and protector of fundamental human rights and freedoms. I find these contradictions barefaced, and shamefully hypocritical of the Home Office.

I plead with anyone in a position to challenge these injustices, to investigate these matters and form their own independent opinions. Many ex-detainees will readily testify to their experiences while in detention, and also to the events I have stated herein concerning my case. There are at least three of my fellow ex-detainees, including Mr A who is willing to testify to these events.

Today I have a copy of my medical records (although deliberately edited) because a friendly nurse helped me smuggle the records out of the Colnbrook health care department. She did this because as a true professional she disagreed with the doctors continued refusal to give me access to my own medical records.

This only goes to show how deep, and institutionalised these evil violations of convention rights are becoming. The system is becoming a monster, an out of control, run-away train. I write this in all good faith, because I believe I have a responsibility to expose this system that perpetuates so much suffering, despair, and misery on fellow human beings.

Even now, six weeks after getting out on my third bail application, I still live in conscious fear of any one in a uniform, I live in constant fear of being re-detained and going through this ordeal again, I have nightmares, and hallucinations of detainees who attempted suicide, I see detainees who slit their own throats, and wrists, and I tremble involuntarily, I try to convince myself they are far away, but the truth is, they are so, very close. I find myself developing a subconscious aversion for Caucasian individuals because of the open racism of detention officers. And even now I cannot stop the drug addiction that was inadvertently forced upon me in detention.

That is why I write this, and affirm that it is completely true, so as to prevent it happening again, and again. The next detainee like me might not make it out alive, and with this I hope that I have discharged my responsibility to prevent that potentially sad, but highly likely occurrence.

Statement by Mr XXX

Submitted in Association with The Medical Justice Network

September 2006

37. Memorandum by The Royal College of Psychiatrists

The Royal College of Psychiatrists is the leading medical authority on mental health in the United Kingdom and the Republic of Ireland and is the professional and educational organisation for doctors specialising in psychiatry.

This documents attempts to summarise the significant mental health problems faced by asylum seekers in the UK. It represents the view of an experienced adult general psychiatrist working in a busy, deprived inner city area characterised by a high level of socio economic deprivation, and psychopathology; there is little doubt that this population is significantly over represented at virtually all points of contact with psychiatric services, from primary care via community mental health teams and outpatient clinics through to the acute admission wards and beyond. The reasons for this over representation are complex, and the academic aspects of this issue are outside the scope of this brief article, which instead considers issues that impinge more directly upon the provision of psychiatric healthcare to this vulnerable population. Broadly speaking, there are three main themes to this matter: demographic issues, clinical issues and political issues.

1. DEMOGRAPHY

From a demographic point of view, probably the most difficult problems lie in defining the asylum seeker population. Whilst the defining criteria for “Refugee” and “Asylum Seeker” are reasonably well defined (see United Nations Convention on Refugees, 1951, 2002) estimates of the asylum seeking population in the UK are much harder to define. One authority, with extensive experience in this area, places the figure at approximately 300,000 admissions to this country over the past decade, (Summerfield 2000). By far the majority of these individuals are confined to inner city conurbations, predominantly in the southeast. Recent attempts at dispersal, from a clinical point of view, seem to have done little to spread this load. A further problem of demography in this area relates to the fluctuating nature of this population. Individuals who are initially designated as refugee or asylum seeker, often undergo a change of status as their application is either rejected or accepted, granted temporary leave to remain, or other disposal. Among these, those who simply “disappear into the woodwork” are the most problematic. Although regarding may lead to a significant change in status from a statistical, demographic point of view, it rarely leads to a dramatic change in the mental health status of the affected individual, contrary to popular belief.

Patterns of engagement with health care services by this population are similarly poorly understood, and several authorities in this area have pointed to the need for more research. Most asylum seekers do appear to register with a general practitioner, and it seems that general practice is the first port of call for most asylum seeker/refugees with a mental health problem. Conceivably, this would be the ideal point at which to commence research, and the increasingly sophisticated data gathering procedures used in primary care in the 21st century indicate this as a sensible point to start. As far as I am aware, neither the Department of Health or individual research has yet sought to identify the number of patients defined as asylum seekers making contact with secondary services, and although this data is recorded on many admission and clerking documents, a coherent, nationwide approach to this question remains, as far as I am aware, unasked, let alone unanswered.

By way of an illustration, a community mental health team in a deprived inner city area supplying a catchment area of approximately 47,000 people, currently has 11 individuals collecting asylum food vouchers, and a further 22 people who have had asylum seeker or refugee status on a routine assessment coding in the past year, and that have been opened at some point for active case management. The total

number of active cases is currently 254, and this reflects an asylum/refugee/temporary leave to remain/illegal immigrant figure of 13%. Difficulties defining population criteria for this group is also relevant to clinical matters.

2. CLINICAL ISSUES

Compared to the native population, asylum seekers/refugees reveal significant differences in the patterns of presentation to primary and secondary mental health services, both in terms of historical and symptomatic features. Again, accurate data is lacking. With respect to specific diagnostic categories, depression, stress-related anxiety disorders, including post traumatic stress disorder (PTSD) and adjustment disorders, generalised anxiety disorders and psychotic disorder appear over represented. Primary disorders of substance misuse appear to be relatively rare, although co-morbid use of illicit substances is common. Interestingly, there is a significant difference in the pattern of drug misuse compared to the local indigenous population. Alcohol, cannabis and occasionally Opiates appear to be the primary drugs of abuse amongst asylum seekers, whilst stimulants and hallucinogens appear less frequently abused.

By far the majority of individuals presenting with depressive, neurotic and adjustment disorders are assessed and managed exclusively within primary care, although in our area attempts at GP liaison have in recent years diverted some of this group into community mental health team caseloads, usually on a short term basis. In this group, and those who in turn are admitted to psychiatric hospital, an admixture of PTSD and psychotic symptoms are common, particularly hallucinations and delusions reflecting paranoid persecutory themes that cannot always be seen to have origins in the patient's earlier trauma experiences. Perhaps counter to intuition, straightforward PTSD does not appear as commonly as one might expect from a population that, by definition, has experienced considerable trauma and upheaval.

Another striking feature of psychiatric presentation in this population concerns differences in the notions of distress held by both the assessor and the assessed. Patients from the asylum/refugee population, particularly where a shared language is absent, often present with a preponderance of physical symptoms. These are very often diffuse, relating for example to tiredness, dizziness, pain and collapse, all of which often defy classification as a physical disorder. Frequently, these presentations are given a label of "somatised anxiety", or similar term, but it is clear that our current approaches to psycho-somatic symptoms fail to take account of the bewildering complexity of experiential and symptomatic factors that lead the patient to present. In those patients who are capable of articulating their symptomatic distress within some form of the western clinical idiom, anxiety and depression, with or without perceptual distortion, appears to be the most common. The majority of patients presenting with anxiety, however, invariably construe this as indicative of an underlying straightforward organic lesion for which a relatively straightforward "quick fix" is perceived as the primary purpose of presentation and engagement with treatment.

Their reasons for this are complex and have been discussed at length in the expert literature, but appear to relate to differing perceptions of just what the scientific, medical model has to offer. Populations outside of the west, from which the majority of the asylum seekers originate, probably do not have a Straightforward psychological, let alone bio-psycho-social approach to difficulties. Instead they regard predominantly physical symptoms as legitimate currency for communication with a perceived carer. Indeed, for many, the concept of themselves as "mentally ill" is essentially alien.

This conflict between different conceptualisations of all illness, let alone psychiatric disorder, defines one of the central challenges facing the GP and inner city psychiatrist caring for this population, whatever their diagnosis. All too often, attempts to place round pegs in square holes lead to a breakdown in care attempts early on, unless some signal gesture, that is in some ways culturally shared, (for example the issuing of a drug for an identified and overtly physical aspect of the patient's symptoms) can be used as an opening gambit in the therapeutic process.

Perhaps the starkest illustration of the problem of conflicting views of illness can be seen when one considers the influence of an effective interpreter upon a clinical intervention with a refugee patient. It quickly becomes apparent that an interpreter's input goes well beyond simple translation. For an asylum seeker, the presence of an individual who appears to them fluent in their own language often carries an implicit acknowledgment of understanding. Whenever possible, in our catchment area, we attempt to use the same interpreter for any given case over time, and attempt to provide the interpreter with an outline of the case, the likely pitfalls, as well as the intended goals of the intervention, prior to the commencement of translation. Almost invariably, this use of an interpreter allows the session to become a powerful form of simple supportive psychotherapy. Another important dimension to this intervention involves time; translating every question and answer via two languages takes up approximately twice the length of service time.

Another common pitfall, when working with interpreters within the asylum population concerns the speed to which western practitioners make false cultural assumptions. For example, there is a very strong Turkish Kurdish population in the writer's catchment area, but the fact that an interpreter is fluent in Turkish and Kurdish, does not of necessity indicate that the interpreter will necessarily adopt a sympathetic or understanding view of the patient's difficulties. Conversely, patients' mis-perception may often identify an articulate, well spoken interpreter of a native language as a reminder of a repressive authority, and this difficulty can easily sabotage the therapeutic intervention early on. Similarly, group attempts at treatment

often fail to work when groups are set up on the basis of straightforward “ethnic streaming”. Experience has taught us here in Hackney that simply placing people together by virtue of their ethnicity, or assumed shared experience, fails to persuade them that the intervention is worthwhile, or likely to bring about significant change in the longer term. The simple, and most effective solution to the problem of heterogeneity, even within small and well-defined cultural sub-populations, lies in attention to individual, experiential detail. This is very hard to provide when the patient is liable to be “dispersed” at any moment. This view is broadly consistent with a steadily evolving body of psychotherapeutic opinion, which supports the idea that attention to the uniquely individual aspects of most cases, and the powerful trusting relationship that builds up in this context, appears to be one of the most important predictors of positive outcome.

These matters impinge on another, philosophical, issue that underpins the way in which we provide services for this group, namely how best to provide psychiatric treatment to people who are experiencing what are essentially normal reactions to grossly abnormal experiences. Academics in this field have asked whether contemporary psychiatry is really equipped to address the pain of torture, migration and pressures of integration, and again, we are reminded of the problem of square pegs and round holes, particularly where the holes centre upon notions of trauma, an issue with which western civilisation can probably said to be presently obsessed.

Many of the patients presenting with an ostensible diagnosis of “PTSD” do not have a simple, straightforward index traumatic experience, in spite of western cultural conceptions, and this may lead to the inappropriate assignment of a therapy, and with it a wasting of resources. Studies that have identified favourable outcomes in this population after allocation to various interventions, bio-psychological, or psycho-social, show the latter to be the more effective. This clearly has important implications for work in primary and secondary care, and efforts by case managers and other workers to attend to the predominantly psychosocial aspects of living difficulty—predominantly shelter, food, clothing, money and work—seem more important than more straightforward approaches to either mood, cognition or physical symptoms. It is likely that asylum seekers are significantly over represented in dropout or “failed to respond” populations among the rapidly increasing workload of clinical psychologists in community mental health.

Many of these issue return to the fundamental question of human resilience. The discrepancy between the large asylum population in our catchment area, and the small number who engage with primary and secondary mental health care, points to the fact that the vast majority of individuals, in spite of all they have endured, remain essentially resilient. It is likely that an overlapping group, in whom resilience is somehow challenged by adjustment to a new way of life in the host country, should have the restoration of this resilience as a primary therapeutic goal, rather than addressing pathological themes related to cognitions, emotion and other dysfunction. The majority of such individuals do not seem particularly willing to construe themselves as the victim of trauma.

Intervention along a more straightforward western psychiatric approach does seem to work well when it is clear that there is a gross disruption of domestic, social or occupational functioning as a direct result of clearly definable psychiatric symptoms, particularly disabling anxiety, perceptual and perception and speech disorders as seen in psychosis or overwhelming PTSD. In more straightforward neurotic conditions, it appears that family and social, rather than psychiatric approaches carry the best chances of success. The efficacy of social, as opposed to straightforward psychiatric, interventions in this population inevitably politicise the challenge of providing good quality mental health care to this group.

3. POLITICAL ISSUES

There is a very wide range of public portrayals of the asylum seeker/refugee population. These vary from the right wing media, who often portray these individuals in terms of a “scrounger/exploiter” stereotype, and journalists are well aware that indignant xenophobia sells newspapers and boosts ratings. At the other extreme, more liberal agents in the media portray this population in an equally unhelpful, but more subtly pernicious stereotype as “tragic victims”. All too often, the emphasis is placed upon the spectacular depredations (torture, imprisonment etc) rather than the more mundane challenges of cultural and linguistic isolation, poverty and loss of status that usually accompany the process of asylum seeking. It is surprising how rarely this difference of view is taken into account at the outset of assessments of an individual’s mental health difficulties.

Like the media, the Government are all too aware of the ability of asylum seeker populations, whether or not they have a mental illness, to elicit strong responses from a misinformed public. The asylum seeker population may thus, for example, be exploited as something of a “political football” in order for a Government to demonstrate its tough, conservative agenda in the run up to a general election. Similarly, the withdrawal of housing, unemployment and food benefits from this population, when publicised, can demonstrate that a Government has a “realistic” economic policy. This was clearly seen after the introduction of restrictions in allocation of benefits from April of 2004, after which many asylum seeker populations were only allowed to obtain food via a voucher system and declined rights to housing and non-emergency health care altogether. In reality, caring professionals, confronted with the actual front line

responsibility for implementing such an inhumane policy, have simply carried on doing what little they could in any case, albeit with even less resources. Psychiatric services are no stranger to attempts to make the best out of a dire situation.

Another political problem involves the extensive bureaucracy surrounding the Home Office procedures for processing asylum applications, appeals and subsequent disposal. The very long waiting time for application, even to embark upon the process via a legal aid funding system of Byzantine complexity commonly serves as a direct exacerbating factor for the psychiatric disorder itself. The current draconian regulations surrounding social and medical support, the uncertainty of asylum applications, the ever present prospect of repatriation and the inability to enact elements of treatment that are likely to carry the best chance of success in the longer term, are all powerful perpetuating factors for psychopathology in this group.

Paradoxically, psychiatric disorders can be further complicated by the patient's perception of themselves as mentally unwell, even if this contradicts their culturally defined concepts of mental illness. A patient may, for example, engage in exaggerated illness behaviour, or even malingering a psychiatric syndrome, in order to secure a sympathetically worded medical report. The decision by a mental health worker to provide or not provide a report for an asylum application may thus create a powerful ethical dilemma, which as with many other challenges in this group, is ultimately better dressed by compassionate attention to the unique; human details of history and present need. Another, even more invidious dilemma confronts in patient staff caring for a patient who is in effect using a psychiatric bed as a last-ditch attempt against repatriation.

In principle, the Government's policy on repatriation of the mentally ill seems clear: they should be sent home once proper, acute treatment has been completed. In fact, when confronted by perverse incentive to remain unwell, both carers and government become involved in something of a chaotic fudge of definitions of recovery. Here, it seems that the asylum seeker, in one small sense, has the upper hand. In spite of the Government's apparently harsh stance, immigration authorities are hardly ever willing to be seen entering a psychiatric hospital in order to forcibly repatriate a distressed individual, under public gaze. Even when they do, it proves a no less onerous task to persuade an airline to allow a distressed, apparently suicidal person on board. The simple visibility of the distress serves as an effective diluent of decisive action. Thus, Government action, as opposed to a Government's expressed intentions; is more driven by dramatic, political sense than a rational sense. A less inconsistent approach to these dilemmas would certainly help to provide more organised, honest and effective care. In the present social or political climate, however, it appears that we are simply unable to give these human details the all too important attention that they deserve.

*Dr Mark Salter
Homerton Hospital
September 2006*

HOME OFFICE STANDARDS OF SERVICE PROVISION:

APPENDIX 47—The Health Specification

COMMENTS ON PROVISION OF MENTAL HEALTHCARE TO CAMPSFIELD HOUSE DETAINEES (2002–03)

Dr Martin Elphick, Consultant Psychiatrist

Background:

I have personally been attending Campsfield House at the request of Forensic Medical Services, on an emergency basis only, for about a year and a half. There are no regular visits by qualified mental health staff. There is virtually no other access to services, no equivalent to community mental healthcare, no day care, and no outpatient care. Patients requiring hospitalisation for mental health problems can be transferred to a local psychiatric hospital, but frequently abscond (whether compulsorily or voluntarily admitted under the Mental Health Act) in order to evade further detention. This tends to cause distrust between agencies.

Detailed comments (Appendix items):

Detainees do not have access to the same range of services as the general public.

Specialised diagnostic and treatment facilities for mental health problems as a consequence of imprisonment, torture and other trauma are virtually non-existent, beyond general support and counselling from the (well-motivated) primary care team. It should be noted that the conditions of detention frequently re-traumatise detainees, since they include many aspects of the original trauma such as restriction of movement behind razor wire, officers in pseudo-military uniform, restriction of information about their future, sudden removal of fellow detainees Without explanation, etc.

The referral process to “the Oxfordshire Mental Health NHS Trust” consists of a personal approach to me by telephone. Attempts to make referrals through any standard channel have been unsatisfactory for years, do not work in my absence, and often result in no action being taken by the Trust staff. No Community Mental Health Team or sector team will take responsibility for any referral. No specific budget has been allocated at any organisational level from Government to Health Authority down to Trust or Locality (other than research and for writing reports and successive recommendation papers).

There is no specialised provision for torture victims.

There is no protocol for the identification, assessment and treatment of substance misusers. Alcohol tends to be more of a problem in this group of detainees than addictive drugs. Detoxification is carried out in the primary healthcare facility, but there is no referral procedure agreed with the local community addictions service.

There is a policy for containing and observing detainees at risk of suicide. Detainees who take overdoses or deliberately harm themselves are taken to the local general hospital for physical treatment, where they may be assessed by the mental health service, but I am not aware that any specialist follow-up arrangement ever results. Those at high risk of suicide requiring observation are better managed at Campsfield House since they are often able to walk out of the Oxfordshire Mental Healthcare NHS Trust hospitals (whether detained under the MHA or not).

The poor specialist service commented upon above is partly mitigated by the commendable ethos of the staff in the medical Centre.

The primary care staff carry out most of the mental health observation, assessment and treatment. This is by good fortune rather than design. There is no mental health multidisciplinary team, so standards set out in the NSF for mental health are unknown to all those practicing. There is no chance therefore that “protocols and procedures . . . etc” based on such government policy documents could apply. Detainees are from time to time assessed and legally transferred out of the Detention Centre under the provision of the MHA.

Day care is not provided. Key workers are not allocated. There is no effective follow-up arrangement. Confidential facilities are provided within Campsfield House. I am not satisfied that effective arrangements are in place for monitoring patient’s progress and outcomes.

Compulsory detention means inevitably that mental health tends to worsen: it is not “maintained or improved”. Being powerless to affect their future, which many believe will be negative if not life-threatening, they are often anxious or in despair. Detainees are not in a position to “make informed decisions about their mental health”—those are made by the Home Office.

I am not aware of any specialist services being available for substance misuse.

Although the detainees are well assessed (in the primary care sense) on arrival, there is little time prior to transfer to make any arrangement for specialist follow-up care. If patients are transferred elsewhere in the country, for instance to another Detention Centre, then the primary care team is able to transfer some information, but if removed abroad there is no apparent facility to ensure that their specialist care continues.

M Elphick

8 April 2003

38. Memorandum from the Forensic Faculty of the Royal College of Psychiatrists

The faculty has major concerns about the mental health needs of asylum seekers. It is generally acknowledged that as a group they are at significantly raised risk of mental disorder either as a consequence of experiences from the countries that they left or this being the reason for their departure. Language is part of the heartland of psychiatry and this can pose real challenges in assessment and delivery of care. Furthermore psychiatry continues to have limitations in its understanding of cultural idiosyncrasies.

Ongoing issues within the UK could be grouped within a number of areas:

PRISON

The continuing practice of failed asylum seekers being detained in prison is an area where the faculty has major worries. Unlike those who are serving a sentence, or have a trial date, they live in uncertainty with regards the length of time they will be in detention. This major stressor will combine with their isolation from family, culture and loss of other supportive to lead to a number developing preventable mental disorder.

Prisoners from outside the UK serving a sentence who are likely to be deported face an uncertain time at the end of the sentence where they tackle the complexities of negotiating challenges to deportation from within the prison estate. The process is often overlong and weighs heavily on feelings of uncertainty which can precipitate various forms of mental disorder. In some a mental disorder can be exploited and thus professionals involved in their care have to be cautious in their delivery of care.

CATCHMENT AREA RESPONSIBILITY

Mental health services have for a long time been closely linked to geographical catchment areas. The asylum seekers, especially those who have newly arrived in the UK, present a further challenge in their access to services at a time when funding is under threat. When further issues such as offending, imprisonment and transfer to the NHS are approached, providers are typically very recalcitrant in making a commitment for care. Mental health patients often have a long follow on period in their involvement with services and thus the commitment for providers may be over a lengthy period.

PATHWAYS OF CARE

Although throughcare is usually uncontroversial, discharge from hospital or release from prison for asylum seekers again raises a complex and challenging set of issues which encompass housing, benefit systems and other social care which link closely with mental health needs. This includes those receiving conditional discharges in their return to the community. Particular attention should be directed to those individuals who face deportation at the end of a stay in hospital where confidence in the ability of home countries to maintain good mental health is often in doubt—many countries have limited or patchy availability of appropriate treatment, including medication which means that patients face a hazardous future. This potentially places the treating mental health professional in an impossible situation in terms of being unable to meet their clinical and ethical duties of ensuring that there will be continuity of at least a basis care plan when moving to a new location

Kim Fraser and Ian Cumming
Forensic Executive members

39. Memorandum from Islington Council

The No Recourse to Public Funds (NRPF) Team, part of the Refugee and Asylum Service, is Islington Council's response to supporting people who are subject to Immigration control who have no recourse to public funds.²⁶⁷

In response to a growing demand for services Islington Council has, working in partnership with local authority representative bodies, established a National NRPF Network that works at practice, policy and strategic levels to promote a humane approach to people with NRPF focusing on finding a solution to the destitution they face.

The information in this submission is based on Islington Council's experience of supporting people with NRPF, its work with an Immigration and Nationality Directorate (IND) Taskforce, which is working with Islington to resolve outstanding NRPF cases and from research for the National NRPF Network with 26 local authorities across the United Kingdom in July and August 2006.

The submission addresses access to accommodation and support for refused asylum seekers and the removal of refused asylum seekers.

BACKGROUND AND LAW

1. Local authorities have a duty to support certain categories of people who are subject to immigration control, have NRPF and who are destitute plus, that is they are assessed as having a need for care and attention that is over and above the mere lack of accommodation and subsistence, or because the case involves a child in need or because the case involves a potential breach of human rights law.

2. This is a complex area of work involving the interlace of immigration, community care and human rights law. Interpretation of the legislation regularly changes as a result of case law. Local authorities' duty to support a person with NRPF can arise in the context of the following legislation:

- Section 21 of the National Assistance Act 1948—providing residential accommodation to vulnerable adults with Community Care needs and to expectant/nursing mothers.
- Section 17 of the Children Act 1989—providing rent and subsistence payments to families with children under 18 who would otherwise be destitute.
- Section 117 of the Mental Health Act 1995—people discharged back to the care of the community under section 117 after being sectioned under section 3 of the Mental Health Act 1983 (involuntary admission to hospital).
- Section 47 of NHS and Community Care Act 1990—duty on local authority to undertake a community care assessment irrespective of whether individual requests this.

²⁶⁷ By no recourse to public funds we mean someone who is subject to Immigration control who has no entitlement to welfare benefits, to Home Office asylum support for asylum seekers or to public housing.

- Section 2 Local Government Act 2000—local authorities have the power to do anything that promotes the well-being of a person, including economic, social and environmental well-being.
- Section 54 and schedule 3 to the Nationality Immigration and Asylum Act 2002, including Schedule 3—people excluded from local authority support as a result of their immigration status may still be entitled to support to avoid a breach of their rights under the European Convention on Human Rights (EGHR).
- Articles 3 and 8 of the ECHR—right not to be subjected to inhuman or degrading treatment and right to family life.
- Section 4 of the Immigration & Asylum Act 1999—Home Office powers to support refused asylum seekers unable to leave the United Kingdom temporarily.

Supporting people who have NRPF involves financial, legal and humanitarian risks for local authorities:

- disregarding immigration restrictions on access to public services means that authorities could act ultra vires, with cost implications for authorities;
- failure to provide services, where there is entitlement, could result in judicial review and claims for damages; and
- failure to support people with NRPF where there is a duty puts vulnerable people at risk, as recent suicides amongst refused asylum seekers suggest.²⁶⁸

GENERAL POINTS

3. Of crucial importance in understanding destitution amongst refused asylum seekers and other people subject to immigration control is that it arises partly as a result of Government policy. IND withdraws accommodation and financial support (asylum support) from the vast majority of refused asylum seekers but does not remove them from the United Kingdom at the point their asylum claim is refused. It places the onus on refused asylum seekers to leave the country voluntarily. The result is that IND risks losing track of refused asylum seekers.

4. Support for refused asylum seekers is restricted through section 54 and schedule 3 of the Nationality, Immigration and Asylum Act 2002. Full board accommodation may be available under section 4 of the Immigration & Asylum Act 1999 (section 4 “hard cases” support) but this is poorly administered and difficult to obtain.²⁶⁹ Applicants must meet strict criteria, which usually means they must agree to cooperate with steps to remove them from the country. Applicants may fail to understand the application form, which can result in refusal of support.

5. Local authorities obligations to support refused asylum seekers arise where cases involve illness, care needs or a child in need. Again, eligibility criteria are restricted and local authorities should carry out community assessments to assess whether applicants meet the threshold for support.

6. The situation thus arises that many refused asylum seekers receive no public support and are not allowed to work. Their only way of supporting themselves is through the assistance of family, mends and the community or through illegal working. For some vulnerable homeless and destitute asylum seekers their destitution leads to community care and mental health problems.

7. The NRPF issue raises other Issues about Home Office policy and practice. It raises a potential question about the quality of Home Office decision making on asylum applications when so many refused asylum seekers remain in the United Kingdom in destitution rather than return to their countries of origin. Other respondents to the JCHR inquiry will be better placed to comment on this, and forthcoming research by Amnesty International and Refugee Action will provide further evidence on this issue.

ISLINGTON’S EXPERIENCE

8. Islington has developed a service based on finding resolution to people’s destitution. It provides signposting advice and assistance to anyone with NRPF who presents for a service. On average it receives 30–40 enquiries per month, and about 10 referrals for full community care assessments.

9. For those who meet the strict eligibility criteria outlined above, it provides care support, including accommodation and financial support. Of the 10 referrals it receives each month it assesses one or two as eligible for care support.

²⁶⁸ See for example, *Mentally ill asylum seeker left destitute leaps to her death*, (*The Herald*, 19 September 2006 at herald.co.uk/news/70321.html)

²⁶⁹ See *Shaming destitution—NA SS section 4 support for failed asylum seekers who are temporarily unable to leave the UK* (Citizens Advice, June 2006).

10. Islington currently provides care support to 64 people with NRPF, 46 of whom are complex refused asylum seekers. Many are cases with little prospect of removal to their home country. The support needs of those it supports are:

- 20 community care cases;
- 33 community mental health cases;
- 7 families with children;
- 2 older people; and
- 2 learning disabilities.

11. Islington has been involved, since December 2006, in a Taskforce with the Home Office working in partnership to find a resolution to 54 of Islington's NRPF cases. The work of the Taskforce has demonstrated the complexity of the issues involved in NRPF cases.

KEY RESEARCH FINDINGS

12. The work carried out by Islington through the NRPF National Network has shown the response by local authorities to NRPF varies greatly. Many authorities take an ad hoc approach and do not routinely carry out care assessments as required by law. Such a response may suggest that some local authorities act outside the law by turning away those it has a duty to support whilst others are supporting people where it has no duty to do.²⁷⁰ Many have no means of identifying the cost and number of people they are supporting. There is a need for guidance and regulation to cover local authorities' NRPF work.

13. The lack of clear guidance and statutory regulation from Government on this area of work leads to inconsistency in decision making across local areas and regions.

14. Local authorities face process problems in assessing applicants' eligibility for care support. The information provided by the Home Office to local authorities (through Local Authority Communications) about individuals' immigration service can be inaccurate or not available without considerable delays.

15. There is no way for local authorities to check whether another local authority has or is already supporting an individual. A shared database would allow local authorities to check this and would minimise fraud. Such a facility could also allow local authorities to inform IND of changing circumstances that might impact on an individual's right to remain in the United Kingdom, such as health.

16. Refused asylum seekers face difficulties in obtaining assistance in submitting applications to IND for section 4 "hard cases" support. In addition there are problems and delays by IND in assessing applications. The result is that refused asylum seekers face destitution and there is added pressure on local authorities, as people turn to them for support.

17. Cases supported by local authorities are generally complex and support may be needed over a long period of time. Local authorities indicated that people could suffer reactive depression, developing mental health problems as a result of uncertainty about their immigration status and being destitute. They also raised the difficulties that arise when someone has been supported and recovered from their mental health problem when a decision has to be made about whether to withdraw support, which could result once again in an individual suffering mental illness.

18. Local authorities are facing growing costs from people with NRPF. One local authority indicated that it had seen an increase in costs of 25–30% over the past three years. Most local authorities have no means of identifying the cost and number of people they are supporting. Of 15 local authorities that were able to provide any indication of the costs of support one projected spending for 2006–07 was over £2 million and six projected spending over £1 million. Actual costs are likely to be much higher as figures do not always include interpreting, care, staffing or other hidden costs.

Refused asylum seekers risk suffering inhumane and degrading treatment—arguably an unacceptable result of Government's policy based on using destitution to force people to return to their country of origin. This policy, compounded by the lack of an adequate response by local authorities, is failing some of the most vulnerable people in our society and contributing to problems of social cohesion.

Islington will shortly make available a full report of its findings of its research with 26 local authorities. In addition it will publish a report of its experience in supporting destitute people in the borough in November 2006.

Gwen Ovshinsky
Director of Adult Social Services

October 2006

²⁷⁰ See also *Mental Health, Destitution and Asylum Seekers—a study of destitute asylum seekers in the dispersal areas of the South East of England*, Dumper, H. Malfait K and Scott Flynn, N. for the National Institute of Mental Health in England and South of England Refugee and Asylum Consortium (September 2006).

40. Letter from Didier D Matamba

RE: USE OF DETENTION AND CONDITION OF DETENTION

I was detained at Dungavel House IRC from 26 June 2006 to 27 July 2006 after spending a night at Atrim custody centre in Belfast.

Let me from the onset mention that in DRC I was detained many times and eventually twice which amounted to my escape to the UK. Although I described torture I suffered to the casework who interviewed me on seeking asylum (Matthew Bums), no medical examination was commissioned to confirm or deny my claims; I was ignorant at that time of the importance of such a report so as to request that myself. I had a number of psychological sessions at my local surgery due to post traumatic depression and nightmares suffered as a result of prolonged detention and seriously occasional beating.

I was arrested as they could not see any pending appeal of fresh claim on the system and they detained me at Dungavel because I had no ties (family or friends) in the community. Sir, it was proven that their system was not updated and that I have a cloud of friends in my community. While they were expedient to detain and issue the first removal directions on the day of arrest, they were not prompt to release me once their shortcomings became apparent. This is an abuse of the system and it indeed amounted to nothing but persecution.

The abuse of the system could also be said on the fact that I use to report at Mary Wharf Police Station once a month. Whenever I missed reporting, I called in to let them know my whereabouts. After being released, Immigration wants me to report four times a month. I do not understand why I am asked to sign four times instead of once as I did not breach my conditions and it was them that made a mistake. How can I be paying for their mistake? It lean abuse of their power.

Here are my reasons:

1. On my arrest at Belfast International Airport, I was told by Mr John Fish—the arresting officer—that I had no appeal/Fresh Claim pending therefore I had to be detained and removed from the United Kingdom. In spite of multiple correspondences and representations by my solicitor, there was acknowledgement of such submission until a letter from Ms Un Homer; IND Director General responding to an enquiry for Study Permit made by my MP, Margaret Beckett in May was received. I took care of forwarding these letters to the Chief Immigration Officer of Liverpool as soon as possible but they went on and held me for over a month. Surely their desire was not to serve justice but maybe the attainment of some political ambition.
2. I could not see how justice would have been served while I was being held in detention pending an outcome to my said Fresh Claim. Clearly, this is prejudicial to the fairness of any process or procedure in response to my Fresh Claim. Needless to mention that my Fresh Claim was submitted in January 2005 and resubmitted later in September of the same year by my previous solicitors: Charles Annon & Co. Since my arrest another Fresh Claim had been submitted on 30 June 2006 with more evidence obtainable on a simple Google search of my Didier Matamba. Currently I have two Fresh Claims, both not yet examined.
3. I called the East-Midlands Reporting Unit on 5 June 2006 to let them know that I will not be able to make it on 12 June 2006 as I was to go to the University of Edinburgh for my research. They denied that I ever called and used it as one of the credibility point to reject my bail application while I was detained in error at Dungavel. As soon as I was taken in to Dungavel Removal Centre, I call my reporting centre to ask for a copy of my call as this was likely to be brought at bail. I was told that there was nothing to worry about as everything was recorded, that Liverpool had access to the system and that they will see the status of my reporting. Unfortunately, later on the said record was found to be inexistent. Surely, data do not just selectively and conveniently disappear from system.
4. My file or parts thereof have been always [from the beginning] had missing documents. I do not believe that it is pure coincidence. My substantive Interview was on February 2003; in April 2003 I received a letter to come to the interview, my solicitors Dicksons HMB wrote to Liverpool to let them know that it was already done. Soon after, it was an apology claiming that the file was located. In February 2004, my application for statutory review was never found by the IAT yet, from the IND's director's letter, it is clear that the said statutory review was received. Now in September 2006, it is my file which missing altogether after "extensive" searches. I do not see where justice is if they could detain me without having my file. Maybe someone has made it their business to "sit" on my file—as we say in DR Congo!
5. I can not say anything about condition of detention as I was in Dungavel which is considered the most humane Immigration Removal Centre in the UK. I have been in a DR Congo prison for over a year in total; I just do not want to be in another prison particularly as a result of "an administrative" error. It is unthinkable that being an asylum seeker does not confer any right to claim compensation. Where are equal rights? Humanity? Justice? We are second-class citizens and somewhat a pest. While British people were sleeping, laws were passed that set a scene for asylum seekers victimisation and criminalisation.

Sir, I strongly believe that detention is definitely used or abused to serve God knows what ends. It could be likened to a football match in which a team has the cup before the game is played . . . not very fair!

Sir, I will be available should you require any other document you believe might be useful.

September 2006

41. Memorandum from the Settle Monthly Meeting of the Religious Society of Friends (Quakers)

HUMAN RIGHTS CONCERNS RELATING TO THE CONDITIONS OF LIFE FOR ASYLUM SEEKERS

SUMMARY

Settle Monthly Meeting of the Religious Society of Friends (Quakers) includes people with practical experience of working with refugees in East Lancashire in voluntary and professional capacities. As a Meeting we have offered hospitality to groups of asylum seekers, some of whom have shared their experiences with us.

We offer evidence below relating to our concerns about:

- (i) access to accommodation and financial support;
- (ii) the provision of healthcare; and
- (iii) the treatment of children.

Note: References in square brackets [] relate issues of concern to human rights legislation and entitlements listed in section 5.

1. *Accommodation and financial support*

1.1 The implementation of the recent reallocation of contracts to housing providers has focused on properties rather than people. While the bulk of the existing properties were taken over by new providers, the people resident in them were forced to move precipitately [5.2], disrupting education [5.7] and health care [5.4]. We are aware of three families with children doing GCSEs and/or A levels who were required to move at 24 hours notice during the exam period. Two families refused to go and it proved possible for them to remain in the same house, though the experience was distressing for all concerned. The third family was compliant and moved as requested, with the result that the girl missed sitting a GCSE. We are also aware of several individuals and families with imminent hospital appointments, whose care was disrupted and delayed, despite the fact that they had previously advised NASS of their health needs. The families who were moved out of Blackburn and Darwen were replaced by others with very similar profiles, leading one to query why they had been subjected to this distress and loss of social and support networks.

1.2 Provision of housing has always been on a multi-occupancy basis. However, previously occupants were generally grouped by language and country of origin. Since the change of contracts, such grouping appears to be no longer required, resulting in households in which the occupants have no common language. Religious and cultural differences are also giving rise to tensions. In our experience the situation is exacerbated by another change in practice whereby one single parent with children may be accommodated with another single parent family (often from a different country) in one property [5.3].

1.3 "Failed" asylum seekers: We estimate that, in East Lancashire, there were between 300 and 400 rejected asylum cases over the past year. Withdrawal of accommodation and financial support from them gives widespread cause for concern. Many will not apply for Section 4 support because it commits them to repatriation and they are genuinely and with good reason afraid of what would then happen to them. Several suffer from mental illness, which may well have rendered them incapable of giving a coherent account of their history in court, and now leaves them particularly vulnerable and unable to cope with such termination of support [5.3].

1.4 Those granted leave to remain: Because of the precipitate withdrawal of benefits and housing from those granted leave to remain, instead of a seamless transition between NASS support and the integration of the individual into work or the mainstream benefits system, they face a period of destitution for about two months at the time they are being accepted into this country [5.3].

2. *Provision of healthcare*

2.1 Accommodation providers are required to advise asylum seekers how to access health care. Some companies fulfil this obligation merely by supplying this information in written form in English, with no local element eg contact details for local health centres [5.4].

2.2 These companies make no provision for those who cannot read English. We are aware of asylum seekers who fail to engage with health services other than Accident and Emergency departments [5.4].

2.3 HIV and Aids treatment is not free for any asylum seekers and is chargeable. This, in addition to potential human rights implications, creates a public health concern [5.5].

2.4 “Failed” asylum seekers: The most glaring problem is the proposal to withdraw medical care from “failed” asylum seekers, except for life-threatening conditions. The impact of these proposals is not evident as yet because their implementation has not been thought through and doctors are generally unaware of the asylum status of any individual [5.4].

2.5 However, fear of deportation has made some individuals reluctant to access health care. We know of a person, being treated for two life-threatening communicable diseases, who attempted suicide on receipt of the refusal letter and subsequently was lost to follow-up [5.5].

3. *Treatment of children*

3.1 The same accommodation providers give only general information, in English, about schooling. We are aware of children who fail to access education for long periods [5.6].

3.2 Relocation at short notice disrupts education. We know of children taking GCSEs this year who were placed under great stress with the threat of removal (see section 1.1) [5.6].

3.3 We know of several cases in which unaccompanied minors whose age is disputed have been dispersed into culturally-mixed adult accommodation without social service assessment of their age. We understand from those deemed to be over 18 that the assessment is based on questioning rather than physical criteria. We feel some of these young people may be mature for their years due to the circumstances they have faced [5.9].

3.4 Under Section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004, the families of “failed” asylum seekers risk being split up, with parents being detained and the children put into care. Such deprivation is a clear breach of their right to family life and is economically unsound, as the costs of such arrangements greatly exceed the costs of accommodation and emergency benefits. We are aware of only one family which faced these measures. Ultimately Social Services were unwilling to separate the child from its parents and provided accommodation and support for the family unit. We understand that the proposal has proved to be unworkable and abandoned, but the fear that this might happen is in itself an assault on the integrity of family life and we are aware of two other families who, because of it, have disappeared [5.10].

4. *Conclusions*

4.1 Many asylum seekers are ill-served by the system which denies, rather than meets, the human rights of vulnerable people who have been forced to flee from their homelands and would have “a well-founded fear of persecution” were they to be returned.

4.2 In a minority of cases this is due to individual or an agent’s negligence (eg on the part of some accommodation providers).

4.3 In the majority of instances of human rights failures which we see, the government’s legal and administrative framework appears at fault.

4.4 Some, but by no means all, of those “failed” asylum-seekers whose rights are currently being infringed come from countries to which the Home Office is not now deporting people because it recognizes the poor state of human rights there. If the position of such “failed” asylum-seekers were to be legalised, and they were to be given the right to work here, the scale of human rights infringements would fall very significantly.

5. *Human rights entitlement*

We see the legal bases for regarding the above actions as potential violations of human rights as follows:
 (Abbreviations: COC The Convention on the Rights of the Child
 HRA The (UK) Human Rights Act
 ICESCR The International Covenant on Economic, Social and Cultural Rights)

5.1 “Everyone’s right to life shall be protected by law” (HRA, Article 2.1).

5.2 Article 9 of ICESCR recognizes “the right of everyone to social security”.

5.3 Article 11.1 of ICESCR recognizes “the right of everyone to an adequate standard of living for himself and his family, . . . including adequate food, clothing and housing”.

5.4 Article 12.1 of ICESCR asserts “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

5.5 Parties to ICESCR are committed to take “the steps necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases”. (Article 12.2c)

5.6 Article 28 of the CRC “recognises the right of the child to education”.

5.7 “No person shall be denied the right to education” and “the state shall respect the rights of parents to ensure such education in conformity with their own religious and philosophical convictions”. (HRA, First Protocol, Article 8.1)

5.8 “Everyone has the right to respect for his private and family life.” (HRA, Article 8.1)

5.9 “A child who is seeking refugee status, or who is considered a refugee . . . shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention”. (COC, Article 22) (The UK entered a reservation in respect of this article, and is therefore refusing to be bound by it.)

5.10 “The unity of the family is an essential right of the refugee and . . . the rights granted to a refugee are extended to members of his or her family.” (The Final Act of the “Conference of Plenipotentiaries”, adopting the 1951 Convention relating to the Status of Refugees, cited by the United Nations High Commissioner for Refugees, Memorandum submitted to the House of Commons Home Affairs Committee’s Inquiry into Immigration Control, Fifth Report of Session 2005–06, Volume II “Written Evidence”, p 129)

John M Asher

September 2006

42. Memorandum from the African HIV Policy Network

THE AFRICAN HIV POLICY NETWORK

The African HIV Policy Network (AHPN) is a network of African community-based HIV organisations. The AHPN works to minimise the impact of HIV on African communities living with and affected by HIV in the UK by articulating their specific needs and influencing decision makers to ensure that policy is shaped to address these needs. The AHPN also supports African community-based HIV organisations so that they can deliver improvements to the lives of Africans affected by HIV either directly or indirectly.

EXPERIENCES AND NEEDS OF AFRICAN PEOPLE LIVING WITH HIV IN THE UK

There are estimated to be more than 11,000 African people living with diagnosed infection in the UK (HPA, 2005). In addition several thousand more African people living in the UK have undiagnosed HIV infection since studies have shown that roughly two-thirds of African people in the UK have never tested for HIV (Fenton *et al*, 2002). HIV prevalence is many times higher among African people in the UK than among the White British majority. Compared to UK born men and women attending GUM clinics (each of whom have an HIV prevalence of 0.2%), 7.7% of African born women and 4.8% of African born men who attend GUM clinics are infected with HIV.

A recent quantitative study (Weatherburn *et al*, 2003) which included an analysis of the health and social needs of African people with HIV shows that between a half and three quarters of this group report significant ongoing difficulties in the following areas: income, immigration status, housing and living conditions, and access to training, skills and job opportunities. Difficulties in meeting these basic needs clearly leads to reduced quality of life. Similar percentages said they had significant and ongoing difficulties associated with anxiety and depression, their ability to sleep, their self confidence and their personal relationships. The same study compared the experiences of African people with HIV to their White British counterparts. Compared to other people with HIV in the UK, African people with HIV were 10 times more likely to report problems associated with their income, seven times more likely to report problems with their living conditions, three times more likely to report problems with discrimination and twice as likely to report problems with getting about (mobility) and personal relationships.

Thus, not only are African people with HIV likely to experience more health and social care needs than the general population, but they also experience more needs than British people with HIV. Social exclusion is undoubtedly exacerbated by factors associated with migrancy. Its likely that a significant proportion of African people with HIV in the UK are (or have been in the past) refugees or asylum seekers (Fortier, 2004), a group already significantly socially excluded (refugee council, 2004a). Exclusion associated with being HIV positive may be significantly compounded by pre-existing social exclusion and social need associated with being an African refugee or asylum seeker.

In order to survive and thrive, refugees and asylum seekers need to draw on their own personal resources (their ability to work for example) and need to draw on a supportive social environment in their host country. This environment is created first by the support of expatriate communities in the host country as well as in their home country and second by the provision of supportive enabling legislation policy and services by the host country. African people with HIV are likely to have all of these resources particularly curtailed.

Below are some of the issues raised by the AHPN members regarding the treatment of asylum seekers.

(i) *Access to accommodation and financial support*

According to Sigma Research's Project Nasah (2003)

“Dealing with the Immigration Service was a huge and specific problem for at least half of all these Africans with HIV. For them, it is likely that their uncertain immigration status undermines other aspect of their life—their access to money via work or benefits and consequently their access to reasonable housing and other essentials for everyday life.”

Experiences

Section 8 of the Asylum and Immigration Act 1996 does not allow asylum seekers to seek legal employment. However, many asylum seekers are highly skilled and would like to contribute to society. Additionally, they do not want to be dependent on the government; and state benefits provide them with limited choices of how they can lead their lives. It pushes some people to adopt survival strategies such as the exchange of sex for food or lodging, working in unsafe or exploitative environments, or participating in commercial sex work. The fact that asylum seekers has limited opportunity to work also impacts on their mental health because they take their role as providers for their families seriously and would prefer to use their time constructively to earn money and to develop their knowledge and skills.

Many African asylum seekers receive vouchers from the National Asylum Support Service (NASS); and they feel that these vouchers restrict their ability to buy culturally appropriate food. For people living with HIV, this impacts on their health because some medication needs to be taken with food and in some cases they are unable to use the vouchers to adequately cater for their nutritional needs.

Recommendations

The government policy of disallowing asylum seekers from seeking legal employment (Section 8 of the Asylum and Immigration Act 1996) should be repealed.

Ratify the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and their Families.

The voucher system should be revised to take into consideration the nutritional needs of African asylum seekers.

(ii) *The provision of healthcare*

In April 2004, in response to the media hype around “treatment tourism”, the Department of Health introduced changes to the NHS (Charges to Overseas Visitors) Regulations 1989. Prior to April 2004, NHS treatment of all kinds was available free of charge to anyone who could show that they had been in the UK for more than 12 months. These new regulations mean that asylum seekers who have not been granted leave to remain in the UK do not have access to free HIV treatment.

Experiences

Chelsea and Westminster Hospital sent a bill of £12,671 to one patient, while another patient from St George's Hospital received a bill of £34,257. These bills are unrealistic and impact negatively on the health of people living with HIV because they become fearful about accessing future treatment; and without HIV treatment, their health will deteriorate.

These proposals would accentuate inequalities rather address them. Charging undocumented migrants, failed asylum seekers, or visitors with AIDS, Tuberculosis or Malaria runs counter to public health interests. Africans living in the UK tend to present later for HIV/AIDS testing and these measures deter people from taking up testing services. This has evident repercussions for the spread of the epidemic which will have further and weightier social and economic cost implications. These communities who by the nature of their status in this country cannot work and thus pay for medical services is both inhumane and unethical contradicting international and national legislation on human rights and discrimination.

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- The Human Rights Act (HRA) brings into national law the majority of the rights and freedoms set out in the European Convention on Human Rights. Withholding proper medical care from someone with a serious illness could be held to contravene Article 2 (right to life) or 3 (freedom from torture). Those rights are actionable directly in the domestic courts and create an obligation for courts, and “public authorities” to interpret the provisions of all legislation in a way that is compatible with the Convention. The NHS, Trusts and health professionals working within the NHS are seen as “public authorities” and therefore need to be aware of the Act. Although many aspects of care remain unchanged, the HRA is likely to have a great impact on the public awareness of patients’ rights in relation to medical care.
 - Article 2 of the European Convention on Human Rights is concerned with the “right to life”. This policy refers to any life threatening condition not just HIV. Applications for Exceptional leave within the UK remain are often made (not always successfully) under this clause. The Department of Health’s policy has undermined access to treatment and therefore this article of the convention. It states, “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”
 - Article 3 states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.
 - Article 14 of the Act is related to the Prohibition of Discrimination. Stating that “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”
 - The UN Declaration on Human Rights also binds the UK legislatively. Article 25 of this declaration recognises the right to health by migrant communities. Stating that these rights and freedoms “shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”
 - The 1969 International convention on the Elimination of all Forms of Racial Discrimination also accords minority ethnic communities the right to access public health, medical care, social security and social services. The Department of Health’s policy contradicts all these forms of legislation.
 - As an umbrella African organisation we are concerned that the Department of Health’s policy have further stigmatised African communities by compounding existing experiences of racial discrimination and social exclusion as the “bearers” of disease within the British public mind. Health professionals must be careful not to breach section 20 of the Race Relations Act by discriminating against asylum seekers (by refusing to provide them with health care services, for example, or by providing lower standards of care). It is unethical to refuse to accept particular patients solely because they may require expensive treatment (so-called “uneconomic” patients).

There is no vaccine or cure for AIDS, but provided HIV is diagnosed early enough new treatments can prolong life for many. Access to essential life-saving HIV treatments is a human right. Although the National Health Service currently makes HIV treatments widely available, a range of barriers exist to equitable treatment access for some, particularly for overseas visitors. These include limited availability of information about treatment options, lack of patient support services for adherence to complex treatments, the discriminatory attitudes of health care workers, and regulatory restrictions affecting groups such as asylum seekers. Research indicates that the most common form of discrimination experienced by people with HIV in the UK is discrimination by health care providers.

Recommendations

The government should re-instate lack of access to anti-HIV treatment in one’s home country as grounds for Humanitarian Protection.

The Government to amend the *NHS (Charges to Overseas Visitors) Regulations 1989* in order to exempt HIV treatment and care from NHS charges. We believe that the current regulations are a danger to both individual and public health.

(iii) *Treatment of children*

Experiences

Provision of Health care—The Department of Health changes to the NHS (Charges to Overseas Visitors) Regulations 1989 does not consider the impact on unaccompanied children and young people under the age of 18. The impact upon children’s issues is of specific concern to African communities—because the majority of children currently affected by HIV, tuberculosis and malaria will, be African. The proposed policy

contradicts other policy and legislation such as The Children Act 1989, Lord Laming's recommendations following the Victoria Climbié Inquiry and the current Children Bill.

The largely invisible population of young people born overseas, who live in British cities without their biological parents will be significantly affected by restricting access to General practice. These maybe school age children who have sought asylum (usually without any knowledge of our legal system) without any adult, even a distant relative. These children have fled their homelands after civil war or state-sponsored genocide and few attend school or maintain a fixed address.

The health needs of these children can be serious and complex (psychological and physical trauma, TB, substance use or pregnancy following rape), however health services will be inaccessible to them if the proposed measures are introduced. Local Government currently acts as the "corporate parent" of these children. The AHPN feel that the proposed measures undermine the necessary role of primary medical providers for this group. These children maybe without parental support or guidance and can be exposed to commercial, sexual and servile exploitation. Access to a GP, for treatment of a minor injury, may be their first opportunity for contact with a responsible, law-abiding UK citizen. Removing this right will severely impact on their future life opportunities. It is also a violation of the right to health guaranteed under the UN Convention of the Rights of the Child.

Detention—Some children have been held in detention centres with their families. This has a serious mental impact on the children. People who live with HIV sometimes feel that they are viewed as criminals for having the virus, let alone for being held in a detention centre. For children, being in a detention centre can be even more traumatic if they see their mothers are distressed.

Dispersal—Some children have been unsettled by the policy of dispersal. After the initial challenge of settling in the UK, making friends and adapting to a new environment, some families have been forced to move. In one case, dispersal forced one mother to disclose her HIV status to her children because she fell ill and needed medical and social assistance. She would have preferred to disclose to her children in another way. Another issue is that it often takes time for children living with HIV to develop a trusting relationship with a support worker. When they are dispersed they are unsettled and are forced to develop new relationships all over again, which delay a child's progress.

Recommendations

The government policy of dispersing asylum seekers across the country (as supported by Section 97 of the Immigration and Asylum Act 1999) should be repealed. This policy isolates people living with and affected by HIV from their only means of personal and community support, and for those with diagnosed HIV it substantially reduces access to adequate specialist HIV care and social support.

Families should not be placed in detention centres.

When dispersing families, further consideration should be taken for families with children, especially when a member of the family is living with HIV and might be unsettled by the move.

(iv) *The use of detention and conditions of detention and methods of removal of failed asylum seekers*

The British Medical Association and the All-Party Parliamentary Group on AIDS (APPGA) have expressed concerns that conditions in detention centres were inappropriate for the long-term health needs of asylum seekers and refugees, especially those living with HIV. Detention centres have no specialist HIV services, could prevent individuals from adhering to their HIV medication, and they have little to no privacy for taking complex medication.

Experiences

Some people living with HIV are experiencing difficulties accessing their medication while they are held in detention. In one case, a woman living with HIV was held in Yarl's Wood and needed to access her HIV medication. The medication was not available at the detention centre and she had to go without treatment for four days. Eventually, they took her to the nearest hospital, Bedfordshire Hospital. The hospital did not have the medication that she needed and they offered her two doses of medication to satisfy the quantity she needed. There was lack of knowledge around HIV treatment.

Another woman living with HIV was removed from her home with her three children, placed in a detention centre and deported to Uganda. In Uganda, she has very limited access to treatment and her health has severely deteriorated. She has no support from family or friends and she may die in very distressing circumstances, leaving her three children behind with no one to care for them.

The detention of asylum seekers and migrants have been severely criticised for the severe failures of the authorities to provide adequate medical care and treatment resulting in cases which would amount to a breach of Article 3 of the European Convention on Human Rights A.

Recommendations

People with HIV should not be placed in detention or removal centres for immigration purposes, where it is not possible to provide suitable medical care, as detention can undermine efforts to maintain good health.

Asylum seekers living with HIV should not be placed in detention centres and then deported if they will not have access to medication in their home countries.

(v) *Treatment by the media*

African's living with and affected by HIV are subjected to inflammatory and ill-informed media coverage. This in turn has contributed to misinformation about HIV and its transmission, and the stigma surrounding HIV infection is increased by portrayals of people living with HIV/AIDS as "potential criminals" and as a threat to the "general public".

Experiences

The media, in particular the tabloids (*Sun*, *Daily Mail*), portray negative images of asylum seekers. They send out negative messages, for example the myth around "treatment tourists", despite recent evidence that shows the average length of time in the UK before diagnosis is 3.9 years. These papers recently covered a story about a Zimbabwean immigrant who they claim knowingly transmitted HIV to six women ("Hols Fiend Gives 6 Girls HIV: Asylum Seeker's AIDS Timebomb at Caravan Park" *The Sun* 14 September 2006; "Asylum Seeker Gave Six Women HIV" *The Daily Mail* 14 September 2006). The allegations were unfounded.

Additional examples include:

- "HIV Migrants hit 1,000 in Britain," *The Times*, February 16, 2005.
- "1 in 22 migrants live with HIV," *Daily Mail*, March 2005.
- "The Secret Threat to British Lives," *The Spectator*, January 2003.
- "AIDS-infected asylum Seekers overwhelm UK hospitals," *The Telegraph*, June 2003.

These kinds of portrayal impact on asylum seekers in the UK, who automatically feel stigmatised. It has a particular impact on asylum seekers who might want to test for HIV, but fear being diagnosed with HIV and being subsequently branded "AIDS time bomb" by the media.

HIV related stigma could lead to discrimination and other violations of human rights that affect the well being of people living with HIV in fundamental ways. Prioritising the rights and dignity of people who have been diagnosed or are at risk of HIV infection creates the conditions necessary for successful prevention, treatment and care. In many international policy contexts, an integrated approach to addressing HIV prevention, care and treatment that is founded on human rights and dignity has been advocated. This is clearly embodied in HIV/AIDS and Human Rights international Guidelines (United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS 1998) and also in the Declaration of Commitment on HIV/AIDS (United Nations 2001).

Recommendations

The media needs to be held accountable for dishonest and inaccurate reporting. The National Union of Journalists should ensure that journalists do not present negative images of African people.

September 2006

43. Memorandum from the Asylum Support Appeals Project

EXECUTIVE SUMMARY

Asylum seekers are often left destitute unnecessarily because there is no public funding available for asylum support appeal hearings. These appeals are against National Asylum Support Service's (NASS) decisions to terminate or refuse asylum seekers' access to housing and financial support and are not immigration appeals. This lack of access to legal representation prevents asylum seekers, many of whom have mental and/or physical health problems, from exercising their legal rights to food and shelter effectively.

ASAP's statistics show that competent legal representation triples asylum seekers' chances of having their housing and financial support awarded or reinstated.¹ However, 99% of asylum seekers had no legal representation during their oral asylum support appeal hearings in 2004-05.² Our research also shows NASS decision making is poor and they frequently misinterpret and misapply the criteria for support provision.³

ASAP believes that the current asylum support appeal system contradicts the well recognised concept of “equality of arms”, which holds that to deal with a case justly the parties should be on an equal footing, embodied in the Civil Procedure Rules (CPR); Rule 1.1(2), and systematically places asylum seekers in a disadvantaged position when challenging NASS decisions. We also believe that unnecessary destitution of this already vulnerable group of individuals as a result of a lack of public funding for their asylum support appeals and of administrative delays caused by NASS is inhuman and degrading. We are also concerned that an increasing number of failed asylum seekers who are not able to leave the UK have no access to any support.

Note 1: Between August 2005 and March 2006, ASAP assisted and/or represented 106 asylum seekers during their oral hearings at the Asylum Support Adjudicators. ASAP had a success rate of 62% while only 20% of unrepresented asylum seekers had positive outcomes after their oral hearings.

Note 2: Asylum Support Adjudicators Annual Report 2004–05.

Note 3: A study into the quality of NASS decision making carried out by ASAP showed an error rate of 98.8%. This was based on 85 decisions from cases represented by ASAP between January and July 2006.

ASYLUM SUPPORT APPEALS PROJECT—INTRODUCTION

Asylum Support Appeals Project (ASAP) is a registered charity providing free legal representation for asylum seekers whose NASS support has been refused or terminated. We also provide second-tier legal advice and training services on asylum support appeal issues for voluntary sector advisors and law practitioners. ASAP is the only agency specialising in the area of law known as asylum support law which relates to asylum seekers’ legal entitlements to housing and financial support. Our submission is based on our experience of legal representation work at the court as well as our work with other front-line agencies working with destitute asylum seekers.

Every year, approximately 2,500 appeals are lodged against NASS decisions to refuse or terminate asylum seekers’ housing and financial support. The total number of asylum seekers with a right of appeal to the Asylum Support Adjudicators (ASA) who do not lodge an appeal is not known. In 2005–06, ASAP represented 106 asylum seekers at the ASA with a success rate of 62%. 56% of the clients we assisted had mental or physical health problems and 75% of them were already destitute by the time they had come to the ASA. We also represented some families which were affected by section 9 and dealt with a number of queries regarding individuals affected by section 55.

There is no public funding available for asylum support appeal hearings. As a result, very few law practitioners have expertise in asylum support law. ASAP advised over 80 organisations with over 200 asylum support queries in 2005–06 and trained 40 organisations.

ASAP welcomes this inquiry, in particular the examination of whether the recent legislative provisions on asylum support breach human rights; particularly: the rights to freedom from torture and inhuman and degrading treatment under Article 3 of ECHR and the right to family life and a fair trial under Articles 8 and 6 respectively. ASAP is also concerned that asylum seekers’ ability to safeguard their legal rights to accommodation and financial support as well as to challenge potential human rights violations when support is not provided by NASS is severely restricted due to the lack of public funding for asylum support appeal hearings. We believe that this potentially engages Article 6 which provides for the right to a fair hearing. With the increasing number of destitute failed asylum seekers who are unable to leave the UK and the imminent national roll-out of the New Asylum Model (NAM), ASAP appreciates this opportunity for witnesses from front-line organisations to inform the Committee of the real conditions of life for asylum seekers and hopes that there will be a significant improvement in the treatment of asylum seekers.

Evidence for the House of Commons Select Committee

MEMORANDUM

1. THE INEQUALITY OF ARMS—LEGAL AID FOR ASYLUM SUPPORT APPEALS

1.1 *Introduction*

1.1.1 Where a person has been refused support or their support has been withdrawn by NASS, that person has an exercisable right of appeal under Sections 102–104 of the Immigration and Asylum Act 1999. A tribunal was set up under Schedule 10 to the Immigration and Asylum Act 1999 (as amended by the National Immigration and Asylum Act 2002) and appeals made against the withdrawal or refusal of support are made to the Asylum Support Adjudicators (ASA).

1.1.2 The ASA hear appeals against decisions to withdraw or refuse support, not challenges to the type, level or adequacy of support. The ASA on hearing an appeal can allow the appeal and grant the person support, dismiss the appeal by upholding NASS’ decision not to provide support or remit the appeal to NASS for further investigation and a fresh decision.

1.2 *Strict Time Limits to Make an Appeal—Barriers to Exercising Rights*

1.2.1 There is a very short time in which to complete an appeal to the ASA. Once a person receives notice in writing of the decision to remove or refuse support, an appeal must be completed by the person appealing and received by the ASA within five days of the date of that decision. Many asylum seekers find it difficult to complete the form, which must be completed in English, within this time frame and the ASA are able to decide an appeal is invalid if the form is not completed correctly. In 2005 the ASA invalidated 485 appeals (19% of all appeals).

1.2.2 Many people find it difficult to complete the form and attend an appeal regarding their support without advice and support from a suitably qualified person. Due to short time limits, complex law and most significantly a lack of public funding the vast majority of people complete the appeal form and attend the appeal hearing alone and unrepresented. 56% of all people who ASAP have helped in the last year had additional mental and physical health needs rendering the job of representing themselves virtually impossible. The strict appeal time has been put in place to ensure that a destitute person gets an appeal hearing quickly to expedite the length of time they are without accommodation but given that NASS can take up to eight weeks to make a decision on a person's original application, the logic of this is flawed. For further comment see paragraph 4.2.1.

1.3 *No Representation in Appeals—A Fair Trial?*

1.3.1 NASS is usually represented by a Home Office Presenting Officer. ASAP is concerned that where one party to the proceedings (NASS) is represented and another (the person appealing) is not, the unrepresented person does not have an equally fair chance to prove their case. This can be considered as contradicting the well recognised concept of "equality of arms" which holds that to deal with a case justly the parties should be on an equal footing. This is embodied in the Civil Procedure Rules (CPR); Rule 1.1(2). The burden of proof in asylum support appeals always rests with the person making the appeal meaning an unrepresented person is required to not only show that NASS' decision was incorrect but also that they are entitled to support.

1.3.2 ASAP argue that the lack of public funding for representation prevents solicitors assisting in asylum support appeals and could be a breach of an individual's rights under ECHR Article 6. Article 6 provides; "In the determination of his civil rights and obligations . . . everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". Asylum support law is complex and individual cases may contain complex issues which are beyond the understanding of a person who wishes to appeal. The proceedings may be unfair if the person appealing does not understand the process, is not able to identify and argue the legal issues and faces a trained Home Office Presenting Officer. The judicial system in the UK is adversarial and it may be an unequal battle if the person appealing is unrepresented.

1.4 *Poor Decision Making Undetected*

1.4.1 The key issue that ASAP has identified is that often the quality of decision making by NASS can be poor and that their decisions are often unlawful, misrepresent the law or contradict their own policy. Whilst the ASA can provide information regarding how many people do appeal, NASS do not provide statistics which show how many people have their support withdrawn or refused and do not appeal so the number of people who don't appeal a decision which could be flawed is unknown. Their destitution will continue, which may give rise to a breach of their rights under ECHR Articles 3 and 8. Those who do appeal but go unrepresented may not be able to identify mistakes of law or policy made by NASS. It can be argued that the Adjudicator in the appeal can identify these issues however the role of the Adjudicator is one of independence and it is only a suitably qualified representative who is advocating for the person appealing who can construct an argument around NASS' errors which benefits the person appealing. ASAP statistics show that 62% of people who received our representation won or had their appeal remitted. This is only true of 20% of people who were unrepresented.

1.4.2 There is a wider issue in that mistakes made by NASS may have a wider effect on a large group of people requiring NASS support. It is important that NASS decision making is scrutinised and challenged where needed. If a person does not get legal advice in respect of an asylum support appeal, mistakes and errors of law may go unchecked. It may be that the individual concerned has a right to judicially review the decision. Judicial reviews are a check on the decision making of government bodies and can not only achieve a positive outcome for an individual who has lost their asylum support appeal but also clarify and even change the law. This opportunity is lost for the want of legal advice.

1.4.3 ASAP has conducted research into the quality of NASS decision making in order to ascertain how often NASS caseworkers make errors when deciding whether someone is entitled to support. This research has highlighted many errors of law and policy made by caseworkers when refusing support and demonstrates the need for a legal representative to identify and challenge this evidence.

1.4.4 The majority of cases heard at the ASA relate to Section 4 support. This is a type of support available to some failed asylum seekers. The ASAP represented 85 Section 4 cases at the ASA over a six months period and all of these have been scrutinised to identify errors. ASAP used decisions between January and July 2006 as this was felt to represent a fair cross section of decisions made by NASS. What ASAP's research does not show however is the number of incorrect decisions issued to people who do not appeal. ASAP only sees decision letters from those who have managed to appeal and then access our service, the total number of incorrect decisions made over a six month period may therefore be much higher. NASS have not made available any statistics which show how many decisions they make to terminate or refuse support each year.

1.4.5 A failed asylum seeker who is unable to leave the UK can apply for Section 4 support providing they are destitute and meet one of five qualifying criteria (see paragraph 1.4.6). It is therefore a two stage test.

When considering a person's destitution the correct test is whether that person can meet their living needs for the next 14 days. None of the 85 decisions stated this test correctly. 28 of these decisions did not consider the person's destitution at all. Of the 57 that did, 33 contained an error which is equal to 57%. In 25 instances NASS stated that a person is only destitute if they could prove their circumstances had reached the required level to demonstrate a breach of ECHR Article 3. This incorrectly and unlawfully places proving destitution at a much higher threshold than the actual test of demonstrating a person cannot meet their living needs for the next 14 days.

1.4.6 The second test for Section 4 support is that the person must meet one of the following criteria in addition to being destitute:

- (a) The person is taking all reasonable steps to leave the UK.
- (b) The person is unable to leave the UK by virtue of a physical impediment to travel or other medical reason.
- (c) In the opinion of the Secretary of State there is no viable route to the person's country of origin.
- (d) The person has made an application for judicial review in respect of their asylum claim and has been given permission to proceed.
- (e) Support is necessary to avoid a breach of the person's human rights within the meaning of the Human Rights Act 1998 and the European Convention on Human Rights.

In respect of the qualifying criteria 64% of the 85 decisions were legally flawed with many commenting on the credibility and honesty of the person applying for support. Comments included suggesting that applicants had made fruitless asylum claims just to get support, had got married and had children to try and remain in the UK and had converted to Christianity to delay their removal from the UK.

1.4.7 The report concluded that the combination of results for the test for destitution and the test for the qualifying criteria demonstrated that 84 out of the 85 decisions used contained an error. This represents 98.8%.

2. PROLONGED DESTITUTION—FAILED ASYLUM SEEKERS AND SECTION 4

2.1 *Failed Asylum Seekers*

2.1.1 Failed asylum seekers (those who have exhausted their asylum application, including appeals) are expected to make arrangements to leave the UK and return to their country of origin. NASS support is terminated approximately 21 days after they receive a final refusal on their asylum application.

2.1.2 However, many failed asylum seekers, for various reasons, are unable to leave the UK at this point. This includes those who are too ill to travel, women who are heavily pregnant or who have very young babies. There are also practical reasons why some failed asylum seekers are unable to leave the UK. Many will experience difficulties obtaining appropriate travel documents or will be denied entry to their country of origin. Some may have outstanding issues regarding their asylum claim. Some will be classed as stateless or there will be disputes concerning their nationality. Unable to leave the UK, many will become destitute.

2.2 *Section 4 Support for Failed Asylum Seekers*

2.2.1 Some failed asylum seekers can apply for a limited type of support known as Section 4. The provision of Section 4 support was initially introduced under the Immigration and Asylum Act 1999. However, it was not until the 31 March 2005 that Section 4 was placed on a statutory footing. The new regulated scheme was brought in by Section 10 of the Asylum and Immigration (Treatment of Claimants) Act 2004.

2.2.2 Section 4 is regarded as a temporary type of support whilst a person is preparing to leave the UK and, as a result, the criteria are very strict. Those applying must first show that they are destitute and secondly, that they meet one or more of the five qualifying criteria. In brief these are: that the person is taking all reasonable steps to leave the UK; that they are unable to leave the UK due to some physical impediment

or another medical reason; the Secretary of State has declared there is no viable route of return to a particular country; the person has permission to proceed with a judicial review; support is necessary to avoid a breach of the person's human rights.

2.3 *Right to Appeal*

2.3.1 As well as putting Section 4 on a statutory footing, the Asylum and Immigration (Treatment of Claimants) Act 2004 provided those who were refused Section 4 support with the right of appeal to the Asylum Support Adjudicator (ASA). Evidence provided earlier in this submission outlines the remit of the ASA (see paragraph 1.1.1).

2.3.2 This finally put failed asylum seekers on par with asylum seekers who have a right to appeal to the ASA if their support withdrawn (either because they are deemed as having breached the conditions on which support is provided or are seen as no longer meeting the conditions). Prior to the 2004 Act, Section 4 was provided on a discretionary basis and failed asylum seekers had no way of challenging NASS' decisions.

2.3.3 However, despite being placed on a statutory footing, Section 4 support is generally regarded as a temporary measure until the reason why an individual cannot leave the UK is resolved. Section 4 support is deliberately constructed to act as a deterrent, to encourage the return of failed asylum seekers which is why the level of support is so much lower than that offered to on going asylum seekers. There is no cash payments, instead failed asylum seekers are provided with housing and £35 worth of vouchers. However, ASAP believes this is flawed logic as anyone in receipt of Section 4 support cannot return home anyway (with the exception of receiving support because they are taking steps to leave the UK) and should not be kept on such a low level of support when they have an impediment to travel.

2.3.4 In addition to poor provisions, many of those applying for Section 4 can experience serious delays when they first apply. In the past year the ASAP represented over 100 failed asylum seekers with their appeals to the ASA. Our case files show that it can take anything from three to eight weeks NASS to make a decision on a application for Section 4 support. Many of those we represent are in urgent need of support and are either sleeping rough or on the floors of friends and community members. Very often these are individuals who are NASS supported and who run the risk of losing their accommodation as NASS regulations strictly prohibit overnight visitors.

2.3.5 The treatment of those applying for Section 4 contrasts sharply with the situation for asylum seekers when they first apply for NASS support on making their asylum claim. Unlike Section 4 applicants they are immediately placed in emergency accommodation whilst NASS assess their application for support.

3. DELAYS FOLLOWING AN APPEAL TO THE ASA—DESTITUTION CONTINUED

3.1 *Following a Successful Appeal*

3.1.2 As well as experiencing delays when they first apply, failed asylum seekers who successfully overturn a decision by NASS not to support them, are also experiencing serious delays between winning their appeals and being awarded support. Again our files show that it can take anything from seven days to six weeks for support to be awarded following a successful appeal at the ASA. This is despite the fact that the adjudicator's decision is binding both on NASS and the person appealing. In the case of an appeal being allowed, the decision essentially means that the individual was entitled to support in the first place and the decision to refuse them support was incorrect. It follows, therefore, that the appealing person if successful is entitled to support immediately following the appeal and it should be awarded accordingly. It is the experience of the ASAP that adjudicators, when closing the hearing often state expressly that the person, having had their appeal allowed, is entitled to support from that day.

3.2 *Following a Remitted Appeal*

3.2.1 The ASA also has the power to remit the appeal which instructs NASS to make a fresh decision thus quashing the decision appealed against This happens in instances where the ASA believes that NASS has failed to take into account all the relevant factors or has reached a decision based on incorrect information. The expectation here is for NASS to reach a new decision as soon as possible. However, again our records show that, in many cases NASS can take several weeks to make a new decision thus prolonging the destitution of those awaiting support.

4. RECOMMENDATIONS

4.1 *Public Funding to be Available for Asylum Support Appeals*

4.1.1 The high level of error leads to unnecessary extended periods of destitution, dismissed appeals and no chance of judicial review. ASAP recommends that public funding be available to provide representation

at asylum support appeals so those appealing can have adequate advice and support in order to allow them to attend the appeal on an equal footing to NASS. Asylum seekers and failed asylum seekers are amongst the most vulnerable people in society and the need for accessible legal advice is great.

4.1.2 NASS caseworkers should be adequately trained to make decisions and should ensure that they address all elements of qualifying criteria for support when making decisions as to whether a person is entitled to support.

4.1.3 Those appealing to the ASA have only five days from the date on the NASS decision in which to lodge their appeal and have it received by the ASA. Many of those appealing are doing so without any representation and will struggle to understand and complete the appeal form. It seems very then unfair then to insist on such a tight time frame for appealing when NASS themselves often fail to process an application for support within a reasonable timeframe. NASS should process applications within 48 hours so the person can immediately exercise their appeal rights.

4.2 *Clear Time Frame For Section 4 Support Provision*

4.2.1 Despite Section 4 being placed on a statutory footing, NASS have in many respects continued to treat this provision as if it were discretionary. This can be observed in the ongoing delays surrounding the provision. Section 4 support was created in recognition that there are groups of failed asylum seekers who, through no fault of their own, are unable to leave the UK. ASAP believes that NASS is failing to honour its obligations towards this group and recommends that Section 4 support given the same priority as mainstream NASS provision. Whilst we recognise that it may not be practical to provide emergency accommodation for those applying for Section 4 support, the ASAP recommends that, at the very least, NASS should endeavour to process their applications within 48 hours (see also paragraph 4.1.3).

4.3 *Prompt Responses to ASA Decisions—Providing Support or Reissuing Decisions*

4.3.1 ASAP recommends that NASS implement the ASA decisions immediately and awards support to the applicant within 24 hours of the appeal being allowed. Failure to do so, having proved they are destitute and are unable to leave the UK, is arguably breach of the persons Article 3 rights as it subjecting them to cruel, inhuman and degrading treatment.

4.3.2 Given that a successful appeal means that the person was entitled to support when they applied and NASS were incorrect to have refused support, the support should be backdated to the date the person originally applied for support. NASS can take up to eight weeks to provide support and it is unacceptable that a person entitled to support spends this time destitute.

4.3.3 When a case is remitted, the ASA should have the power to instruct NASS to make a new decision within 48 hours. ASAP have witnessed the ASA allowing appeals providing the person complies with certain conditions (such as providing NASS with certain documentation) and this power should equally apply to insisting NASS deliver a fresh decision within a proscribed time frame.

44. Memorandum from the Mapesbury Clinic

The Mapesbury Clinic has been working with refugees and asylum seekers since 2000 providing a linguistically and culturally aware service to this group of people. We continue to provide a counselling and psychotherapy service to the aforementioned groups in up to 19 languages including Arabic, Farsi, Bosnian, Turkish and Somali. We have also provided an Advocacy and Information Service since 2003, we have approval from Office of the Immigration Services Commissioner (OISC) for this work. Some of our counsellors and psychotherapists have been refugees and asylum seekers themselves, which is a positive for the clients who fear that they may not be believed or that they will not be understood.

ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

We have experienced through the Advocacy and Information Service the inadequacy of the level of welfare benefits for asylum seekers and/or the inadequate level of housing. More detailed information on these issues is provided by James Allen the Advocacy and Information Worker.

THE PROVISION OF HEALTH CARE

It has come to our attention over the years that many of our clients complain about inadequate health care.

Interpreters

If asylum seekers are able to sign up with a GP, there is often a problem of communication due to the practitioner's inability to converse in the patient's mother tongue and/or a severe lack of properly trained interpreters. This means that patients often have to use family members to interpret for them and therefore they may not wish to discuss their problem fully because of the lack of confidentiality. With regard to the issue of interpreters small children have often engaged with GP's in this role which is inappropriate on all sorts of levels, including ability to understand complex issues and then being expected pass on information to the adult.

Psychological Services

Access to psychological services at primary and secondary level is difficult for refugees and asylum seekers. Again there is a problem of language. This is where the Mapesbury Clinic has been able to provide a limited service to people who have suffered physical and mental trauma prior to their arrival in this country. However, on arrival in the United Kingdom, mental stress continues in terms of racism, which may include hate crimes ranging from verbal abuse to physical attacks.

At the Mapesbury Clinic we offer 12 sessions (we are limited in terms of funding) of psychotherapy with a counsellor or psychotherapist, some of our staff are volunteers who are paid expenses only for their services. We have found that 12 sessions are not really enough for the experiences which our clients wish to discuss. They regularly tell us about events, which include torture in the form of repeated rape (often with multiple perpetrators) in prison or prison like conditions, this applies to men as well as women, although male rape is a "hidden" act. We have heard accounts of beating, burning and being forced to perform humiliating and inhuman actions. We have extended the treatment times to 20 sessions for some clients whose experiences are particularly severe but it could be argued that all of our clients need this level of intervention.

In our experience many failed asylum seekers only reveal information about their experience of torture (rape etc) within the confines of a therapeutic relationship because they have felt ashamed to tell someone like an immigration officer or Home Office worker about what has really happened to them.

TREATMENT OF CHILDREN

The Mapesbury Clinic does not work directly with children, although we have worked with young people aged 16 years and above. Social Services or Community Projects usually refers them.

USE OF DETENTION AND CONDITIONS OF DETENTION AND METHODS OF REMOVAL OF FAILED ASYLUM SEEKERS

I cannot comment on this point as I have only been in post at the Mapesbury Clinic since July 2006. I have knowledge of inappropriate detention and unnecessarily heavy-handed methods of removal to holding centres etc in my experience elsewhere. People are often taken to a detention centre, which is a significant distance from their place of residence. This can and does happen without prior warning and/or without time to pack or retrieve essential items including medication and papers pertinent to their claim for asylum.

TREATMENT BY MEDIA

I cannot comment on this point, as I have no direct experience of this issue.

Bernadette Hawkes
Clinical Services Manager

September 2006

Evidence of Human Rights Issues in the Support of Asylum Seekers in the UK: experiences of clients of the Mapesbury Clinic

1. NASS ACCOMMODATION AND SUPPORT

Dispersal of clients away from social/informal support networks to areas where services cannot meet their needs. Services for asylum seekers in Scotland and in parts of England and Wales have improved a lot in recent years, but specialist services for traumatized and depressed asylum seekers are seldom available in dispersal areas. Clients can also have difficulty finding a solicitor in dispersal areas for immigration (availability varies enormously from place to place).

Section 4 support from NASS, although easier to get now, is difficult for our clients because subsistence is paid only in vouchers, not cash. This makes it difficult to travel or use the telephone and it can be hard to buy familiar/traditional foods or clothing. Being moved around temporary accommodation, two, three or four times, is very disruptive and stressful for vulnerable clients, who often feel insecure and distressed.

Accommodation is contracted out to property agencies whose staff often seem disrespectful in their attitudes to asylum seekers, and unprofessional in the way they work. They also seem to have no training or skills in dealing with clients with mental health problems. These clients, when single, are often expected to share rooms: this is difficult when they have nightmares and/or sleep poorly (which is quite common among our clients). It also exposes them to the attitudes of other residents (of shared houses/flats) to people's mental health, which can be quite negative. The provision of accommodation and support is poorly monitored by NASS, who seem to leave much to the discretion of the property agencies. This also complicates communication/responsibility when difficulties arise.

For destitute asylum seekers with care needs, assessment by a Local Authority under the NHS and Community Care Act 1990 can lead to accommodation and support being provided under section 21 of the National Assistance Act 1948. In practice local authority social services departments vary widely in their willingness and ability to assess asylum seekers' care needs adequately, and then to make reasonable support decisions based on these assessments. Social workers do not always understand what is required in law, or how to put this in to practice appropriately particularly in mental health cases, and the priority of some local authorities seems to be to evade a duty at all costs. In our experience it would be almost impossible for asylum seekers to obtain this form of support, even where their care needs clearly require it, without the help of an advocate or legal representation.

When a grant of leave is made NASS support and accommodation can be withdrawn before any other provision is in place: people are made homeless, and benefits applications can take a long time to process. The housing and welfare benefits systems are entirely new to these clients: the Sunrise programme helps but it is not enough. Having been to Sunrise some clients still come to us for help.

2. ACCESS TO HEALTHCARE

Clients are still having difficulty sometimes registering with GP practices, particularly when they are moved from place to place by NASS. Receptionists can ask to see a passport (which an asylum seeker will not have) and then say that without one the client cannot be registered. Difficulty registering and gaps between GPs can make continuity of care/medication difficult.

GPs can sometimes have difficulty understanding physical and psychological problems clients are having due to communication problems: health issues can go undiagnosed or untreated until an advocate intervenes.

A lack of counseling and psychotherapy through the NHS for traumatized or depressed asylum seekers puts a strain on voluntary agencies such as the Mapesbury Clinic, which receives no PCT or Mental Health Trust funding. Waiting lists for the Clinic or the Medical Foundation tend consequently to be too long and clients' condition can deteriorate, affecting ultimately their ability to settle in the UK and integrate successfully. The almost universal long-term prescription of anti-depressants does not address clients' psychological needs and must be very costly.

3. DETENTION

Mistakes are still being made whereby asylum seekers with applications still pending at the Home Office are being detained for removal. When this is challenged by a solicitor they are then granted temporary admission. For clients with post traumatic stress, or suffering from depression and anxiety, this can be a very distressing experience, particularly when clients have been imprisoned and mistreated in their countries of origin (which is common among our clients). Clients are also detained sometimes who are stateless, and so cannot in effect be removed because no government will accept them: this again is pointlessly traumatising for vulnerable asylum seekers.

4. FORMER ASYLUM SEEKERS

Asylum seekers whose claims have been finally determined (refused) often remain in the UK for years afterwards because they are still afraid to return to their countries of origin. When they are referred to us for counselling it is clear that these long periods of "limbo" (destitution and uncertainty) have often had a detrimental affect on their mental health. It is also often the case that mental health issues have not been presented, or not adequately presented, in their human rights applications for leave to remain or at appeal.

Asylum claims are nowadays decided much more quickly than before, which is in itself a good thing, but it can be difficult to obtain comprehensive reports on psychological issues in so short a time. Distress and trauma can also make it hard for some of our clients to present their asylum cases coherently or consistently (inconsistencies are a common reason for Home Office refusals). We are sometimes able to identify these issues and to refer clients to solicitors who can represent them: otherwise the human rights dimensions of these cases could easily be missed.

The recent Family ILR Programme for asylum seekers with children who applied before October 2000 seemed a rational and pragmatic approach to the fact that so many of these families were, whatever the reason, still in the UK. If large numbers of failed asylum seekers are not going to be removed soon after

their final determinations, it would just seem to make more sense to regularize their immigration status through some grant of leave. For people who clearly have mental health problems this would also be more humane and compassionate: in some cases there is a real risk of suicide if removal is attempted or effected.

James Allen

Advocacy and Information Service

45. Memorandum from the British Psychological Society

EXECUTIVE SUMMARY

- Although many people are highly resilient, both the events leading people to seek asylum and their subsequent experiences may be traumatic. It is psychologically normal, therefore, for a range of emotional and behavioural problems to be evident. These problems demand a humane response, but should not be seen as abnormal.
- In that context, normal human memory should be recognised as prone to error and bias. Apparent errors of recall are not a valid method of determining the truth of an individual's story and therefore their asylum application.
- Detention and forced removal can have serious effects on the mental health of asylum seekers.
- Many asylum seekers have difficulties obtaining health care for reasons including charges for hospital care, language barriers and lack of interpretation services, and lack of expertise of health care workers.
- Some asylum seekers therefore need access to specialist psychological services. These services need not be provided only through conventional mental health services, and in particular may benefit from being delivered in consort with community services, but do demand high levels of training and support.
- Children's psychosocial development may be severely affected by traumatic events that precipitate a search for asylum, by the migration process and especially by detention and removal. Children should be seen as particularly deserving of support. Asylum seeking children can be helped to return to their developmental path by therapeutic input but this is unlikely to be maximally successful while their living conditions are precarious or their parents are in a state of trauma or distress.
- Politicians and the press have key roles in helping to encourage a humane approach to asylum seekers. Such an approach may render it less acceptable for others to scapegoat this marginalised social group.

SUBMISSION TO THE JOINT COMMITTEE ON HUMAN RIGHTS INQUIRY:

1. The British Psychological Society is the learned and professional body, incorporated by Royal Charter, for psychologists in the United Kingdom. The Society has a total membership of over 42,000 and is a registered charity.

2. As psychologists our professional work is based on the assumption that all human beings are equally valuable, and have equal rights, both in relation to the service we offer as psychologists, and in relation to the broader provision of social welfare. Our Code of Ethics and Conduct requires us to "value the dignity and worth of all persons . . . with particular regard to people's rights including those of privacy and self determination" in our work. (*Section 1, Respect, BPS, 2006*).

3. Clinical work with asylum seekers is undertaken by a range of psychologists including clinical, counselling, developmental, educational, forensic and health psychologists in a range of settings including the NHS, specialist services within the NHS and charitable sectors, schools, forensic facilities, refugee communities and other educational establishments.

4. Further research is needed into the psychological concomitants of asylum-applicant status. For example, applications for asylum may be refused on the grounds that there are discrepancies between the accounts given by the applicant at different times. Memory is, however, a reconstructive process, and errors of recall are commonplace for all people (Herlihy et al, 2001; Southwick et al, 1997). The form that questioning takes will influence the individual's ability to retrieve details about emotional and traumatic experiences. (Cohen, 2001). It is a reasonable assumption that these effects will impact on asylum seekers, but clearly further specific research is required.

Access to accommodation and financial support

5. The Society is not the most appropriate body to comment on this matter.[PK1]

Access to healthcare

6. Clinical and anecdotal evidence suggests that some asylum seekers arrive in this country in a fragile and desperate condition (Editorial, *British Medical Journal*, 1997). Asylum seekers are typically uprooted from all that is familiar and precious to them, including family, physical landscapes, language and social customs—a process that has been termed “cultural bereavement” (Clark, 2004).

7. The danger of over-pathologising the mental state of asylum seekers has been emphasised (Richman, 1998; Bracken & Petty, 1999; Summerfield, 2001). Many asylum seekers do not need or wish to access mental health services (Miller 1999). Their condition may be seen as a natural response to the traumatic experiences they have endured, compounded by the practical difficulties and emotional stress of their current circumstances. They are as diverse a group as any other. Some may be very resilient, while others may benefit from appropriate psychological help, which may not always be best presented as western psychiatric help (Tribe, 2002). [PK2]

8. A proportion of asylum seekers are also the victims of torture or organised violence (Medical Foundation, 2004; Gander & Fox, 2004). The psychological fragility of this group of people cannot be overemphasised. They carry the physical and emotional scars of appalling suffering, knowingly inflicted by their fellow human beings. They are likely to suffer poor physical health and disabling mental illness, including post-traumatic stress disorder, depression and anxiety disorders. At its most extreme, their desperation and hopelessness is expressed in the self-harming and suicidal acts of individuals such as Esrafel Shiri, an Iranian asylum seeker who set himself alight in the office of a support agency in Manchester (Brown et al, 2005), or Manuel Bravo, who, according to his farewell note, hanged himself whilst in detention in order to save his son from deportation (BBC News, 19.9.2006).

9. While the psychological state of asylum seekers may be seen, at least in part, as a natural response to their situation, it nevertheless deserves a service response. Unfortunately, the level of service currently provided is limited, partly because the government currently makes no explicit commitment to maintaining the physical or psychological wellbeing of asylum seekers. Many specialist clinical services that exist are within charitable bodies.

10. Despite their greater than average health needs, it is reported that many asylum seekers and refugees have difficulty in obtaining health care (Jones & Gill, 1998; Fassil, 2000). Problems include difficulty in registering with GPs, charges for hospital care, language barriers, bureaucratic obstacles and lack of expertise of health care workers. At the same time, both psychological and physical ill health is exacerbated by low income in the case of failed asylum seekers, (Burnett & Peel, 2001, p 487).

11. Notwithstanding the current policy of dispersal of asylum seekers, referrals within the Health Service have an unequal regional impact. A recent study noted that clinical psychologists rarely have access to specialist training in the special therapeutic needs of asylum seekers, and may be lacking in confidence and skills (Brown et al, 2005). In a recent study, clinical psychologists cited a number of theoretical, therapeutic, and socio-political issues which render the work extremely difficult (Maslin & Shaw, 2006), although other psychologists have written of the many positive aspects of working with asylum seekers in ensuring an understanding of diverse idioms of distress, a deeper understanding of the cultural constructions of mental health, explanatory health beliefs and ensuring that services are offered to all members of our society (Patel, 2003; Tribe & Patel, 2006).

12. Good interpreting services are necessary to ensure that people who do not speak English are not disadvantaged or unable to receive appropriate care or treatment. Research shows that such services are not always available (Tribe, 2005). This right appears to be upheld in British legislation (eg the Human Rights Act, 1998; the Race Relations Amendment Act, 2000). Furthermore these services are essential to the success of the Government’s social inclusion agenda.

13. Issues of access to interpreters are also addressed in Mental Health legislation. The Department of Health and Welsh Officer (Mental Health Act 1983 Code of Practice) identifies that local and health authorities and NHS Trusts have an obligation to ensure that approved social workers and doctors receive sufficient guidance in the use of interpreters and should make arrangements for there to be an easily accessible pool of trained interpreters.

14. A number of writers including Miller (1999), Tribe and De Silva (1999), and Clark (2004) have been suggested that group work and community projects may be more effective for this client group at reducing isolation and improving well-being. Based on her work with *Médecins Sans Frontières* in Sri Lanka, Hauenstein Swan (2005) suggested that an appropriate role for a clinical psychologist may be “linking psychology services more closely with grass-roots voluntary agencies and self-help groups, including offering helping-the-helpers support, or taking responsibility ourselves for training and supervising community members”. She describes this as “a process of community care . . . caring for the community and not only for individuals within it” (Haunstein Swan, 2005). Webster and Robinson (2006) give examples of such projects in the United Kingdom. Such integrated, community based services are presently rare, but may follow from the work of the Government’s Social Exclusion Unit—since the British Psychological Society is advocating, through that body, greater emphasis on such approaches to the delivery of psychological services, in addition to continuing emphasis on conventional agencies of health and social care such as the NHS. Similar recommendations are made by Society representatives in other forums discussing the provision of psychological services to disadvantaged communities.

Treatment of children

15. Asylum-seeking children are among the most vulnerable of a highly vulnerable group. They may have suffered traumatic experiences, including bereavements, and have missed out on a normal developmental trajectory. These issues are unlikely to be resolved whilst their living conditions are precarious, or their parents are themselves in a state of trauma and distress. Where circumstances are conducive, therapeutic input may help the child find a way of reintegrating their experience and returning to their developmental path (Brown et al, 2005, German & Entholt, 2006).

16. Unaccompanied children are of particular concern. 760 such children arrived in the UK to claim asylum in the first quarter of 2006 (Home Office, 2006). Dr Hodes, Senior Lecturer in Child and Adolescent Psychiatry, has recently spoken of the need for greater intervention on the part of authorities, to address the level of psychiatric distress and disorder among asylum-seeking children (Cleary, 2006). The mental and physical ill-health of asylum-seeking children is likely to be exacerbated by detention and the threat of deportation. According to a recent study, detention centres place children's "normal psychosocial development at risk by exposing them to isolated, deprived, and confined conditions" (Fazel & Silove, 2006). As pointed out by the Official Solicitor, detention of a child also interferes with the child's right to freedom, to a normal social life and to education. He has also expressed concern that: "there is a tendency to overlook the rights that the child has as an individual and to fail to ensure that the child is given the opportunity to assert those rights and that those rights are upheld and protected" (quoted in Medical Foundation, 2000).

Use of detention and conditions of detention and methods of removal of failed asylum seekers

17. The use of detention is of concern to the Society, as it is to the medical profession (BMJ, 1997). Detention has serious effects on the mental health of asylum seekers. The prospect of facing, either detention without time limit, or deportation to a situation where they may again face torture, can cause intense anxiety, as found by Judge Tumin, when he was Chief Inspector of Prisons: "The responses to detention can manifest as symptoms which form constellations consistent with psychiatric diagnoses of depression, post traumatic stress disorder, anxiety and psychosis . . . this suffering and misery is generated by the practice of detention" (Pourgourides, 1995).

18. Bracken and Gorst-Unsworth (1991) carried out a study of ten male asylum seekers who were detained pending a decision on their applications. They found a high level of psychological disturbance in all cases. Symptoms included intense fear, anxiety, sleep disturbance, nightmares, irritability, frustration, depression, appetite loss, tearfulness, hopelessness, suicidal ideation and behaviour, and multiple somatic complaints. In the light of its concern about the mental health of detainees, the Medical Foundation has recommended that all detainees subject to indefinite detention without trial should have access to psychiatric assessment from an independent psychiatrist or psychologist (Medical Foundation, 2004).

19. Where detention is followed by forcible removal, this may be carried out in a way that interrupts specialist medical and psychological help that the individual is receiving (Medical Foundation, 2004).

Treatment by the media

20. A report by the UNHCR, focussing particularly on recent coverage of refugees and asylum seekers in the UK and Australia, suggests that: "deliberate attempts to dehumanise asylum seekers are continuing, always presenting them as menacing statistics, as criminals and bringers of disease, or as some other form of generalised abstract aberration that is easy to hate" (Guterres, UN High Commissioner for Refugees, 2006).

21. The regional press, on the other hand, tends to report more favourably on refugee and asylum issues than the national media (eg *Hackney Gazette*, 18.9.2006). This may be because, at a local level, asylum seekers and refugees become known as individuals, so that stereotypes are more difficult to sustain.

22. The UNHCR suggests that media coverage of asylum issues has improved somewhat since the last general election. This illustrates the vulnerability of asylum issues to political process, and suggests that the in the period leading up to the next election the media may again be more likely to target asylum seekers.

23. Politicians and the media have a responsibility to actively endorse the Human Rights Act. Milgram's classic experiments on obedience (1963) have established the readiness of "ordinary people" to submit to those deemed to be in positions of authority. The Mayor of London's launch of the London Press Awards for reporting asylum show one way in which politicians may take a lead in encouraging a more balanced and humane approach by the media to the subject of asylum (NUJ, 20.9.2006). If politicians fail to offer such a lead, they may render it acceptable for others to scapegoat a marginal social group. Psychologists (Kinderman & Butler, 2006) have commented on the potential benefits of constructive leadership by politicians in promoting human rights as fundamental both to our constitutional settlement and to the delivery of high-quality, equitable and ethical public services.

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46. Memorandum from Médecins du Monde

SUMMARY

Médecins du Monde UK believes that the current government policy is infringing the right to health (article 12 of the ICESCR) and does not provide equal access to healthcare for all in the UK. We are particularly concerned that restrictions on NHS entitlement (charges for overseas visitors) prevent vulnerable members of society from accessing healthcare. These rules particularly affect failed asylum seekers and undocumented migrants, but, because of the confusion they create around the issue of entitlement, they also impact on asylum seekers. We are extremely concerned about the consequences of this for individuals and for public health. This document provides evidence from *Médecins du Monde UK's* Project: London and draws on the experience of our sister organisations across Europe.

In light of this evidence, we recommend that restrictions on NHS entitlement related to immigration status are abandoned. If these restrictions remain, however, we strongly recommend that some kind of safety net is provided, as soon as possible, for those who cannot afford to pay. The restrictions on NHS entitlement endanger the core principle of the NHS which is to ensure that “healthcare should be free, available to all and of uniform quality no matter where people live and whatever their background”. *Médecins du Monde UK* finds it unacceptable that people living in the UK are unable to access the vital medical care they need and calls for this fundamental principle of the NHS to be respected.

INTRODUCTION

1. *Médecins du Monde* is a medical humanitarian non-governmental organisation which provides healthcare for the most vulnerable populations suffering from crisis and exclusion in both developed and developing countries. As well as providing healthcare, we bear witness to human rights abuses, particularly obstacles to healthcare, and advocate for access to healthcare.

2. *Médecins du Monde* has over 25 years of experience in providing medical assistance and in advocating for better access to healthcare. *Médecins du Monde UK* launched an advocacy and healthcare project in East London in January 2006. This initiative, known as Project: London, aims to help vulnerable people to access the healthcare they need and at the same time document the obstacles to healthcare which people experience. All evidence and case studies quoted in this paper have either been collected through the work carried out at Project: London or are drawn from the experience of our *Médecins du Monde* sister organisations across Europe.

3. *Médecins du Monde UK* welcomes the Joint Committee on Human Rights inquiry into the treatment of asylum seekers. As a medical organisation, our expertise relates to healthcare issues and this written evidence will focus on access to healthcare.

4. Human rights do, of course, apply to all and the government’s obligations concerning the right to health apply to everyone present in the UK. So, *Médecins du Monde UK* also welcomes the fact that the remit of the Committee’s inquiry includes asylum seekers whose claims have been refused. Many of the issues raised in our evidence relate to asylum seekers, failed asylum seekers and to other vulnerable migrants, such as visa overstayers, clandestines or anyone who cannot show regular status. Our experience demonstrates that the boundaries between these different groups of people are not as rigid as often supposed: today’s “failed asylum seeker” can be tomorrow’s “asylum seeker” if new evidence is found and they start a fresh claim for asylum.

5. *Médecins du Monde UK* is extremely concerned about the restrictions introduced in April 2004 concerning entitlement to NHS secondary care.²⁷¹ Although labelled as charges for overseas visitors, these restrictions have very real consequences on the health of people already living here in the UK. Failed asylum

²⁷¹ National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2004. www.opsi.gov.uk/si/si2004/20040614.htm

seekers and undocumented migrants often have no income, do not have access to public funds and are unable to pay charges. These regulations effectively prevent vulnerable members of UK society from having access to healthcare with consequences for the health of individuals and for public health.

6. For this reason, we have urged the government to reconsider the changes introduced in April 2004. The evidence we have collated through Project: London illustrates that, although implementation of the rules varies greatly, hospital treatment is being denied to people who have life threatening conditions and no other means to access treatment. Furthermore, inconsistent and aggressive application of charging to pregnant women, in direct contravention of government policy, presents a serious threat to the lives of these women and their babies.

7. *Médecins du Monde UK* has also argued vehemently against the introduction of any charges for primary care. Under current rules asylum seekers are fully entitled to primary care while it remains at the discretion of the GP whether to treat failed asylum seekers or undocumented migrants. We have joined with other medical and refugee organisations to call on the government not to implement any changes to primary care without carrying out a prior in-depth, impact assessment. This process should assess the potential impact on the individual, on health services and front-line staff, the voluntary sector and on public health.

8. Another area of serious concern is the level of confusion which currently surrounds the issue of entitlement to NHS care. Our early findings from Project: London suggest that there is a great deal of confusion and tremendous variation in the approach of different GP practices to the issue of entitlement. This confusion creates another barrier preventing vulnerable people—including asylum seekers, refugees and UK citizens whose entitlement to NHS care is very clearly established—from accessing the medical care that they need.

9. We are also extremely concerned that vulnerable people are effectively being denied access to primary care because they are unable to provide the precise documentation required to prove their address and/or identity. This presents a real, and sometimes insurmountable, barrier for people who are destitute, homeless or in very temporary accommodation, or who have irregular status.

EVIDENCE COLLATED THROUGH PROJECT: LONDON

10. In the first nine months of Project: London, we have seen 203 service users, and 89 of these cases are relevant as evidence for this inquiry: 60 were asylum seekers whose claims have been refused; 16 were asylum seekers who were still in the asylum process; and 13 had unclear status (we were unable to assess their asylum status for different reasons: the person was about to make a fresh claim, it was unclear if the person had exhausted all appeals or the person was unsure at which stage of the asylum process they were at).

11. Among the 89 cases that qualify as evidence for this inquiry, it is notable that unstable accommodation was a particular issue. Seventeen of these people were sleeping rough, a situation which usually increases their anxiety and fragile state of mind. Forty-four were living in temporary accommodation and in most cases this meant that they were moving from one friend's place to another friend's place, sleeping on the couch, and always having to find other accommodation very quickly. The remainder of the cases were living in more stable accommodation with the help of family members or friends. This pattern of unstable accommodation makes it particularly difficult for this population to obtain healthcare because access to most services is based on having an address within a catchment area or referral by a GP.

Access to Primary Care

12. Most of the service users who come to see us at Project: London experience difficulties in registering with a GP. Because our project is about helping vulnerable people to access healthcare, we are able to advocate on behalf of asylum seekers or vulnerable migrants and to ensure that they have access to a GP.

13. The main reason why our service users, including asylum seekers, experience difficulties in registering with a GP is the burden of documentation required to prove address and/or identity. There is a lack of flexibility on the part of GP practices when it comes to accepting different types of documentation. Some GP practices are very specific about only accepting utility bills, bank statements or rent agreements as a proof of address. Asylum seekers hardly ever possess any of those documents. Some asylum seekers will have an official document with their address in the form of a letter from their lawyer or from the Home Office. For others, the unstable nature of their accommodation makes it impossible to have any official documents as proof of address. Although explanation and negotiation with GP practices may help in some cases, in other cases the practices remain reluctant to take on such clients.

14. GP practices are also increasingly asking for proof of ID as a condition to register with a GP. However, hardly any asylum seekers still possess their passport or ID card. They might possess an Asylum Seeker Card but this is not always the case. They usually have at least some documentation from the Home Office such as an IS96. Unfortunately, as with proof of address, GP practices are not always flexible about the type of proof of ID that new patients can bring for registration. After negotiation, some will accept to see the person and his documents for registration but others will still be reluctant and might in some cases find other excuses not to accept an asylum seeker.

15. In the case of asylum seekers whose claims have been refused it is even harder to provide the documentation demanded by GP practices to be able to register. Most “failed asylum seekers” no longer possess any proof of ID or address that they can use. This is particularly worrying when people have serious conditions that need to be monitored on a regular basis. As a medical organisation, we are very concerned that such patients are unable to access the ongoing medical care they need.

16. The language and cultural barriers that many asylum seekers experience also make it more difficult to overcome the administrative barriers described above. Over 50% of our clients need language support and they are not always able to explain or understand things clearly. They are used to a different healthcare system and they don’t always understand how the system works here in the UK and what they need to do.

17. Registering with a GP is also harder for those who are rough sleepers or are in very temporary accommodation, as most of the time they do not have an address to use in order to find a GP. This requires a lot of negotiation from our team, and a lot of GP practices will only accept them as temporary patients which is not a solution in the long-term, especially when the person needs ongoing care.

18. We also noticed that some GP practices are also unwilling to register asylum seekers and/or homeless as they require more time than normal. Some GP practices present themselves as not having access to interpreting services, for example, even when we know that the practice has access to free interpreting services provided by the Primary Care Trust.

19. As mentioned previously, most of Project: London’s service users need help to register with a GP. We have selected a few case studies to illustrate the desperate health and social circumstances of many of our clients and the difficulties they encountered in trying to access primary care:

- Mr A, homeless and destitute from the Democratic Republic of Congo, whose asylum claim had been refused and who required psychological support. Five GP practices were contacted and four refused him access, despite our Project: London doctor advocating on his behalf. One practice finally agreed to register him.
- Ms F is a 21 year old asylum seeker from Turkey who was referred to us by the Medical Foundation for the Care of Victims of Torture and who required ongoing medication for her condition. She had attempted to register with a GP but was informed the list was closed. We phoned GP surgeries within the area and many would not accept her documentation and one refused to see the client because she could not speak English and they said that they did not have access to interpreters. However, after consulting the PCT, we were informed that interpreting services are provided by the PCT for GP surgeries free-of-charge. The GP practice still refused to register her even after we explained interpreting services were available, they then argued her documentation was not valid. When we pointed out that Home Office letters have been accepted as official documentation from the PCT they then gave as a final excuse they did not have enough staff. We finally registered her with another GP practice in the area.
- Mr B, from Somalia whose asylum claim had failed at the time he came to the clinic. He was sleeping rough on London buses and was assaulted on one of buses. He did not have any income and was not being supported by any organisation. On hearing that his asylum claim was refused he attempted suicide by trying to set himself on fire. He was referred to mental health services in 2005 but was not considered to have significant mental health problems. Yet, when he came to Project: London in mid-2006, the doctors in the clinic still recognised him to be a significant “suicide risk” and also noticed he was developing symptoms of alcoholism. When he had tried to register with a GP, he was refused. We were unable to locate a GP prepared to register him and we asked the PCT to allocate him a GP but they were unsuccessful as well. Fortunately, his asylum claim is now being reconsidered and therefore, he will be provided with accommodation and he has since been able to register with a GP.
- Mr J, a 33-year old man from the Ivory Coast, who was sleeping rough. He was referred to us to help him access care, particularly for mental health since he was suffering from post-traumatic stress disorder. He had previously been refused access to a GP as he did not have the necessary documents. We finally were able to help him register with a local surgery which was sympathetic to homeless clients and referred him to a counselling service. Finally, his fresh asylum claim was accepted and he was granted Section 4 support from NASS.
- Mr D, a 38-year old man from China, refugee status denied, had been diagnosed with leukaemia and in urgent need of ongoing medication. However, a GP surgery in his area willing to accept him without proof of address and ID has not been found yet.
- Mr L is from Niger, is 38 years old and is an asylum seeker. He is currently living in temporary accommodation, doesn’t know how long he can stay there. He came to see us to help him to register him with a GP as he has no idea what care he is entitled to receive or how to access health services. We phoned five GP practices in his area and all of them refused his Home Office document as a proof of ID or address. Finally the sixth GP practice we called accepted to register him with his Home Office document.

- Ms N is from Afghanistan and is an asylum seeker and is living in temporary accommodation. When she tried to register with a GP practice, she was told she could not register with them as she had not been living in the country for 6 months yet (she had only been living in the UK for three months when she came to see us). She was informed that until she could prove she had been legally resident in the UK for the past six months she would be required to pay of charge of £40 per appointment.

Access to secondary care

20. Access to secondary care is becoming an increasing problem for asylum seekers whose claim has been refused or for those with an uncertain status. The new rules introduced in 2004, have been implemented to varying degrees in different hospitals. There is now growing evidence of the impact that these rules are having on vulnerable people living in the UK.²⁷²

21. We find that the new amendments regarding charging of overseas visitors for secondary care violates the right to life (article 2) by denying some people vital treatment for their survival. Of course, in theory they can access treatment by paying the charge but most of the service users we see at Project: London are on very low income or no income at all and in most cases depend on the help of their community to survive. Asking someone who has been diagnosed with cancer to pay thousands of pounds that he/she will never have, is effectively a death sentence for that person.

22. In theory, “*immediately necessary treatment*” is still available free on the NHS. This concept, however, is not clearly defined and there are clear differences in the application of the term. Maternity care is supposed to be considered as immediately necessary, but we have clear evidence that this is not always the case (see below). It is also unclear how, in practice, the concept of free “*immediately necessary treatment*” is implemented. Health professionals are not often the first person to see the patient. Front line administrative staff are left with the responsibility for assessing patient’s eligibility for medical care. Such implementation of the rules leave the door open to mistakes where patients in need of “*immediately necessary treatment*” are turned away.

23. Through Project: London, we have come across several cases of failed asylum seekers who have effectively been denied essential treatment. The following are examples:

- Mr H is from Iraq and his asylum claim had been refused at the time he came to Project: London. Following an emergency admission to hospital, he was diagnosed as having a kidney stone but was discharged without ongoing treatment. After three further emergency admissions to hospital, he was kept in as an inpatient for five days but was told to leave the hospital as he could not pay for the treatment and he was not entitled to free treatment. The consultant did not consider an operation on his kidney to be “vital” and therefore, they refused to treat him unless he was able to pay £1,000. He is currently challenging the hospital as he in the process of making a fresh asylum claim and is therefore entitled to free NHS secondary care.
- Mr S was diagnosed with bowel cancer after investigation at his local hospital last year. While pursuing further investigation, the hospital established he had been refused asylum, stopped the course of investigation and asked him to pay for all the care he had received to that point plus a deposit of £6,000 before he could start any treatment for his condition. Without resources, except occasional money sent by his family, the man has been unable to access the vital treatment he needs while his condition may be deteriorating. Nearly 10 months have passed since cancer was diagnosed and he still has not received any treatment for his condition.
- Mr D, mentioned above (see paragraph 19), is from China. In June this year he was admitted to hospital and was diagnosed with a type of leukaemia. Due to funding issues he was discharged. He continued to be seen as an outpatient and was given simple medications to help with the disease for which he was charged £280 each time. His condition has recently deteriorated to the point where it is life threatening without treatment. As a result, he has been admitted again to hospital for immediately necessary treatment. However, the treatment he is being given is to stabilise his condition and he does not have access to treatment which could treat his condition in the long term.

We find it completely unacceptable that there are people living in the UK, who have life threatening illnesses and have absolutely no way to access the treatment they need. Unlike in some other European countries, there is no safety net in place to ensure that those without resources to pay for private treatment can have access to healthcare. In such cases, our teams and the many concerned health professionals in the NHS are powerless to help.

24. Another particular area of concern in relation to access to secondary care is access to treatment for HIV. Although the regulations make provision for infectious diseases to be provided free-of-charge to everyone, irrespective of legal status, HIV/AIDS is excluded from this list. This means that failed asylum

²⁷² Refugee Council (2006) First do no harm: Denying healthcare to failed asylum seekers. Nancy Kelley and Juliette Stevenson.

seekers and other vulnerable migrants living in the UK will be unable to access to HIV treatment. This has irreversible effects on the development of the disease in the UK and is counter-productive to efforts to tackle it:

- A lack of access to treatment will reduce the take up of voluntary HIV testing, thereby increasing the proportion of HIV cases going undiagnosed.
- Provision of treatment to prevent a person's condition worsening also has direct implications for how infectious that person is and, thus, for the spread of the epidemic.
- Individuals who are subject to charges for HIV treatment (or other healthcare) are less likely to complete other courses of treatment to which everyone is entitled free of charge (eg TB or sexually transmitted infections).
- Exclusion and stigmatisation of groups at high risk of HIV infection will not help to reduce the spread of the disease.
- The Health Select Committee in its third report session of 2002–03 on sexual health recommended that everyone should be given access to HIV treatment regardless of status.
- Access to HIV treatment in Europe—*Médecins du Monde* is present in 11 other countries in Europe of which eight provide free access to HIV treatment for people without regular status and residing in their country. The approach in the UK contrasts starkly with the policies of a majority of its European neighbours.

25. There are some areas where the application of the charging regime for secondary care is inconsistent with other areas of government policy. No provision is made for an exemption from charges for an overseas visitor seeking exceptional leave to remain in the UK on ECHR grounds (or any other grounds, for that matter). Thus, unless they meet the criteria for one of the other exemption categories, someone who, for example, enters the country on a visitors visa and then seeks exceptional leave to remain will only become eligible for free NHS treatment if or when their application is approved.

26. Similarly, the government recognises that asylum seekers whose claims have been refused but who cannot go back to their country of origin in the near future should receive some public support while they remain in the country. Such cases receive section 4 support, therefore, for housing and welfare but are still excluded from free entitlement to secondary care.

Access to maternity care

27. A further aspect of charging for hospital care that presents considerable cause for concern is the difficulties encountered by pregnant women to access antenatal care. The NHS regulations do specify in a small paragraph that pregnant women shouldn't be denied access to antenatal care if they cannot pay in advance. The Department of Health has clearly stated that maternity care should always be considered as "immediately necessary" because of the risks involved to both mother and child. Thus, maternity care should not be withheld because of a woman's inability to pay.

28. Our evidence demonstrates that the reality of how the rules are being applied to antenatal care is very different to the guidance issued by the Department of Health. At Project: London, we have seen four pregnant women falling within the remit of this inquiry, who had difficulty accessing antenatal care. But this is an issue of wider concern, since we have also seen more pregnant women living here without regular status who have been denied maternity services.

29. These two case studies illustrate some of the difficulties facing these vulnerable pregnant women:

- Ms L is 34, comes from Trinidad and was unsure of the status of her asylum application when we saw her. She was living temporarily with friends but had been informed by her friends that they would like her to move once her baby was born. She was already 38 weeks pregnant when she approached Project: London. She had been refused registration with GP surgeries and she was told by one receptionist that she was not entitled to either primary or secondary health care. She was unable to have a scan at the hospital because she could not pay £100. We have been supporting her to access the appropriate health services and will try and ensure that her child will receive the medical care she or he needs.
- Mrs P is 25 and comes from Lebanon. She was refused asylum status and was living in very temporary accommodation with her husband. She was asked to pay a bill of £2,300 (a set price for the maternity package for antenatal care she had already received) and told that interest would be added if she did not pay within five days. As neither she nor her husband have the money they could not pay the bill. The Overseas Payment Officer called their GP practice in front of them to inform the GP that Mrs P shouldn't receive care at his GP practice. This was a clear breach of confidentiality from the Overseas Payment Officer to call the GP practice. Since then, the Overseas Payment Officer keeps calling Mr and Mrs P and asking them to pay the bill before the birth. They are extremely worried about what is going to happen.

30. A number of common themes emerge from the treatment experienced by pregnant women we see at Project: London. First, pregnant women are very frightened following their discussions with hospital Overseas Payment Officers. Some women have been completely deterred from coming forward for any further care at all, with potentially dangerous consequences for both mother and child. Most of these women are unaware that they could access emergency care (in an A&E department) free-of-charge. This is highly alarming as women we see at Project: London represent only a small snapshot of the situation. Women that we don't get the chance to see might choose to give birth at home alone with all the risks this implies. In some cases, Overseas Payment officers will tell them to go back to their country to have the baby and that they can't have it here. We've seen letters sent by hospitals which failed to inform the women about their rights under the current regulations. In each case, the letters explained that the woman will be charged and needs to pay the maternity package fee *in advance* in order to access any care without informing the woman that she would not be denied care if she could not pay in advance.

31. Secondly, some pregnant women have been totally put off by the fact that they will be charged and therefore refuse to have any antenatal care because they could not afford it. Many women were terrified by the idea of accruing debt. Some hospitals will send debt collectors to reclaim the amount due even before the woman had given birth. All women facing difficulties in accessing antenatal care at hospital were really anxious. Most of the time it is very difficult for us to reassure them. In some cases they are so frightened by the cost that they refuse to go to hospital.

32. For the reasons outlined above, and the very serious risks associated with pregnancy and childbirth, *Médecins du Monde UK* considers that urgent action is required and that there should be immediate exemption to the secondary care charging for maternity services. It is only by removing these charges and the threat of a heavy debt, that we can ensure that women come forward to have their babies in safety.

EXAMPLES OF PROVISIONS OF HEALTHCARE IN OTHER EUROPEAN COUNTRIES

33. *Médecins du Monde* is present in 11 other European countries (Belgium, Cyprus, France, Germany, Greece, Italy, Netherlands, Portugal, Spain, Sweden, Switzerland) all of them, except Switzerland, run similar projects to Project: London. Through our presence and our projects throughout Europe, *Médecins du Monde* has experience of the different policies set up by governments to offer provisions of healthcare in line with article 12 of the International Covenant on Economic, Social and Cultural Rights.

34. It is striking to note that contrary to the regulations of entitlement in the UK, many European countries provide access to healthcare for all migrants, regardless of their status.

35. In France, where the healthcare system is insurance based, there is a particular insurance providing free access to healthcare for people without regular status in France. To access this insurance, people must have resided for at least three months in France and must be on a low income. Despite the fact that migrants are not always aware of their right to access healthcare and the administrative procedure to obtain the insurance is cumbersome, the French government recognises its responsibility to provide healthcare for residents in France, regardless of their immigration status.

36. In the case of the Netherlands migrants without regular status are excluded from the national health insurance. However, the government still recognises the need to provide healthcare for all and set up a special fund for irregular migrants, known as the Koppelingsfonds. Health services provided to migrants include, for example, antenatal and postnatal care, immunisation and HIV/AIDS treatment.

37. In Spain everyone has access to healthcare services regardless of their status on the same basis as other residents in Spain as stipulated in article 12 of the "Ley de Extranjeria" (Foreigners Legislation). In practice, migrants need to be registered with their local council which will allow them to access healthcare services. Even if they are not registered on this list, migrants, whatever their status is, can access any antenatal or postnatal care and any urgent care until the end of the treatment. Minors are exempt, which means they can access any healthcare services without being registered on the local council list.

38. In Belgium there is also a system in place to ensure migrants without regular status can access healthcare which is called "aide médicale urgente" (urgent medical aid). Through this system, migrants have access to most healthcare services including antenatal and postnatal care or HIV/AIDS treatment. For this, they need a medical certificate from a health professional that attests which care they need and why.

GENERAL CONCLUSIONS

39. The restrictions on NHS entitlement have a real impact on asylum seekers and other vulnerable migrants and endanger the core principle of the NHS which is to ensure that "healthcare should be free, available to all and of uniform quality no matter where people live and whatever their background". To make access to healthcare subject to the ability to pay for treatment is against the basic principle of the NHS, which is to provide access to healthcare to everyone regardless of their resources.

40. These restrictions are in clear violation of the right to the highest attainable standard of health (article 12 ICESR) as interpreted by the UN Committee on Economic Social and Cultural Rights which monitors States' observations of the International Covenant on Economic Social and Cultural Rights ratified by the UK in 1976. The General Comment 14 clearly sets out how the right to health should be respected in practice

in paragraph 34. *“In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women’s health status and needs.”*

41. Our experience through Project: London clearly shows that the current restrictions on NHS entitlement violate article 12 by not providing equal access to healthcare regardless of one’s status.

42. These restrictions are potentially creating situations in violation of article 3 of the European Charter of Human Rights. Denying access to healthcare for some people can worsen their medical conditions to a stage where it becomes inhumane and life threatening.

43. There is no evidence that restricting entitlement to secondary or primary care brings any cost savings to the NHS. In relation to HIV, for example, one week’s stay in intensive care is reported to cost almost as much as an annual combination therapy which is now under £10,000. Refusing HIV treatment and accepting to treat the patient in A&E services until her/his medical condition has deteriorated is thus unlikely to result in any cost saving.

44. The general public regularly receives misleading and manipulative messages about asylum seekers, migrant populations and ethnic minorities. Any emphasis on proof of legal status is likely to encourage discrimination against those groups (refugees, asylum seekers, black and minority ethnic groups, people from new EU member states, legal migrant workers) and will, therefore, impair their access to healthcare. It also encourages discrimination based on appearance. People may be prevented from accessing healthcare because of their skin colour or their ability to speak English.

45. Evidence of entitlement may be requested disproportionately from non-white people. Public authorities are required under the Race Relations (Amendment) Act 2000 to eliminate unlawful racial discrimination, promote equality of opportunity and promote good relations between people of different racial groups and assess new policies for their likely impact on race equality.

46. The restrictions on entitlement to secondary care and the proposed restrictions on access to primary care are directly contradictory to other areas of government policy, undermining the aim of joined up government. The restrictions work against, or in contradiction to, the following areas of government policy and strategy:

- Denying treatment to people living with HIV in the UK is in stark contrast to the Department for International Development (DFID)’s HIV and AIDS strategy for the developing world which states that *“Many vulnerable people cannot access the services they need because of cost. This is why the UK Government is committed to ensuring that affordability is never a barrier to accessing health and education, or to services such as HIV testing and contraception.”*²⁷³
- Anything which makes it harder for vulnerable groups to access healthcare seriously undermines the Government’s programme of action to tackle health inequalities launched in 2003.²⁷⁴
- Similarly, refusing to treat people before they become emergency cases puts more strain on A&E services which are already stretched to the limits. It will consequently go against the Government’s recent efforts to reduce pressure on A&E services.
- Furthermore, as described previously, denying access to HIV treatment and to primary care services is likely to seriously diminish the effectiveness of the Chief Medical Officer’s Tuberculosis Action Plan.²⁷⁵
- The measures are also likely to have a divisive effect on social cohesion and could lead to further exclusion of already marginalised groups thus undermining efforts to tackle social exclusion. Specifically in relation to HIV, this could undo a great deal of progress made in this area: *“In the UK, early intervention that specifically focused on the needs of marginalised groups prevented the higher rates of HIV infection experienced by many other countries.”*²⁷⁶

47. Restricting the duty to care undermines the role of health professionals. This creates a particular conflict for health professionals, who are torn between compliance with the law and compliance with their duty to care and patient confidentiality.

48. People in need of healthcare are already, and will be increasingly, deterred from going to healthcare services in fear of being denounced to the immigration services. *Médecins du Monde UK* considers that healthcare needs to be kept separate from immigration rules.

49. Neither the 2004 regulations nor the primary care proposals mentioned children. It remains unclear what children are entitled to, in the case where their parents are not eligible to NHS care. *Médecins du Monde UK* is extremely concerned about the impact of these changes on children. For example, any measures which

²⁷³ DFID, Taking action. The UK’s strategy for tackling HIV and AIDS in the developing world, July 2004.

²⁷⁴ DOH, Tackling health inequalities: a programme for action, July 2003.

²⁷⁵ Stopping Tuberculosis in England. An Action Plan from the Chief Medical Officer, October 2004.

²⁷⁶ DFID, Taking action. The UK’s strategy for tackling HIV and AIDS in the developing world, July 2004.

discourage HIV testing among pregnant women or which deny mothers-to-be access to HIV treatment, will result in more babies born infected with HIV. We find it unacceptable that this, preventable, situation should occur in Britain today.

RECOMMENDATIONS

50. *Médecins du Monde UK* considers that the government should take action to ensure that vulnerable members of society have effective access to healthcare and considers that healthcare needs to be kept separate from immigration rules.

51. *Médecins du Monde UK* strongly recommends a review of the arrangements for charging for secondary care and urges against the introduction of any charges for primary care. We consider that, in keeping with the fundamental principles of the NHS, primary and secondary care should be free for people living in the UK. We believe that a return to this situation is essential.

52. *Médecins du Monde UK* recommends immediate action to exclude maternity services from the current charging arrangements for secondary care. This needs to be dealt with urgently to avoid the preventable death of any woman or her child.

53. Similarly, *Médecins du Monde UK* recommends urgent action to include HIV as a communicable disease for which treatment is freely available to all, irrespective of their status. We call on the Government to recognise the ethical, public health and economic arguments against denying access to HIV treatment. People living with HIV in the UK should have access to treatment and care.

54. We call on the government to endorse full responsibility of care for asylum seekers regardless of which stage of the asylum process they are at. Asylum seekers who have been denied refugee status and/or are supported under section 4 or are claiming asylum under article 3 should still be provided with free access to NHS services.

55. If the Government does proceed with the proposals to introduce charges for primary care, we recommend an impact assessment, to assess the implications for individuals, wider society and the NHS, be carried out prior to introduction of any changes. This impact assessment should seek to measure the effects in terms of the impact on the individual, on health services and front-line staff, the voluntary sector, on particularly vulnerable groups, on public health and social exclusion. There should also be a race equality impact assessment as required under Race Relations Amendment Act 2000.

56. *Médecins du Monde UK* recommends that the Department of Health clarifies an already confusing situation relating to NHS entitlement. We consider that there is a serious need for clear information about NHS entitlement to be disseminated to the general public and to health professionals. This information should particularly address the needs of vulnerable groups.

57. *Médecins du Monde UK* recommends that particular attention is paid to the health needs of especially vulnerable groups, such as children and pregnant women, when considering any measure which will have an impact on their access to healthcare.

58. In the longer term, we recommend that restrictions on NHS entitlement related to immigration status are abandoned. If these restrictions remain, however, we strongly recommend that there is immediate provision of some kind of safety net for those who not able to access medical care that they need because treatment they cannot afford to pay.

September 2006

47. Memorandum from the Association of Visitors to Immigration Detainees

We welcome this opportunity to submit evidence to the inquiry into the human rights issues raised by the treatment of asylum seekers in the UK. We feel that it is important to remind the Joint Committee of the impact that border controls has had on the right to seek asylum in Europe and the UK.

AVID is a registered charity, founded in 1994. Our membership consists of individuals and visiting groups to all removal centres through the UK and to some prisons and short term holding centres. AVID supports the groups by providing information and training and take their concerns about the realities of detention to the government in order to press for best practice.

AVID's experience is in the area of detention. However, as members of the Asylum Rights Campaign, we would like to make the following overall comments:

- (a) Forcing people into destitution by denying them basic subsistence must breach their Human Rights. Threatening to take children into care in order to force families to return has been shown to be unworkable. Use of vouchers was discontinued after a public campaign but has now been reintroduced as a means of encouraging return.

The report produced by the Citizens Advice Bureau²⁷⁷, *Shaming Destitution* and the report by the Refugee Council²⁷⁸, were clear examples of the lack of concern shown for failed asylum seekers.

²⁷⁷ *Shaming Destitution*, June 2006, www.citizensadvice.org.uk

²⁷⁸ *Health Access Report*, July 2006, www.refugeecouncil.org.uk

- (b) AVID feels strongly that the UK should treat asylum seeking children as it treats its own nationals and withdraw the reservation to Article 22 of the UN Convention on the Rights of the Child. However, the Home Affairs Select Committee, July 2006, has already stated that this is not their recommendation but Immigration authorities should include the safeguard and welfare of children under the Children Act in their duty. This is not being taken into account when decisions are made about the continuation of detention of families.
- (c) Statutory Bail hearings were not enacted in the 1999 Act (subsequently repealed in the 2002 Act) and AVID requests that these be made a statutory oversight of the justification for detention. There is no statutory time limit to detention, resulting in detention for prolonged periods with little or no judicial scrutiny of cases, particularly where language or mental health factors prevent bail applications by detainees themselves.
- (d) Alternatives to the detention of children should be considered urgently. The discussion paper by John Bercow MP, Lord Dubbs and Evan Harris MP²⁷⁹ states:
3.3 “Children who are subject to immigration control are children first and foremost and therefore included within the provisions of the Children Acts 1989 and 2004.
. . . Current policy and practice regarding detained children clearly contravenes and undermines UK law and policy on children in a number of ways by prioritizing immigration controls over the welfare of children.”

ARTICLE 3, FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT

2. *Provision of Healthcare*

As part of the fast track system, asylum seekers must be examined and asked about whether they have been tortured. Even when this is part of their medical record, they are not routinely released which can reinforce their previous experiences of imprisonment and torture.

Access to mental healthcare for torture survivors is difficult to obtain unless a report is commissioned by the legal representative dealing with the case and the detainee is released.

Case 1: Man who has been diagnosed by two consultant psychiatrists but has not been released from detention in order to access the NHS treatment he requires under the Mental Health Act. The management of the centre refused to allow a visit by friends, stating that it was a management decision and they overrode Detention Centre Rules. An external consultant was denied a visit the same day.

3. *Treatment of children*

(a) Children are carried in vans for long distances. If a child needs the toilet or is sick, the van can only stop at authorized secure stops eg between Tinsley House, Gatwick and Dungavel House, Scotland the stopover is at Manchester Airport.

(b) The shame attached to having been detained impacts on children and their relationship with their friends and family. If they are released back into their community this impacts on their education and life for a long time.²⁸⁰

4. *Use of detention and conditions of detention and methods of removal*

(a) Handcuffing during hospital appointments:

Case 2: Man who had suffered anal rape was given an internal examination whilst handcuffed via a chain to a security guard who was in the same room.

(b) Handcuffs incorrectly applied, causing pain, swelling and nerve damage:

Case 3: Attempted removal of man who was beaten to keep him quiet on the plane. Handcuffs were applied very tightly causing swelling and bleeding. French pilot refused to board him at Paris and he was returned to UK. Escorts claimed they used reasonable force but asked him not to mention they had hit him when the French pilot spoke to him.

²⁷⁹ Alternatives to immigration detention of families and children, for All Party Parliamentary Groups on Children and Refugees.

²⁸⁰ *No place for a child, Children in UK immigration detention: Impacts, alternatives and safeguards*, by Heaven Crawley and Trine Lester, 2005.

Case 4: Afghan detainee due to be removed on a charter flight was handcuffed, alleges he was gagged, and his legs were tied. He was kicked in his legs and back by the escorts and his legs are black and blue. He suffered broken arm.

Case 5: Alleged assault during movement between centres, following protest for not being able to attend Human Rights hearing which was caused by administrative error admitted by the Home Office. Injuries were evident a week later and video has been sent to Home Office by staff at centre where he was initially detained.

(c) On arrival at a removal centre, there are long waits in vans before processing. Toilet facilities are not always available.

Case 6: Woman who was transferred between centres, who was pregnant and suffering from morning sickness. She was kept waiting in a van outside the centre between 1.30 am until after midday. She was given a sandwich and drink but was refused access to a toilet and had to urinate in the sandwich bag, observed by two male officers.

(d) Enforcement procedures for detaining people for removal:

The Recommendation (n) by the Home Affairs Select Committee Fourth Report on Asylum Removals that a Welfare Officer should be attached to each removal centre has in part been acted upon. However, the full implementation of the recommendation has not happened, as is outlined by the cases below. The recommendation stated:

(n) “We recommend that a welfare officer ought to be attached to each Removal Centre with a remit that includes ensuring that those detained have had an opportunity to alert family and legal representatives to their impending removal. We also recommend that Home Office guidelines should make clear that failed asylum seekers in detention should not be removed without having been given a reasonable opportunity to wind up their affairs.”

In far too many cases, enforcement procedures do not allow this to happen either at the beginning or end of the process, thus contravening The First Protocol, Article 1, Protection of Property of Schedule 1, Part II.

Case 7: A detainee was refused access to a phone to call a member of their family before being removed, being told to hurry because the van was waiting.

Case 8: Detained in her home by team of police and immigration officers, woman was held in police station for five days. She was taken by van to Manchester to collect other detainees, leaving IRC Colnbrook at 6.45 am and arriving the following day at 1.50 am at IRC Tinsley House. Her toiletries were all thrown away (possibly because they were in glass bottles) and not stored in her luggage, had she been able to pack her belongings properly when she was picked up. She has a car to sell but will be unable to do so from detention.

Case 9: Woman who only has £2 cash on her and is unable to access her bank in time before removal. She has removal directions in four days time with only two working days in which to obtain money.

At IRC Haslar and IRC Lindholme, difficulties have been experienced by people about to be removed whose property cannot be accommodated. Both these centres are ex-prisons where accommodation is at a premium for storage space of property.

Enforcement procedures at the end of the process:

Case 10: Married couple who have lived in the UK for 5(m) and 11(f) years, applied for permanent residency. They were detained in a police station for several days, then moved to different removal centres. The woman was removed and her husband’s removal flight was cancelled for a week. The wife has no contacts in the country she was removed to having been here since she was a child.

ARTICLE 5 RIGHT TO LIBERTY AND SECURITY

We welcome the changes in Case Ownership in the New Asylum Model. Higher qualifications and better training will improve the standard of first decisions. Recent figures produced by the Home Office for the second quarter of 2006 have shown an increase in successful appeals, with one in four people gaining leave to stay.

We have concerns about access to bail hearings and challenging the legality of detention and would support the evidence provided in Appendix A, Submission by London Detainee Support Group.

We also welcome the provision of legal surgeries in removal centres and have taken part in the review being carried out by the Legal Services Commission into the success of the project and whether further expansion is required. Our evidence includes:

- Need for more than two surgeries on a Tuesday and Thursday to cover those detained on a Friday for removal the following Monday or Tuesday.
- Need for the providers to do bail hearings. These are often refused because of the merits test or funding implications, but should be seen as an essential part of the rights of those in detention due to the refusal of the Home Office to institute statutory bail hearings.

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- More flexible system for seeing people, with removal centres ensuring their needs do not obstruct access to surgeries.
 - Emergency access for people about to be removed in all centres, not just some.
 - Providers who consistently do not mount bail applications should have their contracts terminated.
 - All fast track systems should support applications for bail as part of their contract.
 - All detainees should be advised of the scheme immediately on entry and it should be part of the reception procedure to ensure detainees understand what is available.

We are extremely concerned about the recent statement by John Reid about deportation of Iraqi Kurds by charter flight, despite Foreign Office advice against travel to Baghdad and all but essential travel to Iraq which suggests there can be no guarantee of safety. In a letter to the duty High Court Judge sent on 30 September 2006 the Home Office states:

“Because of the complexities, practicalities and costs involved in arranging such charters, it is essential that these removals are not disrupted or delayed by large numbers of last-minute claims for permission to seek judicial review.

To ensure the viability of this operation and in line with enforcement operational instructions, the Home Office may decide not to defer removal in the face of a last-minute threat or application to seek judicial review.”

This instruction would appear to remove any last chance at stopping a removal through a legal route.

We continue to have concerns about the use of staff and other detainees for interpreting purposes in removal centres, with no evaluation of the accuracy of the translation given. We welcome the provision in the New Asylum Model to accredit interpreters and would recommend that this is also extended to interviews in removal centres by Clerical Staff who are replacing Immigration Officers.

We would welcome research into the need for detaining people, as evidence has never been produced that absconding is a major issue as part of the determining procedure.²⁸¹

ARTICLE 8 RIGHTS TO RESPECT FOR PRIVATE LIFE AND PHYSICAL INTEGRITY

2. *Provision of healthcare*

In a removal centre, a detainee is entitled to the same level of medical care as a person in the community holding UK citizenship. We are concerned that this right is being eroded in at least two ways:

(a) Entitlement to testing for HIV/AIDS

The current policy within Detention Services is:

“... to arrange HIV tests for detainees either when deemed necessary by healthcare staff (with the permission of the detainee) or at the request of detainees following discussion with healthcare staff. All results received by healthcare centres are passed to the detainees concerned. This policy fits with the UNHCR guidance.”

Brian Pollett, Director, Policy, IND

We are concerned that instances have been reported to us of detainees who have been raped, but not showing clinical symptoms, being refused tests. If they are then be returned to their country of origin without knowing if they are positive, they are at risk and could put others at risk. The mental issues of not knowing can cause great distress.

Case 1: Anal rape victim in IRC Colnbrook was told that he could not have an HIV test as they cannot afford retrovirals, and adequate post-diagnosis counselling is not available/can be interrupted. Also he was told that detainees have to be showing clinical symptoms to be tested.

Case 2: Woman who was HIV positive who was due to be admitted to hospital was detained instead and health worker in the community was refused access to her or knowledge of her treatment.

Case 3: Woman who was receiving retroviral medication did not receive it in the removal centre for five weeks, following her detention.

²⁸¹ Filed (2006) Alternatives to Detention of Asylum Seekers and Refugees, UNHCR.

(b) Access to Secondary Health Care

Depends upon the outcome of the Immigration case, unless the life of a detainee is in danger. The Health Care Steering Group, which has set guidelines for patient referral from detention states that

“These guidelines give the view that urgent cases, those whose lives are in danger, should be referred wherever they are, and routing care can await the outcome of the Immigration department’s adjudication on the case. When Immigration fails to remove a detainee from detention and the detainee is still present after three months, the steering group advises that the patient be referred to secondary care even if the case is not yet settled.”

Report by Health Care Steering Group on Bail for Immigration Detainees Document²⁸²

A delay of three months for expert treatment of depression can prove disastrous.

Case 4: Woman detained in Yarl’s Wood for nine months, was twice hospitalised and twice returned to detention as fit to be detained, deteriorating on return both times. She asked her visitor to help her commit suicide rather than return to her country of origin and went on hunger strike. An independent doctor arranged her first admission into hospital the first time, the centre staff sent her the second time. Eight months after she had been detained two Independent medical experts eventually had her admitted in a very serious condition to a secure mental facility for treatment. She is now recovering in the community after several months in hospital.

Case 5: Age disputed minor was screened on arrival at port as possible TB sufferer but not followed up when he entered detention. As a result of beatings in his country of origin, he had kidney problems which were only treated with paracetamol. He lost weight during detention and had blood in urine which was not investigated. Civil action pending over inadequate health care.

Case 6: Woman detained for one month without access to a midwife, in spite of morning sickness, pains in her stomach and very stressed. Refused milk and fruit instead of food on offer because she could not eat. Returned to smoking because of stress.

3. Treatment of children

(a) Separation during removal

We have on file three examples of mothers who were separated from their children during removal attempts. Their treatment in front of the children by escorts who were trying to put them on the aircraft caused extreme distress to the children, who were unable to be comforted due to the separation.

In the following two cases, children were not detained but deprived of breastfeeding mothers, as there would appear to be no policy on detention of breastfeeding mothers.

Case 7: A woman, who was married to a British citizen, was detained without her baby, The Home Office was aware of the baby. It was suggested by the HO that this was an isolated incident. However a month later, a second breastfeeding mother was detained without her child, who she was breastfeeding for medical reasons (kidney condition and whose baby would not take a bottle). She was detained for two days before being released.

(b) Failure to assess children on entry

Children are not assessed when they enter a removal centre, making an evaluation of their deteriorating health difficult. The physical impact on children is well documented in reports by Her Majesty’s Inspector of Prisons 2004 into IRC Oakington and the research carried out by Save the Children, No place for a child²⁸³.

Case 8: Two year old girl who was detained for four months and during that time, lost four kilos in weight.

4. USE OF DETENTION AND CONDITIONS OF DETENTION AND METHODS OF REMOVAL OF FAILED ASYLUM SEEKERS

Many asylum seekers are detained for long periods without the prospect of imminent removal for reasons such as refusal by receiving country to accept them as their nationals or travel documents are unobtainable.

Case 9: B, an asylum seeker from Iran, was detained for two years on the end of a short prison sentence, pending deportation. He was desperate to return to Iran, but it was clear from the monthly reports on his case that he received from the Immigration Service that no progress was being made on his case. He was finally released on bail by the AIT, but was re-detained two months

²⁸² Fit to be Detained, May 2005, published by Bail for Immigration Detainees, www.biduk.org

²⁸³ No place for a child, Children in UK immigration detention: Impacts, alternatives and safeguards, by Heaven Crawley and Trine Lester, 2005.

later, following the media coverage of the issue. The reasons for detention he received were identical to those he had been given during his previous detention, and it was clear that no progress had been made in obtaining travel documents.

In June 2006 there were 20 people in one centre alone who had been detained for over one year.

Case 10: An undocumented Liberian asylum seeker was distressed by detention as his wife was seven months pregnant when he was detained, and he was her only support in the community. He was released five months later, having missed the birth of his first child.

ARTICLE 14: PROHIBITION OF DISCRIMINATION

2. *Provision of healthcare*

It is our contention that not providing HIV testing unless clinical symptoms are present amounts to discrimination. (See Article 8, healthcare cases.)

3. *Treatment of children*

The case outlined below is an example of the discrimination shown to children of asylum seeking families, who do not appear to fall under the rules of the Children Act. Their right to family life would also appear to have been ignored when the decision was made to remove the father and two older siblings.

Case 1: An attempted removal of part of a family, including two teenage children. The father and two teenage children were taken in separate vans to be removed. The father resisted and was beaten unconscious in front of the children. They were returned to the centre and the father was removed. (He was imprisoned on arrival, managed to escape and is now a refugee in the country next to his removal destination.) The mother and three younger children remained in the removal centre. The mother was taken into hospital, leaving the five children in the centre until Social services could place them.

4. *Use of detention and condition of detention and methods of removal of failed asylum seekers*

Centres have difficulty managing disabled/wheelchair users. There have been recorded instances where wheelchair users have been stranded on one floor and unable to reach the library, education etc because the staff or the centre are unable to facilitate free movement. In the second case, it took three weeks before the needs of a disabled man were met by centre staff.

Case 2: Man held in Colnbrook who needs wheelchair to be moved. Decision made to move him to Harmondsworth at 9.00 pm. Carried downstairs by two guards not qualified to move disabled people. Decision changed; carried upstairs again. Decision changed again; carried downstairs. Put in van not suitable for transport of disabled. On arrival at Harmondsworth, nurse refused to accept him as he had no facilities to look after someone in his condition. Colnbrook then said they now had no bed available.

Man was left in wheelchair in Harmondsworth reception until 4.00 am, and then wheeled to emergency accommodation. On arrival, Colnbrook management changed their minds. He was wheeled back to reception, put in van, taken back to room in Colnbrook by 6.00 am. Collapsed and passed out. Came to at 10.00 am, when due in Harmondsworth for bail hearing! No one was available to say whether he was fit or not to go. Bail application was withdrawn.

Case 3: Man requested a chair in the shower room on which to sit, as he only had one leg and was on crutches. This request was ignored by staff for three weeks until a request was received from the Home Office, who had been alerted by an outside agency.

In order to make forced removals, people are often picked up from the community either on reporting or during early morning raids. How detention occurs leaves people without their belongings and often access to vital property to enable them to effect closure before removal. In the case of the detention of families with children, this is very frightening and traumatising for children.

At the end of the process, we are still documenting incidents where people who are desperately afraid of returning are being forced onto aircraft, receiving injuries in the process which are alleged to have included force outside the boundaries of "Use of control and restraint".

Case 4: Afghan detainee for removal on charter flight was handcuffed, alleges he was gagged, and his legs were tied. He was kicked in his legs and back by the escorts and his legs are black and blue. He suffered broken arm during the attempted removal. Official complaint submitted.

Case 5: Assault during movement between centres, following protest for not being able to attend his Human Rights hearing which was caused by and administrative error admitted by Home Office. Injuries were evident a week later and video has been sent to Home Office by staff at original centre.

APPENDIX A

Memorandum from London Detainee Support Group, September 2006

1. EXECUTIVE SUMMARY

Asylum seekers are often arbitrarily detained for long periods where there is no prospect of imminent removal due to the impossibility of obtaining travel documents. Long-term detention of asylum seekers with deportation orders is particularly common. Torture victims and unaccompanied minors are often inappropriately detained. Delays by NASS in processing applications for support also lead to unnecessarily prolonged detention.

2. London Detainee Support Group (LDSG) is a registered charity providing non-religious, non-judgmental emotional support and practical assistance to immigration detainees held at Harmondsworth and Colnbrook Immigration Removal Centres (IRCs). In 2005–06 LDSG assisted 619 immigration detainees, and as a result we are in a good position to comment on the impact of detention policy and practice on detainees. LDSG's key activities are:

- Maintaining a pool of around 80 volunteer visitors speaking all main detainee languages, each visiting weekly individual detainees to provide emotional support.
- Assisting detainees with practical difficulties related to their detention, eg accessing legal advice or other specialist service providers, applying for support from the National Asylum Support Service (NASS), or resolving welfare problems.

3. LDSG welcomes this inquiry, and in particular the identification of detention as an area likely to raise human rights issues. Due to the extreme vulnerability of many asylum seekers, LDSG believes that the rapidly expanding use of detention is of serious concern. LDSG welcomes the Committee's examination of whether detention may in some cases be arbitrary, and therefore breach the right to liberty under Article 5 of ECHR.

4. There is a lack of adequate safeguards to ensure that detention is not arbitrary. The provision for automatic bail hearings for all detainees in the 1999 Act, never implemented, was repealed by the 2002 Nationality, Immigration and Asylum Act. Moreover, there is no statutory time limit on detention. As a result, many detainees are detained for prolonged periods with little or no judicial scrutiny of their detention, in particular where linguistic or mental health factors prevent detainees from applying for bail themselves. Due to reductions in legal aid available for asylum cases since April 2004, detainees find it problematic to access legal advice in order to make bail applications. Detainees also face administrative delays in the listing of bail applications, as the Asylum and Immigration Tribunal (AIT) does not have sufficient resources to meet its obligations to list within three working days. Bail hearings should be held automatically for all detainees one week after they are detained, and at regular intervals thereafter. A statutory limit on detention should be introduced, in line with many other EU states. The Legal Services Commission should ensure that funding is available for representation of all detainees throughout their detention. Increased resources should be made available to the courts to ensure that bail hearings are listed within three days.

5. Many asylum seekers are detained for long periods with no prospect of imminent removal. The immigration authorities of a number of countries of origin of asylum seekers will not in practice accept the return of undocumented nationals, because they do not consider the EU letter issued by the UK government to be sufficient identification, and will not themselves issue emergency travel documentation to allow return. However, the Immigration Service has in many cases refused to release detained undocumented nationals of these countries. LDSG has supported asylum seekers detained for prolonged periods from a number of countries for a number of countries to which such removals appear to be impossible, including Iran, Somalia, Cote d'Ivoire, Cameroon, Ethiopia, Mauritania and Niger, or prohibitively slow (eg Algeria, India). In addition, we have supported many long-term detainees who have been refused travel documents by countries including China and Liberia which will only rarely issue travel documents. Where travel documents have been refused by the country of origin, release should be automatic.

Three long-term detained undocumented Mauritanian nationals were in contact with us between summer 2005 and spring 2006. None were taken to the Mauritanian Embassy for emergency travel documents. Two were flown to Mauritania, but were refused entry on the grounds that the EU letter was not acceptable identification. In one case, the detainee reported that the Mauritanian immigration authorities were angry with the UK for persisting with removals, when they had made clear that the EU letter was not acceptable. All three were eventually released on bail, after 11, 10 and six months respectively.

C, an undocumented asylum seeker from Cote d'Ivoire, was detained for Fast Track consideration of his asylum. He had no history of criminality or absconding. His asylum was refused after one month, but his detention continued, despite there being no progress in obtaining travel documents. On two occasions he was given removal directions. He reported that he was taken by escort staff from the detention centre, driven in a van for several hours, and taken back to the detention centre. He was released on Temporary Admission after over six months.

No removals of undocumented Ivorian nationals have been possible for at least 3 years; all Ivorian detainees in contact with LDSG were released around June 2004. Since that time, we have supported 15 undocumented Ivorian detainees, of whom 13 have been released, and two (both with deportation orders) remain in detention.

6. Asylum seekers who have been given deportation orders are often detained indefinitely where travel documents are unobtainable. LDSG has supported many detainees who have served short prison sentences for minor non-violent offences, and been issued deportation orders. Where deportation is impossible to carry out, either because the receiving country as a matter of policy does not issue travel documents (see above), or because the deportee has been long-term resident in the UK and cannot prove any connection with their country of origin, extreme long-term detention is common, even where the detainee is cooperating with the documentation process. Both the Immigration Service and the AIT consistently show great reluctance to release on temporary admission or bail in these circumstances, despite the evident impossibility of removal, the stated reason for detention.

D, an asylum seeker from Algeria, was detained for over two years, following a six month sentence. He was very anxious to return, and was fully cooperating with the removal process, but travel documents were not obtainable. He was refused bail, and remains in detention.

LDSG is also aware of undocumented Algerians currently detained for periods of respectively 18 months, 15 months, 10 months, and in four cases for between four and six months. LDSG is not aware of any undocumented Algerians who have been removed or deported since 2003.

7. This issue has become more serious since the media coverage of spring/summer 2006, and detainees previously released on the grounds that deportation was impossible have been redetained, despite there being no progress in their cases.

B, an asylum seeker from Iran, was detained for two years on the end of a short prison sentence, pending deportation. He was desperate to return to Iran, but it was clear from the monthly reports on his case that he received from the Immigration Service that no progress was being made on his case. He was finally released on bail by the AIT, but was redetained two months later, following the media coverage of the issue. The reasons for detention he received were identical to those he had been given during his previous detention, and it was clear that no progress had been made in obtaining travel documents.

8. LDSG has been told by experienced legal advisers of a perceived "tariff", whereby un-deportable detainees must wait in detention for approximately nine months before AIT will consider bail. Factors such as risk of absconding or re-offending are given substantial weight at bail hearings, although the deportee is detained purely for administrative immigration reasons, and has finished their criminal sentence. The punitive use of immigration detention as an improvised extension of the criminal justice system should cease. Where deportation is not possible, release should be automatic, regardless of previous immigration history or offences.

9. Arbitrary detention of asylum seekers who cannot be removed also leads to breaches of Article 8. The Immigration Service justifies the separation of families by the detention of one member as necessary for immigration control. LDSG has supported many detainees separated from their families for long periods, where it was evident that removal was impossible. LDSG has also supported detainees who were held in different detention centres to their families, in breach of guidelines.

X was an undocumented Liberian asylum seeker. He was distressed by detention, as his wife was seven months pregnant when he was detained, and he was her only support in the community. He was released five months later, having missed the birth of his first child.

10. The detention of torture victims remains routine, in contravention of Home Office policy that it will not normally be appropriate. LDSG has supported many torture victims in detention with medical reports supporting their claims to be victims of torture. LDSG is concerned that adequate procedures do not exist to prevent or curtail the detention of torture victims. They are not routinely released, even where Healthcare staff within the detention centre report evidence of torture to the Immigration Service. Torture victims are regularly detained for Fast Track consideration of their asylum case, because asylum seekers are not asked about their claim or health issues at the screening interview at which the decision to Fast Track is made. The Fast Track procedure itself does not allow sufficient time for medical reports to be obtained, and many solicitors do not make referrals to Medical Foundation for the Care of Victims of Torture, citing lack of time. Our volunteer visitors have frequently reported the extreme distress caused by immigration detention

to torture victims with experience of imprisonment in their country of origin. Asylum seekers claiming to be victims of torture should be screened out of the Fast Track procedure. Asylum seekers with medical evidence of torture should not be detained under any circumstances.

B was had been imprisoned for six years in Iran, and tortured for long periods. He had extensive scarring on his body. He came to the UK via Austria, so the Immigration Service hoped to remove him to Austria under the Dublin Convention, and detained him in order to pursue this. However, the Austrian authorities refused to accept him, and he remained in detention. Bail was refused because he did not have sureties. Detention caused him extreme distress, because it reminded him of his experiences in prison in Iran. He repeatedly self-harmed, and on one occasion attempted to hang himself. He was finally released on Temporary Admission after more than three months in detention.

11. Inadequate age assessment procedures cause large numbers of unaccompanied minors to be wrongly detained as adults, until paediatric reports confirm their claims to be minors. 40% of age-disputed minors detained at Oakington were subsequently found to be under 18 and released. LDSG is concerned that the Immigration Officers, on whose judgement asylum-seeking minors are treated as adults, do not have adequate training or qualifications to make such judgments. As a result, serious risks are taken with the wellbeing of vulnerable children.

X claimed to be 17. He was assessed as an unaccompanied minor by social services, and placed in a home. However, at his screening interview, the Immigration Service disputed his age, in breach of their own procedure. They arranged for a second age assessment by a different borough, which concluded that he was not a minor. He was refused asylum on the Fast Track procedure, and his duty solicitor dropped him, informing him that there were no grounds for a further appeal. He found detention a traumatic experience, and felt very isolated as there were no other detainees of his age.

LDSG referred him to a civil solicitor to judicially review the decision to detain, and he was released back to the care of social services.

12. Delays by the National Asylum Support Service (NASS) in processing applications for Section 4 support from unremovable detainees can prevent detainees from applying for bail, and unnecessarily prolong their detention. Immigration detainees applying for bail must supply the address at which they will be living if they are released. Asylum seeking detainees who are cooperating with the removal process or who cannot be removed (eg due to outstanding judicial reviews or health conditions) can apply to NASS for Section 4 support. NASS state that detainees applying for Section 4 support should supply the date of the bail hearing, so that a decision can be made in time, and an address provided for the hearing if appropriate. However, NASS do not automatically consider applications from detainees as Priority A (for which decisions take an average five days. NASS stated at a stakeholders meeting on 27 July 2006 that Priority B applications take an average of 15 working days. In one case, NASS required six months to make a decision on a Section 4 application. Bail applications should be listed after three working days, so in many cases detainees do not receive a decision from NASS in time. NASS should treat all Section 4 applications from immigration detainees as Priority A, as administrative delays can prevent detainees from seeking judicial oversight of their detention, and lead to breach of Article 5.

29 September 2006

48. Memorandum from the North West Consortium (East) for Asylum Seekers and Refugees regarding the Pilot under the Section 9 Regime by the Home Office Immigration and Nationality Directorate (IND)

1. INTRODUCTION

1.1 The North West Consortium East (NWCE) has prepared the above submission for consideration by the Parliamentary Joint Committee in consultation with its eleven member local authorities. (These are the ten Greater Manchester local authorities and Blackburn with Darwen Council). Each local authority may also produce its own individual submission.

1.2 This submission focuses upon both the implementation of the Pilot under Section 9 of the Immigration and Asylum (Treatment of Claimants etc) Act 2004 by the Immigration and Nationality Directorate of the Home Office (IND) and its effect within the Greater Manchester area.

2. BACKGROUND

2.1 Nearly all asylum seekers who are destitute are entitled to receive support from the Government via Home Office National Asylum Support Service (NASS) whilst their claim is being determined. (Section 95 of the Immigration and Asylum Act 1999).

2.2 However, once an individual's claim has been determined and they have not been granted refugee status, then their NASS support is automatically withdrawn and they are expected to return home.

2.3 Some may apply for “Section 4 hard Case support”, which entitles them to receive support but they must agree to return home and to assist IND in making the necessary arrangements.

2.4 However, until the introduction of Section 9 of the 2004 Act failed asylum seeker families continued to be supported.

2.5 Section 9 enables the Home Office National Asylum Support Service (NASS) to withdraw support from failed asylum seeker families that no longer have any right to remain in the UK, where it is has been assessed that they have made insufficient effort to return to their country of origin or to put themselves in a position where they could be returned at some point in the future.

2.6 In 2004 IND stated that Section 9 was “designed to remove the incentive for a family to stay in the UK and not co-operate with attempts to arrange their return. It is intended to change behaviour, so that those affected can leave the country with dignity and avoid the necessity for enforced removal.”

2.7 It was made clear by IND that the legislation was a response to situations that have arisen where failed asylum seeking families have “been able to remain supported in the UK indefinitely, even though they have come to the end of the asylum process and are deliberately frustrating the return process by, for example, not co-operating in the acquisition of travel documents or the making of other arrangements to leave.”

2.8 IND maintained that the legislation was not intended to make families destitute or to take children into the care of local authorities. However local authorities and many other agencies with responsibility for the welfare of children raised concern at the time that these may prove to be consequences of its application for some families.

2.9 IND began piloting the implementation of Section 9 at three of its local enforcement offices in late 2004. The Section 9 process was applied to the cases of 116 asylum-seeking families across Greater Manchester, Yorkshire and London, who had failed in their claim.

3. EXPERIENCE OF THE PILOT PROGRAMME

3.1 Whilst the Home Office is yet to release its own evaluation NWCE concludes that the pilot appears to have failed in achieving its stated aims. As at January 2006, only one family out of the 116 included in the pilot had left the UK as a result of the Section 9 process. Whilst others may have engaged to varying degrees with voluntary return programmes agencies reported that at least 32 of the 116 families included in the pilot lost contact with services.

3.2 This raises significant concern that those families, and their children may also have lost appropriate access to support networks, appropriate housing, health and welfare services rendering them vulnerable.

3.3 *Impact upon Families and Children*

3.3.1 In Greater Manchester local authority officers attempted to contact families included in the pilot at an early stage. The intention was to ensure they understood the Section 9 process and to gauge their intentions. Some families were reluctant or refused to engage, officers were unable to contact others. Many of the families concerned were housed in private sector accommodation under contract to the Home Office (NASS).

3.3.2 Local authority asylum support teams were unable to ascertain whether or not some families were living at the addresses NASS had provided. Staff became concerned that some families may have absconded from their accommodation as a result of the Section 9 pilot but this cannot be proven.

3.3.3 Where local authority staff were in contact with the families included in the Section 9 pilot they reported that parents often did not appear to understand the process or that their support may be withdrawn, despite repeated explanations by Immigration Service officials.

3.3.4 In one case a single parent left her children in NASS accommodation, the local authority subsequently supported the children. In other cases staff expressed concern at the potential for the financial and other uncertainty arising from the Section 9 process to impact upon the emotional state and mental health of parents and their wider ability to provide the support needed by their children.

3.4 *Impact Upon Local Authority Resources*

3.4.1 The pilot of Section 9 placed significant demand upon local authority resources both in terms of contact time with families affected by the pilot and the time spent by officers in developing approaches to respond to the pilot, its implementation, the impact upon families and the wider impact upon local services and communities.

3.4.2 Local authorities incurred costs as they examined the legal implications of the Section 9 and worked to develop a clear position and guidance on the assessment of human rights to be applied to Section 9 cases.

3.4.3 There was considerable media interest in the cases of individual families in Greater Manchester and sustained media interest to establish the view of local authorities on Section 9 and its pilot implementation. Although Greater Manchester local authorities were not proactive in contacting the media re the pilot or the legislation, some authorities incurred costs as a result of dealing with frequent media enquiries.

3.4.4 Two local authorities in particular experienced high and sustained levels of media interest in the cases of families that had their NASS support withdrawn as a result of the Section 9 process. One other local authority spent considerable time and therefore resources managing media enquiries and coverage following the removal of a family from their NASS accommodation without any warning. This coverage inflamed what was already a sensitive local situation.

3.4.5 At least one Greater Manchester local authority was concerned that some elements of the local community were of the view that local authorities were assisting with, or failing to oppose deportations. This situation, created by the pilot of Section 9, placed a strain upon the otherwise good relationships with those parts of the local community.

3.4.6 Three Greater Manchester authorities continue to provide accommodation and/or support to families following the withdrawal of their NASS support under the auspices of the Section 9 pilot. Whilst the Home Office will meet some of the costs incurred by those authorities in respect of the support provided to children the local authorities continue to incur costs as a result of supporting the children with their parents, where such an approach is assessed as being in the best interests of the children concerned.

3.4.7 There is no sign that the Home Office will reinstate the support withdrawn from families as a result of the Section 9 pilot or that the families will leave or be removed from the UK in the foreseeable future. This raises concern that ongoing responsibility for the support of such families will continue to fall to local authorities and other community groups or agencies operating at a local level.

3.5 *Legal Issues*

3.5.1 Throughout the pilot Greater Manchester local authorities raised concern with the Home Office, and also with DfES regarding the conflict between Section 9 and child care legislation. This presented genuine challenges and difficulties.

3.5.2 Local authorities are empowered to provide support under the provisions of the Children Act 1989 where necessary to avoid a breach of an applicant's human rights. In considering whether a breach will occur local authorities must make their own decisions on whether Article 8 of the European Convention of Human Rights (ECHR) is engaged, and if it is engaged, whether to separate the children and parents would be a breach.

3.5.3 The whole ethos of legislation and guidance on children and families would lead local authorities, in general and subject to the facts of each case, towards a view that the separation of children from their parents solely due to the potential for destitution would be a breach of Article 3 and Article 8 (ECHR) and would be likely to have an adverse impact upon the well being of individual children. This relates particularly to Section 17(1) of the Children Act 1989 ie the duty to promote the upbringing of children by their families.

3.5.4 NWCE local authorities were concerned that Section 9 appeared to assume that following the assessment process, if the local authority position is that the children should be accommodated under Section 20 of the Children Act, the parents would always agree to this. No consideration appeared to have been given to the situation where parents do not agree to their children being supported under Section 20 of the Children Act 1989 and where that would leave the local authority in relation to its position within the existing legislative framework.

3.5.5 Whilst each case would have to be considered on its facts and evidence local authorities in Greater Manchester anticipated that situations would arise where the threshold criteria under Section 31 of the Children Act 1989 were not met. In such cases the only legal option available to the local authority would be expensive and time-consuming applications to the Family Division of the High Court requesting that it exercises its inherent jurisdiction to intervene and enable the local authority to take children into care. There is no guarantee that such applications would be granted.

3.5.6 The North West Consortium (East) authorities were concerned that the implementation of Section 9 placed Local Authorities in an impossible position of trying to fulfil their duties within the boundaries of incompatible legislation. The likely consequences for the Local Authorities in the Consortium being that either they would incur considerable costs in supporting families subject to individual assessment and consideration of ECHR, or face unnecessary legal costs when challenged for withholding or withdrawing support and separating children from their parents.

3.5.7 The Consortium requested joint guidance from the Home Office and DfES on how local authorities should approach making such decisions. The provision of such guidance will be of assistance to local authorities if Section 9 is, in its current or some amended form, rolled out more widely.

4. CONCLUSION

4.1 The Consortium Local Authorities accept that failed asylum seekers should be encouraged and assisted to leave the UK, or returned to their home country by the Immigration Services. However the implementation of Section 9 placed NWCE authorities in an impossible position of trying to fulfil their duties within the boundaries of incompatible legislation and failed to achieve its stated aims.

4.2 The NWCE understands that whilst no decision has been taken, the Immigration, Asylum and Nationality Act 2006 includes a provision to repeal Section 9, should it be decided that this is the appropriate course of action. The Home Office Immigration and Nationality Directorate is in the process of evaluating the Section 9 pilot, taking into account feedback from stakeholders including relevant Government Departments, local authorities and voluntary sector agencies.

4.3 We welcome this evaluation and hope that Government may then consider developing a different and wider range of options and measures to encourage unsuccessful asylum seeking families to leave the UK. Section 9 was developed to address the inability of the Immigration Service to remove some failed asylum seeking families from the UK without their cooperation. It is the view of NWCE that Section 9 is not an effective process and has not achieved its stated aims.

4.4 NWCE authorities are of the view that a more open, transparent process of communication with families regarding their options and decision making processes as they go through the asylum process will support an increase in the rate at which failed asylum seeking families voluntarily leave the UK.

4.5 We are optimistic the New Asylum Model (NAM), along with improvements to the assisted voluntary returns system may play a valuable part in encouraging voluntary returns amongst this group. There is a genuine commitment amongst NWCE authorities to work with and support the Home Office in developing alternatives to the Section 9 process that will ensure that the best interests of children are identified and promoted.

4.6 NWCE authorities remain of the view that if immigration legislation is to be effective in addressing the issue of asylum seekers refusing to leave the UK when their claim has failed it must be compatible with and take into account the range of child and social care legislation that places statutory duties upon local authorities to identify and meet the needs of vulnerable children and adults. Failure to achieve this will result in the shifting of costs from central to local Government and at worst in vulnerable children and adults being left destitute and at risk.

September 2006

49. Memorandum from the Housing and Immigration Group

The Housing and Immigration Group (HIG) is an informal group of lawyers, lay advisers and campaigners who work for immigrants in the fields of housing and other social assistance. Our 400 or so members include solicitors, barristers and voluntary organisations working on behalf of asylum-seekers and migrants.

HIG is concerned with housing and social assistance for immigrants. Its objectives are:

1. To promote the exchange of information between participants.
2. To help to formulate policy for its participants and others to promote.
3. To identify potential legal test cases.

ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

General Comments

National Asylum Support Service (NASS)

In July 2006 there was a quiet Home Office announcement that the Department known as NASS which administers support was to be scrapped. There was no prior consultation or explanation of how it will be replaced. Many of those working with asylum-seekers are not aware of the change. Policy documents, application forms, letters from the Department still include reference to NASS. Given the lack of direct access to NASS (it has no public office), there was an advantage to having a clearly identified part of the Home Office to write to and phone and which had started to develop some expertise in the area of support provision. There seems to be no rational justification for the policy change which makes access to the administration of support more difficult.

Section 55

HIG is concerned that the Home Office continues to apply s55 despite the compelling HL judgements in *Limbuela*. A new Policy Bulletin 75 is currently in draft form, containing guidance for the implementation of s55. Asylum seekers are subject to a s55 review process before accessing support even though in first 6 months of 2006 of 1965 applicants interviewed only 450 were refused support. Our experience is that s55 is currently implemented mainly in relation to applicants for subsistence-only support who are staying with friends or relatives. NASS will not accept that they have a roof over their head but no regular access to food and so their only option is to wait to be evicted and then apply for full housing and support. For those who need to stay with a friend or relative eg in London for emotional support, this can mean they manage with inadequate food and necessities or are open to exploitation in exchange for food.

We are concerned that s55 applied to s4 applicants, who are already destitute. We are concerned about asylum seekers who are refused support under s55 but are unable to access legal advice and are unaware of their rights to challenge the decision. This is particularly a problem outside London where there is a severe shortage of asylum support practitioners.

Section 9

The Home Office pilot of Section 9 showed that it was ineffective in persuading families to return. Evidence produced by the voluntary organisations involved, the Inter Agency Partnership and others showed its inhumane effect on families, resulting in some children being taken into care and others disappearing. There was a high level of concern amongst social workers in the area affected by the pilot because of children at risk factor. (Reference to and/or copies of evidence can be provided if it will assist the committee). An announcement on the outcome of the review of s9 was promised in February 2006 but is still awaited. The Home Office now has power to repeal it in the Asylum Act 2006. In the meantime, those in the pilot of 120 families affected by it have not had their support reinstated pending a decision. We are concerned that s9 may be replaced by a harsher regime eg involving detention for children. We would urge the government to look to a persuasive voluntary regime which all the evidence shows is more likely to be effective. We would welcome a pointer from the committee in this area.

Section 10

This has not been implemented apparently because no voluntary organisation would associate itself with it. We would suggest it should be scrapped in the next Asylum Act. With others, we would urge the government to consider allowing asylum-seekers to carry out paid work, even if on a carefully regulated basis so they can get off the NASS support system.

*Other issues**Access to advice/legal aid*

There are article 6 issues arising from the limited access to legal advice whether about asylum case or support issues, especially outside London. There is no public funding for representation at Asylum Support Adjudicator (ASA) appeals against the refusal of NASS support, which often raise difficult issues of law or evidence. Also many issues relating to support are outside scope of ASA appeal and not easily challengeable eg quality of accommodation. The restrictions on immigration advice have had a devastating effect on our clients because of the difficulty in getting competent immigration advice but here we are concerned with asylum support advice and representation. We are concerned about current proposals by the Legal Services Commission and Lord Carter in relation to legal aid which move towards a larger volume of cases paid at lower rates. If these changes are implemented it will be difficult for HIG solicitors, who often work in niche firms, to continue working with vulnerable clients such as asylum-seekers who take longer due to having English as a second language, mental health needs and complex problems. In general the changes may mean some firms have to stop doing legal aid work in areas such as welfare benefits, housing and community care. The proposals are under consideration by a DCA Committee. We would ask the JCHR Committee to make representations in relation to this.

Failed asylum-seekers

Accommodation and support presents the greatest difficulty to failed asylum-seekers. This group appears relevant to the inquiry because it includes those who have made a valid fresh claim which may take months or even years before it is recorded. Failed asylum-seekers with an unrecorded fresh claim may be provided with very basic support under s4 Immigration and Asylum Act 1999. This takes the form of shared private rented accommodation and £35 supermarket vouchers per week per person. The vouchers arrangement presents all the difficulties and potential article 8/14 breaches which were in the public domain at the time

when all NASS asylum-seekers received vouchers. S4 support is particularly problematic for pregnant and nursing mothers because their additional needs are not presently provided for. At the time of writing draft regulations to allow some extra help in kind to those supported under s4 have not yet been introduced.

IND suggests that s4 is a basic temp support for people about to leave the country. This is misleading. Many of our clients have been in receipt of s4 support for years. Of the 6,145 or so failed asylum-seekers currently in receipt of s4 support, some have outstanding fresh claims and others from countries like Eritrea and Somalia have no short or medium-term prospect of returning home. The most blatant human rights breach in this area is the strict gate-keeping criteria applied to s4 support so that most failed asylum-seekers from these countries are ineligible having refused to agree to return to countries to which they would not be removable. Other breaches of human rights for asylum-seekers supported under s4 include:

- The cashless system recently placed on statutory basis resulting in discrimination at supermarket checkouts, inability to purchase culturally appropriate food, etc etc.
- Delay in implementing the s43 of the 2006 Act provisions in relation to other support eg travel, postage, phone calls and the limited scope of that support eg have to be three miles away to get transport costs. Extent of support at present unknown. Particularly a prob for pregnant nursing mothers.
- Poor quality accommodation where a.s.s have to share a room with a stranger.
- Lack of access to secondary and primary healthcare (see below).
- Difficulty accessing advice and rep where s4 support refused (see above).

CASE STUDY

P is 20 year old Rwandan failed asylum-seeker from DRC who is six months pregnant with twins. She left after the murder of her family and her own rape. She has recently made a fresh asylum/human rights claim. She sleeps in her bed with scissors at night because she is afraid she may be attacked. She needs extra ante-natal care and tests because sickle cell trait has been found and because of her mental ill-health and the extra needs of twins. She has not been able to attend hospital appointments or GP appointments because she cannot walk the several miles and has no cash. It is now too late in her pregnancy to carry out sickle cell tests in relation to the embryos. She has difficulty travelling to Tesco to cash her vouchers and carry shopping home for the same reason. At 8–10 weeks pregnant she was street homeless in Kings Cross. She has no baby things or maternity clothes and wears a pair of worn-out sandals. NASS have offered that she can buy maternity things by deducting the money from her £35 per week vouchers. But her vouchers are barely enough to meet her needs for food and other essential items. She is one of many pregnant/nursing women in this position. One was recently given a penalty fare for travelling on the bus with no ticker.

THE PROVISION OF HEALTHCARE

Since the 2004 Regulations were introduced, our members have seen a steady increase in the numbers of asylum-seekers and former asylum-seekers who have been refused access to both primary and secondary healthcare. Examples of the difficulties and case studies are covered in the recent Refugee Council report, particularly in relation to antenatal and postnatal care. The proposals to withdraw primary care entitlement are still in consultation stage. We would recommend that access to primary care for failed asylum seekers is not withdrawn but is rather clearly reinstated. This group are not health tourists and often have serious physical and mental health needs.

Areas of human rights violations include:

Primary Treatment

- Asylum-seekers who are entitled to primary care are routinely turned away from GP's surgeries because they don't have the necessary documents to demonstrate eligibility. An immigration test is applied by the GP receptionist, often incorrectly. An increasing number of failed asylum-seekers including those in receipt of s4 support are being refused GP treatment (which is discretionary). This client group is likely to have physical and mental health problems and includes pregnant and nursing mothers. We have intervened in cases of clear breaches of the Human Rights Act and Convention eg where a failed asylum-seeker with a outstanding fresh claim was refused ante-natal care placing her and her unborn child at risk. There are cases where the hospital has notified the GP of the pregnant client's status, breaching confidentiality, and the patient is then taken off the GP's list at a time when she is most in need of care. A GP's receptionist does not have the expertise to apply a human rights test in relation to health and immigration status. Clients refused GP treatment are likely to need treatment in Accident and Emergency Departments sooner or later. Whilst we consider that all failed asylum-seekers should be able to access necessary healthcare, it is irrational to provide accommodation and subsistence whilst refusing medical treatment.

Secondary Treatment

- As with primary treatment mistakes are often made so that secondary treatment is refused and/or payment is demanded incorrectly from those who are entitled to it eg asylum-seekers, people needing “immediately necessary treatment” and those whose course of treatment started before their negative asylum decision. We are aware of a number of cases where this has affected patients with life threatening or terminal medical conditions such as cancer. Anecdotal evidence suggests this is acting as a deterrent for patients concerned about their immigration status from seeking treatment eg in maternity cases where women may have chosen a risky home birth.
- Secondary treatment is refused to failed asylum-seekers with life threatening or painful conditions who have no means of obtaining it in countries of origin such as Palestine and Iraq.

CASE STUDIES

F is a Palestinian failed asylum seeker who has chronic liver disease and suspected lymphatic cancer. He is unable to return to Palestine due to lack of documents and receives s4 support on that basis. He has been refused further NHS treatment to investigate whether or not he has cancer due to his immigration status.

G is a Kurdish Iraqi failed asylum seeker who originates from outside the Kurdish controlled part of Iraq, again with travel problems returning there. After his asylum claim was refused he developed very painful kidney stones for which he needs opiate painkillers. The normal treatment is to remove the stones but this has been refused due to his status. He is only offered emergency treatment. As a result he is at risk of complications and has an increased risk of mortality.

CHILDREN

Age assessments

HIG members have been involved in litigation to ensure that local authorities carry out proper age assessments of unaccompanied minors, not simply at 15 minute assessment based on physical appearance but some authorities maintain this approach, confident that many applicants will not access legal advice to challenge the decision. Proving age is difficult and often impossible with only one paediatrician regularly carrying out reports and dental records inaccurate. The effect of minors being found to be 18 or over is that they do not receive essential support. We consider there should be a presumption that the person is under 18 unless the authority can show otherwise. In any event, central government guidance would be useful to ensure a consistent approach.

CASE STUDIES

K a 14 year old Afghan was initially supported by Kent Social Services who decided after a few weeks of him being in a Children’s home that he was 18 based on his behaviour, not engaged in playing with the other children. He was from a rural community, illiterate having had little or no school and had worked looking after sheep before he came to the UK. After the threat of judicial review, he was placed in an empty private rented house in Whitstable pending a decision. There he was unable to cope with living alone, cooking etc. The council finally agreed that he was a minor.

P, a 15 year old Rwandan asylum seeker who had experienced gang rape and seen her family killed by Mau Mau rebels was found to be 18. She did not know she could challenge the decision and so was transferred to NASS and dispersed to Newcastle. Three days later she returned to London for a Medical Foundation appointment and did not return to Newcastle. She managed to stay with acquaintances in London receiving subsistence only support for a few months. When her asylum claim was refused she had to leave and slept rough in north London for a year, getting food in exchange for sex. She has had one termination and is now pregnant. Now 18, she was recently referred to an asylum support solicitor and had difficulty in giving instructions, presenting as confused and mentally ill.

Dispersal

Dispersal has an adverse effect on children. This maybe because it means another change in address (the EU Reception Directive precludes unnecessary moves) or where where a parent has a mental health need and so depends on support from a community or relatives in London to be able to parent effectively. Currently families who were supported by local authorities under the interim scheme and have been settled in London for many years are being dispersed to cities like Glasgow, even though they will shortly be granted leave to remain under the “amnesty”. In some cases this presents an unnecessary article 8 breach because support in London will only be needed for a short period.

Section 4 support/access to healthcare

See comments above re nursing mothers and below re detention.

DETENTION

Difficulties here include:

Lack of access to advice about bail, immigration and support

This means many asylum-seekers remain in detention as they are unable to make their own application for bail. BID has produced a self-help guide but there is less prospect of success without representation.

Refusal of s4 support to detainees resulting in prolonged detention

A bail address is needed to secure release. There is little information about the right to claim s4 support for failed asylum-seekers in detention and there have been cases of such support being refused on the basis that the detainee has accommodation! Again there is a problem with lack of access to advice and representation.

Detention of children and facilities

There appears to be a lack of knowledge or monitoring of detainee's health, in particular children's health, or of child protection issues.

CASE STUDY

Ms B, a Jamaican former asylum seeker was detained at Yarls Wood and Oakington. Her children were 6 months and 4 years. Her younger child developed rickets. A paediatrician's report since produced noted there were no or inadequate medical records at both institutions. Such records should have included weighing and measuring the younger child for example. The child, now one, also had anaemia. Rickets is connected to poor diet and lack of sunlight and can cause permanent bone damage. It appeared there was no adequate child protection regime in relation to Yarls Wood.

TREATMENT BY MEDIA

Unfavourable reporting remains a concern and in particular the constant use of "illegal immigrants" to refer to failed asylum-seekers and the suggestion that migrants are a drain on resources. An example is the Evening Standard's recent reporting of Refugee Council report on lack of medical treatment. The statistics showed that this was a very minor problem but the report and headline implied that migrants were draining NHS resources.

September 2006

50. Memorandum from the National AIDS Trust

INTRODUCTION

1.1 The National AIDS Trust (NAT) is the UK's leading independent policy and campaigning organisation on HIV and AIDS. We work to improve the lives of people affected by HIV, both in the UK and internationally. We aim to prevent the spread of HIV, ensure ethical, appropriate and accessible HIV testing, equitable access to HIV treatment, and the eradication of HIV-related stigma and discrimination.

1.2 NAT welcomes the inquiry by the Joint Committee on Human Rights into the treatment of asylum seekers. This issue has become one of the most pressing strands of work for NAT. At almost every meeting of HIV service providers, immigration policy and processes are the main topic of discussion, with numerous accounts of severe hardship and distress. NAT does not take a position on immigration policy but does believe that migrants to the UK, who are often traumatised, extremely vulnerable and destitute, should whilst resident in the UK have their human rights protected and upheld.

HIV AND ASYLUM SEEKERS—BACKGROUND

2.1 There is no statistically reliable information on the prevalence of HIV amongst asylum seekers and other migrants arriving in the UK. The HIV prevalence rate amongst asylum seekers appears to be significantly lower than the general population prevalence in their country of origin, going by the evidence of diagnoses during ante-natal screening in the UK. It is nevertheless the case that there will be elevated rates of HIV infection amongst asylum seekers and other migrants from high prevalence countries when compared with the general population in the UK.

2.2 Significant numbers arriving in recent years from Zimbabwe and other parts of sub-Saharan Africa have had a substantial impact on the profile of HIV in the UK. It is now the case that the majority of HIV diagnoses in the UK are heterosexual rather than homosexual. But most of these diagnosed heterosexuals are believed to have been infected in Africa. It should be noted, however, that recent asylum statistics (2004 and 2005) show that only a few of the main countries of origin of asylum seekers have significant HIV epidemics—Zimbabwe, Eritrea, DRC, Somalia and Sudan.

2.3 There have been claims that many of those arriving in the UK are “health tourists” aiming to benefit from free HIV treatment in the UK. The evidence suggests that late presentation and diagnosis of HIV is very common amongst asylum seekers living with HIV. HIV diagnosis often occurs many months after arrival and linked to some opportunistic infection.²⁸⁴ In the case of those now being denied treatment, it takes place after their asylum claim has failed or their visa expired (they could have accessed free treatment if they had been diagnosed while their claim or visa were still “live”). All these facts powerfully indicate the lack of any evidence for HIV-related health tourism to the UK.

2.4 HIV infection progressively weakens the body’s immune system, rendering the individual vulnerable to opportunistic infections. Left untreated, HIV will over time progress to AIDS, where the body has become too weak to fight off a whole range of diseases, and this will result in death. This deterioration is of course extremely traumatic for the individual concerned but it is compounded by the high degree of stigma and discrimination faced by many people living with HIV, particularly many from African communities. They are often unable to tell even close family and friends, resulting in social isolation, mental stress and depression.

2.5 In the UK anti-retroviral therapy (ART) is available which radically alters the health prospects of those who are receiving it. Unless diagnosis happens very late, ART can enable someone with HIV to live a productive and relatively healthy life, with in all probability a normal life-span. Infectiousness is also significantly reduced. The treatment does however have serious and debilitating side-effects. It also has to be adhered to strictly and continuously if it is to be effective and if the development of drug resistance is to be avoided.²⁸⁵ There is a considerable body of research evidence to suggest that issues such as mental health, social support and economic circumstances have an impact on adherence to treatment.

2.6 The Joint Committee has identified health issues as being particularly significant in its terms of reference. HIV in particular deserves the attention of the Committee. As a life-threatening and infectious disease profoundly influenced by social factors it is a real challenge for the Government to ensure its immigration objectives are met but people are not allowed unnecessarily to suffer in the process. In NAT’s view, current denials, delays and interruptions to treatment for vulnerable people living with HIV with complex needs amount to inhuman and degrading treatment under the ECHR.

ACCESS TO TREATMENT

3.1 The NHS (Charges to Overseas Visitors) Regulations 1989 deny access to free NHS secondary care for people not “ordinarily resident” in the UK. People not “ordinarily resident” should be charged for NHS secondary care received. Until April 2004 these regulations had in practice little impact on those seeking secondary care. The “12 month” rule included as ordinarily resident anyone who had resided in the UK for more than 12 months.

3.2 Amendments to the Regulations, however, which came into force in April 2004, added the requirement that the 12 months residence had to have been “lawful”. At the same time, the Government issued Guidance on “Implementing the Overseas Visitors Hospital Charging Regulations” and placed greater policy emphasis on the need to charge those without a legal right to free NHS care. The result has been a significant increase in the numbers being denied, or having great difficulty in accessing, necessary secondary care.

3.3 For an excellent general survey of the current difficulties many are experiencing in accessing free NHS care we would refer the Committee to the recent report from the Refugee Council “First do no harm: denying healthcare to people whose asylum claims have failed” (June 2006).

²⁸⁴ See Terrence Higgins Trust and George House Trust 2003 “Recent Migrants using HIV Services in England”.

²⁸⁵ Late or missed doses can seriously compromise the effectiveness of treatment and lead to treatment resistant HIV developing. The National AIDS Manual advises that adherence of less than 95% can lead to poor suppression of HIV, increases in viral load and poor gains or falls in CD4 count. For a person taking HIV treatment once a day, 95% adherence means missing no more than one dose per month (see National AIDS Manual (2006) Living With HIV. London: NAM).

Current eligibility rules

3.4 At present asylum seekers do qualify for free NHS secondary care and this eligibility extends to the whole of any appeals process. Furthermore, the so-called “easement clause” allows any specific course of treatment currently being received by an asylum seeker at the point when a claim is finally refused to be continued free of charge.

3.5 This provision is of course welcome but does not cover the cases of those in the UK who have put in an application to remain under Article 3 of the European Convention of Human Rights, those unable to leave the UK who are recipients of section 4 NASS support, and those undocumented migrants who have failed in their asylum application, overstayed their visa or who are otherwise resident in the UK without legal status.

3.6 There are a number of exemptions from the charging regime in relation to specified conditions. Some of the exemptions are for public health reasons—most serious communicable diseases, including for example TB and hepatitis, are exempt from charges as are sexually transmitted infections treated in GUM clinics. The one exception to this last exempted category is HIV—only the HIV test is free but HIV treatment remains chargeable. At the request of NAT and the Terrence Higgins Trust, the House of Commons Health Committee conducted an inquiry into this issue in the last Parliament. We refer the Joint Committee to that report and its evidence for a detailed rehearsal of all the public health and discrimination questions relevant to this issue. The Health Committee concluded unequivocally that HIV treatment should also be exempted from NHS charges.²⁸⁶

3.7 Treatment provided in Accident and Emergency Departments is also free of charge.

3.8 The Department of Health Guidance states that those who in a clinician’s opinion are in need of “immediately necessary treatment”—that is, treatment which is life-saving or which prevents a condition becoming life-threatening—should always have that treatment provided irrespective of eligibility for free treatment or ability to pay. An invoice should, however, be raised for the relevant charge in the case of those patients not entitled to free NHS care. The debt should be pursued using “reasonable measures” and if all reasonable measures are taken without success it is possible for a trust to decide to write the debt off.²⁸⁷

HIV treatment

3.9 The development of anti-retroviral therapy (ART) in the 1990s has changed fundamentally the health prospects of those infected with HIV in the developed world. As long as diagnosis does not take place too late, ART usually means the HIV positive person can lead an active and healthy life, though there are side effects to the treatment. ART is not administered automatically on diagnosis but is commenced when the patient’s CD4 count suggests clinical need (usually when the CD4 count is at or below 200). At any point in the UK about a third of those diagnosed with HIV have not as yet commenced ART—but they will need to be seen regularly for care to assess CD4 levels and whether ART is necessary. Without ART those living with HIV will become increasingly vulnerable to infection and ultimately to AIDS and an early death.

3.10 ART once commenced cannot be interrupted. It must be taken for the remainder of the person’s life to be effective. As has already been stated, strict adherence to the often demanding drug regimen is also essential if drug resistance is not to develop.

3.11 HIV treatment would thus from a clinical perspective qualify as “immediately necessary treatment”—without it, someone’s condition will deteriorate and the individual will die. We consider “immediately necessary treatment” would include not only the provision of ART itself but also the care and monitoring required to assess whether and when ART should be commenced.

HIV case studies

3.12 How in practice does the new charging system affect people living with HIV in the UK? Is the commitment always to provide immediately necessary treatment sufficient for the UK to meet human rights standards for the care of those living with HIV?

3.13 There appear to be many instances where there is confusion as to whether or not someone can access free NHS care. This might be because there is a misunderstanding of the charging rules within the hospital, on other occasions it is because someone’s eligibility is not easy to ascertain.

3.14 There are also many cases of people receiving bills for thousands of pounds which they are totally unable to pay, being unable to work and without means of support (we have seen bills of over £20,000). No attempt is made to discuss ability to pay, encourage continuing access to life-saving treatment or discuss the possibility of debt write-off. Instead people receive the bill followed by a threatening letter from a debt-recovery agency. We do not believe that the current system complies with human rights requirements. Whilst

²⁸⁶Third Report from the Health Select Committee, “New Developments in Sexual Health and HIV/AIDS Policy”, Session 2004–05, HC 252.

²⁸⁷Department of Health “Implementing the Overseas Visitors Hospital Charging Regulations” 2004 para 8.16.

“immediately necessary treatment” might be immediately available, to charge the destitute for their care is deterring very vulnerable people from continuing to access the treatment they need, with possibly fatal results for their own health and serious consequences for public health generally.

3.15 Some case studies provided by service provider colleagues give a flavour of the difficulties currently being faced by failed asylum seekers and other migrants.

Case Study 1

“A” was a Somali national who claimed asylum in 1999 and was supported under the Immigration and Asylum Act 1999 Interim Regulations. After five years the Home Office were unable to clarify her status in the country. Following requests to provide clarification of her status, the Home Office replied stating their file did not have sufficient information to establish how she entered the UK. Due to this administrative confusion A was billed for hospital treatment, as her status could not be proved. In this case the error was with the Home Office but A had to deal with the stress and worry of the invoices for her treatment. A has since died, with invoices of approximately £4,000 issued to her. [source: Leicestershire AIDS Support Services]

Case Study 2

Client has been receiving HIV treatment in London and was relocating to Bristol; however, was told that he would be refused treatment unless he paid. He was currently on combination therapy and needed it to continue in good health. He was distressed and afraid he would die without treatment. The client disappeared—outcome not known. [source: Terrence Higgins Trust]

Case Study 3

Service user C entered the UK on a visitor visa in 2003. He is now enrolled on a course of study. However, to date he has been invoiced more than £6,000, as he cannot prove that he has a student visa which would make him eligible for free treatment if the education course is over six months in duration. He was sufficiently intimidated by the invoices that he disappeared for three months, therefore not adhering to his treatment for HIV. This can result in the development of drug resistant strains of HIV as well as poor health for the Service User. He is also being pursued by a debt recovery agency. He has now disappeared again. [source: Leicestershire AIDS Support Services]

Case Study 4

Client collapsed with a fit and was taken in via A&E. He was subsequently diagnosed with HIV and treated for a number of conditions including TB. He was billed for approximately £5,000. He was discharged and vanished without ongoing treatment. The outcome of his TB treatment is not known. [source: Terrence Higgins Trust]

3.16 It must be stressed that the picture on access to treatment varies hugely across the country. There are many areas where the charges are ignored, at least in specialties involved in life-saving treatments—in our view this is a proper interpretation by PCTs and healthcare staff of their duties under the Human Rights Act 1998. In other areas charges are vigorously pursued.

3.17 Recurring themes from individual cases are—

- incorrect application of charges;
- inappropriate or abusive treatment from some healthcare staff;
- mental distress and hardship caused by inability to pay bills; and
- disappearance from treatment and care—there are serious implications not only for the individual’s health but for public health since this could well result in greater transmission of HIV (including drug-resistant HIV) and active TB (including drug-resistant TB).

3.18 NAT does not believe that the current charging system for life-threatening conditions such as HIV can meet the requirements of the ECHR. NHS treatment for life-threatening conditions, such as HIV treatment, should be free of charge to failed asylum seekers, visa overstayers and others without legal residency status. We would request the Joint Committee to make this a recommendation of their report. At the very least, HIV treatment should be included in the exempted category of STI treatments in GUM clinics.

3.19 NAT has a particular concern about maternity care, another provision which is clinically considered to be “immediately necessary treatment”. For many African women in the UK the ante-natal HIV screen is when they find out that they are HIV positive. This diagnosis can then be followed by appropriate care to prevent mother-to-child HIV transmission and to promote the health of the mother. Opt-out ante-natal HIV screening has significantly reduced undiagnosed HIV infection amongst African women in the UK. In 2004 in England and Scotland approximately 92% of HIV infected pregnant women were diagnosed prior to

delivery, increasing from about 71% in 2000. As a result, the likely proportion of children exposed to vertical transmission of HIV who are themselves infected has decreased from 9.3% in 2000 to 4.1% in 2004.²⁸⁸ Under the new charging system, however, whilst the test for HIV is free for everyone, the maternity care is charged for, as are the drugs necessary to prevent the unborn child becoming infected.

3.20 There is considerable evidence that charges are acting as a deterrent for some mothers to access maternity care. As important to avoid mother-to-child transmission is provision of post-natal care, both to provide psychological support to the mother, who may well be very traumatised by the HIV diagnosis, and to support her in refraining from breastfeeding her baby. Breastfeeding involves a significant risk of HIV transmission. The Refugee Council report provides shocking examples of how charging is having an impact on access to maternity care. The likelihood of a pregnant mother having to witness the infection and then early death of her child has been grounds to prevent deportation under Article 3 of the ECHR. We believe the same argument should apply for these similar circumstances in the UK. As potentially life-saving treatments, there should be no NHS charges for maternity care or for the treatment necessary to prevent mother-to-child transmission of HIV.

3.21 What is also apparent, however, is that to make distinctions between free and chargeable treatments is very difficult in the case of people living in extremely stressful and difficult circumstances. Mental health problems, serious ill-health resulting from the side-effects of HIV treatments (for example, some cancers or cardio-vascular problems), as well as conditions such as diabetes or trauma recovery, all will have an impact if untreated on how well the individual manages their HIV positive condition and how strictly he or she adheres to treatment. It is in our view inhuman and degrading to allow serious ill-health to go untreated unnecessarily. We have argued elsewhere (for example, to the Health Committee) that there is no evidence base for the introduction of these charges, and no cost benefit to the NHS (indeed probably a cost disbenefit).

3.22 The previous system, in which those who had been here for less than a year could be charged at the discretion of the PCT, provided adequate protection for the NHS against real “health tourists” and those who could afford to pay towards their care.

3.23 We recommend that asylum seekers whose claims have been refused and other vulnerable migrants who are actually resident in the UK should not be charged for NHS care. Meeting this overarching recommendation would of course address the other more specific needs and recommendations made in this section on access to treatment.

Section 4 NASS (hard case) support

3.24 At any time there are several thousand people in the UK who have failed in their application for asylum or leave to remain, who have committed themselves to leaving the country, but who are unable to do so for a variety of reasons, including, for example, no safe route of return or current ill-health. These people can be eligible for accommodation and limited benefit support from the National Asylum Support Service (NASS), known as section 4 support. People in receipt of section 4 support are not, however, currently eligible for free NHS secondary care, despite the fact that the Government acknowledges they have no means of support and cannot leave the country. At the time of writing, the Government is considering whether to extend eligibility for free NHS secondary care to those in receipt of section 4 support and a decision is expected imminently.

Article 3 applicants

3.25 It had until very recently been assumed that the definition of “asylum seeker” applied by the Department of Health in relation to charging included within it not only those who have applied for refugee status but also those applying for leave to remain under the provisions of the European Convention on Human Rights. A considerable number of people living with HIV have applications being considered for leave to remain under the ECHR, and in particular Article 3 (Prohibition on torture or inhuman or degrading treatment). A recent communication, however, from the Department of Health to NAT has stated that they do not consider those applying for leave to remain under the ECHR to be entitled to free NHS secondary care.

3.26 This decision has come as a surprise to overseas payment officers, to others in Whitehall and to voluntary sector support organisations. It is in flat contradiction to practice throughout the immigration system where on the basis of provisions such as section 94(1) of the Asylum and Immigration Act 1999 those with Article 3 claims are considered to be asylum seekers for the purposes of receipt of NASS support.

3.27 If the regulations require such an interpretation, we would suggest an urgent amendment to extend free NHS secondary care to this group of people. It is quite possible to have legitimate grounds to remain in the UK under the ECHR which are not available under the Refugee Convention. For example, Article 3 cases do not need to provide “Convention reasons” (thus those whose fears of return relate to family pressure or danger from criminal attacks might be protected under Article 3 but not under the Refugee Convention). Nor do they need to demonstrate “persistence”, “malignancy” or “ill-treatment”. Whilst an

²⁸⁸“Mapping the Issues: HIV and other Sexually Transmitted Infections in the United Kingdom: 2005” Health Protection Agency 2005 p 90.

ECHR claim is being considered the applicant has a right to remain in the country and can receive NASS support. Without a right to work and thus to afford any sort of alternative healthcare provision, to deny the person healthcare is in our view inhuman and degrading treatment.

3.28 To give some recent case studies—one Article 3 applicant who had a baby in the UK is being pursued for a bill of £3,400 though she receives merely £30 a week in state support. Another Article 3 applicant we know of has been billed for £12,720. A third is being refused regular dialysis treatment, needed as a result of his HIV positive status, unless he pays, which he is unable to do.

3.29 Those in receipt of section 4 NASS support and those who have put in a claim to remain in the UK under the provisions of the ECHR should be eligible for free NHS secondary care, just as asylum seekers are.

Primary care

3.30 In 2004 the Government undertook a consultation on whether to extend the principles of the secondary care charging regime to primary care. A large number of organisations within the HIV sector responded, opposing such a move. There has been no announcement from the Department of Health on the outcome of the consultation. We welcome the fact that the Government has not (at least to date) extended the secondary care charging regime to primary care. Primary care is an essential service to meet healthcare needs, including to identify those which are life-threatening or severe and require immediate treatment. Without the opportunities for diagnosis and monitoring provided by primary care the need for life-saving treatment will often be missed or identified too late, including for those conditions such as TB where the treatment would be free.

3.31 There would thus be obvious implications for public health and the control of infectious disease from denying free primary care to significant numbers of people. In all likelihood, moreover, the result of such a policy change would simply be to send thousands of people unnecessarily to Accident and Emergency Departments (where treatment would remain free). Our most important objection is that denial of the free health assessment available in primary care is inhuman treatment under Article 3 of the ECHR, given the possible seriousness of the conditions which present in this setting. We would add that there are particular human rights concerns with regard to the care and protection of children.

3.32 Additionally, we are concerned that current rules do not secure the right to primary care for those without legal residency status. At present asylum seekers do have access to primary care and a practice cannot legally refuse to register a patient who happens to be an asylum seeker, if their list is open to other patients.

3.33 The situation with regard to failed asylum seekers (and those on section 4 NASS support) is more confused. GPs are required to provide emergency treatment, immediately necessary treatment and ongoing treatment if it is being received at intervals of less than seven days. We have already stated that this is not sufficient to ensure life-threatening or very serious conditions are identified at an appropriate stage.

3.34 Department of Health guidance both states that failed asylum seekers should not be registered with a GP but also that GPs have the discretion to accept such persons as registered NHS patients. The result is considerable inconsistency as to the ease with which people who are failed asylum seekers or have undocumented residency status can access primary care. There are also claims that the current financial incentives for GPs, and in particular target-related preventive measures such as on pre-school or influenza immunisation can deter GPs accepting for registration people who are deemed, whether rightly or wrongly, to cause problems in reaching such targets. This is an area where more research is necessary to assess the reality of access to primary care for failed asylum seekers and undocumented migrants. But as a matter of health policy and human rights we believe that where a GP's list is open, there should be a requirement not to discriminate against people on the basis of residency status.

DISPERSAL OF ASYLUM SEEKERS

4.1 The dispersal of asylum seekers receiving NASS support from London and the South East to other parts of the country has been a contentious policy decision. It is imperative such dispersal is done in a way which does not harm a person's health or endanger their life. There have been particular concerns about the dispersal of HIV positive asylum seekers. Short notice and the disruption of a sudden move to another area can threaten continuity of HIV treatment care, and adherence to anti-retrovirals. NAT surveyed both "sending" and "receiving" HIV clinicians in 2005 to assess their views of how the dispersal process was affecting the health of their patients.²⁸⁹

4.2 Amongst all clinicians, 15% thought it had never been safe and appropriate to disperse their patients and 36% thought it had been safe on only up to 25% of occasions. There was particular concern over little or no notice before dispersal, little if any account taken of medical advice to NASS not to disperse, and failures to ensure continuity and effective handover of clinical care.

²⁸⁹For the full report "Dispersal of Asylum Seekers Living with HIV" NAT 2006 go to www.nat.org.uk/document/113

4.3 NASS undertook a consultation on dispersal and the healthcare needs of asylum seekers and in its conclusions and reforms did address many of our concerns. Notice should now ordinarily be between four and six weeks. Most importantly, the HIV clinician needs to be assured that arrangements are properly in place to ensure continuity of care before dispersal can occur. Furthermore, accommodation providers in dispersal areas have an obligation to ensure that asylum seekers with serious conditions such as HIV are registered with a GP within five days of arrival. The challenge will now be the implementation of the new policy. A forthcoming review of implementation will be an opportunity to raise continuing concerns over the need for greater consideration of issues of social support networks in dispersal destinations.

4.4 The NASS reforms of the dispersal process are a good example of how UK immigration policy and practice can, with enough political will, be responsive to the health-related human rights of asylum seekers living with HIV whilst maintaining their basic immigration-related objectives. Such an approach needs to be replicated throughout the whole of the immigration system.

DEPORTATION

5.1 One area where much more needs to be done to meet the human rights of migrants is the deportation process. Two related but distinct issues must be addressed. One is the merits or otherwise of deporting people living with HIV to countries without accessible HIV treatment and care. The other is the deportation process itself, including access to treatment and care for those detained in immigration removal centres, as well as support given to those living with HIV in preparing for the impact of their removal.

5.2 The House of Lords judgment in *N* is an important piece of case law when it comes to consideration of deportation of people living with HIV back to countries where treatment is not available or accessible. The Lords decided that the circumstances in which a human rights claim might be successful in preventing deportation because of a naturally occurring illness would be very exceptional (*see D v UK* before the ECtHR). There have, however, since that case been other judgments such as *CA v SSHD* and *Muwanguzi v SSHD* which provide important instances of where deportation might still involve a breach of human rights—in the former case, it would have been a breach of the individual’s human rights for a pregnant woman to witness the HIV infection of her unborn child and in the latter the breach would have involved the deportation of someone who had experienced treatment failure and resistance to drugs regimes.

5.3 With the rolling out of treatment in many parts of the developing world, the situation with regard to availability and accessibility of treatment is going to become increasingly complex and difficult to track. It is particularly important that immigration authorities demonstrate clearly that their interpretation and enforcement of immigration rules “so far as possible” complies with ECHR rights. There is no substitute for a careful examination of the merits of each case, which must include the relation of the deported individual to dependents and the specificities of their response to treatment.

5.4 In NAT’s study on dispersal, clinicians whilst not usually arguing against dispersal per se, nevertheless identified a number of HIV-related situations where dispersal should be delayed. These included someone who had just started on anti-retroviral therapy, pregnant women, those with mental health problems, people on salvage therapy (where most drugs have proven ineffective), children living with HIV. Greater consideration needs to be given not just to the details of the destination country but also to the way the process of removal itself can undermine, perhaps fatally, the health of someone living with HIV because of the particular and often temporary circumstances of their treatment and care at the time removal is proposed. Deportation processes which are more open to preparation for removal and temporary delay will more effectively support an individual’s right to health and not to suffer inhuman or degrading treatment.

5.5 Thus, as important to a person’s continuing access and adherence to HIV treatment is the way in which people are deported from the UK. People will be extremely fearful and often depressed. The days before removal will be extremely important in terms of advice on continuing treatment, links made with HIV organisations and clinical care in the destination country, and psychological support. No such preparation and support is currently provided for those detained in immigration removal centres who are living with HIV (although in some cases a few months supply of anti-retrovirals is provided). Instead we hear frequent accounts of individuals’ medical confidentiality being undermined, of difficulties in voluntary organisations accessing those detained, of dangerous interruptions to anti-retroviral therapy as people are taken without notice to detention centres without their drugs. We provide one case study below to give some sense of problems encountered.

AMELIA’S STORY

Amelia escaped from Rwanda after the murder of her husband. He was stabbed on the doorstep of their home for testifying against those involved in the genocide. Amelia was detained by the forces alleged to have murdered him. While in detention she was raped.

Eventually, she escaped and arrived in the UK in 2002, seeking asylum. In 2003 she was dispersed to a northern city. Shortly after arriving, she began to experience a series of genito-urinary problems. She was advised to have an HIV test, which proved to be positive.

In 2005, because of an administrative error on the part of her lawyer, a crucial document supporting her application was not provided. Immigration officials and police came to her home to detain her. She had been in the bath when the officials came but she insisted on being allowed to get her medication.

She spent the first twenty-four hours in the police station—her medication was taken from her on arrival. A social worker intervened so that she would be allowed to take her evening dose. She was then transferred to an immigration removal centre.

On arrival at the removal centre, her medication was given to the healthcare service. Her social worker again had to intervene to ensure that she was given medication at the right time. Amelia spent three weeks in detention and was then released. She was required to report weekly to immigration officials.

She was detained again three weeks later when her application for asylum was refused. She had not been expecting to be detained at the reporting centre and had no medication with her. She was detained at 7pm. Due to the need for the transport van to collect other detainees, she arrived at the removal centre at 4am—she had already missed an evening dose. Amelia had to explain to the nurse in the healthcare centre why it was so vital not to miss doses.

An appointment was made for Amelia to visit the local hospital to see an HIV consultant. The healthcare centre did not have ready access to the medication he prescribed. It took four days for a full complement of medication to arrive. However, it was of an inadequate dosage for Amelia's treatment combination. Amelia had to explain to the nurse why she could not simply "double-up" on pills (which would have led to over dosage)—HIV medication taken in excessive doses can cause severe side effects and compromise treatment.

Amelia also explained that she had acquired treatment-resistant HIV and that it was vital to follow this regimen strictly to prevent further resistance developing. For Amelia, the current HIV treatment combination was literally a lifeline. Amelia felt such despair about the prospect of being deported that she struggled to find the will to argue for what she needed.

While detained, Amelia found that it was impossible to keep her HIV status private. She had to go to the healthcare service every day to take some of her medication because it had to be refrigerated. Sometimes, if there were no custodial staff available to escort her, she was late in taking her doses. Because she had to take some of her pills with food she had to ask for it outside of mealtimes. This caused the other detainees to wonder why she had disputes with some of the custodial staff who didn't understand why she was being so "awkward". During a "spot-check" security sweep, detainee's rooms were searched. Other detainees were present while Amelia's medication was removed from a wardrobe and left in plain sight on the bed. They were curious why she had so many pills. Other detainees who knew what the medication was for began to openly discuss her HIV status in the centre. Amelia was eventually again released but her final application for asylum has failed.

At the time of writing, she faces the prospect of being detained and deported to Rwanda at any moment. [source: African HIV Policy Network]

5.6 More general work on the health-related conditions in immigration removal centres has been carried out by Bail for Immigration Detainees (BID) in its report "Fit to be detained?" (May 2005).

5.7 In the absence of comprehensive research we do not want to claim that practice is uniformly bad. But there is enough evidence to suggest that the health-related needs of people living with HIV, and indeed others with serious and life-threatening conditions, are not being adequately met and that this has led to cases of inhuman and degrading treatment. NAT is currently working on a project to support the immigration removal centres in a more responsive and supportive approach to people living with HIV which works in effective partnership with external clinicians, other healthcare workers and voluntary sector organisations. The care and treatment of people living with HIV in immigration removal centres must be rooted in respect for the human rights of those detained, and must be reflected in health-related resourcing and in the contracts with the healthcare providers for the centres. We recommend the Joint Committee secure such commitments from the Government.

WIDER SOCIAL CARE ISSUES

6.1 Living well with HIV is not simply a question of accessing HIV medication and treatment. As we have stated earlier, stable and supportive life circumstances are necessary to enable the essential adherence to anti-retrovirals. People will need some privacy in their accommodation to take their pills, and some of the drugs require refrigeration. There are also dietary requirements for some of the medication. As important is the mental health necessary to manage a serious and stigmatised health condition.

6.2 There is considerable evidence that living with HIV in the UK is made far more difficult for many by poverty. Crusaid run the Hardship Fund for people living with HIV who are in desperate needs of essentials but unable to afford them. Crusaid estimate that one third of all people diagnosed with HIV in the UK have at one time or another received support from their Hardship Fund. In recent years the demographic profile of those being referred to the Hardship Fund for support has changed considerably, with the greatest number now being from sub-Saharan Africa. The needs have also changed. Where a few years ago the need might have been for a cooker or a fridge, it is now commonly for food. One HIV clinician known to NAT

reports significant numbers of people being seen for care who are so poor as not to be able to afford food—these are not only failed asylum seekers and those without legal residency status but also those who have been granted leave to remain but cannot find employment or social support.

6.3 Body and Soul, a charity supporting children, teenagers and families who are living with or affected by HIV, has a client base 70% of which are from BME communities, with the large majority being from sub-Saharan Africa. Many of the teenagers they support have come over to the UK as unaccompanied minors. Case studies supplied contain accounts of homelessness, filthy accommodation, hunger, exploitation, discrimination in healthcare and destitution. We can make these case studies available to the Joint Committee.

6.4 The current social provision for asylum seekers and other migrants is not meeting need and is leaving many living with HIV in particularly vulnerable circumstances. In a wealthy country, to allow people living with HIV to have their health seriously compromised by abject poverty and hunger is, irrespective of residency status, to breach their human rights.

APPLICATION OF UN HUMAN RIGHTS INSTRUMENTS

7.1 Whilst the human rights contained in UN instruments such as the International Covenant on Economic, Social and Cultural Rights are not justiciable in UK or international courts, they are relevant human rights law, particularly where the UK has signed and ratified the instrument.

7.2 We would refer in particular to the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR includes in Article 12 “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. Steps to be taken by States Parties should include “the prevention, treatment and control of epidemic, endemic, occupational and other diseases”.

7.3 The denial of HIV treatment to a group of HIV positive people in the UK and the continuance of untreated infection increases the risk of HIV transmission and thus undermines public health. This is because it disincentivises people from the HIV test, removes the treatment support within which people are assisted in safer sex strategies, and denies people the drugs which substantially reduce their infectiousness. Thus the Government is failing in its obligations for the prevention, treatment and control of an epidemic disease.²⁹⁰

7.4 Furthermore, the UN’s Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment 14 para.34 makes clear that in its view Article 12 of the ICESCR means that States are under an obligation to refrain “from denying or limiting equal access for all persons, including . . . asylum seekers and illegal immigrants, to preventive, curative and palliative health services”. This opinion is repeated by the Committee on the Elimination of Racial Discrimination (CERD) in its General Recommendation No 30 para 36. It has also been supported by the UN Special Rapporteur on the right to the highest attainable standard of health.

7.5 We would mention our belief that the UK should sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW). Article 28 states that “migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment”.

7.6 NAT believes on the basis of the evidence we have referred to in this submission that the UK is clearly in breach of its international human rights obligations in relation to providing asylum seekers and other migrants living with HIV with the highest attainable standard of physical and mental health.

DISCRIMINATION IN PUBLIC SERVICE PROVISION

8.1 We are aware of the sensitivities around immigration policy and of the difficult policy judgements which have to be made by government. But there is inadequate recognition of the potential within immigration services and other services such as healthcare provision for discrimination to occur, people finding in policy decisions implicit sanction for personal and unacceptable prejudices.

8.2 We frequently hear of discriminatory decisions or comments made by healthcare staff and from officials within the immigration system. Asylum seekers living with HIV not only have to bear prejudice relating to their residency status and race, but also stigma and discrimination relating to their HIV positive status.

8.3 The Disability Discrimination Act 2005 [DDA 2005] places on public bodies a positive duty to promote disability equality and eliminate harassment and discrimination. The statutory definition of

²⁹⁰These arguments are rehearsed in more detail in NAT’s submission to the House of Commons Health Committee in its Third Report, Session 2004–05, “New Developments in Sexual Health and HIV/AIDS Policy” HC 252.

disability includes HIV from the point of diagnosis. There is an urgent need for training across all public bodies, and the NHS and IND in particular, in how to treat asylum seekers living with HIV supportively and respectfully. In drawing up their disability equality schemes and action plans, all government departments and other public bodies, and in particular the NHS and the Immigration and Nationality Directorate, should ensure effective training of staff in non-discriminatory service delivery to asylum seekers and other migrants living with HIV.

HEARING THE VOICES OF ASYLUM SEEKERS

9.1 Asylum seekers and other migrants are frequently talked about in this country, but seldom heard. We strongly recommend that the Joint Committee hear directly from asylum seekers during the course of their inquiry. No doubt this is already being considered—there may be a case for some evidence to be taken in public but also some provision either for informal meetings or evidence in private to hear from those unwilling to speak publicly. NAT would be very happy to assist the Committee in identifying individuals living with HIV who wish to tell Members their experiences and views.

SUMMARY OF KEY CONCLUSIONS AND RECOMMENDATIONS

Current denials, delays and interruptions to treatment for vulnerable people living with HIV with complex needs amount to inhuman and degrading treatment under the ECHR. [2.6]

NHS treatment for life-threatening conditions, such as HIV treatment, should be free of charge to failed asylum seekers, visa overstayers and others without legal residency status. [3.18]

As potentially life-saving treatments, there should be no NHS charges for maternity care or for the treatment necessary to prevent mother-to-child transmission of HIV. [3.20]

We recommend that asylum seekers whose claims have been refused and other vulnerable migrants who are actually resident in the UK should not be charged for NHS care. [3.23]

Those in receipt of section 4 NASS support and those who have put in a claim to remain in the UK under the provisions of the ECHR should be eligible for free NHS secondary care, just as asylum seekers are. [3.29]

Where a GP's list is open there should be a requirement not to discriminate against people on the basis of residency status. [3.34]

The NASS reforms of the dispersal process are a good example of how UK immigration policy and practice can, with enough political will, be responsive to the health-related human rights of asylum seekers living with HIV whilst maintaining their basic immigration-related objectives. Such an approach needs to be replicated throughout the whole of the immigration system. [4.4]

Deportation processes which are more open to preparation for removal and temporary delay will more effectively support an individual's right to health and not to suffer inhuman or degrading treatment. [5.4]

The care and treatment of people living with HIV in immigration removal centres must be rooted in respect for the human rights of those detained, and must be reflected in health-related resourcing and in the contracts with the healthcare providers for the centres. We recommend the Joint Committee secure such commitments from the Government. [5.7]

The current social provision for asylum seekers and other migrants is not meeting need and is leaving many living with HIV in particularly vulnerable circumstances. In a wealthy country, to allow people living with HIV to have their health seriously compromised by abject poverty and hunger is, irrespective of residency status, to breach their human rights. [6.4]

The UK should sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW). [7.5]

NAT believes on the basis of the evidence we have referred to in this submission that the UK is clearly in breach of its international human rights obligations in relation to providing asylum seekers and other migrants living with HIV with the highest attainable standard of physical and mental health. [7.6]

In drawing up their disability equality schemes and action plans, all government departments and other public bodies, and in particular the NHS and the Immigration and Nationality Directorate, should ensure effective training of staff in non-discriminatory service delivery to asylum seekers and other migrants living with HIV. [8.3]

We strongly recommend that the Joint Committee hear directly from asylum seekers during the course of their inquiry. [9.1]

51. Memorandum from Pollokshaws Framework for Dialogue Group

Pollokshaws Framework for Dialogue Group met on Thursday 7 September 2006 to discuss the call for evidence from the Joint Committee on Human Rights, and raised the following matters:

ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

While we have no objection to asylum seekers being “dispersed” to cities throughout the UK, the fact that accommodation is allocated on a “no choice” basis can be problematic. People with mobility problems have been housed in a duplex flat; people with vertigo have been housed high in multi-storey flats for example.

The fact that we can be moved from house to house and area to area is very disruptive especially for children, who have to change schools, lose their friends etc.

The quality of housing available to us varies considerably.

There are many instances of overcrowding.

It is like we are in an open prison.

We cannot understand why benefit reduces for 16+ year olds.

The removal of the six monthly/clothing grant has added to our hardship.

There is no more back-dated benefit if you get leave to remain. This makes it difficult to start a new life.

The low level of benefit encourages people to risk working in the informal sector.

Why can the government not reintroduce permission for us to access the labour market eg after we have been here on year with our case still unresolved?

“You come into the country with nothing—why worry if things get stolen?”—comment from a policeman investigating a break in at an asylum seekers flat in Pollokshaws.

THE PROVISION OF HEALTHCARE

If you move house without the permission of NASS / IND SAS you can't register with a new GP.

If you lose your NASS accommodation, but are ineligible for section 4 support, or are not being removed from the UK, you lack a permanent address, so cannot receive mail, which could include notice of hospital appointments etc.

TREATMENT OF CHILDREN

New arrivals over 16 cannot attend school.

There is discrimination against young asylum seekers in the field of further education: they are unable to access fulltime courses, vocational courses, university.

When families have to sign on at reporting centres, (which invariably lack facilities for children) children are photographed and fingerprinted. Children may also witness trauma.

Children should not be required to attend Home Office interviews or court cases where their parents may be revealing distressing details of torture or inhuman treatment.

USE OF DETENTION

Even in some of the most severe regimes that they have fled, people report that only the “political agitator” would be detained—not his whole family.

Sometimes people are detained even though their case is not complete—one local family was detained for removal, then released after a couple of days—meantime their flat had been broken into and their personal possessions stolen.

TREATMENT BY THE MEDIA

The press seems to be able to publish anything. When told it's false, the issue is not redressed, so the wrong impression remains with the public.

52. Letter from Hojjat Masouleh

I am an Iranian failed asylum seeker who lives in UK in a hardship situation with unclear inure. The purpose of this letter is to explain my claim for asylum in details and to enable you to compare it in line with the Human Rights Act, the Act that has been incorporated with British Law, and the Act that you actively rely and enforce it.

On 25 November 2004, I claimed asylum in Heathrow airport London. The Immigration officers interviewed me few times and kept me for 26 hours in a small room. I was than moved to a deportation centre and after 22 hours, I was returned to airport and handed over to the police. I was detained for further 36 hours, before I was sent to the court. I knew that I have not done anything wrong and only trying to save my life by escaping from my county, but the experience left me with a mental scare for life. I spent 68 days in prison and eventually released by court on the bases that I was not guilty of any crime.

This was the treatment I received in a country that claim to have respect for human right I want to know if this treatment is acceptable by the Human Rights Act which is incorporated in British Law. I was only given 10 days to put my asylum claim forward with a help of a Solicitor. A qualified solicitor should have the knowledge of the asylum claim and the rights of a refugee in order to assist a asylum seekers. However; due to the recent changes in the Legal Help system it is very difficult to find such a solicitor. One of the major difficulties that many asylum seekers are facing. In view of my mental condition and the short time, which I was given, I had to be satisfy with an organisation that only deal with the initial claim. However, due to the Solicitor not having time, my case was passed on to others and finally a firm of solicitor in Luton took my case. I felt that an asylum seeker life is contain in a file of paper.

This solicitor was very negligent towards my case for example on a day of appointment, they did not have an interpreter and I had to explain my claim with a very little English I knew and my case was sent to the Home Office. This was the biggest damage to my claim. The other important factor in an asylum claim is the competency of an interpreter. Of course, no one is perfect, but an interpreter is the only person who would be able to convey the exact information at interviews or at the hearing. However, even at court there was no other interpreter to observe the court interpreter. This resulted in many of my claim to be misinterpreted and damaged my credibility. It is obvious that Home Office are very concerned about the small details in order to raise the credibility issue. How can this be possible when a tired interpreter used repeatedly. That is why the Immigration Judge did not accept me as credible witness.

The other issue is the view of the media about the asylum seekers. They always blame the asylum seekers for every incident or issues. Of course in this kind of situation who ever is involve with the asylum cases will be affected and have doubts. Therefore, in this kind of atmosphere a proof of the facts become almost impossible. In relation to the asylum seekers treatment all I can give example is when I raised my objection with one of the Home Office representative, he replied “no body invited you here” he might have been right!!

A life of a failed asylum seeker is like being inside a mansion with closed doors and not even being able to used the basic facilities, imagine how frustrated it could be. A life without aim and full of stress can only be describe as being on the edge of the cliff and anytime falling down, many of this falls are due to the rejections of the society. I like many failed asylum seeker received a letter to leave the country. I cannot leave Britannia to anywhere else except my own country.

There is no law governing my country (Iran), adhere the Human Rights is the priority for all international countries and now with the situation in Iran I cannot return as much as I like to do. In this situation as a human being, I have no right in Britannia and the government make the situation more difficult every day for people like me. Is the Human Right Act not created for the people whose been tortured and persecuted?

What people are worst than the failed asylum seeker? Is a failed asylum seeker not a human that even Human Right does not recognise them? I am sure that no asylum seeker or a refugee enjoys the states they have but have to put up with it, because they have too. Let us be active in promoting the rights for human and respect it Hope for the day that no asylum seeker or refugee existed.

53. Memorandum from Hira Malik

I am writing regarding your inquiry on “treatment of asylum seekers”, I found the information really interesting and therefore I thought I would let you know about some problems that arise locally in Rotherham (Yorkshire) and I am sure that these problems will be very similar on the national level as well. I am one of the myps (member of youth parliament), so I have been approached a lot by young asylum seekers in school and outside. For young people one of the main areas is financial support. As you would be aware that as soon they turn 16, their weekly income support by NASS is cut down by quite a lot and they are faced with more financial difficulties. They are not eligible for EMA and are also not allowed to work to support themselves. This leads them being still very much dependant on their parents who are already not in very good position. All of these and many other issues make many barriers for these young people which stop them from continuing their education post 16. Even if they decide to continue with A-levels, they are stopped again when wanting to go to university, as they have to pay overseas student tuition fees which is very hard rather impossible to pay for when you are not allowed to work and have very low income support.

I believe that young asylum seekers are always kept back from their peers and are not really cared about. They already have so many problems back home and when they come over here they face even more problems. They are not treated equally at all. As being a young person myself and representing many other young people, I know about many problems and issues that we have to face day to day, and I know that it is part of life, but these asylum seekers are not even given an equal chance and that too from a very early age when they don't even know about what they are going through. Things like when you go to trips to France or Germany in year 7/8, they can't go because they don't have travel documents let alone the money problems. I mean they are in danger in their home countries and not the whole world, and this stays with them all the way through their student lives eg overseas trips for art or business studies and many other subjects when doing GCSE's or A-levels.

They are also not allowed to obtain driving license, which again keeps them behind everyone else. I am not saying that they should be privileged in any way but they should be seen and treated equally. Many of the young people, who I have been approached by, are doing volunteer work and so are their parents. This shows that they want to work and that they want to be part of our society. They do not want to be on benefits and feel happy in paying back through volunteer work. Many if not all are very able and intelligent and can help in improving Britain. I know few students who got straight A*'s and A's in their GCSE's and A-levels but are still not given the chance to show what they can do. I am sure that there will many asylum seekers who would be qualified workers in their countries and would still like to work in Britain but again are not given the chance. Giving them a chance to work will only improve Britain's economy as there will be work force, more taxes payers and less benefit claimers.

Media always portrays asylum seekers negatively by saying things like "they get everything even though they are so lazy and don't do anything!" or like "they are everywhere now, why can't they just go back home!!!" when they should be showing the positive side as well. Asylum seekers bring culture and teach us about how things are different in other parts of the world. They also tell us that we should appreciate the lives that we have because no one would like to go to a new country where everything is different and most of the time you don't even know the language.

I think that government should go back to the laws regarding asylum seekers and should change them to make asylum seekers part of our society and also by giving them more equal chances because at the end of the day they are also human beings just like us but with more problems.

I hope that this will be of some use, thanks for your time.

August 2006

54. Memorandum from the Reverend Mary Taylor

With reference to the current government legislation Every Child Matters I am writing to express my deep concerns regarding the move of the children and families identified above. In light of the aims and outcomes identified in the Every Child Matters green paper and outcomes framework I would be remiss in my role as a SENco and a primary school teacher not to share my professional judgments regarding the holistic impact of this move on the children, in addition to the educational ramifications—as outlined on the government's site.

The Government's aim is for every child, whatever their background or their circumstances, to have the support they need to:

- Be healthy.
- Stay safe.
- Enjoy and achieve.
- Make a positive contribution.
- Achieve economic well-being.

The proposed move of these families poses a stark contradiction to the aims outlined above for a number of reasons which I will present below; as such any consequences that occur as a result of this move will have occurred despite government guidelines and the professional and personal recommendations of those involved in this correspondence.

Within the Be Healthy section of the outcomes framework the government identifies that inspectors will be looking to see if:

Action is taken to promote children and young people's physical and mental health

On a simplistic level the manner of this move is in direct contradiction to the action outlined above. The move itself will cause great disruption to the emotional well being of the families concerned however it also poses significant interruption of current support that children and adults are receiving from health and educational professionals. The move of these families to another authority, which is at a differing level of progress regarding the integration of services to form their Children's trust, means that this support may not be automatically transferred resulting in the whole process of fresh referrals. There are of course financial

implications that this will bring due to the number of new professionals involved and this is of course if, as a result of the move, the emotional and physical well being of the families does not change. However, the interruption of support, for the time periods involved are likely to carry with them increased health problems for these families. This will therefore involve further contradiction to the government aim outlined above and result in further financial implications for the agencies and authorities. It is important to note that two of the children concerned with this move have already received involvement from other agencies to enable them to settle in their current school. With this support, they have made progress, the sudden removal of them from their current setting will not only disrupt this level of support and the significant relationships that they have made, but will also result in further disruption for these children that could inevitably lead to a compounding of their needs and difficulties.

Within the Stay Safe section of the outcomes framework the government identifies that evidence of safe practice will be found where

Transitions between settings . . . are well managed

My first response to this is to identify that in terms of the education of these children, this move will result in a mismanagement of transition between their school settings. No arrangements have been made for the children involved to visit new schools, no arrangements have been made for the children to meet new staff, and due to the very brief notice that the families have received, no provision has been made to support these children in leaving their current settings, or at the very least, for them to be able to say goodbye. For any child this would be a significant upheaval which would carry with it emotional consequences. When you therefore consider that the children involved with this move have undergone other significant emotional challenges and changes (at best) in their lives I would ask you to consider the grave effect that the mismanagement of this move will have upon these children and their families. Transition between schools and key stages is an area that their current education authority and the professionals that they work with take very seriously. Because of the age of the children involved in this move, a number of the children and families concerned have been in receipt of support for the transition of their children to and within identified settings in this authority. Both adults and children have made significant links with the staff and pupils involved and are a significant way along this process. The proposed move would therefore cause unnecessary disruption to their lives and relationships and further contravene the government proposal that

“Action is taken to promote children and young people’s physical and mental health”

The current support that these families have received within the Wakefield Children’s Trust falls within the section of the outcomes framework entitled Enjoy and achieve. Here the government identifies that inspectors will be looking to see if

Parents and carers receive support to enable their children to enjoy and achieve

The management of this move, indeed the very nature of this move, does nothing to fulfil this and again works in direct contrast to it. I therefore strongly recommend that these children and their families are not removed from Wakefield. These judgments reflect my deep professional concern with regards to the consequences this will have on their education and well being. They are additionally made in light of current government framework and recommendations, recommendations which highlight the responsibilities of all agencies involved with families and children to work together to safeguard and promote the well being of the child.

55. Memorandum from the UK AIDS and Human Rights Project

INTRODUCTION

1. The UK AIDS and Human Rights Project (UK Project) is a London-based human rights organisation. The UK Project has been established to promote and protect the rights of people living with, affected by, and vulnerable to HIV and AIDS in the UK.

2. We believe that human rights must be used as a platform to increase the effectiveness of HIV and AIDS related responses because they provide:

- tools for making governments accountable for HIV and AIDS-human rights;
- a legal rationale for a human rights based response to HIV and AIDS; and
- an argument for ensuring that the public is informed and educated about HIV and the impact of negative attitudes and actions on people living with and/or affected by HIV, and those at risk.

3. We have three aims:

- to make the UK government accountable for violations of HIV-related human rights;
- to encourage the UK government to adopt human rights based responses to HIV; and
- to promote respect for HIV-related rights by the public.

4. The UK AIDS and Human Rights Project welcomes the Joint Committee on Human Rights Inquiry into the treatment of asylum seekers. Our submission will focus on the issue of asylum seekers and failed asylum seekers in the context of HIV and AIDS. However, first, we would like to highlight general points on human rights and the treatment of asylum seekers in the UK.

5. Since 9/11, there has been an alarming tendency to treat counter-terrorism as a question of immigration control. In the pursuance of draconian legislation, civil liberties and human rights have been represented as if they were inevitably antagonistic to “the national security interest”. The fight against terrorism only but added to existing public concern about “the asylum issue” which has gained momentum since the 1990s, with successive legislation, policy initiatives and incessant media attention strongly combining to imply perceived failures and problems with the asylum system.

6. The “war on terror” has led to an erosion of human rights in the UK, including the right to asylum. Over the past few years the UK government has adopted policies and laws inconsistent with the fundamental human rights principles of equality and non-discrimination, opting for a “pick and choose” approach to human rights standards and considering on several occasions to opt out of fundamental human rights commitments under the ECHR. These suggestions of “opting out” of various human rights obligations demonstrate that the government is increasingly viewing its commitment to human rights as an expendable obligation rather than a necessary responsibility. In August 2005, Tony Blair said:

“Let no one be in any doubt that the rules of the game have changed. Should legal obstacles arise, we will legislate further, including, if necessary amending the Human Rights Act in respect of the interpretation of the European Convention on Human Rights.” (5/8/2005).

7. Just a couple of months before, in his June 2005 report and following his visit to the UK in November 2004, the Council of Europe’s Commissioner for Human Rights noted:¹

“The United Kingdom has not been immune (. . .) to a tendency increasingly discernable across Europe to consider human rights as excessively restricting the effective administration of justice and the protection of the public interest. The Government itself has every right to be proud of its achievement in introducing the Human Rights Act and has proven itself to be acutely conscious of the contours of the obligations entailed. I was struck, however, by the frequency with which I heard calls for the need to rebalance rights protection, which, it was argued, had shifted too far in favour of the individual to the detriment of the community. Criminal justice, asylum and the prevention of terrorism have been particular targets of such rhetoric, and a series of measures have been introduced in respect of them which, often on the very limit of what the respect for human rights allows, occasionally overstep this mark.

Against a background, by no means limited to the United Kingdom, in which human rights are frequently construed as, at best, formal commitments and, at worst, cumbersome obstructions, it is perhaps worth emphasising that human rights are not a pick and mix assortment of luxury entitlements, but the very foundation of democratic societies. As such, their violation affects not just the individual concerned, but society as a whole; we exclude one person from their enjoyment at the risk of excluding all of us.” (paras. 3–4)

8. Since then, the government’s increasingly drastic approach to returns and its reliance on diplomatic assurances and memoranda of understanding to facilitate deportations to states with appalling human rights records, including those using torture, have led to a total disregard for the principle of non-refoulement and the rights of those seeking asylum.

9. We note that concerns over the UK’s asylum policy and the treatment of asylum seekers have been voiced by the United Nations and the Council of Europe. In particular, in his 2005 report,² the Commissioner for Human Rights was unequivocal about his concerns in relation to the government’s asylum related policy and legislation, including the increasing use of detention, the use of fast-track asylum procedures, the length and conditions of detentions, and the detention of children, stressing that the UN High Commissioner for Refugees (UNHCR) “Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers” (“Detention Guidelines”) are clear about the “inherent undesirability of detaining children in relation to asylum proceedings”.

10. Already in 2001, the Human Rights Committee (HRC) expressed concerns that asylum seekers were detained in various facilities and in particular they considered it unacceptable that asylum-seekers were detained in prisons. The Committee made a clear recommendation that the UK government should end its detention of asylum seekers in prisons and that it should closely examine its system of processing asylum seekers in order to ensure that each asylum seeker’s rights under the Refugee Convention receive full protection, being limited only to the extent necessary and on the grounds provided for in the International Covenant on Civil and Political Rights.

11. In its 2002 Concluding Observations on the UK’s implementation of the Convention on the Rights of the Child (CRC), the UN Committee on the Rights of the Child expressed its concern that the detention of an increasing number of children claiming asylum in the UK is incompatible with the provisions of the Convention.

 OVERVIEW OF UK'S OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

12. The UK is party to these key treaties:

- International Covenant on Civil and Political Rights (ICCPR).
- International Covenant on Economic, Social and Cultural Rights (ICESCR).
- International Convention on the Rights of the Child (CRC).
- International Convention on the Elimination of Discrimination Against Women (CEDAW).
- International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- European Convention on Human Rights (ECHR).

13. The UK is also a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

14. The UK has made substantial reservations to some of the treaties and did not ratify some of their subsequent protocols. We note in particular in the context of immigration, the following reservations:

- Reservation to the CRC in respect of the entry, stay in and departure from the UK, of those children subject to immigration control and the acquisition and possession of citizenship. The government justifies this reservation as necessary in the interests of effective immigration control but has stated that the reservation does not prevent the UK from having regard to the Convention in its care and treatment of children. However, evidence shows that there is a lack of adequate protection and care for children in detention. We also note that this reservation has been criticised by the UN Committee on the Rights of Child and the Joint Committee on Human Rights.
- Reservations to the Refugee Convention, including retaining the right to take certain action in times of war, national emergency or for national security reasons.
- Reservation to the ICCPR in relation to the right to continue to apply such immigration legislation governing entry into, stay in and departure from the UK as they may deem necessary from time to time and, accordingly, their acceptance of Article 12(4) and of the other provisions of the Covenant is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the UK to enter and remain in the UK.

THE HUMAN RIGHTS ACT

15. Since October 2000, the Human Rights Act 1998 (HRA) incorporates most of the ECHR rights into UK law. Immigration rules require immigration officers and all of the staff at the Immigration and Nationality Directorate to ensure that their decisions comply with the Human Rights Act.

16. The HRA has been increasingly used to challenge the government's policy on asylum through judicial review proceedings or cases brought by failed asylum seekers.

17. A number of cases have centred on the question of whether or not the return of an individual to a country where they will not be able to access the medical treatment that their condition requires amounts to a breach of Art 3. A key issue raised in judicial review has been the government's policy on denying welfare support to asylum seekers who do not claim asylum immediately upon arrival under section 55 of the Nationality, Immigration and Asylum Act 2002.

INTERNATIONAL HUMAN RIGHTS LAW AND HIV IN THE CONTEXT OF ASYLUM

18. HIV and AIDS are not explicitly mentioned in international human rights law, however the link between HIV, AIDS and human rights, as contained in human rights treaties such as the ICESCR, ICCPR, and the CRC and under international human rights law has been reiterated and increasingly clarified in the normative statements of the General Assembly and the United Nations human rights treaty monitoring bodies as well as numerous resolutions of the Commission on Human Rights.

19. The most important standard in relation to the application of international human rights law in the context of HIV and AIDS are the "International Guidelines on HIV/AIDS and Human Rights" ("HIV/AIDS Guidelines")³ published by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

20. The HIV/AIDS Guidelines are firmly anchored within a framework of existing human rights principles, norms and standards contained in various regional and international human rights instruments. Although non-binding, they provide authoritative interpretations of human rights standards and aim to assist governments in translating human rights principles into practical observance in the context of HIV and AIDS.

21. The HIV/AIDS Guidelines include provisions relevant to the context of treatment of asylum seekers, especially in relation to the right to seek and enjoy asylum, the right to liberty and security, the right to health, the right to be free from inhuman or degrading treatment, the right to be free from discrimination and the right to adequate standards of living. They also address the rights of children and women.

22. We would also like to mention the following documents that consider and provide guidance on the rights of asylum seekers in the context of HIV and AIDS:

- The “Note on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern” (“Note on HIV/AIDS”) published by UNHCR aims to inform governments of recognised standards in the field of HIV and AIDS and the protection of persons of UNHCR’s concern.
- “Strategies to support the HIV-related needs of refugees and host populations”⁴ has been published by UNAIDS/UNHCR and aims to inform and support key decision-makers on HIV-related issues facing refugees, other populations of concern to UNHCR, and the population of host countries.
- The “General Comment No 3 on HIV/AIDS and the rights of child” aims, *inter alia*, to promote the realisation of the human rights of children in the context of HIV and AIDS, as guaranteed under the CRC and to identify measures and good practices to increase the level of implementation by States of the rights related to the prevention of HIV and the support, care and protection infected with or affected by HIV and AIDS.

KEY FACTS ABOUT ASYLUM IN THE UK

23. There were 5,490 applications for asylum in the UK in the second quarter of 2006 (April to June). This was 15% lower than the previous quarter and was 12% less than the second quarter of 2005. The top five applicant nationalities were Afghan, Chinese, Eritrean, Iranian and Somali.⁵

24. Asylum seekers are not economic migrants. They flee their countries because they are looking for a place of safety. The top 10 refugee producing countries in 2005 all have poor human rights records or are places where war or conflict is ongoing.⁶

25. Asylum seekers are not health migrants coming to the UK to access free NHS treatment. There is no evidence that people come to the UK because of their health. The “health tourism” theory has been said to be unfounded by health professionals treating asylum seekers. The British Medical Association (BMA) has found that asylum seekers, far from arriving in the UK with diseases, are more likely to become ill once they have arrived in the UK due to poor living conditions and lack of money for basic needs.⁷

26. Most asylum seekers do not choose their destination country. Most of those that do come to the UK because they have friends or family already here.⁸

27. In 2004, over 97 million foreign nationals entered the UK, including 300,000 students. Asylum seekers represented just 0.035% of the total.⁹

28. The number of asylum claims to industrialised countries, including the UK, is declining. According to UNHCR “the number of people claiming asylum in the UK has dropped 61 per cent over the last two years, back to the levels not seen since the early 1990s”.¹⁰

29. Home Office decision-making remains poor. Twenty per cent of asylum appeals decided in 2005 resulted in Home Office decisions being overturned.

30. Most of the people refused asylum in 2003–04 were not removed, including more than 4,000 Sri Lankans, 4,000 Iraqis, 3,500 Afghans, 3,000 Turkish people, 3,000 Somalis, 3,000 Iranians, and 2,500 Zimbabweans. These are people from countries where there is anarchy, war, or human rights abuses, living in the UK without support or official status. They are unable or unwilling to return to their country, and the government is unable or unwilling to return them.¹¹

PROVISION OF HIV TREATMENT AND OTHER HEALTHCARE TO ASYLUM SEEKERS AND FAILED ASYLUM SEEKERS

Healthcare Needs of Asylum Seekers

31. The healthcare needs of asylum seekers have been examined in numerous and comprehensive reports. We will not provide an in-depth summary of each report but wish to highlight the common themes and issues raised in the research reports available:

- Most asylum seekers’ health problems are not specific to refugee status and are shared with other deprived or excluded groups. Health problems that are specific to asylum seekers originate from the physical or mental torture, or other harsh conditions from which they have escaped.
- Some asylum seekers come from countries where access to healthcare is difficult due to conflict and lack of resources and as a result, they tend not to have received the appropriate immunisations and vaccinations and are susceptible to infectious diseases when held together for several months with other asylum seekers.

- It is estimated that 899 asylum seekers living with HIV entered the UK between October 2003 and September 2004, equivalent to approximately 20% of the total of new cases reported in the UK.
- It is estimated that over 50% of women refugee and asylum seekers in the UK, the majority of whom come from Africa, are fleeing rape—mostly perpetrated by soldiers, police or agents of the state.¹²

32. Common healthcare needs that have been identified are:

Physical Needs:

- communicable diseases (TB, HIV, Hepatitis A, B and C, parasitic diseases);
- physical effects of war/conflict/torture;
- maternal care; and
- sexual health care (for example as a result of rape and/or sexual violence).

Psychological Needs:

- symptoms of psychological distress, depression, anxiety;
- mental health; and
- post-traumatic stress.

Policy and Legislation on Asylum Seekers: Access to Healthcare and HIV Treatment

33. Since April 2004, the amended NHS Regulations on charges to overseas visitors¹³ deny failed asylum seekers and undocumented migrants free hospital healthcare (except in an A&E department) and free HIV treatment and care on the NHS in England and Wales. Only HIV testing and the associated counselling are available free of charge.

34. The current policy on entitlement to primary care is unclear. In August 2004 the government completed a consultation on “Proposals to exclude overseas visitors from eligibility to free NHS primary medical services”,¹⁴ aiming to align primary care with changes in April 2004. No decision has been made and general practices have the discretion to register overseas visitors for NHS primary medical services, although such registration does not provide entitlement to referral for hospital care. Under the new proposals practices would have no discretion to register overseas visitors, failed asylum seekers, people who overstay their visas, and those without official papers, although the provision for emergency and immediately necessary treatment would remain.

35. In March 2006 the Department also published an “Entitlement Table” which includes a section on failed asylum seekers reading as follows:

“The Department of Health has sought to allay confusion over the entitlements of failed asylum seekers to primary care without charge. Health service Circular 1999/018 states that failed asylum seekers should not be registered, but equally, GP practices have the discretion to accept such people as registered NHS patients. Ministers wish to bring greater clarity and consistency to the rules regarding access to primary medical services and so have recently sought views on this issue as part of a consultation on the entitlement of overseas visitors to NHS primary care services. Ministers are still considering the responses and the outcome of the consultation has not yet been announced. Therefore the current situation remains unchanged.”

36. So whilst failed asylum seekers have a right to free emergency or immediately necessary treatment from a GP, it seems to be at the GP’s discretion whether or not they are allowed to register with the practice for other primary care services.

37. Other government’s policies have had an impact on destitute asylum seekers’ access to healthcare but also on their health. An asylum seekers is said to be destitute if he/she does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or he/she has adequate accommodation or the means of obtaining it, but cannot meet other essential living needs.¹⁵

38. The National Asylum Support Service (NASS) provides support and accommodation to newly arrived asylum seekers awaiting a decision on their asylum application from the Home Office. Asylum seekers, like anyone, are entitled to free health and social care services in addition to the housing and subsistence support from NASS.

39. We note that Section 55 of the Nationality, Immigration and Asylum Act 2002, which provided for the withdrawal of welfare support for childless adults who did not apply for asylum “as soon as reasonably practicable” after arriving in the UK, was abandoned following the House of Lord’s judgment in *R (Limbuella) v Secretary of State for the Home Department*¹⁶ which stated that denial of accommodation and

support amounted to a violation of Art 3 ECHR if it forced someone into destitution, the Government abandoned the policy. However, the government is still applying Section 55 to all “late” applications for subsistence-only support (ie support without accommodation).

40. Section 4 of the 1999 Act, as amended by the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, enables asylum seekers whose claim has been rejected (including at appeal) and who are no longer able to receive full NASS support to apply for reduced provision of accommodation and food.

41. There are very strict criteria for receiving this support and to qualify, a client must meet one of the following conditions:

- (1) He or she is taking “all reasonable steps to leave the UK, or to place themselves in a position in which they are able to leave the UK”.
- (2) He or she is “unable to leave the UK by reason of a physical impediment to travel or for some other medical reason”.
- (3) He or she is “unable to leave the UK because in the opinion of the [Home Secretary] there is currently no viable route of return available”.
- (4) He or she has applied to the courts for judicial review of a decision in relation to his or her asylum claim, and a court has granted permission to proceed.
- (5) The provision of accommodation (and subsistence support) is otherwise necessary to avoid a breach of his or her human rights, within the meaning of the HRA. This can include where the applicant has made a fresh asylum claim and this is still under consideration by the Home Office, and where the applicant has made a late (ie out of time) appeal to the Asylum and Immigration Tribunal (AIT) and the AIT is still considering whether to allow the appeal to proceed.

42. “Hard Case” support is usually very basic. People receive £35 food vouchers per week, irrespective of age or need. The vouchers fail to adequately meet people’s needs, particularly those which fall outside toiletries and food.¹⁷ Support includes full board only, hostel accommodation. If there is no full board accommodation people may be placed in remote overflow accommodation, but they receive only vouchers—no cash support is given.

43. The NASS support system has been criticised for being inefficient and inadequately prepared to deal with the increase in the number of failed asylum seekers, leading to a shameful number of destitution.¹⁸ In particular, the Citizens Advice Bureaux recent report on NASS and Section 4 has highlighted pressing issues including the problem of access to healthcare noting that “the limited access of failed asylum seekers, including those on NASS section 4 support, to free NHS medical care, has caused—and continues to cause—hardship and anxiety to supported individuals.” Section 4 support only exists in a cashless economy, leaving failed asylum seekers unable to pay for healthcare bills.

44. The large majority of failed asylum seekers are refused support under Section 4 and are left destitute relying on charities and families to live. Research has shown that destitution is characterised by a number of recurring symptoms, including: lack of shelter and sleeping rough; unsanitary and vermin infected accommodation, lack of privacy in accommodation, inability to feed and cloth oneself; and a reliance on informal support structures.

45. We note that under section 21(1) (A) of the National Assistance Act 1948, local authorities must provide asylum seekers with special needs with residential accommodation and associated assistance. All asylum seekers with special needs have the right to a community care assessment carried out by the social services, but there is evidence that assessments are not carried out even when requested and that there are significant delays, very often because of the dispute between NASS and the local authority over who should provide the services. Some asylum seekers in desperate need of services can end up being denied them completely because a dispute is never resolved.¹⁹

46. Of significant relevance in the context of this submission is *R (M) v Slough Borough Council*.²⁰ M was an asylum seeker had AIDS. He requested Slough Borough Council to undertake an assessment with a view to his being provided with accommodation under section 21 of the 1948 Act. The Council’s community care assessment concluded that although M required medical care he could look after himself and was not in need of care and attention. The Court quashed this decision holding that it was not necessary for the purposes of section 21 for the care and attention to come from the local authority—someone requiring continuous medical attention needed care and attention. M’s increased vulnerability due to his illness made his need for care and attention greater and did not solely arise from his destitution. The responsibility for M therefore lay with the local authority. Below are the relevant paragraphs of the judgment:

“... someone suffering from [AIDS]. . . is clearly—and the medical evidence confirms this—more vulnerable than the able-bodied. So if he loses his accommodation and becomes destitute, his need for care and attention is indeed going to be the greater because of his condition and it cannot, therefore, be said that the need arose solely because of the destitution or because of the physical effects of the destitution. No doubt the physical effects on him of destitution would be more severe, but they would be more severe, not because of the destitution but because of the destitution plus the illness. Quite apart from that, it seems to me that one has to look at what is the meaning of

care and attention and consider whether the authority's view that there was no need for care and attention resulting from the AIDS condition is one which, in the circumstances, can be upheld." (Paras 39–40)

"Care and attention means, or can mean (. . .) 'looking after'. It is not necessary, as all the authorities under section 21 show, for the need for care and attention to be for care and attention provided by the local authority. It is a general need for care and attention and, as it seems to me, a person who is chronically ill and who, therefore, needs continual medical care and continual provision of medicines is, by that very fact, properly to be said to be in need of care and attention. Whether that need for care and attention will in a particular case mean that he is required to have accommodation is a wholly different question and it may well be that in cases not involving asylum-seekers, where there are other means whereby these matters can be provided for, section 21 will not come into play at all.

In a case such as the present, it seems to me, someone who is chronically ill is properly to be regarded as being in need of care and attention, not solely because he is destitute. Therefore, in this case, the appropriate responsibility lies with Slough rather than with the Home Office through NASS." (paras. 43–44)

47. This ruling was upheld by the Court of Appeal. This case dealt with the advanced stage of HIV but the judge's reference to chronic conditions suggest that a failed asylum seeker with HIV would also be deemed in need of care and attention because of this medical condition.

48. Yet, people receiving section 4 support who have special needs continue to experience difficulties accessing additional support to meet these needs from Local Authorities.

49. In particular, we note that asylum seekers living with HIV are not automatically entitled to social services. The criteria are tight and they will only qualify for social services support if they are unable to care for themselves and have no other friends or immediate family members to help them. The Refugee Council reported cases of people living with HIV who used the small amount of cash provided by NASS for food and the rest for emergency travels to hospital:²¹

"Khalid is HIV positive. He has a loaf of bread, a litre of milk and jam in the fridge for his meals and saves his remaining money for hospital travel and a phone card to speak to his mother in Africa."

50. The impact of destitution on health has been well reported.²² In the specific context of HIV, the lack of access, to adequate food and accommodation will have a significant impact on a person's health and will undoubtedly lead to a worsening in their condition.

UK GOVERNMENT'S OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

Right to Health

51. The Right to Health is protected under Art 25 UDHR and Art 12 ICESCR. It is also recognised, *inter alia*, in Art 5 CEDR, in Arts 11 and 12 CEDAW and Art 24 CRC.

52. In the context of asylum seekers' access to healthcare, the right to health has to be considered in conjunction with the right to free from discrimination guaranteed, *inter alia*, under Art 2(2) ICESCR. Access to health care is also one of the rights contained in the 1951 Convention.

53. The Committee on the Economic, Social and Cultural Rights has published *General Comment No 14 on the Right to the highest attainable standard of Health* (Art 12 ICESCR) which provides the most comprehensive definition of the right to health. In particular:

- It is not confined to the right to health care and embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life; it extends to the underlying determinants of health (eg food and nutrition, housing, access to health-related education and information, including on sexual and reproductive health).
- It includes reproductive, maternal (pre-natal as well as post-natal) and child health care.
- It should be available (eg public health and healthcare facilities, essential drugs); accessible (ie health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalised sections of the population, in law and in fact, without discrimination on any of the prohibited grounds) including economic accessibility (ie affordability- health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups) and physical accessibility (health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalised groups; acceptable (ie all health facilities, goods and services must be respectful of medical ethics and culturally appropriate).

54. The GC contains provisions on States' specific legal obligations which include an obligation on governments to refrain from denying or limiting equal access for all persons, including asylum seekers and illegal migrants, to preventative, curative and palliative health services:

“(. . .) States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women's health status and needs.” (para 34)

55. It also sets out core obligations including:

“To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups.” (para 43(a)).

56. The GC defines violations of Art 12 ICESCR as encompassing:

“Violations of the obligation to respect are those State actions, policies or laws that contravene the standards set out in article 12 of the Covenant and are likely to result in bodily harm, unnecessary morbidity and preventable mortality. Examples include the denial of access to health facilities, goods and services to particular individuals or groups as a result of de jure or de facto discrimination; (. . .) the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health (. . .)” (para 50)

“Violations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to health. Examples include the failure to adopt or implement a national health policy designed to ensure the right to health for everyone; insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to health by individuals or groups, particularly the vulnerable or marginalized; the failure to monitor the realization of the right to health at the national level (. . .)” (para 52)

57. In the particular context of HIV, the HIV/AIDS Guidelines make reference to Art. 12 ICESCR and state that:

“States may have to take special measures to ensure that all groups in society, particularly marginalized groups, have equal access to HIV-related prevention, care and treatment services. The human rights obligations of States to prevent discrimination and to assure medical service and medical attention for everyone in the event of sickness require States to ensure that no-one is discriminated against in the healthcare setting on the basis of their HIV status.” (para 146)

58. Furthermore, referring to the HIV/AIDS Guidelines and international law and principles, UNHCR's Note on HIV/AIDS states that:

“Based on the international refugee and human rights principles (. . .), and given that equal and non-discriminatory access to ART is a vital component of ensuring the right to the highest attainable standard of physical and mental health, host governments which are parties to the above-mentioned instruments [including the ICESCR] should ensure that refugees, IDPs and other persons of concern have access, on an equal and non-discriminatory basis, to existing national health and HIV programmes or their equivalent. This includes access to national ART programmes, or their equivalent, and access to other essential drugs which are available to the host population.” (para. 20)

59. Although the ICESCR is not incorporated into UK law and thus is not justiciable, it is a binding treaty and as a state party to the Covenant, the UK government has legal obligations to implement the treaty's provisions, which is monitored by the Committee on Economic, Social and Cultural Rights.

60. In its latest monitoring report on the UK in 2002—two years prior to the introduction of the revised NHS charging system, the Committee criticised “de facto discrimination in relation to some marginalised and vulnerable groups and asked the UK to ensure that its obligations under the covenant were taken into account in national legislation and policy on health and education.”

Is the UK Government's policy justified under international human rights law?

61. Under international human rights law, interferences with fundamental rights and freedoms (defined as “qualified rights” versus “absolute rights”) may be justified when all of the following criteria are met:

- (1) the restriction is provided for and carried out in accordance with the law;
- (2) it serves the interest of a legitimate objective of general interest;
- (3) is strictly necessary to achieve this objective;
- (4) is the least intrusive and least restrictive means available; and
- (5) is not imposed arbitrarily or discriminatorily.

62. These criteria—although the wording may differ—are set out in human rights treaties.

63. Article 4 of the ICESCR permits the limitation of individual rights on grounds of “promoting the general welfare in a democratic society”. Article 5(1) further states that “[n]othing in the present Covenant may be interpreted as implying for any State (. . .) any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.” In the specific context of the right to health, Art 4 ICESCR is further defined by Paras 28–29 of the GC No 14 which states:

“Issues of public health are sometimes used by States as grounds for limiting the exercise of other fundamental rights. The Committee wishes to emphasize that the Covenant’s limitation clause, article 4, is primarily intended to protect the rights of individuals rather than to permit the imposition of limitations by States (. . .)Such restrictions must be in accordance with the law, including international human rights standards, compatible with the nature of the rights protected by the Covenant, in the interest of legitimate aims pursued, and strictly necessary for the promotion of the general welfare in a democratic society.

In line with article 5.1, such limitations must be proportional, ie the least restrictive alternative must be adopted where several types of limitations are available. Even where such limitations on grounds of protecting public health are basically permitted, they should be of limited duration and subject to review.”

64. The government’s rationale for introducing charging for failed asylum seekers and other undocumented migrants has been in the public interest (which it is argued, falls under the objective of “promoting the general welfare”).

65. The government’s argument was alleged “health tourism” and the assumption that the new charging regime would save the NHS significant funds which could be spent instead on those legally resident. However, there is no evidence of abuses by asylum seekers, including in relation to access to HIV treatment. Whilst the Department of Health’s original consultation provided examples of “abuses” that should be stopped, these only related to people coming to the UK for a short period to use the NHS, for example during pregnancies to access maternity services, rather than people who are staying in the UK long term without being legally resident. The document did not contain any specific examples of people migrating to the UK as “health tourists” to use NHS services for HIV or for any other chronic condition.²³

66. However, there is extensive evidence that NHS services are overstretched due to prolonged underfunding not because of asylum seekers or other migrants abusing the system. In the particular context of HIV, treatment provision represents less than 0.1% of the total NHS budget. The NHS spends £3.8 billion per year on alcohol related illnesses as opposed to £279 million on HIV treatment and prevention. Indeed the NHS expenditure on heart disease is £7 billion a year.

67. There is also no evidence that HIV-positive asylum seekers (or other migrants) are coming to the UK to access free healthcare, with the majority ignoring their HIV status when entering the country and only getting tested months later.²⁴

68. Therefore the public interest argument does not seem to meet the criteria of being a legitimate objective.

69. We also note that GC 14 highlights that the right to health “embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.” This is relevant in the context of the destitution of failed asylum seekers and the needs of asylum seekers with healthcare needs examined in paras 37–50 of this document.

70. The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions is guaranteed under Art 11 ICESCR. States Parties to the Covenant have an obligation to take appropriate steps to ensure the realisation of this right.

Right to be free from inhuman and degrading treatment

71. Freedom from inhuman treatment is an absolute right whose violation is not justifiable. It is protected under Art 5 UDHR, Art 7 ICCPR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as well as in the relevant provisions of other international and regional human rights instruments such as the CRC and ECHR.

72. Art 3 ECHR, which is incorporated into the HRA, states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

73. The application of Art.3 is not limited to cases involving inflicted ill-treatment, and the ECtHR has also considered that harsh medical conditions can lead to the protection of Art 3. For example, Art 3 has been used to prevent the UK from deporting HIV-positive failed asylum seekers to their country of origin.²⁵

74. However, it is argued that Art 3 is also relevant in relation to denial of healthcare to failed asylum seekers, including HIV treatment, which will be the focus of this section.

75. The European Court of Human Rights' (ECtHR) jurisprudence on Art 3 provides key arguments that are pertinent to the issue of access to HIV treatment for failed asylum seekers.

76. In particular, we note that the ECtHR held that a refusal to provide access to essential healthcare may exceptionally lead to "treatment" which is so severe that it may violate Art.3 ECHR. The test of "severity" is high and was outlined in *Pretty v UK*:¹⁰

"As regards the types of 'treatment' which fall within the scope of article 3 of the Convention, the Court's case law refers to 'ill-treatment' that attains a minimum level of severity and involves actual bodily injury or intense physical or mental suffering. Where treatment humiliates or debases an individual showing lack of respect for, or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of article 3. The suffering which flows from naturally occurring illness, physical or mental, may be covered by article 3, where it is, or risks being exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible."

77. As mentioned in para 67, there is evidence that asylum seekers only find out about their HIV status after they arrived in the UK and many already present advanced symptoms.

78. Failed asylum seekers are entitled to free counselling and HIV-testing. Those who test HIV-positive are left with a devastating diagnosis and the emotional and psychological implications it implies, not only in terms of coping and dealing with the diagnosis but also due to the stigma and discrimination attached to HIV including within their own community.

79. The government's policy on HIV treatment means that people who are diagnosed with HIV may not be given access to life saving treatment that will enable them to remain in good health for several years and significantly improve their prognosis. As a result, the feeling of anguish, fear and distress caused by a diagnosis is likely to increase significantly because they are denied HIV treatment and care.

80. It is also argued that Art. 3 may be at stake in the case of pregnant HIV-positive women who cannot afford drugs which significantly reduce chances of vertical transmission of HIV from mother to child, as well as elective caesarean, exposing her baby to a high risk of HIV transmission (25–35%) in contrast to below 1% for women who are given ante-natal HIV treatment. Knowing that she may infect her unborn baby with HIV will cause stress and significant emotional and psychological effects on the mother-to-be and arguably, will also impact on her physical health and well being. The consequence might also be extremely grave with the birth an HIV-positive baby when access to adequate drugs would have considerably reduced the risk of transmission.

81. A third Art 3 argument is that knowing that they cannot access and/or afford HIV treatment may lead to failed asylum seekers (and other undocumented migrants) not coming forward for testing, increasing a risk of health deterioration for those unknowingly living with HIV and exposing them to psychological and physical suffering when diagnosed at a later stage of infection.

82. States parties to the Convention are under an absolute obligation not to take steps which would expose people to the risk of article 3 ill-treatment (ie a negative obligation). They are also under a positive obligation to take reasonable steps to protect people against serious harm.²⁷

83. The ECtHR has made it clear that States' obligations under Art 3 apply to all individuals within their jurisdiction, regardless of the "reprehensible nature of the conduct of the person in question":

"Regardless of whether or not [the applicant] ever entered the United Kingdom in the technical sense (. . .) it is to be noted that he has been physically present there and thus within the jurisdiction of the respondent State within the meaning of Article 1 of the Convention (art 1) since 21 January 1993. It is for the respondent State therefore to secure to the applicant the rights guaranteed under Article 3 (art 3) irrespective of the gravity of the offence which he committed." (para 48)²⁸

84. It is argued that by charging failed asylum seekers for HIV treatment and care the government violates its obligations under Art 3 to prevent inhuman or degrading treatment and to protect them against such suffering. The government's policy undoubtedly increases the suffering that occurs following an HIV diagnosis and its psychological and emotional implications as well as personal and social consequences.

85. The implications of a positive HIV diagnosis can be even more traumatic as asylum seekers are already in a very vulnerable state, with some of them having contracted HIV as a result of rapes and sexual and/or physical abuse in their country of origin, and therefore already suffering from physical and psychological trauma, humiliation, stress and despair.

86. Under Art 3, asylum seekers have rights, irrespective of their immigration status. The government is blatantly violating this right by failing to protect the rights of failed asylum seekers by providing them with free HIV treatment and care, but also causing them to experience further suffering.

Right to life

87. There is also a strong argument that denying HIV treatment to failed asylum seekers may be in breach of the right to life, protected inter alia under Art 2 ECHR.

88. It is argued that the government's interference with Art 2 ECHR with regards to failed asylum seekers' access to HIV treatment is two-fold:

- (1) By denying failed asylum seekers access to free HIV treatment, the government is exposing those living with HIV to a worsening of their condition, the transmission of HIV (for pregnant women unable to access ante-natal HIV drugs), and in the most extreme cases, might lead to death.
- (2) By charging failed asylum seekers for HIV treatment, the government deters those who cannot pay for treatment from testing for HIV and as a result, exposing themselves and others to harm and potentially death.

89. The government's policy on charging for HIV-related treatment and care undoubtedly puts failed asylum seekers' lives at risk.

90. Under Art 2 ECHR, States have both negative and positive obligations: the negative obligation to refrain from intentionally or unlawfully depriving an individual of their right, and the positive obligation to protect the right to life (ie taking appropriate measures to protect life). Also, although not absolute, the right to life cannot be balanced against public interest and a violation of the right to life cannot be justified on the ground of the common good in general.

91. In *X v Germany*²⁹ the European Commission for Human Rights held that laws which allowed a person to be evicted from his home, when this eviction may have endangered his life due to his state of health, could give rise to a breach of Art 2. Although the decision only referred to a possibility ("could"), it is argued that a policy that denies free medical treatment to vulnerable groups who are living with a life threatening disease may amount to a breach of Art 2.

92. In *Osman v UK*³⁰ the ECtHR held that "Art 2 ECHR is breached where a public authority knew or ought to know of the existence of a real and immediate risk and failed to take preventive measures which, judged reasonably, might have been expected to avoid that risk". (para 116)

93. There is no cure for HIV but HIV is preventable and treatable. Over the past few years, HIV treatments have significantly improved and people living with HIV can now remain healthy for several years. Those who had a poor prognosis can see their condition improve and can go back to being in good health again. By charging failed asylum seekers for HIV treatment and care, the government deprives them from a chance to live a healthy life, and endangers their lives.

94. Therefore, it is argued that denying free HIV treatment and care to HIV-positive failed asylum seekers can amount to a breach of Art 2 ECHR.

The Right to be Free from Discrimination

95. Discrimination is an assault on the very notion of human rights. The principle of non-discrimination runs through all international human rights instruments and has inspired specialised standards such as the UN Conventions on the elimination of discrimination against women and racial minorities.

96. As noted by the World Health Organisation: "The observance of human rights is permeated and characterized by the principle of freedom from discrimination".³¹

97. Of particular significance is the Human Rights Committee's General Comment No 18 on non-discrimination which is referred to in the HIV/AIDS Guidelines:

"The Human Rights Committee has confirmed that the right to equal protection of the law prohibits discrimination in law or in practice in any fields regulated and protected by public authorities and that a difference in treatment is not necessarily discriminatory if it is based on reasonable and objective criteria. The prohibition against discrimination thus requires States to review and, if necessary, repeal or amend their laws, policies and practices to prescribe differential treatment which is based on arbitrary HIV-related criteria."

98. The Commission for Human Rights as well as the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have interpreted the term "other status" in the non-discrimination provisions in the relevant international human rights treaties to encompass health status, including HIV and AIDS.

99. The principle of non-discrimination in relation to access to HIV treatment for refugees and asylum seekers and "other persons of concern" has been acknowledged in the UNHCR Note on HIV/AIDS. In particular the UNHCR document states that:

"Based on the international refugee and human rights principles (. . .) and given that equal and non-discriminatory access to ART is a vital component of ensuring the right to the highest attainable standard of physical and mental health, host governments which are parties to the [ICESCR and CRC] should ensure that refugees, IDPs and other persons of concerns have access,

on an equal and non-discriminatory basis, to existing national health and HIV programme or their equivalent. This includes access to national ART programmes, or their equivalent, and access to other essential drugs which are available to the host population.” (para 20)

100. In the UK, Art 14 ECHR is particularly relevant following the adoption of the Human Rights Act.

101. Art 14 ECHR is not a free-standing right to equal treatment but a derivative right. Its ambit is confined within the rights stated in the Convention. As a result, only claims of discrimination made in conjunction with one of the other Convention rights can be challenged.

102. However, the “dependent” nature of Art 14 ECHR has, to some extent, been mitigated by the ECtHR’s approach to the “ambit” test which aims at giving Art 14 an “autonomous” existence.³² The ECtHR has held that there may be a violation of Art 14 in conjunction with a substantive right even if there is no violation of that other article taken alone.³³ There must be a relationship or a link between Art. 14 and the other Convention right(s).

103. Although the degree of relationship that the ambit test implies is not quite clear, the ECtHR has held that “it is sufficient that the ‘subject matter’ falls within the scope of the article in question”,³⁴ or that only a very loose relationship between Art 14 and another Convention right is necessary to trigger Art. 14 non-discrimination provisions.³⁵

104. In practice the Court has also sometimes refused to consider a claim under Art 14 after finding a breach of a substantive right.³⁶ Yet, it has also acknowledged the intersectionality of discrimination with another issue (eg privacy).³⁷

105. It is argued that the right to be free from discrimination is at the core of the issue of access to free HIV treatment and care and that there is a strong argument that the government’s policy amounts to a breach of Art 14 (ie charging failed asylum seekers (and illegal migrants) for HIV treatment when no other class of persons in the UK has to pay)³⁸ taken together with Art 3 and/or Art 2.

106. We also note that treatment for TB and other sexually transmitted infections remain free; which means that HIV is the only sexually transmitted infection excluded from the exemption rule. There is therefore an argument that the policy may amount to discrimination on grounds of HIV and national origin and/or immigration status (ie undocumented or illegal immigrant, failed asylum seeker).

107. Interference with Art 14 ECHR can be justified if the distinction has a reasonable and objective justification. The existence of such a justification relies on the principle of proportionality and must be assessed in relation to the aim and effects of the measure under consideration and the means used to achieve it.

108. The government’s justification for introducing the new charging regime has been because of the “significant amount of abuse going on” and alleged “health tourism”. As examined in paras 69–71, the government’s allegations do not rest on any empirical evidence. In relation to the specific assumption of “health tourism” in the context of HIV, we note that there was extensive evidence provided by NGOs when the issue was considered by the Health Select Committee in its Third Report (2005).³⁹ The Committee noted:

“Despite John Hutton MP’s conviction that ‘there is a significant amount of abuse going on’, no evidence exists to objectively quantify the scale of abuse, either in relation to HIV or more generally. The Department’s original consultation (. . .) gives no specific examples of people migrating to the UK as ‘health tourists’ to use NHS services for HIV or for any other chronic condition. In fact we received some evidence which strongly refuted claims that HIV-infected individuals are coming to the UK to cynically exploit free access to medical care. Memoranda argued that HIV+ people who were infected outside the UK typically sought access to medical care at a late stage, when if they had come to the UK with the express purpose of obtaining medical care it would seem logical for them to seek testing and treatment at the earliest possible opportunity. The Terrence Higgins Trust conducted a small piece of research on a population of 60 HIV+ migrants who were recent users of THT services. Approximately 3% (two people in total) had been diagnosed prior to entering the UK. Only 8% were diagnosed with HIV within three months of entry to the UK. In all at least 75% waited more than nine months after entering the UK before having an HIV test. One third of people in the cases examined did not have a test until more than 18 months after entry.” (paras 106–108)

109. In its concluding paragraph, the Committee further noted:

“[n]either the Department nor any other interested parties have been able to present us with any evidence suggesting that that this is currently the case, or that the introduction of these restrictions on free treatment will actively discourage people from entering or remaining in this country illegally. What little evidence exists in this area in fact seems to suggest that HIV tourism is not taking place. It suggests that HIV+ migrants do not access NHS services until their disease is very advanced, usually many months or even years after their arrival in the UK, which would not be the expected behaviour of a cynical ‘health tourist’ who had come to this country solely to access free services.” (para 111)

110. In terms of costs, which is one of the arguments put forward by the government to introduce charging for HIV treatment, the Committee said:

“The Department’s consultation on changes to charging rules for overseas visitors suggested that cost-saving was a key reason for reviewing the regulations. We were therefore astonished that, by the Department’s own admission, these changes have been introduced without any attempt at a cost-benefit analysis, and without the Department having even a rough idea of the numbers of individuals that are likely to be affected. While generating even small amounts of savings for the NHS might appear to be worthwhile, in the case of HIV treatment we have received powerful evidence that it would in fact be more cost-effective to provide free HIV treatment to all, as, without treatment, HIV+ individuals living in this country without proper authority are likely to place a far greater burden on NHS resources.” (para 138)

111. The detrimental effects of the introduction of the new charging regime in relation to HIV (but also other health conditions) have been well documented. In particular the impact of charging failed asylum seekers for HIV treatment and care is especially worrying with wide implications on public health. A summary of the implications in terms of financial costs but also in terms of HIV transmission and impact on public health is provided in the Committee’s report:

“[t]he cost of not treating HIV is also very high, perhaps even higher than the cost of treating it. Without treatment, those with HIV are likely to become seriously ill ever more frequently, accessing treatments through A&E departments on a ‘revolving door’ basis. While those ineligible for free HIV treatment would be charged for any subsequent inpatient treatment if they were admitted to hospital, initial treatment in an A&E department would be free (. . .)

Considering the situation from a purely pragmatic point of view, an NHS Trust could in fact end up losing more money through its obligation to provide ‘immediately necessary’ treatment to an HIV+ person who has developed a life-threatening problem, and who is subsequently unable to meet the charges for this treatment, than if they had provided free ART to that person to prevent them from becoming ill in the first place (. . .)

[i]ntroducing charges for HIV treatment may in fact contribute to onward transmission, both because charges may act as a deterrent to testing for people who cannot afford treatment in the event of a positive result, and because untreated individuals are more infectious than those on treatment whose viral load is controlled. In its cost-benefit analysis of the changes to regulations governing access to free NHS treatment for overseas visitors, the Department must also take into account the potential costs associated with increased onward transmission of HIV.

Coupled with increasing confusion regarding eligibility for HIV treatment even amongst those who are eligible, and fear amongst migrant communities that if, in future, they attend health services they will be questioned about their immigration status, this strongly suggests that the introduction of charges for HIV treatment will increase the number of HIV+ people living in this country who are unaware of their infection, in direct contradiction of the Government’s target to reduce the number of undiagnosed HIV infections. An increase in the numbers of people who are unaware of their HIV+ status will pose a serious and escalating threat to public health.” (paras 134–52)

112. In conclusion we believe that the government’s policy of charging failed asylum seekers for HIV treatment and care violates Art 14 ECHR, in conjunction with Art 3 and Art 8.

DETENTION OF HIV-POSITIVE ASYLUM SEEKERS

Facts and Figures about the Detention of Asylum Seekers in the UK

113. Home Office figures show that at 24 June 2006, 1,825 people were detained in the UK under Immigration Act powers.⁴⁰ Furthermore:

- 90% of immigration detainees were male and 15 people detained solely under Immigration Act powers were recorded as being less than 18. 10 of these had been in detention for less than one month, and the remainder between one and two months.⁴¹
- At least 80 asylum-seeking children were held in detention for up two months last year. 1,660 were held at Immigration Service Removal Centres, 45 at Immigration Short Term Holding Facilities and 120 at prison establishments.
- Of the 7,035 adults recorded as leaving detention during the first quarter of 2006, 3,500 (50%) had been detained for 7 days or less, 750 (11%) for 8 to 14 days, 1,055 (15%) for 15 to 29 days and 975 (14%) for one month to less than two months. 30 adults had been detained for one year or more.⁴²

114. Amnesty International estimates that at least 27,000 and 25,000 people who had sought asylum at some stage were detained in 2003 and 2004 respectively for some period of time.⁴³

115. It is estimated that the government currently detains more than 2,000 children, including babies, in immigration detention centres every year.⁴⁴ Current UK policy and practice means that children can and do remain in detention for lengthy periods, up to 268 days.⁴⁵

116. Eight asylum seekers in detention committed suicide between January 2003 and January 2006. Thirty-four asylum seekers have taken their own life since January 2004; six of these were detained in ordinary prisons.

UK Law and Policy on Detention of Asylum Seekers

117. Under Immigration Act powers, it is the executive who authorises the detention of people who have sought asylum. No judicial authorisation is required and there is no prompt and automatic judicial oversight of the decision to detain, nor are there automatic judicial reviews of the continuance of detention.

118. Under the Immigration Act 1971 (as amended), immigration officers and Home Office officials have powers to detain those who are subject to immigration control, including asylum-seekers and people whose asylum claims have been dismissed. There are no statutory criteria for detention. The detention is indefinite and only subject to internal administrative review.

119. Stated UK policy allows for detention to be used to prevent absconding; to establish identity; to remove people from the UK at the end of their asylum or immigration case; and for the purposes of making a decision on a claim for asylum deemed to be straightforward and capable of being decided quickly. There is no upper or lower age for being detained as asylum-seekers or immigrants.

120. Under the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005, some applicants are detained immediately (usually on the basis of their nationality) and sent to Harmondsworth or Yarls Wood where their claim is “fast tracked”. They have a right to appeal, although this is again fast-tracked.

121. There are guidelines for immigration detention contained in the Home Office instructions, the Operational Enforcement Manual, and the statutory Detention Centre Rules.

122. The Home Office Operating Enforcement manual (OEM) which contains guidance and information for Immigration Service officers dealing with enforcement (after-entry) immigration matters, states that detention must be used sparingly, and for the shortest period necessary.

123. The OEM includes a section on factors that influence a decision to detain (excluding pre-decision fast track cases):

1. There is a presumption in favour of temporary admission or temporary release.
2. There must be strong grounds for believing that a person will not comply with conditions of temporary admission or temporary release for detention to be justified.
3. All reasonable alternatives to detention must be considered before detention is authorised.
4. Once detention has been authorised, it must be kept under close review to ensure that it continues to be justified.
5. Each case must be considered on its individual merits.

124. It also states that “certain persons are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated IS accommodation or elsewhere. Others are unsuitable for IS detention accommodation because their detention requires particular security, care and control.”

125. The manual also lists people who are “normally considered suitable for detention in only very exceptional circumstances, whether in dedicated IS detention accommodation or elsewhere”:

- unaccompanied children and persons under the age of 18;
- the elderly, especially where supervision is required;
- pregnant women, unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this;
- those suffering from serious medical conditions or the mentally ill;
- those where there is independent evidence that they have been tortured; and
- people with serious disabilities.

126. The manual does not provide a definition of “very exceptional circumstances” and as will be examined below, there is evidence that very often, those groups are detained. The manual provides a list of people who are “usually” unsuitable for the detained fast track, including:

- unaccompanied minors (always unsuitable, see 38.9 Young Persons);
- age dispute cases. The policy of detaining age dispute cases for the purposes of Fast Tracking was updated in February 2006;
- disabled applicants, except the most easily manageable;
- pregnant females of 24 weeks and above;
- any person with a medical condition which requires 24 hour nursing or medical intervention; and
- anybody identified as having an infectious/contagious disease.

127. The Detention Centre Rules 2001 also contain guidance on the treatment of people with special illnesses and conditions. We note in particular Rule 35(1) which states:

“The medical practitioner shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.”

128. Finally the Detention Services Operating Standards introduced in 2002 provide information on the standard of healthcare in detention centres.

129. Again as will be examined below, there is a wide gap between policy and practice.

Detention of Asylum Seekers under International Law

130. The right to liberty underpins the right to asylum and the presumption against detention of asylum seekers. Sources of international law governing detention include the UDHR, the Refugee Convention and its Protocol, the ICCPR, the CRC, and the ECHR.

131. Art 31 of the Refugee Convention specifically prohibits the imposition of penalties on refugees who have entered or are present in a country illegally. This prohibition applies to refugees who have arrived “directly from a territory where their life or freedom was threatened . . . or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.” (Art 31(1)). The Convention further provides that “the movements of such refugees” shall not be subject to “restrictions other than those which are necessary.” (Art 31(2))

132. Art 3 UDHR provides that: “Everyone has the right to life, liberty and the security of person.”

133. Art 9 UDHR further states: “No one shall be subjected to arbitrary arrest, detention or exile.”

134. Art 9(1) ICCPR states that: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention (. . .).”

135. Article 37(b) CRC states that: “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time (. . .)”

136. Art 5 (1) ECHR asserts that everyone has the right to liberty and security of person and that the deprivation of liberty is only allowed in limited cases and in accordance with a procedure prescribed by law. The exceptions include “(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition”, which is the only one relevant in the immigration context.

137. Although non-binding, the UNHCR intergovernmental Executive Committee of the Programme and the UNHCR Detention Guidelines are regarded as authoritative in the field of refugee rights. They both condemn the use of detention of asylum seekers and call for alternatives to detention.

138. The UNHCR Detention Guidelines state:

“The detention of asylum-seekers is, in the view of UNHCR inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. Freedom from arbitrary detention is a fundamental human right and the use of detention is, in many instances, contrary to the norms and principles of international law.” (para 1)

139. More specifically, the Detention Guidelines provide that “as a general principle asylum seekers should not be detained”. Guideline 2 further states:

According to Article 14 of the Universal Declaration of Human Rights, the right to seek and enjoy asylum is recognised as a basic human right. In exercising this right asylum-seekers are often forced to arrive at, or enter, a territory illegally. However the position of asylum-seekers differs fundamentally from that of ordinary immigrants in that they may not be in a position to comply with the legal formalities for entry. This element, as well as the fact that asylum-seekers have often had traumatic experiences, should be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence.”

140. Guideline 3 sets out the exceptional Grounds for Detention:

“Detention of asylum-seekers may exceptionally be resorted to for the reasons set out below as long as this is clearly prescribed by a national law which is in conformity with general norms and principles of international human rights law. These are contained in the main human rights instruments. There should be a presumption against detention. Where there are monitoring mechanisms which can be employed as viable alternatives to detention, (such as reporting obligations or guarantor requirements [see Guideline 4]), these should be applied first unless there is evidence to suggest that such an alternative will not be effective in the individual case. Detention

should therefore only take place after a full consideration of all possible alternatives, or when monitoring mechanisms have been demonstrated not to have achieved the lawful and legitimate purpose.”

141. Guideline 4 provides for alternatives to detention, including: monitoring (reporting and residency) requirements; provision of a guarantor/surety; release on bail; and open centres.

Conditions of Detention of Asylum Seekers under International Law

142. Under international law, the fundamental principle underlying the detention or imprisonment of a person is that they shall be treated in a humane manner and with respect for the inherent dignity of the human person.

143. As enshrined in Art.10 ICCPR, “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. This implies not only the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, but also that migrants deprived of their liberty should be kept in conditions that take into account their status and needs.

144. General Comment 21 on Art 10 provides that:

“Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.” (para 3)

145. General Comment No. 15 on the position of aliens under the Covenant also states that “if lawfully deprived of their liberty, [aliens] shall be treated with humanity and with respect for the inherent dignity of their person”.

146. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the UNHCR Detention Guidelines also provide an extensive list of guarantees for the protection of the human dignity of persons, including migrants, deprived of their liberty. Despite their non-binding nature, they reflect internationally recognised principles.

147. General Recommendation Number 30 of the Committee on the Elimination of Racial Discrimination recommends that States must “[e]nsure (. . .) that conditions in centres for refugees and asylum seekers meet international standards”.

148. Art 37(c) CRC also establishes that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

149. The detention of vulnerable groups such as women, children and asylum seekers with health needs has been considered by both non-governmental organisations and the UN.

150. Most of UN guidelines dealing with HIV in the context of detention of asylum seekers deal with the issue of detention on grounds of HIV; which is not at stake in the UK.

151. However, the detention of vulnerable groups, including asylum seekers with healthcare needs, has been considered in several documents. In particular, Guideline 5 of the UNHCR Detention Guidelines deals with the detention of vulnerable persons and states:

“Given the very negative effects of detention on the psychological well being of those detained, active consideration of possible alternatives should precede any order to detain asylum-seekers falling within the following vulnerable categories:

Unaccompanied elderly persons.

Torture or trauma victims.

Persons with a mental or physical disability.

In the event that individuals falling within these categories are detained, it is advisable that this should only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well being. In addition there must be regular follow up and support by a relevant skilled professional. They must also have access to services, hospitalisation, medication counselling etc should it become necessary.”

152. The Detention Guidelines also state that the detention of asylum seeker women requires them to be accommodated separately from male asylum seekers unless they are close family relatives. Guideline 8 further provides that “[as] a general rule the detention of pregnant women in their final months and nursing mothers, both of whom may have special needs, should be avoided (. . .) [Women] should have access to gynaecological and obstetrical services”.

153. The Guidelines further call for “regular follow-up and support by a relevant skilled professional” for those detained, and “access to services, hospitalization, medication, counselling, etc., should it become necessary.” (Principle 24) The Guidelines emphasise that all detained asylum seekers must have “the opportunity to receive appropriate medical treatment and psychological counselling where appropriate.” (Guideline 10(v))

154. International law also recognises that health professionals who provide care for detainees are bound by significant ethical obligations. These professionals “have a duty” to protect detainees’ “physical and mental health” and to provide “treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.”⁴⁶

155. Commenting on the detention of asylum seekers in the UK, the UNHCR has stated:

“Victims of torture, persons with a mental or physical disability, unaccompanied elderly persons, families with children, and other individuals with similarly vulnerable backgrounds and characteristics are also of concern to UNHCR in the context of detention. In the event that individuals falling within these categories are detained, UNHCR’s view is that this should only be on the certification of a qualified medical practitioner that detention will not further adversely affect their health and well-being.”⁴⁷

156. Principles 24–26 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment further provide that:

“A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.”

“A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.”

“The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.”

Detention of HIV-Positive Asylum Seekers in the UK

157. The conditions of detention of asylum seekers and migrants in UK have been severely criticised: health deterioration, disrupted medical treatment, failure to facilitate access to external secondary health services, unidentified health needs, lack of follow-up, and continuity of care are some of the main issues which have been raised.

158. We note that the issue of detention of asylum seekers in the UK was criticised by the HRC in 2001. In its concluding observations, the Committee expressed concern that “asylum seekers have been detained in various facilities on grounds other than those legitimate under the ICCPR, including reasons of administrative convenience.”

159. The UNHCR has also emitted serious concerns about asylum seekers’ detention in the country:

“UNHCR understands that under current legislation any asylum seeker, including minors and other vulnerable persons, may be detained at any stage of their asylum claim, that there is no maximum period an individual may spend in detention, and that continued detention of any one individual is subject to internal administrative review conducted by IND caseworkers and immigration officers only. UNHCR recognises that an individual is free to apply for bail at any time during their detention, but also notes that unless an application for bail is heard in court, an individual’s detention and the reasons behind it are not subject to judicial scrutiny.

UNHCR further notes the continued practice of detaining vulnerable individuals. From Home Office statistics, UNHCR understands that on 26 June 2004, 60 children were being held in UK detention centres. Of these, 5 had already spent between 15 and 29 days in detention, and another 5 between one and two months. Available Home Office statistics further reveal that on 25 June 2005, 70 of those who were detained solely under Immigration Act powers were recorded as being under 18 years old. Of those, 45 had been in detention for 14 days or less, 10 for between 15 and 29 days, and the remainder between one and two months.”⁴⁸

160. There has not been any specific research and/or investigation into the detention of HIV-positive asylum seekers but their situation has been highlighted in several reports. Some specific reports have provided medical evidence on the inadequacy of conditions of detention for asylum seekers with healthcare needs and the detrimental impact of detention, including in the context of HIV and AIDS.

161. *“The Health and Medical Needs of Immigration Detainees in the UK: MSF’s Experiences”* was published by Médecins Sans Frontières (MSF) in November 2004 and reports the findings of one of their doctors’ assessment in April and May 2004 of 13 adults and three children detained under the Immigration Act. The detainees were held in five immigration removal centres, an immigration holding centre, a young offenders’ centre, and two prisons. The doctor had been engaged by Bail for Immigration Detainees (BID) in an attempt to apply for the release of those detainees on bail on health grounds. The report highlighted MSF’s concerns about the health status of the individuals they medically examined and the apparent lack of mechanisms in place to ensure that members of this vulnerable population are afforded the medical care and protection they need. It also underlined the failure to treat basic physical health problems, including failure to refer an HIV-positive detainee at the symptomatic stage of infection urgently back to a genito-urinary clinic, a breast lump, a cough which may have indicated TB, and genito-urinary check for sexually transmitted infections post rape. Finally the report suggested that despite guidelines stating that an individual with a serious medical condition or mental health problems should only be detained in exceptional circumstances, there was no systematic process to identify and release such people. Nor was there any system of regular health review for those detained:

“One detainee we visited had been diagnosed with symptomatic HIV infection and was being considered for antiretroviral treatment at the time he/she was detained. However, we noted that despite awareness of his/her condition and need for referral by a variety of detention health care staff (as documented in the medical notes), referral back to his/her local hospital outpatient department had not been made by the detention health centre even after several months. MSF assisted in facilitating this referral.”

“In light of the fact that the detention health centre was clearly not able to provide appropriate care for symptomatic HIV positive detainees, MSF felt strongly that it was inappropriate to detain such an individual. This echoes the findings of a recent All-Party Parliamentary Group on AIDS who concluded that ‘the UK government should not detain, solely for immigration purposes, individuals with serious communicable diseases such as HIV, if it cannot provide for their care inside detention centres.’”

“[f]or those individuals who required more than just a basic level of care, weaknesses were clearly apparent in the system to ensure an appropriate level of care and follow up. Where there are insufficient facilities and resources to ensure that a detainee with a particular medical condition receives appropriate care, for example HIV care and treatment, the individual should not be detained.”

162. *“Fit to be detained? Challenging the detention of asylum seekers with health needs”* was published by BID in May 2005 and described what happened to the bail applications for the 16 asylum seekers after the medical reports. In particular the report mentions that although the MSF doctor stated that continued detention would be likely to result in further deterioration of the individual detainee’s health in each of his individual medical assessment report, one detainee was released within five days and another after 14 days, five were detained a further 30–60 days and three for between 70 and 170 days.

163. The report’s key findings unequivocally prove that the detention process in the UK fails to comply with the most basic international principles. Although those findings only refer to the specific case of the 16 individuals, it is argued that it is most likely that there is a systemic problem of failure to comply with guidelines and other recommendations.

The main issues raised in the report are:⁴⁹

Long periods of detention: Despite instructions that those with serious illness “are not normally considered suitable for detention”, such people are detained for long periods.

Inadequate internal review mechanisms: Internal mechanisms for reviewing the necessity and appropriateness of maintaining detention do not appear to be effective in ensuring that ill detainees are released, even in cases where detention is exacerbating their condition and resulting in deteriorating mental or physical health.

Inadequate rules: The Detention Centre Rules and Operating Standards are not effective in protecting the needs and rights of detainees, in particular the more vulnerable: women, children, age-disputed children, those with serious mental and/or physical health problems.

Little weight is given to health factors: The Immigration Service have stated that “Evidence that a person has been a victim of torture, or has a history of physical or mental ill health, are clearly cited as negative factors influencing a decision to detain and would weigh against deciding to detain. There may, of course, be countervailing factors present in a case such as to justify detention.” It would appear that the “countervailing factors” in these cases were given greater weight than the evidence of ill health. In some cases, even a medical assessment clearly stating that health would be likely to deteriorate further was not enough evidence to “weigh against” maintaining detention.

Failure to employ alternatives to detention: It appears that there is a presumption in favour of maintaining detention and a reluctance to actively consider alternatives to detention, such as reporting requirements, at an early stage.

Restricted access to legal representation to challenge detention: Detainees with health problems are struggling to access legal representation to challenge their detention, or to progress their substantive asylum or immigration case. They are remaining in detention for long periods without their detention being independently reviewed.

Detention on arrival and where no history of non-compliance with immigration control: Detention is being used for people with health problems who have claimed asylum either on arrival, or shortly afterwards, and have always maintained contact with the Immigration Service prior to being detained.

Maintaining contact on release: The majority of detainees released from detention maintained contact with the Immigration Service calling into question the need to detain them in the first place.

Adjudicators disregarding health status in some bail applications: In some bail applications, it would appear that Adjudicators are not taking medical evidence into account or are not being presented with relevant information regarding health status by the Immigration Service.

164. “*Migration and HIV: Improving Lives in Britain*” published by the All Party Parliamentary Group on AIDS (APPGA) in 2003 provides the most comprehensive overview of the issue of HIV-positive asylum seekers in detention or held in removal centres. The report provides unequivocal examples of the inadequacy of detaining HIV-positive asylum seekers and worrying instances of HIV transmission.

165. The report notes:

Detrimental impact of entry into a detention facility: If an individual is detained after their arrival and short-term settlement in the UK, their medical notes usually do not follow them into detention, they lose contact with their healthcare providers and do not have access to HIV specialist care. Their HIV treatment is taken away from them upon entry into a facility and they are not given any medical exam until 24 hours have elapsed. This means that they can miss access to his/her HIV treatment for up to 24 hours, heightening the likelihood of future drug resistance.

Absence of adequate arrangements for medical treatment: HIV-positive detainees are not able to manage their own medical treatment such as taking it the specified required times because of detention arrangements (eg meal times).

Lack of communication between detention centres and community healthcare services: This was highlighted in the HM Inspectorate of Prisons’ 2003 report on the “*Inspection of Five Immigration Service Custodial Establishments*”.

Difficulty in attending outside medical appointments and/or being handcuffed during the appointment: The report notes that medical appointments may be cancelled either for logistical or practical reasons; detainee with HIV was taken to his medical appointment in handcuffs and his blood test was carried out while he was wearing the handcuffs.

Absence of counselling or psychological services: Detainees who are tested for HIV do not receive adequate pre- and post-test counselling when the test is done on-site. The issue of informed consent has also been raised with detainees being traumatised by what happened in their country and then arrested and offered a test without being given appropriate info or being given the time to think about it.

166. The Report concludes:

“The Government should not place people with serious communicable diseases, such as HIV, in detention or removal centres for immigration purposes where it is not possible to provide suitable medical care for them.”

167. We would also like to highlight that several reports by the HM Inspectorate of Prisons have included evidence of the failure of detention facilities to meet the healthcare needs of detainees, that it be for short or longer periods. Issues like the lack of routine professional soon after arrival leaving some health problems undetected, the use of handcuffs, the lack of contracted healthcare input for local GPs or nurses, healthcare professionals only called in an emergency with staff required to make a judgement on what constituted an emergency themselves were mentioned in the “*Report on four STHFs (Luton, Waterside Court, Portsmouth, Stansted) May 2005—January 2006*”. The lack of communication between detention centres and community healthcare professionals, the absence of specialised care, the lack of shared medical records between the different centres and GPs, the removal of medication on arrival as blanket policy, and the reluctance to use interpreters or language line making it difficult for detainees to discuss their health concerns and reveal health issues that were relevant to their asylum claims, were issues reported in “*Tinsley House, Haslar, Oakington, Campsfield House and Lindholme (an Inspection of five IRCs)*”.

168. Whilst those reports provide extensive evidence that the government is failing to comply with international guidelines on the detention of asylum seekers including those living with HIV, it is argued that in some instances the treatment of asylum seekers amounts to a breach of international human rights law.

169. In the specific context of HIV, there is compelling evidence that detention has a detrimental impact on HIV-positive detainees’ ability to access medical care. This was for example illustrated by MSF’s case of the individual at the symptomatic stage of infection not being referred to his local hospital.

170. Art 12 ICESCR has been extensively examined above in the context of NHS charging system. We therefore refer to paras 57–74 of this submission. However, we wish to repeat that under Art 12 ICESCR, States have core obligations which include ensuring that all individuals, especially those belonging to vulnerable or marginalised groups, have access to health facilities and failure to comply with this obligation amounts to a breach of Art 12.

171. There is also a strong argument that failure to take the necessary steps to ensure that HIV-positive detainees can take their HIV medication and the use of blanket policies on medication removal upon entry into a detention centre interfere with the right to be free from inhuman or degrading treatment guaranteed *inter alia* by Art 3 ECHR.

172. Art 3 in the context of access to HIV treatment has been examined above. However, we would like to bring to the attention of the Committee the following case that is relevant to the specific issue of healthcare in detention:

173. In *McGlinchey and Others v UK*⁵⁰ the ECtHR found a violation of Art 3 ECHR and held that “[T]he state must ensure that a person is detained in conditions that are compatible respect for human dignity, that the manner and method of the detention do not subject her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, her health and well-being are adequately secured by, among other things, providing her with requisite medical assistance (. . .)”.

174. States’ duty of care for detainees had been previously acknowledged by the ECtHR on several occasions, including in *Algur v Turkey*:⁵¹

“[W]ith regard to Article 3, the State is responsible for and under a duty to protect all persons in custody, as they are in a vulnerable position (. . .)” (at para 44)

175. We also note that the HRC found in *Steve Shaw v Jamaica*⁵² and *Desmond Taylor v Jamaica*⁵³ that the treatment of detainees, which included a lack of provision for healthcare and medical care and medical facilities constituted a breach of Art 10 (1) ICCPR which states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

176. There has been extensive domestic case law on the treatment of asylum seekers in detention centres. We would like to highlight the High Court’s recent decision in *D & K v Secretary of State for the Home Department*. On 22 May 2016, the Court found a “persistent and sustained failure to give effect to important aspects of the Detention Centre Rules and publicly to highlight a departure from published policy” by the Home Office to abide by the legal requirement to ensure that detainees in immigration detention centres are medically examined within 24 hours of their detention. This failure led to the unlawful detention of two asylum seekers at Oakington Removal Centre in May 2005, who should have been assessed as unsuitable for detention as there was medical evidence that they had been tortured in their countries of origin.

177. It is argued that the government’s policy on detention of asylum seekers is not in line with international and regional law and standards, including the UNHCR Detention Guidelines.

178. We note that despite concerns from the international community such as the HRC and the UNHCR about the detention policy and extensive evidence of its detrimental impact particularly on vulnerable people, such as children, women and those with healthcare needs, the government is blatantly disregarding the most fundamental principles that govern the treatment of asylum seekers in international law and policy.

DISPERSAL OF HIV-POSITIVE ASYLUM SEEKERS

Facts and Figures about Dispersal in the UK

- The “dispersal scheme” introduced under the 1999 Immigration and Asylum Act.
- The national dispersal policy under which newly arrived asylum seekers are dispersed across the UK started in April 2000.
- One of the main purposes of government arrangements was to provide a statutory basis for dispersing asylum seekers away from hard pressed local authorities in London and the South East.
- The agency in charge of implementing the dispersal policy is the UK National Asylum Support Service.

179. The issue of healthcare for dispersed asylum seekers, especially in the context of HIV has been widely considered:

- The detrimental impact of dispersing HIV-positive asylum seekers was also acknowledged in the APPGA’s inquiry into HIV and Migration in May 2003.
- An article published in the *British Medical Journal* in 2004 further highlighted the issue of dispersal of HIV-positive asylum seekers by providing the findings of a national survey of UK healthcare providers.⁵⁴ The research aimed at finding out the experiences and opinions of doctors working in genitourinary medicine in relation to the dispersal of HIV-positive asylum seekers. The main

findings of the study were that most doctors who treat HIV positive asylum seekers have unsuccessfully contested dispersal and that doctors believe that dispersal is disruptive, may compromise HIV care, and may lead to increased transmission.

- In 2006, the National AIDS Trust published a report on the dispersal of asylum seekers living with HIV.

180. In December 2005, NASS introduced a new policy on the dispersal of asylum seekers with healthcare needs. The new policy states that a delay must be considered when dispersing HIV-positive asylum seekers, and that the treating clinician must be satisfied that continuing treatment has been organised in the patient's destination area. It also states that the provider of accommodation in the destination area has an obligation to ensure that HIV-positive asylum seekers are registered with a GP.

181. We have welcomed this new guidance which should significantly improve the standard of care and treatment of HIV-positive asylum seekers. And therefore we will not consider this issue further in this submission.

182. However, it is now important that NASS implementation of the new policy be adequately monitored and any gaps identified and remedied.

REMOVAL OF HIV-POSITIVE ASYLUM SEEKERS

UK Law and Policy on Failed Asylum Seekers' Removal

183. An applicant can make a claim under the Refugee Convention. If the claim is successfully granted, they are then classified as a refugee and are entitled to remain in the UK indefinitely and qualify for all rights as a British national. They are usually granted indefinite leave to remain (ILR).

184. Humanitarian protection may be raised under Art.3 ECHR (which will be the main focus of this section) and is granted to asylum seekers if it is accepted that they face a serious risk in their home country. Humanitarian protection normally allows the asylum seeker leave to stay in the UK for five years in the first instance.

185. If someone does not qualify for refugee status or humanitarian protection, they may still be allowed to stay under "discretionary leave". This is only granted in special circumstances—especially for unaccompanied asylum-seeking children (UASC) who cannot be returned to their country of origin.

186. Under UK immigration law, asylum applicants whose applications have been rejected and who have no appeal outstanding have no legal right to remain in the United Kingdom (administrative removal).⁵⁵

187. The Home Office's Immigration and Nationality Directorate is responsible for deciding asylum applications and for returning failed applicants. Failed applicants are expected to leave the United Kingdom voluntarily or be subject to removal action.

188. Since July 2006, Statement of Changes in Immigration Rules (HC 1337) outlines the changes in the rules laid down regarding the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the UK. The changes are mainly intended to balance the need for deportation for the "public good" against "compassionate circumstances" for the individual subject to a deportation procedure. However, it does not describe what the public good is, leaving that open to interpretation on a case-by-case basis.⁵⁶

189. This Statement amends para 364 of the Immigration Rules to make it clear that where a person is liable to deportation then the presumption shall be that the public interest requires deportation and that it will only be in exceptional circumstances that the public interest in deportation will be outweighed in a case where it would not be contrary to the ECHR and the Refugee Convention to deport:

"Subject to paragraph 380, while each case will be considered on its merits, where a person is liable to deportation the presumption shall be that the public interest requires deportation. The Secretary of State will consider all relevant factors in considering whether the presumption is outweighed in any particular case, although it will only be in exceptional circumstances that the public interest in deportation will be outweighed in a case where it would not be contrary to the Human Rights Convention and the Convention and Protocol relating to the Status of Refugees to deport. The aim is an exercise of the power of deportation which is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects. In the cases detailed in paragraph 363A deportation will normally be the proper course where a person has failed to comply with or has contravened a condition or has remained without authority."

Asylum Seekers' Deportation under International Law

190. The principle of non-refoulement is codified in its best-known form in the Refugee Convention. Major UN human rights treaties also prohibit the forcible return of persons to countries where they may be exposed to torture or cruel, inhuman or degrading treatment or punishment.

191. The Convention against Torture (CAT) states that:

“No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” (Art 3)

192. The ICCPR and the ECHR do not contain any explicit provisions on the topic. However, the HRC and the ECtHR have both interpreted the ban on refoulement as being inherent in Art 7 of the ICCPR and Art 3 ECHR that prohibit torture and inhuman and degrading treatment and punishment.⁵⁷

193. The European Court of Human Rights further held in *Soering v UK*⁵⁸ that Art 3 prohibits the extradition of a person who is threatened with torture or inhuman or degrading treatment or punishment in the requesting country. Extradition in such circumstances would, according to the Court, “plainly be contrary to the spirit and intendment of the Article” and would “hardly be compatible with the underlying values of the Convention”.

194. Most importantly, derogation from Art 3 CAT, Art 7 ICCPR or Art 3 ECHR not justifiable under any circumstances.

195. There are no specific guidelines or instruments on the specific issue of deportation of HIV-positive asylum seekers within the context of access to healthcare in the country of return but it is argued that the guidelines on the treatment of asylum seekers and on the right to health are relevant in this context.

196. The reference case in relation to the deportation of a person living with HIV in the UK is *D v UK*⁵⁹ where the Court considered the issue for the first time. In this case, the Court held that if the man—who was dying of AIDS-related complications—was deported to the Caribbean island of St Kitts, it would amount to “inhuman treatment” and violate Art 3 ECHR.

197. “D” had attempted to enter the UK as a visitor but permission was refused when he was found to be in possession of large quantities of cocaine. He was convicted of drug importation offences and received a sentence of six years’ imprisonment. In 1994, while in prison, D was diagnosed with AIDS. In January 1996, he was released and placed in immigration detention pending his removal to St Kitts. D applied for permission to remain in the UK on compassionate grounds, as his deportation to St Kitts would entail loss of the medical treatment he was receiving. His request was refused on the grounds that Immigration Department policy did not provide a right for a person with AIDS to remain in the UK exceptionally, when treatment was being carried out at the public expense under the National Health Service. D also lost his case in the Court of Appeal.

198. D’s case reached the European Court of Human Rights where he claimed that his deportation to a place where no adequate facilities necessary to his condition were available would shorten his life and deprive him of his right to life, in violation of various articles of the Convention. Because he had no accommodation, no money and no access to social support, D argued that his death would not only be accelerated but that it would come about in inhuman and degrading conditions.

199. The Court noted that up to that point the guarantees under Art 3 had been applied in contexts where the risk to the individual of ill-treatment emanated from public authorities or from non-State bodies where the authorities there were unable to provide appropriate protection. Given the fundamental importance of Art 3, the Court reserved the prerogative to scrutinise situations where the source of the risk stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country, or which, taken alone, do not in themselves infringe the standards of that Article. The Court stated that to limit the application of Art 3 in this manner would be to undermine the absolute character of its protection.⁶⁰

200. The Court found that the abrupt withdrawal of medical treatment caused by the deportation of D to St Kitts would amount to a violation of Art 3. The Court also made it clear that everyone, irrespective of conduct (eg failed asylum seeker, prisoner) is protected under Art 3 and that States are bound to protect individuals within their jurisdiction from ill-treatment (eg lack of medical facilities) even if that ill-treatment is likely to take place outside the Contracting State; which was the case here as D was dying, there was no medical treatment available and he had no family to support him. Therefore there were exceptional circumstances.

201. The Court subsequently adhered to *D v UK* and relied on key criteria to assess whether there is a “real risk” that the expulsion of a person living with HIV/AIDS would be contrary to Art 3:

- The appellant’s present medical condition: advanced or terminal stage.
- Availability of support in the country of return: family and close relatives.
- Availability of medical care.

202. The Court did stress on several occasions that HIV treatment may be in principle available yet at a considerable cost, but seemed to rely on the existence of family support to assist the appellant in accessing treatment.

203. In *Ndangoya v Sweden*⁶¹ where the appellant was to be returned from Sweden to Tanzania, the Court stated that:

“[a]dequate treatment is available in Tanzania, albeit at a considerable cost . . . the applicant is in principle at liberty to settle at a place where medical treatment is available . . . it is clear that he has many siblings in the country. It therefore appears that the family links have not been completely severed and that, consequently, the applicant would not be unable to seek the support of his relatives upon return to Tanzania.”

204. In *Amegnigan v The Netherlands*⁶² where the applicant where to be returned to Togo, the Court said:

“The Court has found no indication in the applicant’s submissions that he has reached the stage of full-blown AIDS or that he is suffering from any HIV-related illness. Whilst acknowledging the assessment of the applicant’s treating specialist doctor that the applicant’s health condition would relapse if treatment would be discontinued, the Court notes that adequate treatment is in principle available in Togo, albeit at a possibly considerable cost(. . .)[i]t does not appear that the applicant’s illness has attained an advanced or terminal stage, or that he has no prospect of medical care or family support in Togo where his mother and a younger brother are residing.”

205. In *SCC v Sweden*⁶³ where the applicant where to be returned to Zambia, the ECtHR noted:

“The court recalls that the applicant’s present medical status was diagnosed in 1995 and that her anti-HIV treatment has just recently commenced. The court further recalls the conclusion of the Swedish National Board of Health and Welfare that, when assessing the humanitarian aspects of a case like this, an overall evaluation of the HIV infected alien’s state of health should be made rather than letting the HIV diagnosis in itself be decisive. The court finds that the Board’s reasoning is still valid.”

The Court stated that HIV treatment was available, although at considerable cost, but it also mentioned the existence of family support in the country.

UK Policy on the Removal of Failed Asylum Seekers Living with HIV and AIDS

206. The Court’s judgment in D has been used by the Home Office to define its policy on the removal of failed asylum seekers living with HIV. The new Home Office policy was introduced in 2001 following the entry into force of the HRA 1998.

207. The policy states that UK’s obligations under Art 3 are engaged in medical cases where the following requirements are satisfied:

- the UK can be regarded as having assumed responsibility for a person’s care;
- there is credible medical evidence that return, due to a complete absence of medical treatment in the country concerned, would significantly reduce the applicant’s life expectancy; and
- subject them to acute physical and mental suffering.

208. The policy is set out in Chapter 36 of the IND Operation Enforcement Manual dealing with “extenuating circumstances” in relation to deportation orders:

“Cases involving persons with AIDS or who are HIV positive are particularly sensitive. However, the fact a person has AIDS or is HIV positive is not, in itself, a bar to removal. Representations should be dealt with in the same way as for any other medical condition, and enforcement action may be pursued unless medical evidence available is sufficient to satisfy the department that the person is not fit to travel.

If an offender who has AIDS or is HIV positive is detected, ask him to provide a letter from his consultant confirming:

- He has AIDS or is HIV positive.
- His life expectancy.
- The nature and location of the treatment he is receiving.
- His fitness to travel if required to leave the country.

The UK’s obligations under Article 3 of the ECHR will be engaged in all medical cases where the following requirements are satisfied: the UK can be regarded as having assumed responsibility for a person’s care, and there is credible medical evidence that return, due to a complete absence of medical treatment in the country concerned, would significantly reduce the applicant’s life expectancy and subject them to acute physical and mental suffering.

Case law has confirmed that the circumstances in which an individual can resist removal on Article 3 related medical grounds will be exceptional.

A person who is subject to removal cannot in principle claim any entitlement to remain in the UK in order to continue to benefit from medical, social or other forms of assistance provided. Where similar treatment may not be available to a person in their home country because of its cost, this does not amount to a claim of inhuman or degrading treatment. However, to attempt to remove someone to a country where there is a complete absence of treatment, facilities or social support which could result in an imminent and/or lingering death and cause acute physical and mental suffering would be very likely to engage our obligations under Article 3.

Each case is considered on its individual merits. Notices may be served if appropriate but then refer to the relevant casework section. Where a person is obviously very ill, it may not be appropriate to serve notices.”

209. The policy clearly distinguishes between “availability” and “affordability” of treatment. It also does not mention the availability of family support but states that every case should be considered on a case by case basis.

210. Although the Home Office had been sympathetic to Art 3 cases in the past, there has been a significant change in decisions over the past few years which seem to coincide with an increasing harshening of the Government’s policy on failed asylum seekers, including in the context of HIV, and the debate surrounding “imported infections” and the alleged draining of NHS resources by failed asylum seekers and illegal migrants. It is worth recalling that in 2004 the Government considered introducing mandatory HIV tests for immigrants.

211. The Home Office’s decisions in Art 3 claims have been widely criticised in the UK. In particular the case of *N v Secretary of State for the Home Department*⁶⁴ has been seen as appalling evidence of what has become an over-restrictive interpretation of “exceptional circumstances” as first stated by the ECtHR in *D v UK*.

212. “N” (a 24-year-old woman) entered the UK from Uganda. She used a false name and a false passport. She was extremely ill and within a couple of days was admitted to Hospital where she was diagnosed with full-blown AIDS and a cluster of AIDS-related illnesses including Kaposi’s sarcoma. She did not know she had AIDS and did not come in the UK for medical treatment, but as a refugee. She had been kidnapped and held captive by the Lord’s Resistance Army for two years, then by another rebel group, the National Resistance Movement. She had been severely mistreated and repeatedly raped. “N” applied for asylum on two independent grounds: first, under the 1951 Refugee Convention claiming that she would be persecuted by the Ugandan authorities, or at least that they would fail to protect her from the rebels; and, second, arguing that deporting her to Uganda would expose her to breaches of her rights under Art 3 ECHR.

213. In April 2001 the Home Office refused N’s application for asylum. Her appeal under the Refugee Convention was dismissed but her Art 3 claim was upheld both by the Adjudicator and the Immigration Tribunal Appeal (now abolished). N accessed HIV treatment and became well, stable and free from any significant illness. However, her doctors said that she would have a year at most to live if medication were withdrawn, as it would be in Uganda. The Court of Appeal reversed the decision saying that her case stretched Art 3 too far: D was certainly going to die; N might theoretically be able to get treatment, although this was extremely unlikely and, even if she did, it would not prevent her illness from getting worse.

214. The case went to the House of Lords which upheld the Court of Appeal’s decision and ruled that there was no violation of Art 3 by the UK in returning an immigrant suffering from AIDS to her country of origin where she would not be able to obtain the necessary medicines and treatments—that she is currently receiving in the UK—to prolong her life and to maintain her relative good health to prevent her suffering severe pain and anguish; and where she also does not have any family support.

215. Although the Lords referred to Strasbourg jurisprudence, they seem to have disregarded the importance of the availability of family support in the country of return which has been acknowledged by the ECtHR and which it is argued should be taken into consideration in any HIV-related claims under Art 3.

216. The Court distinguished *D v UK* on the grounds that the situation in the receiving state were not as extreme as that faced by a terminally ill patient in that case where there was no prospect of any medical care or family support. The Lords argued that a claim would only succeed where “the applicant’s medical condition has reached such a critical state, that there are compelling humanitarian grounds for not removing him or her to a place which lacks the medical and social services which he or she would need to prevent acute suffering.” Therefore Art 3 did not require contracting states to undertake the obligation of providing aliens with indefinite medical treatment lacking in their home countries, which they said, would open the floodgates to a myriad of claims placing an unreasonable burden on the state. Although they expressed sympathy for N’s plight and reminded the Home Secretary that they could exercise their discretion not to deport her, they concluded that N should not be allowed “to remain in the host state to enjoy decades of healthy life at the expense of [the] state”.

217. As argued by Byrne, if N could not qualify for Art 3 protection then who will in the future?⁶⁵

218. The over-restrictive interpretation of the policy on Art 3 means that failed asylum seekers are being sent back with a death sentence at destination. In their judgment, the Lords seem to generalise the issue as that of provision of medical treatment as opposed to the provision of treatment for a condition like HIV that is incurable, require daily and demanding treatment that needs to be taken at specific times for the rest of a person's life, and which, if stopped even for a short period of time, can lead to the deterioration of a person's condition.

CONCLUSION

219. The UK government seems to have conveniently forgotten about the fundamental obligations that fall on States Parties to human rights treaties.

220. The government's policy on asylum has been repeatedly criticised by the UN and the Council of Europe. An example of the total disregard of the government for its international obligations is the fact that two years after the UN Economic, Social and Cultural Committee emitted concerns about the UK asylum policy, not only had the government not implemented the Committee's recommendations but it had actually introduced discriminatory policy denying marginalised and vulnerable groups the most the most basic and fundamental rights guaranteed by the ICESCR.

221. International human rights and humanitarian law and policy provide a framework for the treatment of HIV-positive asylum seekers which should be used by the government to develop a human rights based response to the issue of HIV in the context of asylum in the UK.

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- ²⁰ <http://www.bailii.org/ew/cases/EWCA/Civ/2006/655.html>
- ²¹ *Supra*, at 19.
- ²² See for example, Inter-Agency Partnership, *The impact of section 55 on the Inter-Agency Partnership and the asylum seekers it supports* (2004); Refugee Council, *Hungry and homeless: the impact of the withdrawal of state support on asylum seekers, refugee communities and the voluntary sector* (2004).
- ²³ This was highlighted in the Health Select Committee's Third Report on *New Developments in Sexual Health and HIV/AIDS Policy* (2005).
- ²⁴ This was illustrated in various NGO submissions to the Health Select Committee inquiry into new developments in sexual health and HIV.
- ²⁵ *D v UK* (1997) 24 EHRR 423.
- ²⁶ [2002] 35 EHRR 1.
- ²⁷ See for example, *A v United Kingdom* (1998) 27 EHRR 611; *Z v United Kingdom* [2001] 2 FLR 612 at 631, para 73.
- ²⁸ *Supra*, at 25.
- ²⁹ (5207/71)CD 39, 99.
- ³⁰ [1998] ECHR 101.

- ³¹ Health and Freedom from Discrimination, Health & Human Rights Publications Series, No 2, 2001.
- ³² See *Rasmussen v Denmark* (1984) 7 EHRR 371.
- ³³ See *Belgian Linguistic Case (No 2)* (1979–80) 1 EHRR 252, para. 9. This principle was applied in *Abdulaziz, Cabales and Balkandali v UK* (1985) 7 EHRR 471, where the applicants, who were lawfully and permanently resident in the UK, complained that their husbands were refused permission to join them. The ECtHR found no breach of Art 8 taken alone, but ruled a violation of Art 14 in conjunction with Art 8. The Court held that although it was legitimate to restrict the admission of non-national spouses to the UK, it was discriminatory to distinguish between non-nationals’ wives (permitted entry) and non-nationals’ husbands (entry refused).
- ³⁴ See *X v Germany* (1976) 19 YB 276, p 286.
- ³⁵ See *Schmidt and Dahlström v Sweden* (1979–80) 1 EHRR 632.
- ³⁶ See for example, *Smith and Grady v UK* [1999] IRLR 734.
- ³⁷ *Ibid.*
- ³⁸ Note that if one looks at the categories of “visitors” who have to pay for HIV treatment (ie illegal immigrants, visa overstayers, failed asylum seekers and others living in the UK “without proper authority”), the issue of discrimination is still raised arguably on the grounds of national origin and other status.
- ³⁹ *Supra*, at 23.
- ⁴⁰ Source: <http://www.homeoffice.gov.uk/rds/pdfs06/asylumq206.pdf>
- ⁴¹ *Ibid.*
- ⁴² *Ibid.*
- ⁴³ Amnesty International, *Seeking Asylum is not a Crime: Detention of people who have sought asylum*, 2005.
- ⁴⁴ Source: No Place for a Child Coalition.
- ⁴⁵ Source: Save the Children, *No place for a child*, 2005.
- ⁴⁶ Principles of Medical Ethics relevant to the Role of Health Personnel particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Adopted as UN General Assembly Resolution 37/194, 18 December 1982), Principle 1.
- ⁴⁷ UNHCR Comments on the 2005 Immigration and Nationality Bill.
- ⁴⁸ UNHCR London 2005.
- ⁴⁹ BID Report, pp 13–14.
- ⁵⁰ [2003] 37 EHRR 41.
- ⁵¹ 22 October 2002.
- ⁵² (Communication No. 704/1996).
- ⁵³ (Communication No. 705/1996).
- ⁵⁴ <http://bmj.bmjournals.com/cgi/content/full/329/7461/322>
- ⁵⁵ Immigration Rule 395(B).
- ⁵⁶ Statement of Changes in Immigration Rules HC 1337—July 2006.
- ⁵⁷ International Commission of Jurists, *Terrorism and Human Rights*, p 246.
- ⁵⁸ [1989] ECHR 14.
- ⁵⁹ *Supra*, at 25.
- ⁶⁰ *Ibid.*, at para 49.
- ⁶¹ App No 17868/03, 22 June 2004 (inadmissible).
- ⁶² App No 25629/04, 25 November 2004 (inadmissible).
- ⁶³ Application No 46553/99, 15 February 2000.
- ⁶⁴ (2003) EWCA Civ 1369, [2005] UKHL 31.
- ⁶⁵ I Byrne, “Make the right to health a reality: legal strategies for effective implementation”, Commonwealth Law Conference, September 2005.

56. Memorandum from the Children's Commissioner for England on behalf of the Children's Commissioners for England, Scotland, Wales and Northern Ireland

EXECUTIVE SUMMARY

UK's reservation to the UN CRC

It is the view of the Children's Commissioners that the UK Government should withdraw its reservation to the UN Convention on the Rights of the Child.

All the UK Children's Commissioners have regard to the United Nations Convention on the Rights of the Child (UN CRC) in the discharge of their functions. The UK's reservation to UN CRC is at the heart of the failure to secure the rights of refugee and asylum seeking children across the United Kingdom.

UNACCOMPANIED MINORS

Determination of age

It is the view of the Children's Commissioners that the processing of an asylum claim should be delayed until any age dispute is resolved and that there is an urgent need to review current arrangements for determining age.

Many unaccompanied young asylum seekers arrive without documentary evidence of their age. The asylum system and the care regime they are subject to will depend on whether or not they are found to be minors. Evidence suggests many children are wrongly classed as adults. Being subject to adult asylum and accommodation arrangements, they miss out on the protection available to unaccompanied children.

Definition of unaccompanied status

It is the view of the Children's Commissioners that there should be a consistent definition of unaccompanied minors across the Home Office estate that fully reflects the EU Qualification Directive.

Definitions of "accompanied" and "unaccompanied" are inconsistent within different parts of the Home Office estate. Some do not accord with the definition in the EU Qualification Directive. The definitions result in some children being exposed to trafficking and leave others in inappropriate care arrangements and unable to access social services.

Appointment of legal guardians

It is the view of the Children's Commissioners that a guardian or advisor should be appointed as soon an unaccompanied or separated child is identified and the arrangement maintained until the child has reached the age of majority or has permanently left the UK.

Social services departments do not always provide appropriate care to unaccompanied minors. Decisions on the care package are sometimes based on age rather than assessed need. Some large "gateway" authorities are routinely "de-accommodating" children in order to avoid incurring "leaving care" costs. The grant arrangements whereby local authorities are reimbursed by NASS appear to influence the levels and types of care, particularly in decisions about fostering. Department of Health guidance on appropriate care for unaccompanied minors is sometimes ignored.

Education and training opportunities

It is the view of the Children's Commissioners that a more flexible approach to allowing unaccompanied young people to complete education and training courses is needed to avoid discriminatory treatment and to allow them to fulfil their potential.

The majority of unaccompanied minors fail to gain asylum, but are granted temporary protection until they reach the age of 18. Entitlements to access employment, social and housing benefits and a "leaving care" service beyond the age of 18 are tied to the young person's immigration status at this time. Current Government thinking appears to suggest that unaccompanied children should not be encouraged to take courses leading to further or higher education or training which may take them beyond their 18th birthday as they are unlikely to obtain permission to remain. This is therefore discriminatory treatment as compared to citizen children in the care system.

Explaining rights

It is the view of the Children's Commissioners that local authorities should have a duty to ensure that comprehensive assistance is given to a young person who wishes to make an application to extend their leave.

Not all unaccompanied minors are aware of their right to apply to extend their stay; failure to do so means that they are classified as "overstayers" with no further entitlements. Emerging from the direct care of social services and into mainstream benefits is made difficult by restrictive rules and Home Office inefficiency. There is confusion over who is responsible for the care of young people who have no further right to remain. "Section 4" support, available to many failed adult asylum seekers, is not generally available to those who have previously had temporary protection as children. There is no official guidance to local authorities on how or if these young people should be supported. Many former unaccompanied minors "disappear" at this stage and may be vulnerable to exploitation and trafficking or are left unable to access benefits and housing.

CHILDREN IN FAMILIES

Failed asylum and immigration

It is the view of the Children's Commissioners that Section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act should be withdrawn from statute and the Government should consider alternative ways of dealing with failed asylum claimants to avoid breaching children's rights.

Section 9 of the *Asylum and Immigration (Treatment of Claimants etc) Act* has been piloted in some areas but not yet "rolled-out" nationally. The policy, if implemented, may result in children being removed from their parents and placed in care. This conflicts with the best interests principles that are enshrined in children's legislation and the Convention on the Rights of the Child.

Safeguarding and promoting the welfare of children

It is the view of the Children's Commissioners that Section 11 of the Children Act 2004 should be extended to include the Immigration Service, NASS and Immigration Removal Centres.

Section 11 of the *Children Act 2004* imposes a duty on an extensive range of authorities who deal with children to have regard to the need to safeguard and promote the welfare of children in the exercise of their normal functions. Excluded from the list of authorities to whom the duty applies are the Immigration Service, NASS and Immigration Removal Centres. This undermines the intention of the statute to provide a comprehensive safeguarding framework.

Children in detention centres

It is the view of the Children's Commissioners that families with children should not have their asylum claims processed in the Detained Fast Track.

The current practice of detaining children in Immigration Removal Centres is not compatible with various human rights instruments including the Convention on the Rights of the Child, the UN Minimum Standards and Norms for Juvenile Justice. Children in families are most often detained at the end of the asylum process, but are also detained pending examination of an asylum claim. Detention of children for such administrative convenience cannot be regarded as being a "measure of last resort".

Family removal policy

It is the view of the Children's Commissioners a wholesale review of the current policy of detaining families at the end of the process that considers the alternatives to detention that have proved successful in other jurisdictions should be undertaken.

The current practices of removal to detention without prior warning are severely damaging to children's wellbeing. Finding a solution that recognises the needs of children will mean a wholesale reappraisal of how failed asylum seeking families are dealt with. The Government must now look seriously at alternatives to detention including other forms of supervision and any future policy should be designed with the UN CRC and the UN rules on Juveniles Deprived of their Liberty (UN JDL) firmly in mind. Research evidence on alternatives to detention is available from other jurisdictions and show a way forward based on close contact and welfare principles.

International standards and judicial oversight

It is the view of the Children's Commissioners that any decision to detain a child should be compliant with international standards and subject to judicial oversight.

Detaining children is an extremely serious step as there is evidence that it affects them adversely. Any such decision must be fully compliant with international norms and standards and should be subject to judicial oversight.

1. INTRODUCTION

The Office of the Children's Commissioner and the Commissioners for Scotland, Wales and Northern Ireland welcome the inquiry by the Joint Committee on Human Rights into the human rights issues raised by the treatment of asylum seekers in the UK.

Although our four offices have differing remits under separate legislation we all are bound to have regard to the UN Convention on the Rights of the Child ("the CRC"). In the case of the Office of the Children's Commissioner, the general function described above is set out in Section 2 of the Children Act 2004.²⁹¹

Our focus in submitting evidence to the inquiry is on human rights concerns raised by the conditions encountered by children seeking asylum in the United Kingdom and, in particular, where these conditions appear to us to conflict with the obligations imposed by the UK's ratification of the CRC.

We are well aware that in ratifying to the CRC the UK Government entered the following reservation:

"The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time."

The Government has argued that the reservation does not inhibit the discharge of its obligations under Article 22 of CRC²⁹² which relates specifically to the protection and assistance in the enjoyment of rights under the CRC (and in other human rights instruments) by a child who is seeking refugee status. Our offices have a deep concern that the maintenance of the reservation has serious and practical effects relating to the enjoyment of Convention rights by asylum seeking children and other children subject to immigration control²⁹³ and should be removed. Our submissions to this inquiry focus on these concerns.

1.1 *Children seeking asylum in the UK*

Children seeking asylum in the UK fall into two groups. Some children are here with their parents, legal guardian or other primary carer. These children are often referred to as "accompanied" children. These children share the fate of their parents in respect of accommodation, welfare support and the provision of health services. They are also subject to the same removal regime where the asylum claim is unsuccessful including detention prior to removal. The legislative regime which determines the conditions of stay for asylum seeking families and failed asylum seekers is the *Immigration and Asylum Act 1999* ("the 1999 Act"). The 1999 Act draws a distinction between children whose parents are seeking asylum and other children. The assistance to children generally contemplated by social welfare legislation is largely ousted by the 1999 Act.²⁹⁴ In addition, the *Asylum and Immigration (Treatment of Claimants etc) Act 2004* ("The 2004 Act") provides for the withdrawal of all benefits from failed asylum seekers with families following a process of certification by the Secretary of State.

The other group of children are unaccompanied or separated children. In England and Wales they fall within the scope of the *Children Act 1989*²⁹⁵ ("The 1989 Act") and are subject to a different care regime and a different asylum determination process to their accompanied peers. So far as their support is concerned, the legislative framework does not distinguish between them and children who are not subject to

²⁹¹ The duty to have regard to the UNCRC is qualified by section 2 (12) of the 2004 Act. Reference to the UNCRC is . . . "subject to any reservations . . . for the time being in force".

²⁹² See the UK Governments first report to the Committee on the Rights of the Child.

²⁹³ Some commentators, including the Committee on the Rights of the Child, have argued that the UK's reservation is incompatible with the objects and purpose of the CRC. We note that the UK is the only country of the 192 signatories to the Convention to have entered a reservation. We are convinced of the argument that the reservation is not necessary in order for the government to address its concerns regarding the maintenance of the UK's borders. This argument has been forcefully put in the legal opinion prepared for Save the Children (UK) by Blake and Drew, 30.11.01.

²⁹⁴ Section 122 prohibits local authorities from providing such assistance where such assistance is being provided by the National Asylum Support Service under section 95 of the 1999 Act. There is an exception for children who are disabled whose needs go beyond the "essential living needs" to be provided by NASS. They are able to receive assistance from the local authority for additional needs arising from their disability.

²⁹⁵ Most of the relevant matters dealt with under the Children Act 1989 for England and Wales are dealt with in Scotland by Children (Scotland) Act 1995. Unless specifically stated, references to the Children Act 1989 include their legislative counterparts in the relevant Scottish and Northern Irish legislation.

immigration control with the very important exception of the “leaving care” provisions of the Act which are ousted by the provisions of Section 54 and Schedule 3 of the *Nationality, Immigration and Asylum Act 2002* (“The 2002 Act”).²⁹⁶

The different legislative regimes applying to children in families and unaccompanied children raise different issues in relation to the enjoyment of CRC rights and we consider their position separately in these submissions.

2. UNACCOMPANIED ASYLUM SEEKING CHILDREN

2.1 Age disputes

“The things I would change about the immigration system if I could would be to change age disputes. When I came into the country the immigration officer agreed that I was the age I said but when I went to social services they said I wasn’t 16. So I had to go to a doctor and my result came positive—he said I was 16.”²⁹⁷—Ahmed, 16

The quotation from Ahmed, aged 16, illustrates the sense of “being wronged”—a feeling experienced by many young asylum seekers whose age is disputed either by social services staff or by immigration officers. Age is an important part of a human being’s identity. To deny part of a child’s identity simply because they “appear” to be older than they say may not be consistent with the State’s undertaking under Article 8 of CRC to respect the right of the child to preserve his or her identity. Of course, this is not to deny the right of the State to enquire into the age of an undocumented asylum applicant but as Children’s Commissioners, we are very concerned that the current arrangements for determining age are leaving many hundreds, and possibly thousands, of children unprotected.

The age that an unaccompanied asylum seeker claiming to be a minor is thought or determined to be by the principle agencies he or she encounters will have immediate and practical consequences for his or her treatment whilst in the UK.

2.1.1 Determination of age by the Immigration Service

Paragraph 349 of the Immigration Rules defines a child thus:

“In this paragraph and paragraphs 350–352 a child means a person who is under 18 years of age or who, in the absence of documentary evidence establishing age, appears to be under that age.” (emphasis added).

In line with the Immigration Rules, immigration officers will make a decision as to the age of a person claiming to be a minor solely on the basis of his or her appearance. In our view, this is at the root of the problem that inevitably leads to many children’s fundamental right to be treated as a child being violated.

As noted by the Royal College of Paediatrics and Child Health:

“The determination of age is a complex and often inexact set of skills, where various types of physical, social and cultural factors all play a part, although none provide a wholly exact or reliable indication of age, especially for older children.”²⁹⁸

The decision by an immigration officer at the screening interview²⁹⁹ to dispute an applicant’s age has the consequence that he or she will enter an asylum determination system designed for adults. This means the young person will have a more limited time for returning details of the asylum claim, will be called for interview at which there will be no public funding available to have a lawyer present, will not benefit from the presence of a responsible adult at the asylum interview and may be detained pending the asylum decision. On the other hand, an applicant accepted as an unaccompanied minor is subject to a more age-appropriate asylum determination procedure, has a right to be accompanied to interviews and will have his or her claim assessed by a specialist children’s unit. In addition, a young person in this position may not be detained.

The immigration officer’s decision can also determine the care regime the applicant is immediately subject to. Where treated as an adult, the applicant, will be directed to the National Asylum Support Service (NASS)³⁰⁰ for accommodation and support or detained. Where the decision is to accept the applicant as an unaccompanied child, he or she will be referred for accommodation and support under the *Children Act 1989* to a local authority.

²⁹⁶ Schedule 3, paragraph 1 precludes eligibility for support or assistance under section 17, 23C, 24A or 24B of the *Children Act 1989*, Article 18, 35 or 36 of the *Children (Northern Ireland) Order 1995* or sections 22, 29 and 30 of the *Children (Scotland) Act 1995*. All these powers and duties relate to welfare and other powers that can be exercised in relation to adults.

²⁹⁷ Quote taken from “River of Life—our journey through the asylum system”—Brighter Futures Project (a *Save the Children* self-advocacy project for young asylum seekers and refugees).

²⁹⁸ Royal College of Paediatrics and Child Health: *The Health of Refugee Children—Guidelines for Pediatricians* (November 1999).

²⁹⁹ “Screening interviews” are conducted at ports of entry or, where the applicant applies “in country” at an Asylum Screening Unit (ASU).

³⁰⁰ Under powers contained in the Immigration and Asylum Act 1999.

Although Home Office policy is for the immigration officer to apply the “benefit of the doubt” in favour of the applicant in “borderline” cases, the evidence suggests that in practice this is frequently not adhered to. The result is that a substantial number of asylum seekers who are in fact unaccompanied children are excluded from the protection of the domestic care regime which incorporates the “best interests” principle guaranteed by the CRC. The evidence for this lies in the annual asylum statistics which have included information on age-disputed cases. Additionally, data collected at the Oakington Immigration Reception Centre³⁰¹ provides information on the numbers of cases detained at the centre on the authority of an immigration officer but subsequently found to be minors following a social services assessment.

2.1.2 Detention of unaccompanied asylum seeking children

Home Office policy is not to detain unaccompanied children. This policy was not applied to age disputed cases until a policy change, effective from February 2006,³⁰² reduced the discretion of immigration officers to authorise detention in the “fast track” asylum processing regimes operating at Oakington, Harmondsworth and Yarl’s Wood removal centres.

Where unaccompanied minors are detained because their age is disputed, there will be breaches of Article 37 of the CRC. In particular, age disputed minors continue to be detained alongside adults contrary to Article 37(c) of the Convention. The method of selection for suitability for detention, relying as it does on the discretion of an immigration officer (and not subject to judicial oversight), may be considered “arbitrary” contrary to Article 37(b).

In 2005, prior to the policy change, over 60% of age-disputed minors detained in the “fast track” at Oakington were found to be minors following an assessment by Cambridge Social Services. This amounted to over 100 children over one year at this centre alone.³⁰³ Despite the welcome change in policy, the Children’s Commissioners have seen evidence that some children are still being processed in the detained fast track.³⁰⁴

Unlike at Oakington, the referral of age-disputed cases from Harmondsworth and Yarl’s Wood IRC’s to their respective Local Authorities has not been documented. At these two centres, legal representation is provided through a duty solicitor scheme rather than by on-site legal representatives. Unlike at Oakington, there are no regulated procedures in place for referrals to the local authority and no statistics collected on how often this occurs or on how long children remain in detention prior to assessment.

The detention of children in the “super fast track” at Harmondsworth and Yarl’s Wood is of particular concern as there is a real possibility that children could be returned to their country of origin without ever having had an assessment to determine whether they are children. This is in clear breach of Article 22 of the CRC.

2.1.3 The Annual Statistics

The Commissioners welcome the inclusion of data on age disputed unaccompanied asylum applicants in the 2004 and 2005 annual asylum statistics though the figures give cause for some concern.

In 2004, there were 2,990 asylum applications from unaccompanied children accepted as such at the point of application.³⁰⁵ In addition, there were 2,345 applications from applicants claiming to be minors whose age the Home Office disputed. 1,850 of these cases were still recorded as “unresolved” on 10th June 2005. Age disputes may be “resolved” by either the applicant withdrawing the claim to be a minor³⁰⁶ or the Home Office receiving “credible evidence of age”.³⁰⁷ Unfortunately, the data does not tell us how many of the 495 “resolved” cases were due to the Home Office accepting “credible evidence”³⁰⁸ that the applicant was a minor as originally claimed.

³⁰¹ The information is collected by the Refugee Council at Oakington and by Cambridge Social Services Department. It is presented to a quarterly inter-agency meeting held at the centre.

³⁰² Published by the Home Office as the *Detained Fast Track Asylum Processes Suitability List*. February 2006.

³⁰³ See appendix 1 this reproduces the 2005 statistics collected at Oakington.

³⁰⁴ This might occur for example where a passport issued to an adult is used by a child to enter the UK. This occurred in the case of a girl assessed as 14 by Bedford Social Services who was detained in the super fast track at Yarl’s Wood after the change in policy.

³⁰⁵ *Asylum Statistics United Kingdom 2005*, Home Office Statistical Bulletin, Heath, Jeffries and Pearce 22.08.06. Table 2.3 indicates that an unaccompanied asylum seeking child is defined as a person aged 17 or under, applying for asylum in the UK, who at the time of application is, or (if there is no proof) is determined to be under 18 and is applying for asylum in their own right and has no relative or guardian in the UK (footnote 2). The figures exclude age disputed cases (footnote 3).

³⁰⁶ *Ibid*, page 11, paragraph 17. Note that withdrawing the age claim does not necessarily mean that the applicant lied about his or her age in the first place. The Commissioners have been informed of cases where children have “given up” on their age claim because they have been advised to do so in order to access NASS support.

³⁰⁷ *Ibid*, page 11, paragraph 17. Operational Guidance to IND staff on what can be regarded as “credible evidence of age” is found in *Disputed Age Cases* (2nd edition, January 2005).

³⁰⁸ *Disputed Age Cases* (2nd edition, January 2005), section 3 sets out what the Home Office will accept as “credible evidence”. In the vast majority of cases it is the evidence of a social work assessment that is accepted.

In 2005³⁰⁹, 2,965 applications were received from unaccompanied minors accepted as such at the point of applying. In addition, there were 2,425 age-disputed applications.³¹⁰ Of these cases, 1,775 cases were still recorded as unresolved as at 12 June 2006. There is no available data on the outcome of the 650 “resolved” cases.

A significant gap in the information is what happens to the “unresolved” cases identified in the annual statistics. There is no duty on immigration officers to refer age disputed cases to a local authority for an assessment (although policy requires them to refer such cases to the Children’s Panel of the Refugee Council). Some will have approached a local authority and been assessed as an adult. They may have been informed that they have a right to approach a local authority by the Children’s Panel or by their immigration lawyer if they have one. Written information on the right to approach a social services department for an assessment was taken out of the letter issued to age disputed applicants in February 2006.³¹¹ Where a social services assessment concludes that the applicant is an adult, they will have to be directed towards NASS for assistance.

The Commissioners are concerned that there are significant numbers of age disputed cases in the “unresolved” category which are simply being treated as adult cases and the affected individuals are unaware of their entitlement to be considered and treated as children. We provide some case studies illustrating this at Annex 2.

2.1.4 Arrangements for establishing the age of a disputed applicant

The burden of proving minority lies with the applicant. Arrangements for ensuring that an age disputed applicant is able to present “credible evidence” in support of his or her claim as a minor are inadequate. For example, paediatricians reports³¹² are treated with scepticism by Home Office decision makers because of the potential margin of error and are often rejected.³¹³ Documentary evidence such as birth certificates, sometimes obtained from the home country at great risk, are regarded as unreliable and potentially fraudulent.

The evidence most readily accepted as a matter of policy is a full assessment by a local authority social services department³¹⁴. Despite this, the Home Office will sometimes dispute even this evidence. The English Commissioner was made aware of the case of a girl detained at Yarl’s Wood and assessed twice by Bedford Social Services as being 14 years old. Although released into foster care, the Home Office continue to maintain that she is an adult and is treating her as such for the purpose of her asylum claim. We also know from local authority staff when they accompany “in-country” applicants whom they have accepted as a minor to a screening unit, the immigration officer will sometimes refuse to accept their assessment.

2.1.5 Determination of age by a social services department

A local authority must conduct an assessment on a person who approaches them or is referred to them as a “child in need”. The requirement to assess age where this is in doubt arises from the need to establish whether their duties of the local authority under Part 3 of the *Children Act* are engaged.

There is no statutory guidance available to social services departments to assist them to determine the age of a person presenting to them as an unaccompanied minor. Anecdotal evidence suggests there is considerable variation in practice and the resources available for conducting such assessments between different authorities. Similar anecdotal evidence from bodies such as the Children’s Panel suggests very different outcomes to assessment interviews depending on which authority is approached.

The Children’s Commissioners are concerned at the potential conflict of interest inherent in the situation where the body that is conducting the assessment will also generally be the body that is responsible for meeting the needs of that individual if found to be a child in need. Where resources are stretched and budgets need to be balanced, these factors may influence the decision making process. In addition, the lack of training available to social workers in conducting these assessments can mean that all sorts of cultural assumptions may be made in respect of appearance and demeanour. Credibility may often be an issue in these interviews even where the assessor’s disbelief does not relate to any fact pertinent to determining age. Despite the fact that there is guidance from the High Court on the lawful conduct of an age assessment by a local authority³¹⁵, it appears that in many cases this guidance is ignored resulting in high levels of judicial review applications to the courts.

³⁰⁹ Heath, Jeffries and Pearce, (op. cit.) Table 2.4.

³¹⁰ Heath, Jeffries and Pearce (op cit), page 11, paragraph 15. A 4% rise on the number of age disputed applications from 2004 despite a small drop in the number of applicants accepted as unaccompanied minors.

³¹¹ The IS97 (M)—the letter issued to all age-disputed applicants by the immigration service, was changed when the detained fast track suitability processes were revised in late 2005.

³¹² The Legal Services Commission will pay for a medical report for an age disputed asylum applicant.

³¹³ This came to light particularly at the Oakington Reception Centre where on-site lawyers routinely request such reports which the immigration service routinely rejects. The same child is often released following the production of a social services report.

³¹⁴ *Disputed Age Cases* (2nd edition, January 2005).

³¹⁵ *R (on the application of B) v Merton London Borough Council* [2003] EWHC 1689 (Admin) [2003] All ER 280; *R (on the application of T) v London Borough of Enfield* [2004] EWHC 2297 (Admin).

The Children’s Commissioners would like to see a thorough review of the current arrangements for determining age with a view to ensuring that unaccompanied children seeking asylum are treated as such and afforded their rights as children.

2.2 *Inconsistent definitions of “accompanied” and “unaccompanied” children which leave some children at risk*

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” (CRC, Article 3(1))

“State parties shall take appropriate measures to ensure that a child who is seeking refugee status . . . receives appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention . . .”(CRC, Article 22 (1)—extract)

2.2.1 The definitions in use

The EU Qualification Directive³¹⁶ provides a comprehensive and widely accepted definition of an unaccompanied minor.

“unaccompanied minors” means third country nationals or stateless persons below the age of 18, who arrive on the territory of the member states unaccompanied by an adult responsible for them whether by law or custom, and *for as long as they are not effectively taken into care of such a person; it includes minors who are left unaccompanied after they have entered the territory of member states.* (emphasis added)

The Asylum Policy Instruction (API), to which Home Office decision makers have regard, gives the following definitions and guidance on the difference between “accompanied” and “unaccompanied”³¹⁷ children.

“An accompanied child is: applying for asylum in his/her own right and travelling with family or joining family in the UK. Although the child may not be with parents we would consider him/her to be accompanied if they are being cared for by an adult who is responsible for them. This may be a private fostering arrangement. If the child is being cared for by an adult for a period of 28 days or more then the local authority should be informed in order for them to assess the appropriateness of the placement.”

“An unaccompanied child is: applying for asylum in his/her own right and is separated from both parents and not being cared for by an adult who by law or custom has responsibility to do so. This definition is set out in the Immigration Rules (paragraph 349-352 of HC 395 as amended)”³¹⁸

Although the “formal” definition of “unaccompanied” in the Qualification Directive and the API are similar, the fact that the Home Office consider children to be accompanied if they are being cared for by “an adult who is responsible for them” as opposed to an adult who is responsible for them “by law or custom” has significant implications.

2.2.2 Consequences of the current definitions

Under the current arrangements, immigration officers are only required to decide if a child has “an adult responsible for them” when deciding on whether the child meets the definition of an unaccompanied minor. They do not have to have regard to whether that adult is responsible for them “by law or custom”. This facilitates easy processing but puts children at risk in a number of ways.

The adult with them may be an older sibling who is ill-equipped to be “responsible” for them and may not have been prior to arrival. Furthermore, the older sibling may be an “age-disputed” minor him/her self. There are no arrangements to identify such cases and no duty on immigration officers to refer to a local authority for an assessment.

The adult with them may be a trafficker. It is unclear how the immigration officer might in practice establish whether the child “is being cared for by an adult for a period of 28 days or more” and yet it is only on that basis that the duty to refer to a local authority is triggered. Were immigration officers subject to the Section 11 duty³¹⁹, the Commissioners believe that their vital role as gatekeepers in the fight against child trafficking would be strengthened.

³¹⁶ The UK government must implement the Qualification Directive into national legislation by 10 October 2006.

³¹⁷ Asylum Policy Instruction—“Children”, Home Office.

³¹⁸ In fact the Immigration Rules do *not* define either an “unaccompanied minor” or an “unaccompanied child”. Rule 349 defines a “child” as a “*a person who is under 18 years of age or who, in the absence of documentary evidence establishing age, appears to be under that age*”, but does not give a definition of “unaccompanied”.

³¹⁹ Section 11 of the Children Act 2004.

While the Qualification Directive recognises that a child may become unaccompanied after arrival, the grant instructions to local authorities from NASS³²⁰ note the following exclusion from the definition of an “unaccompanied minor”:

“Children who arrived in the UK in the care of a parent or other adult or who arrived in the UK alone but were subsequently placed in the care of a relative or family friend, even in the event of a subsequent breakdown of this situation.”

The Children’s Commissioners are concerned that some children who should properly be identified as unaccompanied asylum seeking children in line with the Qualification Directive will not be treated as such for the purposes of their care in the UK because of the grant instructions. Local authorities may decline to assume care for such children or create obstacles in doing so because they are not currently reimbursed by NASS for doing so. Evidence for this happening is attached in a case study at Annex 3.

2.3 *The care of unaccompanied minors*

2.3.1 Responsibility for care; current and planned arrangements

The vast majority of unaccompanied asylum seeking children are refused asylum but are granted a period of “Discretionary Leave”.³²¹ For most children this is given until the age of 18 under the part of the Discretionary Leave policy relating to unaccompanied children.³²²

During this time, the responsibility for caring for them lies with a local authority social services department. The current arrangements are that the particular local authority responsible for their care is the one where the child first presents as “in need”. A pilot scheme, whereby children arriving in Kent are transferred to Manchester for their care, has recently been evaluated³²³ and is likely to act as a model for future care arrangements under the “UASC reform programme”.³²⁴

Part of the rationale for the planned transfer arrangements is the burden that is placed on the resources of particular “gateway” authorities where the majority of unaccompanied asylum seeking children arrive. The arguments for new arrangements are very similar to those used when the National Asylum Support Service was introduced for adults. Here, “dispersal” was introduced to alleviate pressure on local authorities in the South East of England where housing stock was also more expensive.

2.3.2 Care routes

Under the *Children Act 1989*, a social services authority has a duty to provide services, including, in some circumstances, accommodation for “children in need”. Accommodation without any attendant care package may be provided to a child under section 17 of the *Children Act*. A “looked after” service under section 20 is almost always going to be the most appropriate care route for an unaccompanied child. This was confirmed by guidance issued to local authorities in 2003³²⁵. Where a child has been “looked after” for a period of time, they are entitled to a “leaving care” service. There is no entitlement to a leaving care service for those “assisted” with accommodation under section 17 of the Act.³²⁶

The Commissioners are concerned that many local authorities continue to provide accommodation to unaccompanied minors under s 17.³²⁷ It is doubtful whether these decisions are based on the young person’s assessed needs but rather on the desire to avoid incurring “leaving care” duties.

Some local authorities appear to be making decisions on the care route based on age rather than an assessment of need. Section 20 is provided to the under 16s and section 17 to the over 16s. This may also impact on the local authority “age assessment”. Children presenting as under 16 may be assessed as “under 18 but over 16”. The practice of using age rather than assessed need to decide which section of the Children Act to offer assistance to children under 18 is unlawful.

The English Commissioner has recently been made aware of a practice designed to avoid incurring “leaving care” costs which appears to be operating in some local authorities with the largest numbers of unaccompanied minors. The practice consists of providing section 20 *Children Act* support initially, but ceasing this before the child has been “looked after” for 13 weeks, thus avoiding the duty to provide a leaving care service.³²⁸ It is hard to resist the conclusion that these decisions are financially driven.

³²⁰ Grant Instructions to Local Authorities, Financial Year 2005–06 NASS, paragraph 13.3.

³²¹ Heath, Jeffries and Pearce (op cit) page 10, paragraph 12: 2,560 initial decisions made on applications from unaccompanied asylum seeking children. Of these, 140 (5%) were granted asylum, 20 (1%) were granted Humanitarian Protection and 1,960 (69%) were granted Discretionary Leave. 440 (15%) were refused outright with no grant of leave.

³²² Asylum Policy Instruction; *Discretionary Leave*, section 2.4.

³²³ Available from the *Association of Directors of Social Services*.

³²⁴ The “UASC reform programme” was launched in 2005 by NASS. A consultation has been promised and is still awaited.

³²⁵ Local Authority Circular (2003) 13, Department of Health, 2 June 2003.

³²⁶ Children Act 1989, section 22(1)(b).

³²⁷ See for example “*Ringling the Changes*”, Refugee Council, 2005.

³²⁸ The required period under the *Children Act* after which the child is entitled to a leaving care service.

Similar consideration applies to foster placements. Certainly for younger children and in many cases for older children, the provision of a stable foster placement is the most effective way of adjusting to the loss of, or separation from, their birth family or customary carer. The lower level of grant provided to the over 16s³²⁹ means that local authorities are typically seeking to remove a children from foster care and place them in less expensive accommodation when they reach 16 irrespective of the child's wishes, needs or best interests. Placing children into "semi-supported"³³⁰ and usually shared accommodation leaves many children vulnerable and open to exploitation by criminal gangs or traffickers.

The Children's Commissioners are concerned that the arrangements for the care of unaccompanied asylum seeking children are not always guided by "best interests" considerations and that the requirement³³¹ that best interests are a primary consideration are sometimes compromised by less compelling considerations.

2.3.3 The case for "guardianship"

The requirement in the CRC for the State to provide "special protection and assistance" to a child temporarily or permanently deprived of their family environment,³³² along with the requirement to render "appropriate assistance to parents or legal guardians in the performance of their child-rearing responsibilities"³³³ requires states to create the underlying legal framework to secure proper representation of an unaccompanied child's best interests. We concur with the view expressed by the UN Committee on the Rights of the Child that:

"States should appoint a guardian or advisor as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has reached the age of majority or has permanently left the territory and/or jurisdiction of the State . . . The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision making processes including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution."³³⁴

The UK Government has resisted the argument that UASC should be appointed a guardian on the ground that the CRC requirements are adequately met through the arrangements for care made under the *Children Act 1989* which incorporates the "best interests" principle. Along with this, the Government points to the fact that all unaccompanied children are referred to the Refugee Council's Children's Panel of Advisors who are able to intercede on a child's behalf if necessary.

Whilst we have great respect for the work of the Children's Panel, we would point out that this is under-resourced and unable to allocate a named advisor for the majority of those referred.³³⁵ Furthermore, the Panel is not established on a statutory basis and does not have the powers of a legal guardian even where it is necessary to intervene to assist a child.

The Commissioners believe that the lack of guardianship arrangements means that unaccompanied children are inadequately represented in various situations. As noted above, decisions about how a UASC should be "assisted" or "accommodated" under the *Children Act 1989* will have wide-ranging implications for the level of care received. Typically, the decision on the "care route" would take place at the stage of the initial assessment of the child. Without guardianship representation at such meetings, there is no realistic check on whether the best interests of the child are guiding the decision making.

2.3.4 Leaving Care arrangements

"I have discretionary leave to remain. I've applied for an extension. Not knowing what the decision will be makes me worry. I want to apply for my next course so I can continue my studies, but the college wants to know what my status is. You want to plan your life—not knowing what the decision will be is a barrier."— Maria, 18³³⁶

An application to the Home Office to extend the Discretionary Leave made before the original period of leave expires, automatically extends that leave until a further decision on the application is made.³³⁷ Where the decision is to refuse to grant further leave, a right of appeal is triggered.³³⁸ Once the appeal has been finally determined or the time for appealing expires, the young person becomes "appeal rights exhausted" and reaches "the end of the line".

³²⁹ NASS provides £650 per week for the care of under 16's and £350 a week for the care of over 16's.

³³⁰ Support is often provided through the "agency" providing accommodation rather than directly through a social worker. Contact with a social worker in such arrangements appears to be very variable.

³³¹ Convention on the Rights of the Child, Article 3(1).

³³² *Ibid*, Article 20 (1).

³³³ *Ibid*, Article 18 (2).

³³⁴ Committee on the Rights of the Child, General Comment No 6 (2005) *Treatment of Unaccompanied and Separated Children outside their Country of Origin*.

³³⁵ In 2004, of 3862 referrals only 1082 were allocated a named advisor.

³³⁶ Quotation taken from "River of Life—our journey through the asylum system", Save The Children's Brighter Futures project.

³³⁷ Immigration Act 1971, section 3C.

³³⁸ Nationality, Immigration and Asylum Act 2002, section 82(2)(d).

Even where a UASC has been “looked after” until age 18 and received a “leaving care” service beyond that, once a young person reaches “the end of the line” he or she is no longer entitled to a leaving care service from a local authority.³³⁹

2.3.5 Planning for “leaving care”

The uncertainties surrounding the outcome of the immigration claim make planning for the future very difficult for UASC themselves and for those charged with providing a service to them under leaving care legislation.

The duties imposed on local authorities in respect of “care leavers” (including UASC) include the duty to prepare a “pathway plan” for transition to adulthood. The pathway plan should detail what the young person intends to do once he or she leaves care and the continuing involvement of the local authority in helping the young person achieve his or her goals. This can include the provision of accommodation and financial support to assist with education, employment or training.

The final immigration decision is the “wild card” in this planning process, but there is a growing body of opinion within Government that the likelihood of ultimate refusal should be taken into account when preparing the pathway plan. This has recently been articulated as one of the four major themes in the “UASC reform programme”.

“UASC require different treatment from other children in Local Authority (LA) care. This can be because they require different services. But more particularly the reality of their immigration status means that their adult life may well be outside the UK and care workers need to take this into account when formulating future education and care plans.”³⁴⁰

The Commissioners have concerns about this approach to the problem of planning services for UASC. The principle of “non-discrimination” in Article 2 of the Convention on the Rights of the Child applies in respect to all dealings with unaccompanied children. In particular, it prohibits discrimination on the basis of the child being unaccompanied or being an asylum seeker. Whilst it is acceptable to differentiate the treatment of UASC from other children “in care” on the basis of different protection needs, the suggestion implied in the thinking of the UASC reform programme may amount to less favourable treatment on account of their immigration status.

In particular, we are concerned that academically able children will be discouraged from pursuing courses of study, such as A-Levels, which finish beyond the expiry of their leave at age 18 or may be precluded from training courses that may equip them for the future on the same grounds. Children may also find themselves dissuaded from particular education or training options only to find that they then obtain further leave to remain after age 18. They will then have wasted a number of years which could have been used preparing for entry into further or higher education.

We appreciate that the Government is in some difficulty over this question. Allowing young people to acquire qualifications of any sort during their stay in the UK may be regarded as a factor that encourages unfounded applications for asylum in order to access an education in the UK. This is not, however, a reason for denying access to educational opportunities to UASC on the same terms as citizen children and should not determine Government policy as it now appears it may. At the empirical level, we have seen no evidence of education operating as a “pull factor” and the numbers of asylum applications from UASC over the last few years have in fact been declining. In short, the proposition that allowing access to education to those with temporary permission to remain is acting as a “magnet” for children to come here for the purpose of accessing education appears groundless.

The Commissioners would like to see a more flexible approach from Government. The formulation of care and education plans for UASC should be based on their needs and on their potential as they should for any other looked after child. Dissuading children at age 15, 16 or 17 from pursuing particular education or training options for which they are otherwise suitable because such options may go beyond the period of their formal leave is both discriminatory and fails to take into account their best interests which are likely to be consistent with achieving educationally and obtaining qualifications which are often recognised outside the UK and therefore “transferable”. It would in our view be preferable for the Home Office to take into account the education and training timetable of individual UASC and former UASC when “actively reviewing” their application to extend their Discretionary Leave.

2.3.6 Arrangements for UASC awaiting a decision on “further leave”

A UASC who has been granted Discretionary Leave until 18 must make a further application to remain before the currency of the original leave expires. If they fail to do so, they become unlawfully present in the UK on the day that their leave expires. Although most UASC do make such an application, some are not aware of this requirement. There is no duty on a local authority to ensure, as part of care planning, that the

³³⁹ Section 54 and Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*. A former UASC would also reach “the end of the line” if they failed to apply “in time” (ie before it expires) for an extension of their Discretionary Leave.

³⁴⁰ UASC Reform Programme 2005–06. Bulletin Issue 3, National Asylum Support Service.

“extension application” is discussed even though it has a direct bearing on their future duties to the young person. We are aware of a number of children who have failed to apply to extend their leave and have consequently become unlawfully present in the UK on their 18th birthday. A local authority has no “leaving care duties” to young people over 18 who are in this situation and are therefore “without leave”.³⁴¹

Most USAC will not reach the “end of the line” at the point described above. Rather, an “in time” application for an extension of Discretionary Leave will be made. The young person remains lawfully in the UK while the decision is under consideration and, where refused, an appeal is outstanding. They can continue to access mainstream benefits such as Income Support (up to age 19 and if in full-time education) or Job Seekers Allowance, have permission to work and are entitled to a “leaving care” service from the local authority if previously “looked after” for the requisite period.

In practice, many UASC come off “direct” financial assistance from the local authority at age 18 and are assisted either into work or onto the appropriate benefit. The DWP operates certain rules which mean that it will often take several months before a legitimate claim for support can be processed. The rule requires that the “evidence” to be submitted to the DWP as “proof” of entitlement is a receipt or acknowledgement from the Home Office that the extension application has been made “in time”.

This routinely, perhaps inexplicably, takes months during which time young people may find themselves without funds or even borrowing from friends. We have noted cases of young people becoming seriously ill with worry because of the delays in the issuing of benefits. Some cut themselves off from friends who have lent them money to tide them over because they are embarrassed and cannot fulfil a promise to pay them back.

Furthermore, the barrier in accessing either income support or Job Seekers Allowance (JSA) means that any claim for housing benefit cannot be processed. We are aware of occasions where young people have been threatened with eviction because they have not been in receipt of housing benefit due to the delay in processing their claim for income support or JSA. The OCC has written to the Minister for the Department of Work and Pensions³⁴² asking that the evidential requirements be changed to allow the submission of a copy of the solicitor’s letter making the in-time extension application along with proof of posting.

2.3.7 Arrangements for assistance to UASC at the “end of the line”

Adult asylum seekers whose asylum claims fail are, subject to certain rules, eligible for what is known as “Section 4” support.³⁴³ For technical reasons relating to the definition of an “asylum seeker” for support purposes,³⁴⁴ any UASC who have their asylum claim “finally determined” prior to their 18th birthday, would not in general be eligible for Section 4 support. They would only become eligible following a formal grant of Temporary Admission (which is not generally given when leave expires) release from detention or release on bail.³⁴⁵

Local authorities dealing with former UASC who are “end of line” seem generally unaware that there is no power in law to assist them under Section 4 and are still routinely referring such case to NASS for processing a Section 4 claim. The Commissioners’ view is that the local authorities who provided the support while the UASC were minors will retain the duty to support and assist to avoid a breach of their human rights until such time as they are removed from the UK (unless the circumstances outlined in the previous paragraph pertain).

The Commissioners are concerned that many young people are being put under considerable stress by the lack of clarity as to who is responsible for their support at this stage. There ought to be guidance issued by the Government to assist local authorities fulfil their duties.

Finally, we would wish to make the Committee aware that to our knowledge most young people who reach the “end of the line” disappear from the radar of formal support arrangements. It is clear to us that no “durable solutions” have been found for these young people. We are concerned that so many young lives are ending up being lived in the shadows where they are vulnerable to exploitation and trafficking.

Far more work needs to be done to look at the reasons why young people are not convinced that they can return safely and to work with them where necessary to assist with re-integration into their country of origin if the balance of interests is not in favour of them remaining temporarily or permanently in the UK.

³⁴¹ The local authority retain a residual duty to continue to “exercise a power or perform a duty” if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of (a) a person’s European Convention rights or (b) a person’s rights under the Community Treaties.

³⁴² DWP letter, 5 June 2006.

³⁴³ I A reference to Section 4 of the *Immigration and Asylum Act 1999* which enables the Secretary of State to provide or arrange for the provision of accommodation for, amongst others, “failed asylum seekers”.

³⁴⁴ IAA 1999, s 4 (4) (a).

³⁴⁵ *Ibid*, s(4)(1).

3. CHILDREN IN ASYLUM SEEKING FAMILIES

The Children's Commissioners have many concerns about the treatment of asylum seeking children in families and the effect on their human rights including levels of poverty, access and enjoyment of education and access to primary and specialist health care. However, we restrict our evidence to the Committee on this occasion to three areas in which we have had particular involvement.

3.1 *Section 9 of the Asylum and Immigration (Treatment of Claimant's) etc Act 2004*

3.1.1 The Section 9 regime

Prior to the 2004 Act, failed asylum seekers with minor dependant children continued to be eligible for NASS support until removal from the UK, even where their asylum application and any appeal have been determined finally.³⁴⁶

Section 9 of the 2004 Act permits NASS to withdraw support (including accommodation) from failed asylum seekers with families. This follows a five-stage process ending in "certification" that the person has failed "without reasonable excuse to take reasonable steps to leave the UK voluntarily or place himself in a position in which he is able to leave the UK voluntarily" (eg by cooperating with re-documentation by the relevant embassy). NASS support can be withdrawn 14 days after receiving such a certificate if the family has taken no steps by then to depart voluntarily.

NASS informs the local authority of those in their area whom they have certified. Local Authorities will still be able to provide accommodation and support to the minor children of such a family but not to the adults; this entails separating the children from their families.

3.1.2 Conflict with the Children Act and the CRC

The Children's Commissioners believe that these arrangements conflict with accepted norms of good practice which seek to preserve the bond between parent and child and also with the "best interests" principle as enshrined in the Children Act 1989 and the CRC.

The *Children Act 1989* states that in any action or decision relating to accommodation of the child, the best interests of the child shall be the paramount consideration. Under the Section 9 regime, social workers would be asked to separate children from their families simply because Section 9 has ended the lawful accommodation of the adult members of the family and the family had nowhere to live. There are however considerable legal barriers to them doing so.

A local authority cannot remove a child who is under 16 from a parent who holds parental responsibility without first obtaining the consent of the parents or obtaining a court order. Significant difficulties would arise where the parent(s) refuse to consent to the child(ren) being accommodated separately from them.

The appropriate order in such cases would be either an interim care order or emergency protection order. Where a local authority attempts to obtain such an order, even on an interim basis, it must show that it has reasonable grounds to believe that the child would suffer or would be at risk of suffering significant harm without such an order. In addition, they would need to show that such harm was due to the care being given to the child "not being that which is expected of a reasonable parent". The fact that the family has nowhere to live as a result of the failure of their asylum application, is unlikely to fall within these grounds and thus the criteria for an interim care order or emergency protection order would not be fulfilled.

3.1.3 Conflict with ECHR Article 3 in the event of failure to provide accommodation to the family

On the other hand, the local authority would be in great difficulty in attempting to provide accommodation to the whole family following certification under Section 9. Although it would be normal "best interest" practice for a local authority to provide accommodation to a family who had no other means of support under Section 17 of the Children Act, Schedule 3 of the 2002 Act, by virtue of Section 9 of the 2004 Act, specifically prevents such practice in relation to assisting adults in a failed asylum seeking family.³⁴⁷

By withholding support in the above circumstances, the local authority is likely to render a family "destitute". This may in itself breach the Article 3 ECHR "threshold"—preventing an authority from subjecting someone to cruel, inhuman or degrading treatment.

³⁴⁶ Section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 ("The 2004 Act") inserted a new class of persons—"failed asylum seeker with family"—who are ineligible for support in Schedule 3 of the Nationality, Immigration and Asylum Act 2002 ("The 2002 Act").

³⁴⁷ There is however an exception to the general rule under Schedule 3 of the 2002 Act that support cannot be provided: "*Paragraph 1 (of Schedule 3) does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of—(a) a person's Convention treaty rights, or (b) a person's rights under the Community Treaties.*"

Although there is a “safety net” within the Schedule for cases where a breach of human rights would otherwise occur, it is a remedy that is unlikely to be in children’s best interests as it only allows assistance to the extent necessary for an avoidance of the breach. Designing legislation that places children on the verge of, or at risk of, destitution is clearly at odds with children’s best interests as expressed in the CRC and in all other Government policy towards children. It is simply not good enough for the Government to say that parents are putting their own children in this position by failing to co-operate with removal. Because the Children Act 1989 states that in any action or decision relating to the accommodation of the child, the best interests of the child shall be the paramount consideration, Section 9 of the 2004 Act is in direct conflict and if allowed to remain would undermine the *Children Act* itself.

The Commissioners cannot support legislation that potentially makes children homeless. We note that the Government has said that the Section 9 pilot will be evaluated and that there will be no “roll-out” of the programme until the evaluation is complete. We also note that the evaluation is taking a considerable time which leaves the statute in force and a great deal of confusion amongst local authorities and asylum seeking families. We urge the Government to complete the evaluation and take a view on whether Section 9 should then be removed from the statute book. The Commissioner’s would support such a view.

3.2 Section 11 of the Children Act 2004

3.2.1 An inclusive approach to safeguarding children?

When “*Every Child Matters*” was published, it was widely believed that the title reflected an inclusive approach to all children within the United Kingdom’s jurisdiction. Section 11 of the *Children Act 2004* was therefore a great disappointment to the Commissioners because key agencies responsible for the welfare and support of refugee and asylum seeking families were excluded from its provisions.

Section 11 imposes a duty on an extensive range of authorities who have dealings with children, including the police and prison service, to have regard to the need to safeguard and promote the welfare of children in discharging their normal functions.³⁴⁸ It also requires each person and body to whom the section applies to make arrangements to ensure that “any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.”³⁴⁹

The exclusion of NASS, the Immigration Service and managers of Immigration Removal Centres from the new duty brings into question the effectiveness of the statutory provision and associated guidance to provide a comprehensive safeguarding framework for all children and young people. We believe that the exclusions are already having an impact on relations between those who are under the duty and those who are not.³⁵⁰

3.2.2 Exclusion of the Immigration Service

During debate on the Bill that became the *Children Act 2004* and later, the Bill that became the *Asylum and Immigration Act 2006*, Ministers argued that the duty imposed by Section 11 would impede the primary function of the Immigration Service to enforce immigration control.³⁵¹ The Commissioners do not accept this position and furthermore believe that the Immigration Service has a vital role in protecting children in some areas of its operation.

Safeguarding the welfare of children at ports has been highlighted in the context of the trafficking of children earlier in this evidence and through recent research.³⁵² *Operation Paladin Child* at Heathrow airport identified the issue of children and young people being collected from, or brought in at ports by adults with particular claims to a relationship with children. There is currently no duty for the Immigration Service to investigate such relationships.

We applaud the Government’s efforts to strengthen the statutory framework for the protection of trafficked children through the creation of new and specific offences in the *Asylum and Immigration (Treatment of Claimants etc) Act 2004*. The development of the cross-departmental trafficking toolkit is also welcome. The toolkit emphasises the key role of immigration officers in trafficking cases where they can assist in the identification of victims and traffickers, provide initial support to victims, refer on to social services, contribute to inter-agency profiling of potential victims, identify and check on suspicious “relatives” or sponsors and so on.

³⁴⁸ *The Children Act 2004, section 11(2) (a).*

³⁴⁹ *Ibid*, section 11(2)(b).

³⁵⁰ One example provided to the English Commissioner was the reluctance of some local authorities to share information on the *National Register of Unaccompanied Children* data base because there was no obligation on some of the participating agencies to have regard to the same safeguarding duty. This may be a reasonable view to take given the provision of section 11(2)(b).

³⁵¹ “*A duty to have regard to the need to safeguard and promote the welfare of children could severely compromise our ability to maintain an effective asylum system and strong immigration control*”—*Baroness Ashton, Lords Grand Committee reading of the Children Bill (Official Report, 17.06.04 col 996).*

³⁵² Somerset, C (2004) *Cause for Concern ECPAT.*

Without the statutory duty imposed by Section 11, the Commissioners believe that it is unlikely that the Immigration Service will have the necessary impetus to integrate child safeguarding procedures into its ordinary entry-control functions. As a result, the Government's efforts to clamp down on trafficking will be considerably less effective and many more children will be put at risk.

The enforcement functions of the Immigration Service should also be subject to the duty. We do not accept the argument that this would compromise the service in the discharge of its normal functions. The statute does not require persons and bodies bound by the duty to change its functions, but merely to have regard to the need to safeguard and promote the welfare of children in the exercise of such.

3.2.3 Exclusion of managers of immigration removal centres

The English Commissioner has reported on his concerns for the welfare of children in Immigration Removal Centres (IRCs) in his report on an announced visit to Yarl's Wood. The Scottish Commissioner has also raised concerns following her visit to Dungavel. Concerns regarding children's welfare have also been reported by HMIP, Anne Owers, in numerous reports of removal centres, most recently in her follow up visit to Yarl's Wood in which she interviewed a number of children.³⁵³ The Commissioners' views are that children should not be detained other than as a matter of last resort and then only for the shortest possible time.

However, the current reality is that thousands of children are detained each year. While that is the case children are put at risk if there are not effective policies in place to safeguard their welfare. The English Commissioner highlighted some of these concerns in his report of a visit to Yarl's Wood in 2005. A subsequent report by HMIP³⁵⁴ highlighted ongoing concerns regarding, in particular, the procedures for making child protection referrals. The parallel "cause for concern" system in operation was described as "fundamentally flawed and dangerous".

We have seen no coherent argument that extending the Section 11 duty to managers of IRCs would compromise their operations. Indeed, we firmly believe that it would strengthen relationships with the local authorities, Local Safeguarding Children's Boards and the other bodies with whom IRC staff may have regular contact. We are aware of some improvements being made in respect of the safety of, and conditions for, children in IRCs. We believe that extending the Section 11 duty should underpin these improvements and would hasten change.

3.2.4 Exclusion of NASS

The vast majority of families seeking asylum are accommodated and supported through the National Asylum Support Service (NASS), established under the *Immigration & Asylum Act 1999*. NASS is also responsible for making decisions about dispersing families to different areas of the UK, and for taking into consideration the safeguarding of children in this context. Emergency accommodation (ie accommodation prior to dispersal)³⁵⁵ is provided through NASS. NASS caseworkers are involved in making decisions about children's welfare in a number of different areas including child protection,³⁵⁵ children's education,³⁵⁶ age disputes³⁵⁷ and appropriate support for pregnant women and newborn babies.³⁵⁸ Families supported by NASS thus come into contact with that agency and in most cases will have no contact with social services. Ensuring that NASS is under the same safeguarding duty as their statutory partners would provide for better working relationships and greater protection for children and their welfare.

3.3 Detention of children in asylum seeking families and the removals process

3.3.1 Legality of detention of children under international law

In the OCC's report on an announced visit to Yarl's Wood on 31 October 2005 the English Commissioner raised concerns as to whether the detention of children was compatible with international human rights instruments. In particular, consideration was given to the extent to which detention and the conditions of detention at Yarl's Wood were compliant with the UN Convention on the Rights of the Child and the UN Rules on Juveniles Deprived of their Liberty. Concerns had already been raised about immigration

³⁵³ *Report on an unannounced short follow up inspection of Yarl's Wood Immigration Removal Centre, 13–16 February 2006, HMIP.*

³⁵⁴ *Ibid*, page 27.

³⁵⁵ NASS Policy Bulletin 74.

³⁵⁶ NASS Policy Bulletin 63.

³⁵⁷ NASS Policy Bulletin 33.

³⁵⁸ NASS Policy Bulletin 61.

detention of children by both the UN Committee on the Rights of the Child and the European Commissioner for Human Rights,³⁵⁹ as well as by the Inspector for Prisons, Anne Owers, in her first report on Yarl's Wood³⁶⁰.

Article 37(b) of the UN Convention on the Rights of the Child³⁶¹ requires that deprivation of liberty shall only be used as a measure of last resort and for the shortest appropriate period of time. This provision is also to be found in the UN Rules on Juveniles Deprived of their Liberty (UN JDL),³⁶² which are part of the UN Minimum Standards and Norms of Juvenile Justice, and apply to all children who are deprived of their liberty, for whatever reason.

Home Office policy prior to October 2001 was broadly in line with most of these international standards and was reflected in the July 1998 White Paper *Firmer, Faster, Fairer*. "Detention should be planned to be effected as close to removal as possible so as to ensure that families are not normally detained for more than a few days"³⁶³. The policy was then changed to allow "detention of those families whose circumstances justify this (ie the risk of absconding, identities and claims need to be clarified or pre-removal)"³⁶⁴. The change in policy appears to have resulted from Ministerial authorisation and was not based on any research evidence regarding families absconding or other risk evidence.³⁶⁵

The UN JDL Rules provide that deprivation of liberty should only occur in exceptional cases.³⁶⁶ They require that the length of the sanction should be determined by the judicial authority, without precluding the possibility of early release and that a State should set an age limit below which it should not be permitted to deprive a child of his or her liberty.

Administrative detention of children for immigration purposes, which is not time-limited, sets no minimum age and is not used as a measure of last resort is therefore in clear breach of the UN JDL rules.³⁶⁷

3.3.2 Domestic Legislation

Families with children can be placed in administrative detention under the powers contained in Para 16 Schedule 2 and Para 2 Schedule 3 of the Immigration Act 1971. The majority of the children and families so detained are awaiting removal while a minority are detained pending examination of whether they should be granted leave to remain. This latter group are currently only detained at Yarl's Wood IRC in the "super-fast track"³⁶⁸.

Most attention has been devoted to the issue of children detained pending removal and while that is the main focus of our submissions in this section, we deal first with children detained *pending examination* of their families' asylum claims.

3.3.3 Detention of Children pending examination of the asylum claim

The Commissioners see no justification for detaining children on arrival in the UK for the purely administrative matter of processing their families' asylum claims. Anyone who has claimed asylum has an incentive to comply with the rules in order to present their case to the authorities. We understand that detention at this stage is considered primarily on the basis of the families' nationality³⁶⁹ and the presumption of an early, and negative, resolution to the claim. Although the House of Lords and the European Court of Human Rights have declared that it is lawful to detain asylum seekers pending examination of their claim under Article 5(1)(f) of ECHR³⁷⁰, we are unaware of any case brought before the courts by or in relation to the detention of children. Detention at this stage cannot be construed as a "measure of last resort" and is therefore in our view incompatible with Article 37 of the CRC and the UN JDL rules.

³⁵⁹ See Concluding Observations of the UN Committee on the Rights of the Child 2002 and Report on the UK of the European Commissioner on Human Rights, 2005.

³⁶⁰ *Report of an announced inspection of Yarl's Wood Immigration Detention Centre*, 28 February–4 March 2005 by HM Inspector of Prisons.

³⁶¹ The UN Convention on the Rights of the Child is not part of UK law, even though the Convention was ratified in 1991 and that ratification came into force in January 1992. There is, however, an international expectation that states will implement and abide by their treaty obligations. There are those who argue that the UN Convention has now been so widely ratified that it has the status of customary law.

³⁶² Adopted by the General Assembly Resolution 45/113 of 14 December 1990. The Rules set a general standard to which States should aspire, but do not have the status of a treaty.

³⁶³ *Fairer, Faster, Firmer—a modern approach to Immigration and Asylum*, Home Office, HMSO, paragraph 12.5.

³⁶⁴ Letter from Kevin Brewer, Director of Immigration Detention Services to Bail for Immigration Detainees, 25.09.01.

³⁶⁵ Letter from Simon Barrett, Assistant Director of Detention Services Policy to Bail for Immigration Detainees, 18.06.02.

³⁶⁶ Rule 2.

³⁶⁷ Whilst a child could technically bring judicial review proceedings to challenge his or her detention, the Commissioners believe that this is an insufficient and ineffective means of challenge.

³⁶⁸ The rules governing who is suitable for the detained fast track (DFT) are set out in the *Detained Fast Track Asylum Processes Suitability List*. The most recent version is dated February 2006.

³⁶⁹ *Ibid*; Annex 2.

³⁷⁰ *Saadi -v- United Kingdom* (Appln No 13229/03).

3.3.4 Current policy and practice regarding the removal of failed asylum seeking families from the UK

The Immigration Service has a published policy dealing with family removals.³⁷¹ This has recently been the subject of an internal review following concerns raised by, amongst others, the Scottish Children's Commissioner.

The English Commissioner's office was invited to meet senior Home Office and Immigration Service officials as part of the review process.³⁷² At this meeting, it was explained that the Immigration Service was conscious that communications throughout the process of removals could and should be improved. Officials wanted to see a process which recognised the needs of children and maintained participants' dignity. We were told that a summary report on the review would be ready for stakeholders by the end of June 2006. This has not been forthcoming.

It was the OCC's impression that the scope of the review was limited to how enforcement and removal action could be made "more humane". For example, "pastoral visits" (where they take place at all prior to enforcement action) are used merely as an information gathering exercise on the back of a pre-existing decision to remove rather than as an opportunity for communication with the family relating to concerns they have about returning or around the possibilities for voluntary return.

While the Commissioners welcome any review of current policy and practice, it is clear that a much wider review which reappraises the approach to families who have reached the end of the process is needed. We think there is little scope for the enforcement arm of the Immigration Service to achieve this on their own. Unless and until such a wholesale reappraisal takes place, children's experience of the process will be overwhelmingly negative and will continue to damage them.

3.3.5 The experience of removal to detention

"Let me tell you what happened to me this week on 17 July. Police and Immigration people broke our door and came in the house at round about 6.00 and 6.30 on Monday morning, both woman's and men were gathered around the house as we were criminals as we had done something against the law as we had killed someone. I first didn't know who these people are. I thought they got the wrong house and I am not a criminal. These people were very scary, big and scary." (Extract from a letter received by the English Children's Commissioner from a 15 year old child of a failed asylum seeking family—July 2006)

"In school, everything we do, every policy we write, every preparation we make for inspection is guided by the five outcomes of *"Every Child Matters"*. How can it be so apparent to everyone in school, including children in S's class old enough to understand what has happened, that "every child matters" unless he is the son of an asylum seeker? If every service dealing with children is guided by these tenets, how can officers of the immigration service act so patently outside these guidelines? In short, how can a so-called Western democracy allow a situation in which children simply disappear from their familiar surroundings only to find themselves within hours in a detention centre in another part of the country?" (Extract from a letter received by the English Commissioner from the Head teacher of a primary school—July 2006)

The two extracts above illustrate some of human rights issues raised by the current practices of the Immigration Service in pursuing the removal of failed asylum seeking families to detention prior to removal from the United Kingdom. We could have drawn on many other examples provided to us in writing and orally by children and their parents with whom we talked to in our visit to Yarl's Wood Immigration Removal Centre³⁷³. Very similar accounts have been presented to the Scottish Commissioner.

It appears to us that typically families are given no warning of their imminent arrest and removal to detention prior to removal from the UK. This often means:

- Children are made to feel afraid by the intrusion into their homes.
- Children have to witness the distress (and often handcuffing) of their parents and can become very anxious about their health and welfare.
- Children are sometimes drawn inappropriately into interpreting immigration officer's questions to family members.
- Children are made to feel like criminals and are sometimes treated as such—for example by being handcuffed or restrained.
- Children are given minutes to pack up what may be years of accumulated possessions. We were told that an average visit is completed within 45 minutes.

³⁷¹ Family Removals Policy, Home Office, March 2006.

³⁷² Meeting between OCC staff and Home Office/Immigration Service officials, 08.05.06.

³⁷³ OCC announced visit to Yarl's Wood IRC, 31.10.05.

- Children are prevented from contacting friends by telephone or in person, to say goodbye.
- Children are not provided with information allowing them to make sense of what is happening to them.³⁷⁴

3.3.6 Alternatives to detention

Mr Gils-Robles, as former Commissioner for Human Rights for the Council of Europe reporting on the UK in 2004,³⁷⁵ expressed his opinion that the numbers of children detained with their families in the UK suggests that insufficient attention has been paid to the examination of alternative forms of supervision. He pointed out that there has been little study of the likelihood of families with children absconding that supported the Immigration Services increasing resort to detention. “Prima facie, . . . families with their children attending school, are less likely to abscond than any other category”.³⁷⁶ The Children’s Commissioners would like to see the Government commission such a study as part of a wider review into treatment of families at the end of the asylum process.

Along with many others, we have asked IND to consider the research evidence available on alternatives to detention in other jurisdictions. The OCC has itself presented IND with the findings of its own small scale study into alternatives practiced in Canada, the USA and Sweden.³⁷⁷ The discussion paper prepared recently for the All Party Parliamentary Groups on Children and Refugees³⁷⁸ supported by the “No Place for a Child Coalition” admirably and persuasively sets out the arguments for such an alternative approach.

It may be that there will always be cases where forced removals involving detention become necessary. However, we regard this as an extremely serious step where children are involved. The evidence is overwhelming that detention is harmful to children. The detention of any child must therefore be fully compliant with the internationally recognised standards outlined above. Government policy on the detention of children must be designed with these standards underpinning them.

We concur with the view of Mr. Gils-Robles, in his former role as the European Commissioner for Human Rights, that where detention is deemed necessary, the Immigration Service should seek the authorisation of a judge, with a periodic, judicial review of the continuing justification for detention.

Alternatives to the detention of children are available and are increasingly well- documented. Not only would their employment reduce the harm currently being done to children but there could be benefits for the Government in reducing expenditure, increasing confidence in the asylum system and in being seen to abide by their international obligations.

Annex 1

AGE DISPUTED CASES DETAINED AT OAKINGTON IMMIGRATION RECEPTION CENTRE—2005

OAKINGTON ANNUAL SUMMARY

*Analysis of outcomes of Disputed Minors where Cambridgeshire Social Services have been asked to undertake age assessments*³⁷⁹

Month 2005	Requested	Undertaken	Minors	Adults	% determined as minors of those assessed
January	20	19	8	11	42.11
February	16	9	4	5	44.44
March	12	10	5	5	50.00
April	11	5	2	3	40.00
May	29	19	8	11	42.11
June	26	14	7	7	50.00
July	20	13	8	5	61.54
August	18	10	8	2	80.00
September	25	18	15	3	83.33

³⁷⁴ Further evidence of this being children’s experience of being removed is powerfully provided in “*Report of an Unannounced short follow up inspection of Yarl’s Wood IRC 13-16 2006*”, HMIP, Appendix 3. This summarises the results of structured interviews conducted with 13 children during the visit.

³⁷⁵ Report by Mr Gil-Robles, Commissioner for Human Rights, Council of Europe, on his visit to the United Kingdom, 4–12 November 2004 CommDH(2005)6.

³⁷⁶ *Ibid*, para 60.

³⁷⁷ *A Review of Alternatives to Detention—case studies from Canada, Sweden and USA*; OCC & Children’s Legal Centre, May 2006.

³⁷⁸ “*Alternatives to immigration detention of families and children*”—a discussion paper by John Bercow MP, Lord Dubbs and Evan Harris MP, July 2006.

³⁷⁹ Figures compiled by the Refugee Council at Oakington Immigration Removal Centre.

<i>Month 2005</i>	<i>Requested</i>	<i>Undertaken</i>	<i>Minors</i>	<i>Adults</i>	<i>% determined as minors of those assessed</i>
October	20	13	10	3	76.92
November	26	22	14	8	63.64
December	18	14	12	2	85.71
TOTALS	241	166	101	65	60.84

Annex 2**CASE STUDY 1—AGE DISPUTED MINOR DISPERSED TO NASS ACCOMMODATION**

N arrived at Dover in early January 2003 in the back of a lorry and was discovered. He claimed asylum immediately and provided the immigration officer with his date of birth which made him 16 years and 7 months. He was temporarily admitted, served with notification as an illegal entrant, issued with a standard acknowledgement letter and a further standard letter telling him that the immigration officer was disputing his age.

N remained in “emergency accommodation” until mid May 2003. By this time his asylum claim had been “refused outright”. As he was considered to be an adult he was not granted a period of exceptional leave until age 18 as ought to have been the case if he had been recognised as a child. In mid May he was dispersed to NASS accommodation in the Midlands.

A NASS caseworker recognised that he was a child and referred him to the local authority social services department who then assumed responsibility for his care.

N had spent five months living with adult asylum seeking men. His asylum claim had not been processed with his status as a minor being taken into consideration. The Home Office did not reconsider his claim once he had been accepted as a minor by the social services department.

CASE STUDY 2—AGE DISPUTED MINOR DISPERSED TO NASS ACCOMMODATION

A arrived in Dover aged 16 years and 8 months in late June 2002. His age was disputed and he was ascribed a birth date of 01.01.85 (the standard procedure where age is in dispute). He was directed to apply to NASS for help with accommodation despite him being a minor. NASS dispersed him to accommodation in the Midlands in July 2002. He remained in NASS accommodation (for single adult males) until August 2003 at which time NASS decided that he was a minor after all and referred him to the local authority for support and accommodation. The local authority assumed responsibility for his care as a child.

By the time of his referral to social services, A had been in adult accommodation for over a year and was approaching his 18th birthday. His whole asylum case—initial decision and appeal—had been heard and dismissed before he was “discovered” to be a minor. This was never rectified. His legal representatives failed to make any representations to the Home Office about his age.

Annex 3**CASE STUDY—BARRIERS TO ACCESSING LOCAL AUTHORITY CARE**

Two boys from Iran aged 15 and 16 met in Turkey where they were “handled” by the same agent. They had not known each other while in Iran but became friends on the journey. They were transported to the UK together in various vehicles. The final leg of their journey took them from the continent to the UK in the back of a lorry on board a boat. They were landed at Tilbury docks in Essex where they followed the instructions of the agent and made lots of noise to draw the attention of the authorities. The port authorities called the police and they were taken to a local police station.

The police asked them if they had any money. They had some Euros and, as it was late at night, the police sent the boys to a local hotel and told them to return in the morning. On returning the following day they were asked if they knew anyone in the UK. Through an interpreter the 15 year old was able to explain that he had an older brother in the UK. The police called the brother and asked him to come and collect his younger brother and his friend. The brother agreed and drove to the police station. He took them to live with him at his house in a different local authority in a different part of the country.

The accommodation was a two bedroom house. One room was occupied by the older brother and his wife and the other by their primary school age child. The presence of the two boys was placing a strain on the relationships in the house not only due to the limited space but because they had no money to contribute to their support costs. As the family was on benefits, this meant feeding two additional persons on a very limited income. In this situation, the relationship between the older brother and the two boys came under strain and led after several months to a demand that both boys leave the former’s house.

An immigration solicitor whom the boys had instructed had written to the local authority and asked them to conduct a needs assessment to establish if they had any duty of care towards them. The local authority had replied that since they had entered the UK through Tilbury port, the responsibility to assess the boys fell on that particular local authority. They declined to either assess the boys themselves or to provide them with funds to travel to the local authority where they had landed.

Only after the further intervention of a solicitor threatening judicial review did the local authority assess the two boys and eventually provide care for them.

The local authority would not be able to claim the UASC grant from NASS to fund these two boys care. The circumstances of their arrival exclude them from being considered “unaccompanied” according to the definition contained in the grant instructions. This may explain their reluctance to assist the boys.

57. Memorandum from Anne Owers, HM Chief Inspector of Prisons

1. The Prisons Inspectorate is statutorily responsible for inspecting the conditions and treatment of those detained in immigration removal centres (IRCs)³⁸⁰. More recently, it has inspected immigration short-term holding facilities (STHFs) (where detainees can be held for up to seven days); and this is now provided for in statute³⁸¹. This evidence therefore relates solely to the conditions and treatment of those held in detention, the majority of whom are asylum-seekers.

2. The role of inspection is particularly crucial in a system where decisions to detain are administrative, rather than judicial, and which is not subject to any automatic judicial reviews of continuing detention. This was provided for in the Immigration and Asylum Act 1999, but was never implemented and was later repealed. Inspection of all places of custody is also now mandated under the Optional Protocol to the UN Convention against Torture, to which the UK was one of the first signatories, and which came into effect in June 2006. The Protocol requires all states parties to have in place a national expert preventive mechanism to carry out inspection visits to all places of detention.

3. As a general point, we note the Government’s proposal, in the recent strategy paper on immigration³⁸², to consult on a “single regulatory body” for immigration. While we can see the logic for a single body to monitor independently the operation of immigration and asylum law, we consider that the inspection of *places of detention*, deriving as it does from international human rights obligations as well as domestic law, is a separate human rights-based exercise, and should not be subsumed into any broader regulatory body. It would, of course, complement any such body and would need to have a memorandum of understanding with it (as exists at present between this inspectorate and other inspectorates where there is an overlap with detention, such as the Healthcare Commission and Ofsted).

CHILDREN

4. The detention of children has been a major concern to this Inspectorate since our inspections began. At Dungavel IRC (then the main UK centre for detaining families) in 2003, we and the Scottish education inspectorate (HMIE) stated that the detention of children should be exceptional and only for a matter of hours, as detention of itself compromises the welfare and development of children, and this increases the longer detention is maintained.

5. While our subsequent reports have also sought (and to some extent obtained) improvements in the education and facilities available to detained children, we have held to the proposition that the detention of children is itself harmful and to be avoided. Reports on Yarl’s Wood and Oakington have pointed to the damage to education, and the issues for the safeguarding of children, that have arisen due to detention. Children have been detained within weeks or days of taking public examinations; with medical or mental health conditions that make them unfit to be detained; or with parents who may lack the capacity to care for them. A joint report on Safeguarding Children, produced by eight inspectorates³⁸³, underlined these concerns.

6. That view is strengthened by the evidence that we obtained from children themselves in the course of our most recent inspection of Yarl’s Wood IRC (now the main UK centre for the detention of families). That evidence is provided at Annex 1.* It shows the traumatic effect, on children who may be very young, of the process and the fact of detention.

³⁸⁰ under the Immigration and Asylum Act 1999.

³⁸¹ under the Immigration, Asylum and Nationality Act 2006.

³⁸² *Fair, Effective, Transparent and Trusted: Rebuilding Confidence in our Immigration System*, July 2006.

³⁸³ *Safeguarding children: the second joint Chief Inspectors’ report on arrangements to safeguard children*, July 2005 (Commission for Social Care Inspection, HM Inspectorate of Court Administration, Healthcare Commission, HM Inspectorate of Constabulary, HM Inspectorate of Probation, HM Inspectorate of Prisons, HM Crown Prosecution Service Inspectorate, Ofsted).

* Ev not printed.

7. It is accepted that the UK has entered a reservation to the UN Convention on the Rights of the Child in relation to immigration. The extent and applicability of this reservation has been queried; however, following the logic of the judgment in the 2002 case brought by the Howard League in relation to children in prisons³⁸⁴, it appears that it cannot extinguish detained children's rights to the protections afforded under domestic law, principally the Children Act 1989, and Article 8 of the ECHR, incorporated in the Human Rights Act 1998. Thus, the welfare of detained children, though not paramount, should be a relevant and important consideration in deciding whether to detain and to maintain detention, and the need to prevent risk of significant harm should be central to the treatment and safeguarding of detained children.

8. Inspections have highlighted failings in these areas:

- There is no evidence that, in taking decisions about whether to detain children and families, the interests and welfare of the child are taken into account and balanced against the necessity of detention. Inspectors have found children taken out of school just before public examinations, and detained children who were clearly vulnerable and at risk (such as one autistic child who was not eating properly).
- Once children are detained, there are no independent mechanisms for assessing the effect on their welfare and development and ensuring that these assessments become part of the process whereby IND reviews the necessity for continued detention.
- Apart from a routine medical examination, there are no systems for assessing a child's immediate welfare needs or vulnerability on arrival, including any risk of significant harm under s47 of the Children Act. Processes are inadequate to determine parents' capacity of willingness to care for children. Moreover it must be assumed that the longer the child remains in detention, the greater the risk of significant harm; and there are no procedures to instigate area child protection team strategy conferences for children whose detention stretches into weeks or months.
- Arrangements for liaising with relevant local agencies with responsibilities under the Children Act 1989 and related legislation have been slow to develop. A social worker from the local authority was put in place at Yarl's Wood IRC, but her role was unclear and the appointment was short-lived. It is understood that she is being replaced.
- There are still deficits in the training of those looking after detained children; and in some cases, particularly in short-term holding facilities, staff do not have enhanced criminal records bureau checks.

DETENTION IN GENERAL

9. Inspections have revealed gaps in the arrangements for the care and treatment of detainees, some of which have been remedied by administrative or legislative provisions: for example, detainees' ability to engage in purposeful activity, to have access to families and friends via phones and the internet, and the provision (albeit very limited) of welfare support for people suddenly removed from their homes and possessions. This links to the role of the Visiting Committees for IRCs (now Independent Monitoring Boards) set up in the 1999 Act. The Inspectorate has pressed for similar arrangements to be put in place for voluntary visiting of STHFs, and this has now been agreed.

10. Inspectorate reports have also, in general, commended the residential staff in IRCs and STHFs, for seeking to support detainees and minimise the trauma of sudden detention (though there have been exceptions). In relation to IRCs, the problems that detainees face largely stem from deficiencies in the operation of immigration control, and its interface with detention. In relation to STHFs, there remain some inadequacies in the facilities available (with an absence of proper sleeping arrangements in some of the airport facilities, and entirely unacceptable provisions in the so-called "dog kennels" in Calais). In general, we regularly express concern about the lack of proper separation between men, women and children.

11. Some of the key human rights issues that emerge from inspection reports are:

- The absence of a continuous record, and proper monitoring, of a detainee's custodial history and movements, particularly in relation to short-term holding facilities (STHFs).
- Poor communication, and action upon, allegations of previous torture or abuse; and deficits in specialist healthcare in relation to mental illness, trauma and previous abuse.
- Inadequate provision of independent legal advice and information and inadequate information about the reasons for detention and the progress of cases.
- Use of force and segregation.
- Inadequate welfare support, or preparation for removal or release.

³⁸⁴ *The Queen (on the application of the Howard League for Penal Reform) and SSHD and DoH [2002] EWHC 2497 (Admin)*.

Custody records and the movement of detainees

12. Inspectors find that many detainees are subject to a number of moves, including police custody and short stays in a number of STHFs and IRCs. These moves are in themselves disruptive and at times traumatic; this is exacerbated by the fact that there is no continuous record of a detainee's custodial history, nor is relevant information about their needs always passed on.

13. Sampling files at IRCs reveals that up to 60% of the sample were initially detained in a police station (including, for example, half the single women at Yarl's Wood), where they reported two or three days without shower, change of clothing, exercise or access to a telephone. This includes pregnant women, and detainees liable to self-harm. Code C of the Police and Criminal Evidence Act does not apply in all respects to immigration detainees in police custody, so that they have fewer safeguards than offenders.

14. Frequent moves, without a comprehensive custodial record, serve to disguise the total period of custody, and whether the agreed maximum periods for detention in an STHF (five days or seven days immediately prior to removal) have been breached. One detainee experienced four moves in three days; another had had six moves in three weeks. Many such moves take place overnight (in one removal centre, 58% of receptions, only a minority of which came from the adjacent airport) took place between 7 pm and 7 am). Risk factors are not always recorded, nor is access to basic hygiene facilities always assured in all places of detention, particularly police stations. Frequent moves, to distant locations anywhere between Dungavel and Dover, also make it extremely difficult for solicitors, families and friends to contact detainees, or return property to them.

Rule 35 and allegations of previous torture

15. Rule 35 of the Detention Centre Rules requires healthcare professionals at IRCs to record any evidence of previous torture or trauma, and to notify the immigration authorities of this, through the IRC monitor, and of any consequences for fitness to detain. Inspections have revealed some serious shortcomings in these arrangements.

16. First, it is not clear that healthcare professionals in IRCs are always alert to, or competent to detect, signs of torture or previous abuse. The Inspectorate has therefore recommended that they use, and are trained in, the publication *Medical Investigation and Documentation of Torture*, produced by the Human Rights Centre at Essex University and supported by the Foreign and Commonwealth Office.

17. The Inspectorate has carried out a clinical review of healthcare services at Yarl's Wood IRC, following the hunger strike of two women with previous histories of torture and abuse, and consequent mental health issues. That review will be published next week, and provides much greater detail about some of the healthcare shortcomings, many of which are likely to have general application. That review will be forwarded to the Committee.

18. Second, there are no clear systems for monitoring or following up presumed torture cases which are referred onwards to IND. In many cases, healthcare professionals, and on-site immigration staff, are not aware of any action that is subsequently taken, or any reasons for inaction. Haslar staff had passed on eight such allegations, and had had no response. Dover had reported two cases in the previous week, with no acknowledgment, further enquiry, or review from the responsible office, which they said was "normal". Indeed, they had only ever had one response: from the external IND office asking what the rule 35 letter was, and what they were supposed to do with it. At Colnbrook IRC, we reported that responses to rule 35 pro formas were rare, and noted the case of a young man with a previous history and fear of future torture, who was under constant watch because of risk of suicide, but where "staff appeared uncertain about the requirements and purpose of rule 35". Similarly, at Oakington, there had been no response, after five weeks, to a rule 35 letter about a detainee who had attempted self-harm.

19. The Inspectorate has therefore repeatedly recommended that IND and IRC staff should be trained in the proper operation of rule 35; that IND should properly investigate all illnesses and conditions, including torture, referred to it under rule 35, and that this process should be documented and the detainee and healthcare department informed of the outcome. Similarly, the healthcare department and the IRC controller should keep a record of such referrals and the responses.

Advice and information

20. Given the summary nature of detention powers, and the likely consequences for individuals, it is extremely important for asylum-seekers to have access to independent advice, and full information about their cases. Both are in short supply: and it is often for that reason that half of all detainees, in our confidential surveys, report feeling unsafe.

21. Permanent independent legal advice and representation has been available on-site only at Oakington (which was initially designated a reception centre for fast-track cases). This is now to cease. The Legal Services Commission has begun to set up some surgeries on an occasional basis, or advice lines, in other

IRCs. However, as a general rule, it remains extremely difficult for detainees to find a competent and available legal representative; there is a national shortage of competent specialist legal advisers, and this is compounded by detainees' moves away from a home area where they may have had contact with a solicitor. Less than half of the detainees we have surveyed have had a legal visit in detention. This is something that we have raised with the Legal Services Commission. Information and the ability to contact legal advisers is often not available in the short-term holding facilities where detainees may first be held.

22. Information about the reasons for detention and the progress of cases is also sparse. Reasons for detention tend to be pro forma and issued only in English. Further information about cases and their progress is also hard to obtain, even though IRC staff sometimes make considerable efforts to do so, and share the frustration of the detainees in their care. This has worsened, due to the withdrawal of on-site immigration staff, who were at least able to communicate directly with detainees and transmit their concerns to caseworking colleagues. Experienced immigration officers have been replaced by less experienced administrative staff. Fewer than half the detainees we survey report that it is easy to see an immigration officer; and in some centres this is as low as 11%.

23. There is also considerable confusion about case responsibility within IND, which is divided or re-allocated among different offices: the port of entry, the local enforcement office or reporting centre; the Management of Detained Cases Unit (MODCU) or a specialist unit such as the Criminal Casework Directorate or the Judicial Review Unit.

24. Reviews of detention must take place at least monthly, as well as following fresh information or a change in circumstances. We find that monthly reviews are repetitive, do not reflect changed circumstances, including the longevity of detention, and in some cases are missing altogether.

Use of force and segregation

25. In our early inspections, we found routine use of strip-searching in IRCs run by the Prison Service. This has now ceased. However, staff in Prison Service IRCs still routinely carry staves (short sticks), whereas this is not the case in privately-managed IRCs. We continue to have great concern about the routine use of handcuffs in public places, without any assessment of risk. This is routine at Manchester and Stansted (but not in other) airports.

26. Inspections always check the extent, and the legality, of the use of force and of segregation (or "removal from association" and "temporary confinement") in IRCs. We have found instances where the relevant rules are not properly applied, and those practices have largely ceased following inspection. We have also criticised the multiple uses of some units, for example the Detainee Departure Unit at Oakington, for detainees who are suicidal as well as those who are disruptive.

Welfare support and preparation for removal or release

27. Inspection reports into IRCs and STHFs at ports and airports repeatedly note the lack of any formal processes for welfare support of detainees, and to prepare them for what will happen next. In some IRCs, volunteer visitors have provided some welcome support, but moves to put in place formal and systemic welfare procedures have been slow. Support for those being released into the community, sometimes for the first time, is also limited.

28. Proper procedures to prepare detainees, particularly asylum-seekers, for removal are essential both for humanitarian reasons, and to ensure that removal can be effected properly and with dignity. We have noted ignorance and confusion among asylum-seekers and staff about the provisions whereby asylum-seekers can be returned voluntarily, which is consistent with the findings of the National Audit Office that this option has not been promoted sufficiently.

29. Detainees are often given little warning of removal—sometimes deliberately, in case they react badly. However, this simply adds to the trauma and the likelihood of disruptive or damaging behaviour. In our inspections of the Heathrow STHFs, we noted that there were many instances of force being used on reluctant returnees who caused disruption: sometimes in public places and always with risks to the safety of detainees and staff. Yet it was rarely possible to effect removal in such circumstances, as airlines refused to carry those who were disruptive. We urged that the process be managed with greater dignity and safety, by ensuring that detainees were fully informed and were able to seek advice; and by carrying out proper risk assessments and making relevant provision.

58. Memorandum from the Bail Circle of the Churches' Commission for Racial Justice

INTRODUCTION

This document is the response to the JCHR consultation, from the Churches' Commission for Racial Justice (CCRJ), a Commission of the ecumenical body, Churches Together in Britain and Ireland (CTBI) in which both the majority and minority ethnic Churches are represented.

In making this response, CCRJ has concentrated principally on the issues of health care, considering them in the light of the Christian teachings which have shaped our society: that everyone is equal before God, that we must love our neighbours as ourselves, and that we are called upon to provide welcome and hospitality to the stranger. We have found that, in relation to these principles, provision for the care of people seeking asylum is seriously deficient, in both the policies and procedures of the Government.

We submit practical examples from our own work and that of others. We also outline observed links to areas of asylum policy, operational practice, and legal decision-making which impact on health, and also detention, and destitution which are the precise factors of remit of the committee, whose effects have important but unreported financial and social public costs, financially and socially.

Access to health care, and destitution, in non-detained asylum seekers

In August 2004 CCRJ submitted a response³⁸⁵ to the Department of Health's consultation on this topic, and we would reiterate what was said in that document in respect of the initial proposals to withdraw Primary Healthcare from asylum seekers at a statutory end of legal procedure, often after highly unsatisfactory decision-making and representation. CCRJ believes it would be a risk both to asylum seekers and the public health interest, should these proposals be resurrected after having been put aside due to strong objections from the medical professions.

Those who are "at end of procedure" and who have no formal address are too fearful of detention or removal to avail themselves of Section 4 NASS provision and often unable to access NHS care. The majority of such clients are seriously depressed and traumatised and clearly in need of psychogenic medication and support, which have proved difficult to arrange.

We have observed that many experiences like those recorded in our 2004 paper to the DHSS, continue to be observable in worse measure. A study completed in June 2006 by an alliance of churches and small NGO's in Leicester, under the auspices of the Anglican Diocesan Board of Social Responsibility³⁸⁶ provides a useful summary of these effects, on a sample of some 600 cases. These findings of this study are replicated by the experience of health staff seconded from the Westminster Primary Care Trust. At the recent AGM of the Notre Dame de France Refugee Drop-in Centre they reported that 21% of some 800 Francophone asylum seeking clients had sought health care. Many showed a pervasive state of serious psychological ill health, depression and anxiety. A number of serious medical problems were found and referred on. The health staff noted: "many of the service users are homeless, or staying with various friends . . . a fairly transient population not just in Westminster but London-wide. . . [most] are at "End of Procedure", having exhausted appeal rights . . . Health care access for these service users tends to depend on discretion of (GP) providers . . ."

Some examples of unsatisfactory GP care

Whilst we repeatedly meet with examples of skilled and caring assistance given by GP's and their area CPN teams we also must note three quite recent cases where attention and care paid by a GP clinic—both doctor and reception staff—to non-detained asylum seekers' needs was less than satisfactory, and raised concerns of discrimination.

For example, a pregnant asylum seeker was refused antenatal care, despite complaining of difficulties. The baby was stillborn at six months after being admitted to A&E, and the woman consequently suffered serious depression.

In two other cases, clients who were at considerable risk of self-harm through previous torture and detention, including prolonged UK Immigration detention, both encountered a dismissive reception of their state of mind from their GPs, requiring GP transfer.

³⁸⁵ Ev not printed. CCRJ: NHS-Primary Care withdrawal consultation-12080.

³⁸⁶ Anglican Diocese of Leicester, June 2006: <http://www.leicester.anglican.org/bsr/destitution.html>

Use of detention, conditions of detention, methods of removal

Health care and conditions of detention—Bail Circle experience 2005–06

The Bail Circle is a small organisation, and numbers dealt with are therefore only a “thumbnail” of the detention population: Whilst not quantitatively representative, our findings are in accordance with reports by other agencies, and should be taken in conjunction.

During the first half of 2005, of 29 detainees still held at 1 July 2005, five disclosed they had been Victims of Torture (henceforth VoT) who had no medical expert reports prepared for their asylum procedures. Of these, three—one male and two females—were in addition disclosed rape victims. Rape is a form of torture the effects of which in our view continue to be seriously disregarded by statutory organisations.

Of the 49 detainees released during this period, 10 reported to have been victims of torture, and one had serious mental health problems. (The unusually high number of releases on Temporary Admission during this period are accounted for by the S&M legal decision resulting in a Removal suspension and hence the release of 37 detained Zimbabweans, many on Temporary Admission.)

In 2006, of the 14 detainees recorded by us as released, five were unreported victims of torture subsequently documented by independent medical examination by professionals from the Medical Justice network³⁸⁷: Some of these concerned very serious torture cases, who suffered serious deterioration of mental health in addition due to prolonged UK immigration detention. One, detained for 16 months in total, remained in detention for a further nine months after a medico-legal report had been presented to IND.

Of 23 current detainee records started since 1 July 2006, five are reported to be VoT’s not previously documented, and have since been independently examined, whilst two had serious physical health—and disability problems, yet were detained without the sort of medical and supervision adequately specific to their serious medical conditions.

We must unfortunately conclude that:

- (a) Proactive reporting by IND of trauma/ torture appellant assertions, especially those of Fast Track detainees, still does not occur, or when brought to IND attention are not attended to, recorded, or passed to the Medical Foundation, as agreed in meetings and minutes months ago: ie where torture or trauma is alleged by the appellant, habitually no statutory action is taken except on the rare occasion when a good solicitor pursues the matter proactively.
- (b) Medical care in immigration detention centres serves merely “fitness to detain”, of unacceptably low criterial threshold, instead of complying with the IND’s Operational Guidance on the non-detention of torture victims.
- (c) The statutory threshold of acceptance, even denial, of torture evidence often breaches the UK’s international obligations to victims of torture under the Geneva Convention.

Statutory decisions and trauma history: interactions

Statutory decisions and trauma history interact to create REAL and dangerous health effects, in non-detained asylum seekers. Detention exacerbates this significantly. In common with other detention NGO’s, our experience shows that these effects are disregarded or not recognised by decision makers.

Whilst we recognise that the Committee’s brief for this submission excludes the issue of the quality of legal procedure we observe that the rapid acceleration of the legal processing of asylum claims produces a loss of quality and capacity of legal representation, which, interacting with statutory inertia on torture, is having seriously pathogenic effects both at the onset of procedure and point of arrest and removal.

We fear that in the attempt to increase “successful” removal statistics, important for the government’s public presentation of asylum issues, brings with it an unacceptable risk to the mental health of removal detainees.

Self-harm and suicides in detention

Example

Two recent suicides this summer of non-detained asylum seekers both occurred in clients who were part of the new, better skilled and “efficient”, NAM procedure pilot in Liverpool.

Example

Evidence at the recent inquest into the suicide of Manuel Bravo in Yarl’s Wood also pointed up the effects of a combination of legal failure plus a failure by IND to observe the recommendation by Collins J: that adequate time between detention and removal should be given to permit credible quality legal support and intervention.

³⁸⁷ Medical Justice: www.medicaljustice.org.uk/

Example

The committee will by now have seen HMIP's report launched 04/10/06,³⁸⁸ on health care in Yarl's Wood RDC which houses both single women in the Fast Track procedure, and families for removal. It confirms our views on the management of health issues in asylum detention.

We welcome the information that the Collins recommendation was implemented after Mr. Bravo's death. However, the bottleneck in legal capacity, and the often unpaid and time-intensive nature of detention legal work, make that a very meagre measure of relief to protect against self-harm. The increasing "inequality of arms" between asylum seekers and statutory agencies creates a futureless despair and unpredictability that is highly psychopathogenic. Good, unhurried legal representation is a highly significant protective factor against self-harm in asylum detention.

Recently an IND official stated to us that "there was no discernable difference between the rate of (lethal) self harm in the general population, and asylum detainees".

We append statistics for May to August 2006 relating to recorded self-harm incidents in asylum detention³⁸⁹. These were obtained by the National Coalition of Anti Deportation Campaigns under a FOI request. We also append the list of 33 "successful" suicides by asylum seekers since 2000, collated by the Institute of Race Relations.³⁹⁰

We note that the number of cases requiring medical treatment on self-harm attempts, and the numbers of those placed on formal Suicide Watch show significant differences. This indicates a gap between statutory awareness of the extent of self-harm, and any humane legal and medical responses taken in consequence. An intrusive "suicide watch" programme in detention centres does not alone answer the mental health needs exposed.

Recommendation

That an independent study be commissioned to produce a comparison of suicide rates in immigration and prison detention and in the general public, and with explicit and appropriate methodological controls.

Recommendation

That current excessive detention be halted as a political preventative—and control measure, regardless of EU policy harmonisation.

Discrepancies between statutory statements and reported detention experiences

We are concerned by the gap that exists between the Government's policies and public presentation of the situation regarding suicide and self harm, and the reality of the experience of people seeking asylum and the advocacy groups working with them. In a recent study³⁹¹ Fazel and Siloye confirm the increased risk to asylum seekers of suicide in detention which we and other advocacy groups are positing. HMIP, the Medical Foundation, Medical Justice, and BID/Bail for Immigration Detainees all concur on this matter. But statutory denial continues: A Home Office spokesperson commenting on that study, was reported as saying:

"[. . .] detainees have access to local medical facilities and psychiatric professionals. People with mental health problems would not be placed in detention in the first place, and health professionals monitoring them are required to report any problems. We are confident the system in place to care for detainees is satisfactory."

Medical and torture symptoms when not recorded, do not "exist" legally

We believe that the effects of much untreated and unconsidered trauma, and resultant mental and physical ill health in detention remains undocumented and hence is legally non-existent. This lack of documentation is the result of the drastic reduction in CLR fees for expert reports on these issues, and is exacerbated by the reluctance of many solicitors to confront the Legal Services Commission's refusal to fund such reports, because of fears for the future renewal of their contracts.

A further result of reduced legal preparation time is the superficiality of the dossier content of files sent to the AIT for appeals. This means immigration judges now have to rely to a much larger extent on IND input than before, and this skews AIT outcomes. "Inequality of arms" between asylum seeker and statutory agents continues to increase apace.

³⁸⁸ HMIP, 04/10/06: "Inquiry into the quality of healthcare at Yarl's Wood immigration removal centre".

³⁸⁹ NCDAC: Self-harm statistics based on an FOI request 25/09/06.

³⁹⁰ IRR: Institute of Race Relations: Asylum detention suicides 2000–06.

³⁹¹ Fazel M and Siloye D; British Medical Journal, reported by BBC 05/02/2006.

Professionally disrespectful statutory treatment of expert reports on trauma

We also observe a steadily increasing culture of habitual statutory disbelief of individual asylum accounts even when symptoms and accounts are by and large congruent with objective country evidence. We believe that symptoms of torture, documented by medical experts, should be considered valid and respected as confirmatory evidence of the tales of detention and persecution.

Decision makers responses to observing publicly displayed trauma behaviour

We welcome the fact that there continues to be a modicum of good quality expert reporting on post-torture scars, complaints and observable psychological ill health during the appeal procedures.

It is regrettable however that decisions by both IND and AIT nevertheless increasingly often deny any credibility to causative accounts of experiences in asylum stories of abuse, detention and serial rape. We question what medical training judges and senior IND staff receive to be able to assess and dismiss expert medical opinions on the likely truthfulness of such accounts.

Even where a medical report results in the claim of trauma being accepted, often we see legalistic arguments applied to deny or cast doubt on the causal link between events reported by the asylum seeker, and the resultant health problems. We have even seen decisions which suggested that the presented trauma might have been self-inflicted.

On many occasions the IND interview itself, or the court's decision, clearly reports observed behaviour which consisted of undeniably acute trauma reactions during cross examination; eg a freezing reaction characterised by an inability to comprehend, evident perplexity, instant weeping highly specific to incidents touched upon, almost immediate and very severe headaches, and frequently a total inability to recall (a well documented feature of PTSD) quite often with an additional inability to articulate.

If on the other hand a psychiatric expert has given cogent clinical reasons why the client should NOT give oral evidence, then in at least one blatant example in our records this is held against the defendant as a sign of dishonesty.

Repeatedly we see the IND or IAT ignore or dismiss opinions in a high quality medical expert report describing good credibility, using the agreed clinical vocabulary of the Istanbul protocol on degree of trauma, between medical/psychological presenting problems, and the statutory asylum account.

Such ingrained statutory disbelief of the serious and lasting effects of torture results in many patient relapsing, as well as raising uncontrollable fears of detention and removal.

We believe that the effect on medical care of statutory disbelief is significant and costly in terms of NHS resources. This has not been the subject of any investigation, since many medical practitioners who provide good care are not very familiar with the asylum legal procedures. They may not, therefore, identify legal progress as a factor in presenting symptoms, and consequently do not pick up the link between statutory rejection and relapse.

RECOMMENDATIONS

For all asylum seekers

1. That healthcare in Immigration detention be the direct remit of the National Health Service and be implemented primarily in accordance with patient needs, not immigration purposes.
2. That the impact of once again drastically reducing good quality legal resources for asylum advocacy be recognised as a variable in assessing welfare and health issues of asylum seekers.
3. That "dispersal" towns be furnished with additional specialist mental and other health resources, to meet asylum seekers' specific needs where these impinge on PCT's current workloads (as they do).
4. That documented serious health/disability needs of asylum seekers be given the humane primacy they deserve over immigration objectives.

For detained asylum seekers

5. That planned further extensions of the Fast Track procedure's "End to End" detention policy, from 18% of arrivals to date-to 35% of new arrival by next year, be halted as destructive of mental and physical health.
6. That current passive and occasionally obstructive policies of the asylum detention establishment towards independent medical intervention be eased and move towards proactive cooperation, not confrontation.

7. That statistics be published comparing suicide/self harm figures in criminal prisons and immigration detention centres.

Puck de Raadt (BA-Psy, MSc-Neuropsych)
The Bail Circle
Churches Commission for Racial Justice

59. Memorandum from the Scottish Refugee Council

ABOUT THE INQUIRY

The Joint Committee on Human Rights (JCHR) is conducting an inquiry into the human rights issues raised by the treatment of asylum seekers in the UK. The inquiry will consider any significant human rights concerns relating to the conditions of life for asylum seekers and failed asylum seekers in the UK, focussing in particular on those relating to: access to accommodation and financial support; the provision of healthcare; the treatment of children; the use of detention and conditions of detention and methods of removal of failed asylum seekers; and the treatment of the media.

ABOUT SCOTTISH REFUGEE COUNCIL

Scottish Refugee Council provides help and advice to those who have fled human rights abuses or other persecution in their homeland and now seek refuge in Scotland. We are a membership organisation that works independently and in partnership with others to provide support to refugees from arrival to settlement and integration into Scottish society. We campaign to ensure that the UK Government meets its international, legal and humanitarian obligations and to raise awareness of refugee issues. We are also an active member of the European Council on Refugees and Exiles (ECRE), a network of over 80 refugee-assisting organisations across Europe.

1. INTRODUCTION

1.1 Scottish Refugee Council continues to be deeply concerned by many aspects of Government legislation and policy with regard to the treatment of asylum seekers and people who have been refused asylum in the UK and we welcome the Committee's inquiry into this area. In particular we are concerned by the increasing use of Government policies and legislation whose aims are to:

- use the removal of welfare support as a coercive tool to ensure compliance with immigration control;^{392,393}
- be seen by the general public to be acting tough on asylum seekers;³⁹⁴ and
- act as a deterrent for asylum seekers to register an asylum claim in the UK.

We believe that in many cases the treatment of asylum seekers in these areas and others may potentially breach the European Convention on Human Rights (ECHR) and other international human rights instruments.

1.2 Whilst we welcome the focus that the inquiry places on examining the treatment of asylum seekers in the UK, we would suggest that acknowledgement is made in the inquiry to the increasing methods of border controls used by the UK Government to restrict the fundamental human right to seek sanctuary in a safe country. Despite the Government's recent assertion that it is committed to providing sanctuary to refugees fleeing persecution³⁹⁵, we are worried that increased immigration control methods to strengthen the UK's borders are undermining the fundamental human right enshrined in Article 14 of the Universal Declaration of Human Rights and the 1951 UN Convention on Refugees by denying access to those fleeing persecution. Increased immigration controls such as juxtaposed controls, visa requirements, airline liaison officers, carriers' sanctions and new technologies to detect migrants in transit do not make a distinction between

³⁹² Such as Section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 which removes financial support of asylum seekers with dependent children who have reached the end of the asylum process and fail to arrange to leave the country or fail to comply with removal directions.

³⁹³ Such as the restrictive conditions attached to Section 4 of the Immigration and Asylum Act 1999 the only support available to asylum seekers who have been refused protection but who cannot return to their country of origin through no fault of their own.

³⁹⁴ Such as Section 10 of the Section 10 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 which gives power to the Secretary of State to require those who receive section 4 support to take part in "community activities". The Government believes that refused asylum seekers will be able to "give something back to the community" and "occupy themselves purposefully in a manner which is beneficial to the public" by carrying out community work in return for their board and lodging.

³⁹⁵ "While making the rules strict and workable, we will make sure we don't slam the door on those genuine refugees fleeing death and persecution.", Tony Blair, Controlling our borders: making immigration work for the UK, February 2005.

those fleeing persecution and other migrants seeking to come to the UK for other purposes. Thus, we are deeply concerned that these controls are restricting the fundamental right to asylum and thus have an impact on how the UK Government treats asylum seekers.

1.3 As a member of the Asylum Support Programme Inter-Agency Partnership (IAP)³⁹⁶, Scottish Refugee Council fully endorses the issues raised around accommodation and financial support to asylum seekers and refused asylum seekers made by the Partnership and the evidence submitted in their response.

1.4 As a member of the Asylum Positive Images network in Scotland, we also support the evidence in the submission made by Oxfam UK's Poverty Programme on the treatment of asylum seekers by the media.

1.5 This submission focuses on areas where legislation and UK Government policies impact on the treatment of asylum seekers in Scotland in terms of differing practice and devolved arrangements in Scotland.

2. THE TREATMENT OF ASYLUM-SEEKING CHILDREN IN SCOTLAND

2.1 *The UN Convention on the Rights of the Child*

2.1.1 Article 22³⁹⁷ of the UN Convention on the Rights of the Child (UNCRC) guarantees the protection of children seeking asylum. In general, the rights protected by the Convention should apply to all children. The UK has however entered a general reservation to the UNCRC as regards the entry, stay in and departure from the UK of children who are subject to immigration control.

2.1.2 Scottish Refugee Council is extremely concerned by the UK Government's insistence on maintaining such a reservation to the UNCRC. We are concerned that this has been too widely interpreted by the Government and the impact of the reservation extends beyond the determination of refugee status, and leaves asylum-seeking children and refugee children with less protection in terms of their rights under the UNCRC. We support both the UN Committee on the Rights of the Child's³⁹⁸ call for this reservation to be withdrawn and *we would ask the Committee to reiterate its previous recommendations that the UK Government withdraw its reservation.*

2.2 *Destitution of asylum-seeking children: Section 9*

2.2.1 Section 9 of the Nationality, Immigration & Asylum Act 2004 extends provisions under the Nationality, Immigration and Asylum Act 2002 to create the category of, "failed asylum seeker with family"³⁹⁹, who cease to be eligible for any form of support. Under the Act, families who are deemed to have "failed without reasonable excuse to take reasonable steps to leave the UK voluntarily"⁴⁰⁰ have no recourse to financial and other assistance. Children of families in Scotland remain eligible for support under the Children (Scotland) Act 1995, but only if separated from their families and being looked after by local authorities. Support to the whole family can only be provided if there is felt to be a potential breach of the ECHR.

2.2.2 Whilst Section 9 has not been implemented in Scotland nor was Scotland included in the pilot, Scottish Refugee Council caseworkers have already witnessed the fear, panic and confusion that this policy evokes. In July NASS 72 letters, the first step in the Section 9 process, were sent to clients in Glasgow informing them that support to them and their families would stop.⁴⁰¹ This is despite the fact that many had on-going cases.⁴⁰²

2.2.3 Scottish Refugee Council has grave concerns about the impact that Section 9 would have in Scotland where a high number of asylum-seeking families are housed in one local authority compared to other dispersal areas in the UK⁴⁰³. We believe that this policy is exceptionally damaging to the welfare of children and potentially in breach of Articles 3 and 8 of the European Convention on Human Rights.

³⁹⁶ The Asylum Support Programme Inter-Agency Partnership (IAP) consists of six agencies: Refugee Council, Refugee Action, Migrant Helpline, Refugee Arrivals Project, Scottish Refugee Council and Welsh Refugee Council.

³⁹⁷ *States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*

³⁹⁸ Concluding observations of the Committee on the Rights of the Child: CRC/C/15/Add 34 1995.

³⁹⁹ Section 9(1).

⁴⁰⁰ Section 9(1)(b)(i).

⁴⁰¹ Between July 2005 and October 2005 Scottish Refugee Council Casework Services provided advice to 43 clients and their families in relation to NASS 72 letters.

⁴⁰² Some families had judicially reviewed the decisions to reject their claims, others had lodged fresh claims. We do not have exact statistics on this, but it is estimated that around a quarter of families had some aspect of their claim ongoing.

⁴⁰³ According to current statistics Glasgow City Council houses 4,770 asylum seekers including dependents, Asylum Statistics, 2nd Quarter, Home Office, <http://www.homeoffice.gov.uk/rds/pdfs06/asylumq206.pdf>

Moreover, on a practical level, we believe that there is very little realistic possibility of introducing such a policy due to capacity of Children's Services in Glasgow. Both of these concerns have been raised by Kathleen Marshall, Scotland's Commissioner for Children & Young People:

2.2.4. . . there must be serious concerns about the human rights impact of such a response, as well as its basic practicality. There would simply not be enough "looked after" places to accommodate any more children, least of all those with caring families whose need is based purely on material considerations. Nor should policy-makers underestimate the impact that the possibility of such action might have on the mental well-being of families and children. I have been told anecdotally about children "whispering in the playgrounds" about the possibility of being removed from their parents in these circumstances. I cannot evidence this, but it rings true. We must surely avoid strategies likely to instill such fear in the hearts of innocent children.⁴⁰⁴

2.2.5 Criticism of Section 9 and its potential human rights breaches have come from many other quarters, including: NGOs⁴⁰⁵, the Home Affairs Select Committee, The House of Lords and the Joint Committee on Human Rights⁴⁰⁶ itself.

2.2.6 Provision for withdrawing Section 9 from statute was included under Section 44⁴⁰⁷ of the Immigration, Asylum and Nationality Act 2006. *Scottish Refugee Council would strongly urge the Committee to recommend in its inquiry that Section 44 is enacted.*

2.3 Destitution of asylum-seeking families: bureaucratic routes

2.3.1 Despite Section 9 not being implemented at this stage, Scottish Refugee Council is extremely concerned by the destitution experienced by children caused by bureaucratic errors and delays in administering financial support to asylum-seeking families.

2.3.2 Case study 1 gives one example from our recent casework of where children were subjected to destitution due to administrative delays in issuing support by NASS.

Case study 1

A 41-year old single mother of 5 children approached Scottish Refugee Council for advice regarding a NASS support issue. She lost her ARC card on June 25 2006 and she was subsequently unable to collect her weekly NASS payment from the Post Office. NASS was informed about the issue the following day and the client was provided with emergency support until 28 August 2006. No ARC replacement was issued by that date and NASS failed to provide additional Emergency Support Tokens from 28 August until 12 September 2006 despite many contacts (telephone calls, faxes) about the issue. This caused a lot of stress to client and her children as they had to come to Scottish Refugee Council and Social Work Services for assistance with the matter on numerous occasions. Social Work Services were reluctant to give interim support to the family despite their obligations under the Children (Scotland) Act 1995. There is still a risk of not getting her NASS support payment on time as the issue of ARC card replacement is yet to be resolved.

2.3.3 Scottish Refugee Council recently published research into the destitution of asylum seekers and refugees in Scotland⁴⁰⁸. This research disturbingly revealed that there were at least 24 asylum-seeking children from 16 families affected by absolute poverty living in Glasgow during February 2006. Seven of those families (a total of 10 children) had been destitute for longer than six months. Eight of the families who were recorded within the survey were destitute because they are at the end of the process. Three of those families had applied for Section 4 support but had become destitute while they waited for it to start. That means that a total of four children were destitute in Glasgow during February 2006 because of an administrative delay on the part of NASS.

2.3.4 A further four families were also at the end of the asylum process but were not receiving Section 4 support either because they did not meet the criteria for the support or were unwilling to apply. Such families should continue to receive NASS support until they leave the country. However, this is often not the case either because a child has been born after the parents received their final refusal on their asylum case, or because they failed to register their child on their asylum claim, or because a dependent child had arrived in the country after asylum claim had failed. In these cases Social Work Services are obliged to provide support for the children under Section 22 of the Children Scotland Act 1995, but in practice whether they also provide support to the parents varies depending on which social work team is responsible for the area the family live within.

⁴⁰⁴ Written Evidence by Kathleen Marshall, Scotland's Commissioner for Children and Young People to Home Affairs Committee Inquiry into Immigration Control, December 2, 2005

http://www.sceyp.org.uk/admin/04policy/files/spo_165326Immigration%20Control%20Inquiry%20Response%20Dec%202005.pdf

⁴⁰⁵ Such as *The End of the Road*, http://www.barnardos.org.uk/end_of_the_road_asylum_report.pdf

⁴⁰⁶ JCHR, fifth report, session 2003–04, para 45.

⁴⁰⁷ *The Secretary of State may by order provide for paragraph 7A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (c 41) (failed asylum seeker with family: withdrawal of support) to cease to have effect.*

⁴⁰⁸ *They Think We Are Nothing*, A Survey of Destitute Asylum Seekers and Refugees in Scotland, Mhoraig Green, Scottish Refugee Council, August 2006. http://www.scottishrefugeecouncil.org.uk/pub/Destitution_Research

2.3.5 Two families were destitute and potentially homeless because their NASS support had been terminated because of a breach of conditions (for example, being caught working or allowing destitute asylum seekers to share their accommodation). This is despite the fact that families with children whose NASS support had been terminated for this reason should be supported by Local Authorities under Section 22 of the Children Scotland Act 1995.

2.3.6 We are very concerned that the human rights of these children are being breached and *we would urge the Committee to recommend to the Government that:*

- *all families should continue to be supported while they remain in the UK, regardless of whether the children were born after their parents became fully refused asylum seekers;*
- *families should not be forced to become dependent on the charitable support of organisations and other asylum seekers as the only route out of their destitution; and*
- *the role and responsibility of local authorities in Scotland for supporting destitute asylum-seeking families should be clarified to ensure that children are not made destitute.*

2.4 Enforced removal of asylum-seeking children

2.4.1 There has been considerable, much-publicised, concern in Scotland around early morning enforced removals involving children. NGOs, churches, local communities, The Children’s Commissioner for Scotland⁴⁰⁹ and many others have all expressed grave concern at the way in which such removals are conducted, the disproportionate use of force by immigration enforcement officers and the impact that such removals has on the mental and physical well-being of children.

2.4.2 Such practices have also been criticised by Ministers of the Scottish Parliament and the First Minister Jack McConnell. On 21 September in a Scottish Parliamentary motion Peter Peacock, The Scottish Education Minister expressed the Scottish Executive’s concern for the welfare of children who are subject to enforced removals:

2.4.3 [the Scottish Parliament] affirms its support for the principles of the UN Convention on the Rights of the Child (UNCRC) which states that governments should protect children from all forms of physical or mental violence; recognises that, while the Scottish Executive has no direct responsibility for the operation of the immigration and asylum system, it is responsible for the welfare of children, for schools, and for working with the UK Government to report on compliance with the UNCRC; commends the substantial work done in Scotland to ensure the effective education and inclusion of the children of asylum seekers; believes that, in the vast majority of cases, failed asylum seeker families do not pose either a security threat or a serious risk of flight; calls on Scottish ministers to give the greatest possible urgency to realising their aspirations for the most vulnerable children in Scotland, including those facing detention and removal, and urges them to continue discussions with the Home Office with a view to agreement that the Home Office will work closely with services for children and young people before the removal of any family and to convey to the Home Office the widespread concerns about practices such as so-called “dawn raids”, handcuffing of children, and the removal of children by large groups of officers in uniform and body armour.⁴¹⁰

2.4.4 Article 8 of the ECHR states that family privacy should be respected. Any intrusion has to be clearly justified on grounds that it is proportionate and has a legitimate end. Article 3 of the UNCRC also states that the best interests of the child must be at least a primary consideration on any matter affecting her. Article 12 states that the child should have the right to have a say about decisions that affect her and have their opinion heard. We contest that current practices of enforced removal in Scotland may not be compliant with these Articles.

2.4.5 We believe that very little attention is paid to ensuring that child protection issues and the best interests of the child concerned are central to the process of removal. Whilst the guidance to enforcement staff stipulates that pastoral visits should be undertaken prior to removals taking place, we are deeply concerned that when they do take place in many cases these are perfunctorily carried out as intelligence gathering exercises to ascertain the best time for immigration officers to effect removal, rather than to ensure that children’s needs are met.

2.4.6 Many areas of oversight are wholly lacking to ensure the best interests of the child are taken into consideration, such as:

- assessing the current physical and mental health of the child and their suitability for travel;
- ensuring that the child is appropriately immunised for diseases prevalent in the country they will return to and to which they may not have natural immunity, such as malaria and yellow fever;
- ensuring that the removal takes place at appropriate breaks in the children’s education and they have access to their educational records;

⁴⁰⁹ For example: <http://news.bbc.co.uk/1/hi/scotland/4293600.stm>

⁴¹⁰ Scottish Parliamentary motion S2M-3323.2—Children of Asylum Seekers, Supported by: Robert Brown, Malcolm Chisholm Lodged on 21 September 2005; taken in the Chamber on 22 September 2005 <http://www.scottish.parliament.uk/sch/motion.page?clause=WHERE%20motionid=8861>

- ensuring that the children’s own concerns are heard; and
- ensuring there are no outstanding child protection issues.

2.4.7 On the last point, we are aware of instances where a lack of knowledge of officers about outstanding child protection cases has resulted in children at risk being detained and subsequently removed with their parents. This raises serious concerns that the current process is paying scant regard to the human rights, safety and welfare of the children involved.

2.4.8 We welcome the Scottish Executive’s support for the principles of the UNCRC and also welcomed their statement on the creation of the position of a “lead professional” to support the welfare of children at the end of the asylum process and pilot it in Scotland:

2.4.9 The role of the lead professional will be key to the welfare of children as they will feed in vital information about children’s health, education or any other considerations that should be taken into account prior to the timing of removal being confirmed.⁴¹¹

2.4.10 Although we are pleased that considerations of health and education are now being considered to make steps to ensure the best interests of the child figure in the removals process, details however on the actual role, responsibility, authority, independence and accountability of this “lead professional” have not been announced and we seek clarification and further dialogue to what extent this role will play.

2.4.11 On 27 March 2006, the Home Office Minister, Tony McNulty announced a range of measures⁴¹² to improve the current process. This included a National Review of IND’s Family Removal Process.

2.4.12 Whilst we welcomed this review and submitted evidence. We were disappointed by the narrow focus of the questions put forward for consultation as we feel that these do not reflect the complex nature of the issue of return and families at the end of the asylum process and are not convinced that this review will lead to changes which will guarantee that the best interests of the child will be fully considered. We firmly believe that a far more comprehensive review of the Government’s policy on returns and family removals is essential. *We urge the Committee to question the progress that has been made by IND in the range of measures announced on 27 March 2005, including the Review of Family Removal Processes, and to assess whether any proposed changes will ensure that the human rights of children subject to enforced removal are not breached.* We have appended our submission of evidence to the IND’s Review of Family Removal Processes should you wish to consider this matter more in depth.

2.5 Detention of asylum-seeking children

2.5.1 Detention, even for a short period, is a traumatic experience for children, inhumane and has serious impact on their physical health, mental health, personal development and education. This has been supported by reports from Her Majesty’s Inspectorate of Prisons, NGOs and most recently by the British Medical Journal⁴¹³. Scottish Refugee Council believes that the best interests of children should be of paramount consideration and detaining children is fundamentally not in their best interests.

2.5.2 We believe that detaining children for the purposes of immigration control in the UK runs contrary to many international human rights conventions and standards⁴¹⁴. These standards state that detention can only be justified in all but the most exceptional circumstances as a measure of last resort.

2.5.3 As a result of the high-profile public debate in Scotland around the detention of children, families are now detained for a maximum of 72 hours in Dungavel House Removal Centre in South Lanarkshire. We are seriously concerned that children are being frequently transferred around the UK detention estate from one centre to another as removals are not being effected. For example, we have heard of several cases of asylum-seeking families being detained at Dungavel, and then moved to another centre only for them to appear again back in Dungavel. This has not only caused extreme distress and disorientation, but also difficulties in accessing current or new legal representation. The length of time of these transfers and the length of time and conditions to effect removal are serious cause for concern. Case study 2 gives one such example.

⁴¹¹ Statement by Peter Peacock, Education and Young People Minister, Scottish Executive: Minister welcomes package of measures for children of asylum-seeking families, Scottish Executive press release.

⁴¹² Measures announced included: the introduction of enhanced criminal record checks for frontline immigration enforcement staff working across the UK; the creation of a new post of Regional Director for Immigration in Scotland, with responsibility for co-ordinating and managing immigration arrangements in Scotland as part of a broader UK development; significant progress on increasing the numbers of failed asylum seekers who leave the UK voluntarily through the Government’s enhanced voluntary returns package; a provision in the Police and Justice Bill, currently going through Parliament, which will allow for the independent inspection of the immigration service; and a review of family removals processes by the Home Office; Immigration Minister Welcomes Continuing Dialogue with Scotland, Home Office press release, 27 March 2006, <http://press.homeoffice.gov.uk/press-releases/dialogue-with-scotland>

⁴¹³ “[detention centres in the UK] . . . hold children, placing their normal psychosocial development at risk by exposing them to isolated, deprived, and confined conditions, a situation that bodes poorly for their future adaptation, whether they are ultimately resettled or repatriated. <http://bmj.bmjournals.com/cgi/content/full/332/7536/251>

⁴¹⁴ UN Convention on the Rights of the Child (UNCRC), Article 37 (b); UNHCR: Guidelines on unaccompanied asylum-seeking children (UNHCR 1997), Revised guidelines on the detention of asylum-seekers (UNHCR 1999), and ExCom Resolutions (principally No 44); European Convention on Human Rights (ECHR), Article 5.

Case study 2

A mother and daughter (aged nine years) were taken from Dungavel during the night. They arrived at Manchester airport at approx. 7am. They were offered breakfast at this time which they took but couldn't eat. No food or drink or sandwiches on offer until 3 pm, which again they struggled to eat. They spent all day at the airport (waiting 14 hours on a chair) and at 12.30 am were taken from the airport back to Dungavel arriving approximately at 5 am the following morning. They were totally exhausted and it was lunch time before they ate again.

Testimony given to Toryglen Community Group by woman upon release from detention, 4 October 2006

2.5.4 These problems are compounded by cross-border movements from England to Scotland and vice-versa as not only is there the impact of geographical distance between client and lawyer, but also the major problem with transference from one legal system to another. The full extent of this practice is difficult to assess due to a lack of transparency and available data.

2.5.5 We are also concerned about the lack of independent monitoring of asylum-seeking children in Dungavel. In July 2005, as part of a report into safeguarding children's rights⁴¹⁵, Chief Inspectors from various statutory bodies⁴¹⁶ looked into the issue of asylum-seeking children in detention. However, the report did not look into arrangements for children at Dungavel as this was "outside the scope of the review".⁴¹⁷ The only independent report so far into conditions at Dungavel was published by Anne Owers, HM Inspector of Prisons, in 2003. We are therefore concerned that in detention centres based in England various inspectors have the authority and power to inspect facilities, conditions and practices yet will not cross the border into Scotland. Meanwhile, their power does not appear to fall to their Scottish counterparts.

2.5.6 Detention of asylum-seeking children in the UK is not proportionate to international human rights. Statistics on the number of children detained, the length of their detention and the difference in numbers detained compared to the numbers removed unmistakably show that it is not used as an option of last resort.

2.5.7 Scottish Refugee Council as part of the No Place for a Child Coalition⁴¹⁸ is opposed to the detention of children for immigration purposes and has called on the UK Government to stop this practice. The All-Party Parliamentary Group on Refugees in support of this campaign has proposed alternatives to detaining children⁴¹⁹. *We would urge the Committee to recommend that the Government stops detaining asylum-seeking children and seek a more humane and less harmful alternative.*

3. ACCESS TO FINANCIAL SUPPORT AND ACCOMMODATION WITH REFERENCE TO SCOTLAND

3.1 *Destitution of asylum seekers in Scotland*

3.1.1 Scottish Refugee Council, like other members of the Inter-Agency Partnership, NGOs, churches and community groups supporting asylum seekers, is extremely concerned by the increasing number of asylum seekers who are experiencing absolute and severe poverty through the withdrawal of statutory support and the withdrawal of the right to work to support themselves.

3.1.2 We recently conducted a survey of destitute clients presenting at our offices and the offices of other voluntary-sector support agencies in Glasgow⁴²⁰.

3.1.3 The survey revealed that at least 154⁴²¹ asylum seekers, refugees and their dependents were destitute. 27 people surveyed were asylum seekers with active claims, 7 were refugees and had yet to access mainstream support and 78 had been refused asylum and were at the end of the process. However only 33% were satisfied with their legal support, indicating that people may have been let down by the well-documented failings of the asylum system.

⁴¹⁵ Safeguarding Children July 2005 The second joint Chief Inspectors' Report on Arrangements to Safeguard Children.

⁴¹⁶ Commission for Social Care Inspection (CSCI), HM Inspectorate of Court Administration (HMICA), The Healthcare Commission, HM Inspectorate of Constabulary (HMIC), HM Inspectorate of Probation (HMIP), HM Inspectorate of Prisons (HMIP), HM Crown Prosecution Service Inspectorate (HMCPSP), The Office for Standards in Education (OFSTED).

⁴¹⁷ Safeguarding Children July 2005 The second joint Chief Inspectors' Report on Arrangements to Safeguard Children, p 86: "7.2 This chapter also examines arrangements for children held with their families using evidence from HMI Prisons inspections of two immigration removal centres in England: Oakington (Cambridgeshire) and Tinsley House (West Sussex). The centre at Dungavel (South Lanarkshire) is outside the scope of this review, although asylum-seeking families based in England might be placed there pending deportation."

⁴¹⁸ See www.noplaceforachild.org Other members of the coalition include Refugee Council, Save the Children, Bail for Immigration Detainees and Welsh Refugee Council.

⁴¹⁹ See www.noplaceforachild.org

⁴²⁰ The aim of the research was to capture a snapshot of the number of destitute asylum seekers and refugees presenting to voluntary sector agencies in Scotland during a one-month period and to find out more about their experiences and what led them to become destitute. A quantitative survey took place in Glasgow, where the overwhelming majority of Scotland's asylum seekers live, between 30 January and 28 February 2006.

⁴²¹ These numbers are likely to significantly under represent the actual number of destitute asylum seekers because of the methods used and the problems associated with reaching a hidden population.

3.1.4 We append the survey to give the Committee an overview of the extent and devastating impact that UK Government policy and administrative delays and errors are having on asylum seekers. We believe that in many instances the situation that destitute asylum seekers are facing could constitute breaches of Article 3 of the ECHR and Articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights.

3.1.5 We would like to take this opportunity to present particular issues relating to unresolved differences between UK Government policy and differences in Scottish legislation which are having a significant impact on the treatment of asylum seekers in Scotland.

3.2 *Asylum seekers with care needs in Scotland*

3.2.1 Scottish Refugee Council is increasingly encountering difficulties securing financial support and accommodation for clients with special needs from Social Services in Scotland. In several cases Social Work Services in Glasgow refuse to support clients regardless of clear indications that clients' needs are above and beyond that which can be met by Section 4 support (if eligible). The threshold for accessing this support is set extremely high in Glasgow and the most vulnerable asylum seekers including those with mental health needs are being left in dire situations. This is due, in large part, to the different legislative framework in Scotland. One such case where a mentally-ill woman who was left without any support committed suicide attracted considerable media attention⁴²² and case study 3 gives an example from our case files.

3.2.2 The Immigration and Asylum Act 1999 removed the right of asylum seekers to access mainstream welfare benefits, public housing and some forms of Local Authority assistance, ie services to meet a need that "arises solely out of destitution or the effects of destitution".

3.2.3 Despite the changes in entitlements brought about by this legislation, asylum seekers retain entitlement to some Local Authority services. Existing Community Care legislation, the National Assistance Act 1948, which sets out the responsibilities of Local Authorities towards people with disabilities, mental health or other health needs still applies to asylum seekers. However, many Local Authorities disputed their responsibilities and a resulting legal challenge in the English courts defined the parameters.⁴²³

3.2.4 Whilst this judgement settled the threshold for social work and other assistance in England and Wales and has subsequently informed policy since, it has no bearing in Scotland where existing social work policy remains unchanged. Policy Bulletin 82 in which NASS clearly states the limits of support it can provide under section 95 for those with care needs does mention Scottish legislation. However, it relies on the Westminster ruling which, although it could be considered persuasive, does not constitute legal precedent in Scotland.

3.2.5 This lack of precedent leaves asylum seekers with care needs in Scotland in a precarious position which subsequent Policy Bulletins have failed to address. Most recently, the draft Policy Bulletin 75 on Section 55 Guidance again assumes that the National Assistance Act 1948 has an exact equivalent in Scottish legislation (which it does not⁴²⁴), and that the Westminster ruling has a binding effect on Scottish authorities.

3.2.6 On an operational basis, Scottish Refugee Council caseworkers continue to make persuasive cases to ensure that clients with special needs receive appropriate support and entitlements. However, the Home Office, Scottish Office and the Scottish Executive have still to address this issue.

Case study 3

An Iraqi male, appeal rights exhausted in 2004 has been in and out of hospital with mental health problems. The client is married to a Scottish citizen who also suffers from mental health problems.

A Community Care Assessment (CCA) was requested on 5 November 2004. Two weeks later, the client was admitted to hospital. He was allocated a social worker the same week. A CCA was carried out in December 2004 and during the assessment, the client and his wife expressed the need for financial assistance. The social worker had said that the chances of Social Services providing financial support at the time or in the future was very low. She did however agree to liaise with client's psychiatrist.

During this time, the Glasgow City Council had started eviction proceedings to remove client from NASS accommodation. The client's solicitor also made further representation to the Home Office on medical grounds.

On 12 January 2005, the client came to Scottish Refugee Council extremely distressed, stating that a social work manager had visited him and informed him that social work would not support him financially and that he was going to commit suicide. His social worker was contacted who said she would liaise with seniors to see whether they would change their mind. Section 4 support was discussed with client as an option.

The client returned to the office two days later, stating he was worried that he would not be able to live on his own if he was to get Section 4 support.

⁴²² <http://www.theherald.co.uk/news/70321.html>

⁴²³ Westminster City Council v National Asylum Support Service (NASS).

⁴²⁴ Social Work (Scotland) Act 1968.

On 18 January 2005, Scottish Refugee Council received letter from Social Work Services, refusing client support.

On 4 February 2005, the client applied for Section 4 support on the basis of his further representations. On 18 February, Section 4 support was refused. The reason given was the client's needs were above and beyond destitution.

Scottish Refugee Council again contacted Social Work to ask them to support the client. We were informed by COSLA however, that Glasgow Social Services had a new policy stating asylum seekers would not be supported unless their needs were so exceptional as to warrant residential care. The client was left in limbo where neither NASS nor Glasgow City Council would support him.

3.3 *Refusal to recognise differences between legal systems in Scotland and England*

3.3.1 Scottish Refugee Council is concerned that asylum seekers in Scotland are falling through gaps in procedural differences between Scottish and English legal systems and being left destitute and in appalling situations. This is due to NASS refusing to accept timescales for lodging appeals. Case study 4 gives an example of this situation.

Case study 4

A young Iraqi woman approached Scottish Refugee Council on many different occasions seeking assistance in connection with her case. She became destitute after NASS terminated her support despite her having an ongoing asylum appeal at Edinburgh Court of Session. NASS stated that the client's appeal was made out of time (an appeal must be made within 12 days from the previous court decision date according to English law. However, under the Scottish legal system this is 42 days). Evidence from the client's solicitor and Edinburgh Court of Session confirmed that the appeal was made timely but NASS refused the client's application for support re-instatement stating that according to its policy her appeal should have been made within 12 days for her to be considered for support. The client has been left destitute and homeless. She is now dependent on charitable support and temporary accommodation provided by friends to avoid having to sleep on the streets. Her lawyer is pursuing this case at judicial review.

Gary Christie
Policy & Communications Team

October 2006

60. Memorandum from Amnesty International UK

Amnesty International is a world-wide membership movement. Our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights. We promote all human rights and undertake research and action focussed on preventing grave abuses of the rights to physical and mental integrity, freedom of conscience and expression and freedom from discrimination.

TREATMENT OF ASYLUM SEEKERS

Amnesty International UK welcomes the opportunity to submit evidence to this inquiry into the human rights issues raised by the treatment of asylum seekers in the UK. For this submission the organisation will focus primarily on the treatment of rejected asylum seekers and on the issue of detention of people who have sought asylum.

The number of those detained solely under Immigration Act powers in the UK who have claimed asylum at some stage, including families with children has increased. The latest Home Office statistics show that on 24 June 2006 there were 1,825 detainees who had claimed asylum at some stage.

In June 2005, Amnesty International published its report UK: Seeking asylum is not a crime: detention of people who have sought asylum⁴²⁵, examining the increased use of detention both at the beginning and end of the asylum process to see if the UK met its obligations under international refugee and human rights law and standards. The organisation found that people who had sought asylum were detained even though the prospect of effecting their forcible removal within a reasonable time was slim.

For its report Amnesty International examined the cases of asylum seekers who were detained for the duration of the asylum process whose claims were considered under accelerated asylum determination procedures predicated on detention and those who were detained once their claim had been dismissed and were considered to be at the end of the asylum process.

⁴²⁵ http://www.amnesty.org.uk/uploads/documents/doc_16178.pdf

At the time of its research Amnesty International estimated at least 25,000 people who had sought asylum at some stage were detained in 2004 for some period of time, many more than were removed during the same time frame. This despite the fact that the UK authorities have claimed that detention is pivotal to their strategy to remove asylum seekers whose claims have been dismissed and that detention would only be used as a last resort.

As a result of its research Amnesty International found that detention was in many cases inappropriate, unnecessary, disproportionate and therefore unlawful. Whether at the beginning or the end of the asylum determination process, the individuals concerned may be taken into detention on the basis that a bed is available in the detention estate.

One of Amnesty International's main concerns is that there is no prompt and automatic judicial oversight of the decision to detain nor are there automatic judicial reviews of the continuance of detention. In addition, there are no maximum time limits of the length of detention.

Amnesty International was concerned that the difficulties that those who have sought asylum face in accessing justice whilst detained have been compounded by the restrictions since April 2004 to publicly funded immigration and asylum work. There has been a withdrawal of established solicitors from this area of work and at all stages of the asylum process many are left with little or no access to effective legal advice and representation. This problem is particularly acute for those at the end of the asylum process who are held in detention.

Those detained under Immigration Act powers were often held far away from their families, in often remote locations and in grim, prison-like establishments. Those detained included families, including mothers with children, at times very young ones, victims of torture and other vulnerable individuals.

At the time of being taken into detention the individuals concerned were not told how long they would be detained. People complained about not knowing what was happening with their asylum claim whilst they were in detention and it was difficult for them to pursue their asylum claim.

Those detained also told Amnesty International that they felt abandoned, demoralised and bored. People were being shunted around the detention estate from one Immigration Removal Centre to another without any prior notification. In some cases the transfer took place at night and people were kept for hours in the back of a van. The majority of those interviewed by Amnesty International were transferred from one place of detention to another with some being transferred more than four times.

Some of those interviewed made allegations that excessive force was used by the authorities in attempting to enforce their return. They complained of being assaulted while being escorted to the airport to be forcibly removed from the UK. One of those interviewed was taken to the airport to be forcibly returned to his country of origin without any of his belongings. The flight was cancelled while he was waiting at the airport. He was booked onto another flight several days later and this time he resisted being returned without his possessions. He alleged that he was badly beaten by eight escorts from the private company employed to carry out the forcible removal. He complained that he was badly bruised as a result of this assault, his face was bleeding and he could not stand unaided.

Several of those interviewed by Amnesty International described the reprehensible way in which they were taken from their homes into detention and the lasting effect it has had on them and their family.

One year after applying for asylum a family was taken into detention at Dungavel Immigration Removal Centre in Scotland for a total of 17 days. At approximately 6 am several officials came to the family's flat. They knocked loudly, shouting "this is the Home Office" and charged in. Some entered the flat and some remained outside and in the lift. The 11-year-old boy was asleep and neither his father or mother was allowed to wake him. Instead, he was woken up by the officials which the boy found extremely traumatic. The family did not understand what was happening. They got dressed and were told they were being sent back to their own country. The officials gathered their belongings very quickly including documents. They were not told they were going to Dungavel IRC; they were told they were going back to their own country. The man was taken in one vehicle handcuffed and his wife and child in the other car.

Upon their arrival at Dungavel IRC the child locked himself in the toilet and refused to come out for a long time. He did not speak to his parents and communicated with them by passing notes to them under the toilet door. The whole experience has left him profoundly distressed; he is seeing a psychologist and finds it difficult to sleep.

Since their experience in detention any knock on the door is taken as a threat and the boy is terrified to be taken into detention again.

Fast track detention

In tandem with a policy to step up forcible removals, asylum policy in the UK has increasingly focused on procedures devised to deal with asylum claims more speedily. Amnesty International is concerned about the quality of decisions and procedural safeguards within the detained accelerated procedures. Speeding up the decision-making process is beneficial only if it is not at the expense of fairness and quality. In addition, the expeditious processing of asylum claims should not be premised on detention.

The vast majority of fast track asylum claims are initially refused and the UK authorities see the high refusal rate as evidence of the high number of unfounded claims. However, non-governmental organisations are concerned that the system is set up to refuse people and that the tight timescale renders fair decision-making almost impossible.

There is particular concern about the potential for unfairness for survivors of torture who may not build a relationship in the time allowed to feel able to disclose experiences of torture crucial to their case.

Amnesty International considers that the fast-track procedures at Harmondsworth and Yarl's Wood Immigration Removal Centre and at Oakington Reception Centre to be unjust because they are premised on detention. The organisation believes that the use of fast-track procedures, where the time limits are so tight, is not conducive to fair decisions and that asylum seekers are detained for administrative convenience, to permit the Home Office to make a quick decision on straightforward claims, the main factor being the asylum seekers' nationality.

Amnesty International is opposed to the detention of asylum-seekers except in the most exceptional circumstances as prescribed by international and regional law and standards, including the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers. Detention will only be lawful when the authorities can demonstrate in each individual case that it is necessary and proportionate to the objective to be achieved, that it is on grounds prescribed by law, and that it is for one of the specified reasons which international and regional standards recognize as legitimate grounds for detaining asylum-seekers.

Amnesty International also opposes the detention of people who have claimed asylum and whose claims have been dismissed by the authorities, unless, for example, the detaining authorities can demonstrate that there is an objective risk that the individual concerned would otherwise abscond, and that other measures short of detention, such as reporting requirements, would not be sufficient.

With respect to both categories, detention should also be for the shortest possible time. In addition anyone held in detention must be promptly brought before a judicial authority and be provided with an effective opportunity to challenge the lawfulness of the decision to detain him/her.

Amnesty International urges the UK authorities only to resort to detaining those who have sought asylum in exceptional circumstances and only when it is lawful.

The treatment of rejected asylum seekers

Amnesty International has just completed a report on the destitution of rejected asylum seekers that will be published on 7 November 2006. For this report the organisation interviewed a number of rejected asylum seekers and found that they were living a life of abject poverty in some cases for many years. They are reliant on the charity of others in the main part to subsist, living a hand to mouth existence. All of those interviewed expressed a fear of returning to their country of origin.

Amnesty International believes that rejected asylum seekers are being made destitute to force them to go home. However, this is evidently not working in the way that the Government anticipated. The National Audit Office, estimated that in May 2004 there was a backlog of removals of between 155,000 and 283,000 rejected asylum seekers. In March 2006, the House of Commons Public Affairs Committee concluded that on the basis of these figures, without any new unsuccessful applications, it would take between 10 and 18 years to tackle the backlog based on the Immigration and Nationality Directorate's removal rate.

Each year around two-thirds of asylum applications are ultimately refused, including any appeal. Financial support and accommodation is cut off after 21 days and at this point they are expected to leave the country voluntarily or be subject to removal action.

Since 1 April 2004 rejected asylum seekers are denied free health care at NHS hospitals unless it is for emergency treatment. This is the same for whether the rejected applicant is in receipt of Section 4 support or not. Regulations made under Section 4 of the Immigration and Asylum Act 1999, as amended by the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 provide for support and accommodation continues to be available for failed asylum seekers who are destitute and unable to leave the UK immediately due to circumstances entirely beyond their control.⁴²⁶

The majority of rejected asylum seekers do not apply for Section 4 support or are not eligible.

⁴²⁶ They have also to satisfy one or more of the following:

- (a) he is taking all reasonable steps to leave the UK or place himself in a position in which he is able to leave the UK, which may include complying with attempts to obtain a travel document to facilitate his departure;
- (b) he is unable to leave the UK by reason of a physical impediment to travel or for some other medical reason;
- (c) he is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return available;
- (d) he has made an application for judicial review of a decision in relation to his asylum claim; and
- (e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights within the meaning of the Human Rights Act 1998. (this includes where the applicant has made fresh asylum claim).

While the asylum claim is being processed, the applicant is entitled to free health care. Once appeal rights are exhausted and they are rejected, asylum seekers are only entitled to emergency treatment in hospitals or to continue with treatment they were already receiving but all other secondary care treatment is chargeable. This includes pregnant women, cancer patients and diabetics.

Rejected asylum seekers have no legal right to work and are at risk of exploitation and injury. Amnesty International was told by some of those working with rejected asylum seekers that they suspected some of the women, through desperation had been forced into prostitution to survive and of young girls who were given floor space possibly in exchange for sexual favours, and others working illegally for very little remuneration.

Many of those interviewed by Amnesty International displayed signs of depression and some had serious mental health problems and were only receiving appropriate treatment if the condition had manifested during the asylum process.

Access to accommodation and financial support

Amnesty International has been informed that in the Blackburn and Darwen area asylum seekers have been moved from their accommodation to alternative accommodation without being given a chance to take their few personal belongings. Others are moved at very short notice.

An example of this is illustrated by the case of a family of asylum seekers with an outstanding appeal with three children, one about to take his GCSEs and another in her final year at college. When told of their planned relocation they requested to be re-housed in the same area. Without any warning the family were given 30 minutes notice of relocation some 25 miles away and refused to move. Their followed a dispute between housing providers in the area and finally the family had to relocate.

There are reports that some accommodation is substandard with leaking plumbing and decayed infrastructure. Asylum seekers are given information about their relocation in English, a language many do not yet speak and in some cases after relocation, it takes up to three weeks for benefit payments to be made.

Please do contact Amnesty International if any further information or assistance is required.

October 2006

61. Memorandum from the Yorkshire & Humberside Consortium

Below is a response collated from input around the Yorkshire & Humberside Region on your call for evidence. Other individuals or organizations my response separately.

The region, particularly the larger cities of Sheffield and Leeds, has a long tradition of welcoming and providing safe homes for people who have fled from war and persecution all over the world. Asylum seekers and refugees have settled and in so doing have contributed a great deal to creating diverse and multi cultural cities. As a region, we participated in the interim dispersal scheme, prior to the formal roll out of the dispersal process and Sheffield the first local authority to take Gateway refugees. It is currently the only local authority to have welcomed three groups of refugees to the city under the Gateway programme, joined recently by Hull accepting a group of Gateway refugees.

Ten local authorities in the Yorkshire and Humberside region make up the Yorkshire and Humberside Public Sector Group which has a contract with the Home Office to accommodate and support half the asylum seekers dispersed to this region under the new target contracts.

ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

Asylum seekers receive financial support from NASS equivalent to 70% of income support levels. Whilst we welcomed scrapping the voucher system for asylum seekers back in 2002, we do have concerns that asylum seekers receive cash allowances below welfare benefit levels.

No additional one off payments or grants/loans are available to asylum seekers, in the way that other welfare benefit recipients can sometimes access extra financial support, eg Community Care Grants and Crisis Loans.

The withdrawal of the right for asylum seekers to apply for permission to work whilst they awaited a decision on their claim, and the subsequent withdrawal of the £50 clothing allowance for those who had not received a decision within six months of applying, has resulted in asylum seekers being totally reliant on financial support which is 70% of income support levels. Whilst we accept that there should be no suggested incentive for asylum seekers to "choose" to come to the UK, we do have concerns that asylum seekers receive less financial support than benefit recipients who are not asylum seekers and that as welfare benefit levels are set at the minimum needed to prevent poverty the financial support available to asylum seekers puts them below the poverty threshold.

As a direct result of the dispersal system many asylum seekers living in the Yorkshire & Humberside region will have no family or social support networks to turn to for assistance. This contrasts with many non asylum seeking households who are able to call on family and/or friends to help out in times of increased financial expenditure, eg the birth of a baby. We believe the Government should look again at conferring the right to seek employment to both asylum seekers and failed asylum seekers. This would enable asylum seekers to contribute to the economy and reduce welfare benefit expenditure as well as filling gaps in the employment market. We believe that if recent Government targets are met and more unsuccessful asylum seekers are removed, allowing both asylum seekers and failed asylum seekers to work would not “encourage” more people to seek asylum in the UK. It would however generate tax and national insurance contributions and reduce the financial costs to the state of their support.

There is a view for example, that if the Government is not prepared to allow asylum seekers to work then benefit levels should be increased to 100% income support levels. Asylum seekers should then be liable for paying utility bills and water rates, in the same way that other benefit recipients are. This would also help prepare those asylum seekers who are granted leave to remain on how to budget their income against all necessary expenditure.

With respect to S4 support and the provision of vouchers instead of cash to failed asylum seekers, Sheffield City Council urges that failed asylum seekers be allowed to work, but failing this believes that failed asylum seekers should also receive cash at 100% income support levels. The provision of vouchers stigmatises failed asylum seekers and is not an appropriate form of support. We await the outcome of the current consultation around S4 support and the potential expansion of the scope of what is to be included but remain very concerned that the Government seem intent on denying failed asylum seekers any cash allowance. On scrapping the voucher system for asylum seekers in 2002 the then Home Secretary, Rt Hon David Blunkett MP believed the voucher system was slow, vulnerable to fraud and unfair and it is concerning that the Government intends to pursue this costly means of supporting failed asylum seekers, who only remain in the UK until such time as IND arrange for their return to their country of origin.

The issue of the high numbers of destitute unsuccessful (and sometimes successful) asylum seekers continues to be a major point of concern across all sectors. There is much hidden destitution and hardship. Voluntary sector organizations appeal for funds to provide hardship grants on a regular basis, and overnight bed stops.

Provision of Healthcare

I have had the response below from one PCT. However, I believe the examples listed illustrate the problems around healthcare.

As a PCT North East Lincolnshire has at least 50 but probably numbers over 100 of failed asylum seekers living in their catchment area who under present legislation are only entitled to immediate and necessary treatment. This has caused us acute difficulties in some cases and has the potential to for many of the others. Health problems are being neglected until they reach the acute phase which is not good medical practice and also uneconomic.

Four prominent cases are:

- (a) a gentleman involved in an RTA who now needs long-term intensive life-support care;
- (b) a gentleman with Hepatitis who is being refused treatment;
- (c) a gentleman who has sustained severe stab wounds and is having difficulty obtaining after-care; and
- (d) a lady who was charged for antenatal, and perinatal care including the birth even though the hospital were aware of her inability to pay for the care.

Treatment of children

As you will be aware, the Home Office is currently reviewing its practice for the support of unaccompanied asylum seeking children (UASC) with a view to supporting a small numbers of specialist centres to which incoming children will be dispersed, rather than being supported as at present, by the local authority where they first apply for asylum. It remains to be seen what the final proposals will be, but a key concern is that the new procedures will be driven by a need for cost reductions and the needs of the child will become secondary to that.

Treatment by the media

The regional picture of the media is fairly balanced. They express some concern about the government’s handling of immigration and asylum policy, and can portray a picture of abuses of the system by significant numbers of asylum seekers. This is often forcefully expressed, especially by opinion columnists. However, it is rare that anything from local media falls outside the realm of legitimate debate on an issue of widespread public concern.

However, the local media are also supportive of positive initiatives, such as Refugee Week, and much of the regional work the consortium and its partners do. They have been prepared to strongly support individual cases of unfair adjudications and forced deportations, while also noting court cases involving asylum seekers who have committed crimes.

There is a fairly united opposition to far right agitation.

Cases which go against the letter or spirit of the PCC guidelines are rare.

This is a compilation of submission from around the Region and is by no means exhaustive. I hope it is helpful.

Liz Westmorland
Consortium Manager

October 2006

62. Memorandum from The Law Society

TREATMENT OF ASYLUM SEEKERS

The Law Society regulates and represents solicitors. This response is from the representation arm of the Law Society.

The Society welcomes the opportunity to comment in relation to the treatment of asylum seekers, although the issues outlined in the call for evidence are largely beyond our remit as they relate to social policy. We are however, concerned with access to justice and due process issues and confine our comments to issues within that remit.

Ability to access legal advice

We believe that the availability of good legal advice is the bed rock of a credible and just asylum process and that it will assist with the progress of cases through the asylum system.

We are concerned that inadequate levels of welfare benefits to asylum seekers has a knock on, and perhaps unforeseen, detrimental effect on their ability to access legal advice, as lack of a resources can render clients unable to travel or telephone their solicitor. As an example of this, one of our members reports of a client who was obliged to walk from Hackney to Central London to see her solicitor, a distance of some 4 miles in the heat wave in July this year. This would have been a lengthy walk in any event, but this particular client has AIDS and the walk was punishing. Under Legal Services Commission regulations, her solicitor is only able to pay for her fares when they reach a certain level (basically, outside the London area).

Assumptions on declining demand for legal advice by asylum claimants

The Society is concerned that assumptions regarding the appropriate level of funding for legally aided asylum cases are seriously flawed, as they do not take into account the number of possible fresh claims. Removals, although increasing, have failed over many years to keep pace with arrivals, meaning that there are up to 500,000 un-removed failed asylum seekers in the country who are potential fresh claimants. Changes in country conditions and personal circumstances mean that such fresh claims may have merit. The current reduction in public funds and suppliers makes it impossible for this demand to be met. Our members have reported anecdotal evidence of a lack of suppliers to take on such fresh claims from referral organisations working with asylum seekers in Birmingham. We are concerned that this situation could result in a loss of access to justice on a substantial scale. The Home Office and the Legal Services Commission continue to work on the assumption that demand is declining in this area, despite the fact that neither appears to be aware of the actual potential scale of such fresh claims. We therefore urge that research should be undertaken to clarify the position.

Detainees

The Law Society also has concerns about effective access to justice for those who are detained, particularly as there is no judicial oversight of the original decision to detain. The Society believes that asylum seekers should only be detained if they have committed a criminal offence or are likely to abscond. To do otherwise, without judicial oversight, may lead to a breach of UN guidelines against arbitrary detention.

As suppliers face increasing pressure to deal with appeals within short deadlines, their capacity to prepare and present bail applications for those detained is significantly impaired. There is a right to full disclosure in bail cases under article 5 of the ECHR. Unfortunately, our members tell us that this does not occur, as in practice it is often difficult to obtain bail summaries until the day of the hearing, and advisers are therefore unable to take proper instructions. The applicant, who is often vulnerable and speaks little or no English,

is thereby effectively denied access to justice. For these reasons, there should be automatic bail hearings and full advance disclosure in all detention cases. We are disappointed that detention criteria have still not been put on a statutory footing.

We are also concerned that families are detained other than to affect removal and for longer periods than just immediately prior to removal, which would contravene article 37 of the Convention of the Rights of the child.

John Ludlow
Head of Parliamentary Unit

63. Memorandum from the National Consortia Co-ordinating Group

Attached are a number of reports which have been undertaken by the NCCG which are covered in your call for evidence.⁴²⁷

The National Consortia Co-ordinating Group (NCCG) is constituted of all eleven UK mainland Regional Consortia, which provide an enabling and in some cases an accommodation function for dispersed asylum seekers.

The group provides a national forum for the regions and takes forward nationally, policy and operational issues on behalf of the regions. The group has strong links with local government both within the regions and nationally with COSLA, WLGA, LGA and ALG. The group also has good links with the voluntary sector both regionally and through the Inter Agency Partnership nationally.

This is a compilation of submission from the NCCG and addresses some of the key areas of concern and it is by no means exhaustive. I hope it is useful.

BRIEFING: ASYLUM-SEEKING CHILDREN IN DETENTION IN THE UK

In light of the NCCG 2006–07 theme “The Best Interests of the Child”, this briefing paper sets out the main facts and issues of contention relating to the principle of detaining asylum-seeking children in the UK—rather than details of standards at individual places of detention. It has been prepared by Pip Tyler, National Consortia Support Team (NCST) on behalf of the National Consortia Coordinating Group (NCCG).

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- Background: Detention in the UK
- Detention of children and families: UK policy and statistics
- Principal basis of opposition to the policy of child detention
- Statutory perspectives: Government, MPs, Children’s Commissioners and HM Prison’s Inspector
- International position: UNHCR and EU
- Voluntary Sector campaigns
- Media coverage
- Medical position: evidence base of outcomes for children
- Alternatives to detention
- Conclusion
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BACKGROUND: ASYLUM AND IMMIGRATION DETENTION IN THE UK

The-statutory provisions for immigration detention are found in the immigration Act 1971 and the Immigration (Places of Detention) Direction 1996. Two White Papers, “Fairer, Faster, Firmer—a modern approach to immigration and asylum” (1998) and “Secure Borders, Safe Haven: Integration with Diversity in Modern Britain” (2002) brought in new proposals relating to detention.

As of June 2006, there are 2508 places at detention centres⁴²⁸. The Government has recently rejected the proposal to develop an amnesty for unsuccessful asylum seekers who have remained in the UK for a reasonable length of time and has reiterated its intent to develop a more proactive removal and enforcement policy to address key issues in removing unsuccessful asylum seekers (BBC 12.07.06).

⁴²⁷ See also the NCCG report “Section 9—Asylum and Immigration (Treatment of Claimants) Act 2004: Pilot Implementation and evaluation”, January 2006.

⁴²⁸ Calculated by totalling the operational capacity of each centre (excluding short-term holding facilities) as described on the IND website on 28 June 2006.
<http://www.ind.homeoffice.gov.uk/aboutus/detentionandremovalcentres/>.

The power to detain rests with Immigration Officers. A person may be detained pending an immigration decision or, following a negative decision, awaiting deportation. Detention is normally justified for one of three reasons:

- belief that an individual will fail to keep their terms of admission,
- to clarify a claim, or
- where removal is imminent.

There is no maximum time limit to detention, although the Government recommends that it should be for “the shortest possible time” (Home Office 1998, para 12.11).

There are currently 10 Immigration Removal Centres (IRCs) in the UK⁴²⁹. IRCs are subject to the Detention Centre Rules 2001.

DETENTION OF CHILDREN AND FAMILIES

UK Policy

Children of any age may be held in detention at an IRC for an indefinite period of time

However, separated or unaccompanied children are usually given Temporary Admission once identified as being under 18. Yarl’s Wood, Bedfordshire, Dungavel House, Scotland and Tinsley House, Gatwick all take child detainees⁴³⁰.

The Detention Centre Rules (2001) outline the basic rights and provisions for families who are detained:

“Families and minors

- 11.(1) Detained family members shall be entitled to enjoy family life at the detention centre save to the extent necessary in the interests of security and safety.
- (2) Detained persons aged under 18 and families will be provided with accommodation suitable to their needs.
- (3) Everything reasonably necessary for detained persons’ protection, safety and well-being and the maintenance and care of infants and children shall be provided.”

“Fairer, Faster, Firmer” (1998) specifically mentions children and families, covering issues of length of detention and unaccompanied asylum-seeking children:

“12.5 The detention of families and children is particularly regrettable, but is also sometimes necessary to effect the removal of those who have no authority to remain in the UK and who refuse to leave voluntarily. Such detention should be planned to be effected as close to removal as possible so as to ensure that families are not normally detained for more than a few days.

12.6 Unaccompanied minors should never be detained other than in the most exceptional circumstances and then only overnight with appropriate care if they, for example, arrive unaccompanied at an airport. Where they cannot be cared for by responsible family or friends in the community, they should be placed in the care of the local authority whilst the circumstances of their case are determined. But the age of a person is not easily determined in every case. This is especially so where individuals enter the country with documents which suggest that they are an adult and later claim to be a minor. Sometimes people over 18 claim to be minors in order to be released from detention. In all cases, people who claim to be under the age of 18 are referred to the Refugee Council Children’s Panel. Where reliable medical evidence indicates that a person is under 18 years of age they will be treated as minors and will therefore not normally be detained.”

As stated in paragraph 12.5 above, previously the detention of families only took place for a few days prior to removal. “Secure Borders, Safe Haven” (2002 para 4.77) amended the criteria to allow detention of families for other reasons and for longer periods of time:

“Whilst this [previous scenario] covered most circumstances where detention of a family might be necessary, it did not allow for those occasions when it is justifiable to detain families at other times or for longer than just a few days. Accordingly, families may, where necessary, now be detained at other times and for longer periods than just immediately prior to removal. This could be whilst their identities and basis of claim are established, or because there is a reasonable belief that they would abscond. Where families are detained they are held in dedicated family accommodation based on family rooms in Removal Centres. No family is detained simply because suitable accommodation is available.”

⁴²⁹ Detention Centres were renamed Removal Centres in the White Paper “Secure Borders” Paragraph 4.74 (Home Office 2002).

⁴³⁰ According to IND website. Oakington’s family unit closed in October 2005.

Statistics

The statistics released by the Home Office⁴³¹ make it impossible to ascertain the total number of children detained each year. The number of children detained at any one time are given in each quarterly statistics report—but only the number for a single given day within that quarter. Hence the numbers appear relatively low:

Home Office statistics⁴³²**CHILD DETENTIONS AND LENGTH OF STAY ON PARTICULAR DATES**

<i>Date</i>	<i>Total no. of asylum detainees</i>	<i>Total no. of children</i>	<i>Length of stay</i>		
			<i>≤ 14 days</i>	<i>15–29 days</i>	<i>Over 1 month</i>
25 Mar 06	1,745	50	25	10	15 (up to mths)
31 Dec 05	1,450	30	10	15	5 (up to 4mths)
24 Sep 05	1,695	75	65	10	0
25 Jun 05	1,680	70	45	10	15 (up to 2mths)

However, the last two reports have included numbers leaving detention, which appear much larger. This is because they are accumulated statistics for the whole quarter.

Home Office statistics**NO. CHILDREN RELEASED FROM DETENTION⁴³³ OVER A QUARTER**

<i>Quarter</i>	<i>Total no. leaving detention</i>	<i>Total no. children</i>	<i>Age breakdown</i>				<i>Length of stay</i>			
			<i>Age < 5</i>	<i>Age 5–11</i>	<i>Age 12–16</i>	<i>Age 17</i>	<i>≤ 7 days</i>	<i>8–14 days</i>	<i>15–29 days</i>	<i>1–4 mths</i>
Q4 2005	4,640	465	195	155	95	20	385	60	70	0
Q3 2005	4,285	375	155	125	85	10	310	50	70	30

It is more realistic to use these latter figures for release since, in giving accumulated data they give a more accurate picture of the total number of children detained. Using these figures for a period of six months, it is reasonable to estimate that twice as many—approximately 1,700 children—were detained during 2005, the majority of whom are under the age of 11⁴³⁴.

This approximation is confirmed by two other sources.

A report by the Children’s Commissioner for England (Aynsley-Green 2005) on his visit to Yarl’s Wood IRC includes some statistical information which he personally requested. This included data on children’s admissions to Yarl’s Wood over a period of six months (May–October 2005). This data on admissions is exactly the type of data omitted from the Home Office statistics which enables an estimate of the total number of detentions. The number of admissions to Yarl’s Wood over the six months totalled 897, which suggests that potentially 1,794 child detentions are enforced per year at Yarl’s Wood alone⁴³⁵.

A report by Save the Children (Crawley and Lester 2005) also estimates that 2,000 children are detained per year. This figure has been calculated on the basis of figures given by Lord Bassam in May 2004 of the number of children detained and the length of their detention during March and April of that year. Assuming these statistics would be representative of each two month period, Save the Children extrapolated them to give a figure of 2000 over the course of 12 months.

The key point to note is that these figures are currently not made available publicly, nor is a breakdown of the length of time children are detained based on age, nationality and reason for detention.

⁴³¹ Home Office Asylum Research Development Statistics www.homeoffice.gov.uk/rds/immigration1.html.

⁴³² Tables collated from data from Home Office Asylum Statistics www.homeoffice.gov.uk/rds/immigration1.html. Data always rounded to the nearest five. Some sources quote the number of all children detained; these tables only include data on asylum-seeking children who have been detained and so is more precise.

⁴³³ Excluding Oakington Reception Centre. The family unit at Oakington was closed in October 2005 and so future statistics should be more accurate.

⁴³⁴ It is not known whether age disputed individuals are classed as adults or children in this data. There is also a possibility of double-counting ie where children are detained for more than one separate period.

⁴³⁵ This figure is likely to include some double counting, as although the report statistics are labelled “admissions”, they actually include children who have been detained for longer than that particular calendar month.

Principal basis of opposition to the policy of child detention

The main criticisms of the Government's child detention policy are based upon particular international agreements. The first two given here relate specifically to children; the final two are generally applicable to both adults and children. In terms of the authority which each carries, i, iii and iv are legally binding (once ratified), and ii is optional, although none have means of enforcement. It is acknowledged that there exists a much wider international legal context from which other sources of opposition and support for the policy of detention could be drawn.

i. *UN Convention on the Rights of the Child (UNCRC) (1989)*

The UNCRC (1989) was ratified by the UK on 16 December 1991⁴³⁶. Article 37 states that the detention of children should be a last resort and for a minimal time. It also states that detained children should be separated from adults unless it is in their best interest, and children are entitled to have prompt legal assistance and to challenge their detention.

EXTRACT FROM ARTICLE 37, UNCRC 1989

“(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action”.

ii. *The UN Rules on Juveniles Deprived of their Liberty (1990b)*

These apply to all children, including those seeking asylum. Key points of relevance are included in the box below.

EXTRACTS FROM THE UN RULES ON JUVENILES DEPRIVED OF THEIR LIBERTY (1990B)

Rule 1 Imprisonment should be used as a last resort

Rule 2 Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

Rule 6 Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

Rule 11a The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law.

Rule 24 On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

Rule 59 Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons.

iii. *European Convention on Human Rights (ECHR) (1950)*

This was ratified by the UK on 3 September 1953. Although this is not a Convention peculiar to children, Article 5 is often used as a basis for opposition to the policy of child detention. Selected relevant elements are outlined in the box below.

⁴³⁶ <http://www.ohchr.org/english/countries/ratification/11.htm>

EXTRACT FROM THE ECHR (1950)

“Article 5 Right to liberty and security

1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.”

iv. 1951 UN Convention relating to the Status of Refugees

The 1951 Convention, ratified by the UK on 11 March 1954, does not explicitly address the detention of children, there are a number of elements which are very relevant here. Article 26 includes asylum seekers in its definition of refugee, and therefore restrictions on choice of residence is not permitted⁴³⁷. Although the usual interpretation of “penalties” in Article 31(1) relates to criminal penalties, widening the interpretation to include detention as a penalty is an unsettled argument⁴³⁸. Article 31(2) acknowledges the right of the state to restrict movement which is “necessary”, but does not define what this may include.

EXTRACTS FROM THE UN CONVENTION RELATING TO THE STATUS OF REFUGEES (1951)

“Article M. Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.” . . .

“Article 31. Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article I, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.”

STATUTORY PERSPECTIVES

i. *Government*

The UK Government has described detention as “unfortunate but essential” (Home Office 2002, para 4.74) and that of children as “particularly regrettable, but . . . also sometimes necessary” (Home Office 1998, para 12.5). It has stated:

“Naturally there are particular concerns about detaining families and it is not a step to be taken lightly. Although true of all decisions to detain, it is especially important in the case of families that detention should be used only when necessary and should not be for an excessive period.” (Home Office 2002, para 4.77).

The Government position on detaining children was made clear during a House of Lords debate in 2002, where Lord Filkin stated:

“As regards families with children, we start from the position that we want to minimise their detention, but it is clearly necessary to detain them in certain circumstances. . . . where we think it necessary to detain a family with children for the proper administration of immigration or asylum processes otherwise there is a judgment that they would abscond. . . . We do not believe that children should be separated from their parents in those circumstances; they should be with their parents or their legal guardian. Alternatively, the argument is that we should never detain a family

⁴³⁷ According to Field with Edwards (2006) p6.

⁴³⁸ Ibid. See Section II of the report for a more detailed discussion of interpretation of the 1951 Convention.

with children for more than seven days. The consequence of that—I am sorry to have to spell it out—would be significant abuse. It would be known that a family with children would be unlikely to be detained for long and would be able simply to disappear into the community.

However, detention involving children is a serious step. We do not take it lightly. The interests of the child are taken into account. The ECHR and domestic law stipulate that detention must be for no longer than is reasonably necessary for the purposes for which it is authorised and must not be of excessive duration.

. . . No doubt it would be a better world if no families with children were detained but we do not believe that that is the real world.’ (HOL Deb 31 Oct 02 vol 640 c347)

While the UK may be a signatory to international Conventions, they are not legally binding and do not carry the same status as domestic legislation. When the UK ratified the UN Convention on the Rights of the Child, it entered reservations to the Convention in order to ensure that immigration policy is not compromised. The UK reservations mean that it can exclude children subject to immigration control from their rights under the Convention:

“The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time. . .

Where at any time there is a lack of suitable detention facilities or where the mixing of adults and children is deemed to be mutually beneficial, the United Kingdom, in respect of each of its dependent territories, reserves the right not to apply article 37 (c) in so far as those provisions require children who are detained to be accommodated separately from adults” UN (1980a).

During a House of Lords debate on 8 November 2005, Baroness Crawley confirmed the Government’s unwavering position in relation to this reservation. While the Government are considering withdrawing the section of the reservation about accommodation for children in the same accommodation as adults, it is not contemplating changing its position on immigration law superseding the UNCRC:

“With regard to immigration, the Government have carefully reviewed the reservation in light of recent requests that it should be withdrawn. We believe that it is necessary to retain this reservation which makes it clear that nothing in the convention is to be interpreted as affecting the operation of UK immigration and nationality legislation. The UK has entered other, similar reservations in respect of other human rights instruments. However, no child will be denied their human rights as guaranteed by the Human Rights Act when in the UK. . .

With regard to detaining under-eighteens in the same accommodation with adults, I should like to stress that we are doing all that we can to be in a position to be able to withdraw the reservation about custody and accommodation, if following review, we decide that this is desirable. We have made good progress in this field. We are building four new separate facilities for 17 year-old girls; one opened in December 2004 and a second in September 2005. The other two are due to open shortly.”⁴³⁹

ii. MPs

In contrast to the Government position, MPs have expressed concern about the policy of detaining children. There have been two relevant Early Day Motions⁴⁴⁰ (EDMs) relating to the detention of children. The most relevant was EDM no.1845 on 17 March 2006 by Neil Gerrard MP (Labour), and has 137 signatures to date from eight parties⁴⁴¹. It states that:

“This House is concerned by the detention of children in UK immigration detention centres as part of the standard immigration procedure; recognises the negative impact on children’s mental and physical health and the disruption of their education; welcomes the work conducted by Save the Children, the Refugee Council, Bail for Immigration Detainees, the Scottish Refugee Council and the Welsh Refugee Council to bring an end to this unjust policy; supports their recommendations that children should be treated as children first and foremost and their needs and rights protected; calls for alternatives to detention to be piloted; and urges the Government to make detailed statistics available on an ongoing basis regarding the ages of, and numbers of, children held in detention and the length of time each is held in detention”.

An earlier EDM (no.206) proposed on on 25 May 2005 by Diane Abbott MP (Labour) entitled “Racist abuse at Oakington Detention Centre” urges the Government “to use detention only as a last resort and to observe international guidelines in the treatment of all detainees, with particular respect to families and children in detention’. It was signed by 31 MPs from five parties.

⁴³⁹ <http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds05/text/51108w02.htm>

⁴⁴⁰ <http://edmi.parliament.uk/EDMi/Default.aspx>

⁴⁴¹ Figures correct on 5 July 2006.

The All Party Parliamentary Groups (APPGs) for Children and for Refugees jointly commissioned a discussion paper which setting out alternatives to the detention of refugees and asylum seekers before deportation (Bercow et al 2006). The report was written by the No Place For A Child coalition and by the coalition's Parliamentary champions: Lord Dubs (Lab), Dr Evan Harris MP (LibDem) and John Bercow MP (Con). This report was launched on 12 July 2006, and principally recommends an independent caseworker model as the best alternative to detaining families.

iii. *Children's Commissioners*

The four UK Children's Commissioners⁴⁴² met with the Home Office in December 2005 to discuss their concerns about the treatment of asylum seeking children, and issued a joint statement⁴⁴³. One of their main concerns was about the detention of asylum seeking children—both those in families, unaccompanied children and age-disputed young people, and they reported agreement from the Home Office to take account of their concerns.

The Children's Commissioner for England made an announced visit to Yarl's Wood IRC on 31 October 2005. His subsequent report (Aynsley-Green 2005) contains detailed concerns about the individual centre, such as the lack of provision of a children's complaint process. A number of recommendations were made, covering issues surrounding both the principle of detaining children and conditions within Yarl's Wood detention centre itself. The recommendations related to the principle of detaining children covered:

- Treatment as children first.
- Detention as a measure of last resort following a family assessment.
- Research needed to assess whether families with children at school do abscond prior to removal, as commonly assumed.
- Consideration of alternatives to detention eg, electronic monitoring, reporting, supervised accommodation, community supervision, incentivised compliance, voluntary return.
- Stopping early morning removals without prior notice.

The Commissioner for Children and Young People in Scotland delivered a speech on 1 December 2004 relating to the detention of children (Marshall 2004). She raised a variety of concerns. She concluded that the detention of children is not used as "a last resort" as UN CRC Article 37 recommends, and that detention and methods of removal have an adverse effect upon children's welfare. She called for:

- The UK Government to produce better statistics in this area ie numbers and ages of children detained, length of detention and eventual outcome.
- Independent welfare assessments, complaints procedures and legal advice.
- Case discussion and assessment of children about to be removed where there are concerns about welfare. International monitoring of the situation once a child has been removed.
- Encouragement of pursuit of alternatives to detention for all children, including age disputed asylum seekers.

iv. *Prison's Inspections*

The HM Prison's Inspector has inspected 11 IRCs⁴⁴⁴ and 26⁴⁴⁵ short-term, non-residential holding facilities (STHFs) which may be used to hold children. Inspection reports are available on the Her Majesty's Inspectorate of Prisons (HMIP) website⁴⁴⁶. There has been a mixture of announced and unannounced inspections, detailed in the following table:

<i>IRC/STHF</i>	<i>Inspection dates</i>
Dungavel IRC	15.08.03, 27.08.03, 02.12.04
Oakington Reception Centre	27.03.02, 01.04.03, 06.06.04, 13.06.05
Tinsley House IRC	12.02.02, 01.04.03, 10.11.04
Yarl's Wood IRC	28.02.05
Luton International Airport; Waterside Court, Leeds; Portsmouth Continental Ferry Port; Stansted Airport STHFs	May 05—Jan 06
Calais Seaport; Coquelles Freight; Coquelles Tourist STHFs	Aug 05
Queen's Building and Terminals 1-4 Heathrow Airport STHFs	Oct 05
Birmingham International Airport; Eaton House, Middlesex; Glasgow	Feb—Apr 05

⁴⁴² AI Aynsley-Green (England), Nigel Williams (Northern Ireland), Kathleen Marshall (Scotland) and Peter Clarke (Wales).

⁴⁴³ Northern Ireland Commissioner for Children and Young People <http://www.niccy.org/article.aspx?menuid=456>

⁴⁴⁴ Dungavel inspection on 15.08.03 was an educational update undertaken by the HM Inspectorate of Education.

⁴⁴⁵ Manchester Airport does not hold children, although it is listed here as part of a joint report where the other STHFs do hold children

⁴⁴⁶ http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect_reports/irc-inspections.html/

<i>IRC/STHF</i>	<i>Inspection dates</i>
International Airport; Festival Court, Glasgow STHFs Gatwick Airport North and South Terminals; London City Airport; Dover Asylum Screening Centre STHFs	Nov 04—Jan 05
Harwich International Port; Manchester Airport; Port of Dover Communications House, London; Lunar House, Croydon; Electric House, Croydon; Dallas Court, Manchester STHFs	Aug 04—Jan 05 Jun—Oct 04

All of these inspection reports were accessed; it is notable that every report raised concerns, to varying degrees, relating to children held in the facility. These concerns usually focused upon Child Protection policies, links with the local Area Child Protection Committee (ACPC) or Local Safeguarding Children Board (LSCB), and the enhanced Criminal Records Bureau (CRB) checks upon staff. While it is not the place of such reports to comment upon the principle of detention itself, occasionally the view of the inspector was apparent. For example, the Yarl's Wood inspection noted that the principle issue of concern was "the effect of detention itself on some children" (p5), and during the Dungavel inspection 2003:

"Welfare and development of children is likely to be compromised by detention, however humane the provisions and that this will increase the longer detention is maintained".

INTERNATIONAL POSITIONS

i. *UNHCR*

The most recent UNHCR position in relation to legal protection in the UK, was given in a response to Immigration, Asylum and Nationality Bill of 2005 (UNHCR 2005). It stated that, as a general premise, "the detention of asylum seekers is inherently undesirable, and that there must be a presumption against its use". More specifically, it highlights areas relating to the detention of children:

- It outlines two categories of particularly vulnerable people who should never be detained: firstly children, and secondly "other vulnerable persons"—which includes families with children.
- Calls for the UK Government to consider alternatives to detention prior to detention taking place for particular groups of vulnerable people; these groups include children, families with children and disputed minors.
- In the case of detention of such vulnerable groups, they should have an automatic right to bail from the beginning of the detention period.

ii. *EU*

The EU Commissioner for Human Rights raised various concerns relating to the detention of children in the UK (Gil-Robles 2005). Some general concerns raised included the restriction of legal aid to five hours per case, the length of detention in some cases being over one year, and the need for automatic judicial review as a minimum standard. The specific section on the detention of children covers a number of concerns:

- A lack of comprehensive statistics of the detention of children, beyond "snap-shot statistics on any one day".
- Frequency and duration of the detention of children.
- Education at detention centres—rather than recommend greater attention to the provision of education, children should not be detained for so long that access to education is a problem at all.
- Some families are visited to give notice of imminent transfer to a removal centre; others are deemed at high risk of absconding and therefore are not informed. The logic of this approach means that families not at risk of absconding should not be detained at all.
- The Immigration Minister must give authorisation for the detention of a child beyond 28 days, based upon a welfare assessment after 21 days. This is inadequate and at the time, there was no apparent procedure for conducting the welfare assessment at the time. The decision to detain children should be taken by a judicial authority. The burden of proving the necessity of detention should be placed upon the Immigration Service, rather than on the child/family to challenge it.
- Detention at prison—during 2003, three children had been detained at a prison in Northern Ireland under Immigration powers.

Among the recommendations, the commissioner called for alternative forms of supervision of families with children pending deportation, judicial authorisation of the detention of minors, and their detention to be subject to periodic judicial review.

VOLUNTARY SECTOR

The most recent and prominent campaign on this issue, “No Place for a Child”⁴⁴⁷, was launched in 2006 by a consortium of voluntary sector agencies⁴⁴⁸. The campaign report (Crawley and Lester 2005):

- demands that the UK Government stop detaining vulnerable children and babies;
- calls for alternatives to detention; and
- gives examples of the medical complaints suffered by detained children eg skin complaints and respiratory problems.

Specific issues raised by the campaign include:

Immediate recommendations:

- Introduction of a maximum of seven days for children in detention.
- Monitor and reduce the transfer of children between detention facilities.
- Legal advice/representation and access to bail for all detainees.
- Statistics on detained children and age-disputed cases regularly available.
- Enhanced CRB checks for all staff at detention centres.
- Child Protection concerns should be resolved before removal from the UK.
- Assessments and review processes to be improved.

Recommendations

- Treatment of asylum-seeking children as children first.
- Withdraw reservation from the UNCRC.
- Interests should be represented by the Commissioners in each UK country.
- Halting the detention of children due to negative effects experienced.
- Undertake age assessments before a decision to detain.
- Reporting—more flexible for families, cover costs of reporting.
- Alternatives to detention eg incentivised compliance.
- Improve voluntary returns eg increase availability of information about opportunities for return.

Other reports cover similar issues eg see Cole (2003), Children’s Rights Alliance for England (2005), Amnesty International (2005). Another coalition campaign is the Stop Deporting Children Campaign, which is supported by the Green Party, several MEPs and BASW, among others.

MEDIA COVERAGE

The media has been relatively quiet on the specific issue of detaining children. An internet search⁴⁴⁹ revealed that during 2006, only three newspapers⁴⁵⁰ ran reports specifically about the detention of children; they were mostly reporting on the No Place for a Child campaign; none appeared to support the policy of detaining children. Comparatively more reports have appeared about the detention of asylum seekers in general, with most newspapers having reported four or five times on this subject.

Other, more specialised media have raised the issue of child detention eg Community Care (18.05.06) and Institute of Race Relations (28.03.06).

MEDICAL POSITION EVIDENCE BASE OF OUTCOMES FOR CHILDREN

A relatively quick, but systematic⁴⁵¹, search of research evidence relating to the effects of detention upon asylum-seeking children found 10 empirical studies concerning the effects of detention upon asylum seekers. Two of these specifically studied children,⁴⁵² both of which reported specific negative outcomes for asylum-seeking children associated with their detention:

⁴⁴⁷ www.noplaceforachild.org.uk

⁴⁴⁸ Refugee Council, Bail for Immigration Detainees (BiD), Save the Children, Welsh Refugee Council and Scottish Refugee Council.

⁴⁴⁹ Search of five main online newspapers—BBC, Independent, Daily Mail, Guardian, Times, Mirror on 27 June 2006 using the keywords “children”, “asylum” and “detention”.

⁴⁵⁰ BBC 28.03.06, 09.05.06 and 11.05.06, The Independent 28 and 29.03.06 and The Daily Mail 28.03.06.

⁴⁵¹ Four databases were used to search for relevant articles: Pubmed, British Medical Journal (BMJ), Social Science Information Gateway (SOSIG) and the Medical Journal of Australia (MJA). Inclusion criteria and keyword searching were used. Search was undertaken on 27 June 2006.

⁴⁵² If all full text documents were retrieved this figure may increase as in some cases only references or abstracts were available online.

- Steel et al (2004) found that children displayed “a tenfold increase in psychiatric disorder subsequent to detention” and concluded that detention is “injurious to the mental health of asylum seekers”.
- Mares and Jureidini (2004) found very high levels of psychopathology in child asylum seekers, of which “much was attributable to traumatic experiences in detention and, for children, the impact of indefinite detention on their caregivers”.

All of the remaining studies appear to demonstrate negative mental health outcomes associated with the detention of asylum seekers in general; a finding which is reasonable to assume applies to children as well as adults.

ALTERNATIVES TO DETENTION FOR CHILDREN

It is not clear whether detention is necessary either to prevent absconding or ensure compliance with the asylum system. Other research evidence has been cited by various studies that demonstrates the high compliance rate of asylum seekers in general—even at the removal stage, thus questioning the need for detention at all (eg see Crawley and Lester p37). According to a UN report (Field with Edwards 2006), the rate of absconding prior to a negative decision or removal is already low due to the fact that asylum seekers have a vested interest in complying with a system in a state where they wish to remain. It suggests that certain factors such as competent legal advice and case management help to reduce this rate further, and so alternatives to detention are themselves possibly unnecessary. For those found to not be in need of international protection, counselling and reporting requirements appear to be effective (ibid.).

Various alternatives to detention have been proposed. Field with Edwards (2006) explain alternatives specifically for separated children; these include guardianship, specialised group homes, and projects to combat trafficking which try to ascertain the role of any adult claiming custody. However since separated children are not detained in the UK these alternatives are not of utmost relevance. Rather, since the focus of this briefing is detained children with their families, relevant alternatives are those which relate to all adults and/or families.

ALTERNATIVES TO DETENTION OF ADULTS AS PRACTISED IN OTHER STATES

(Taken from Field with Edwards 2006, Crawley and Lester 2005 and Bercow et al 2006)

- Bail, bond or surety.
- Reporting requirements (used to some extent in the UK).
- Open centres, semi open centres, directed residence, dispersal, restrictions to a district.
- Registration and documentation.
- Release to nonGovernmental/community supervision.
- Electronic monitoring and home curfew (used to some extent in the UK)
- Detention of one parent.
- Welfare approach independent caseworker model.

The final two listed are specific to families.

The first, which involves detaining one parent while the remainder of the family is not detained. In Sweden, families are given the choice between the detention of the whole family or just one parent; the latter is most commonly chosen. In the case of only a father and child, the child can be released into a group home with access to the father in detention. However, most families in Sweden are put into family accommodation at a Reception Centre which requires daily reporting to Immigration. The combination of alternatives in Sweden is reportedly “extremely effective” (See Field with Edwards 2006).

The second “welfare approach” has been used in Melbourne at the Hotham Mission. This approach uses an independent caseworker who is assigned with meeting the protection and welfare needs of the family. This includes housing and support, planning for return, access to legal advice, and emotional support. A recent evaluation concluded that there were no cases of absconding and all those with negative decisions left Australia (See Bercow et al 2006).

The UN study found that certain factors also appear to influence the effectiveness⁴⁵³ of any particular measure:

1. Provision of legal advice increases compliance and appearance. In the USA in 2001, the failure of separated children to appear dropped from 68%–30% if they had a legal representative.
2. Ensuring asylum seekers understand their rights and obligations.
3. Provision of adequate support and accommodation is critical to compliance.
4. Screening for family/community ties or use of community groups to create guarantors/sponsors.

⁴⁵³ Effectiveness here interpreted as reducing the rate of absconding and/or improving compliance with asylum procedures (Field with Edwards 2006).

In addition, the report concludes that virtually all alternative measures are less expensive than detention. A variety of cases are cited, including the UK where a South Bank University study found that of 98 people released on bail due to intervention by BID, 73 (74%) complied with bail conditions. Their detention for the period studied would have cost an estimated £430,000.

CONCLUSIONS

The current UK asylum system has increased its use of detention over recent years, which includes the detention of children. At a national level, the issue of child detention is gaining momentum, given the No Place for a Child campaign and the interest of the APPGs on refugees and children.

The Refugee Council fears that in the event of the a move away from or repeal of Section 9, there could be increased used of detention (Community Care 2006).

Indeed, it appears that the Government plans to continue with its agenda of increasing the use of detention as a corner stone of its enforcement and removal policy.. Baroness Scotland of Asthal recently confirmed this in the House of Lords:

“There is currently a rising demand for places in the immigration removal estate. We are urgently considering whether Oakington should remain open beyond September. However, this will be subject, among other matters, to suitable funding being agreed.”

(HOL 3 July 2006 cWA8)

The UK Government has a clear and unapologetic stance on this issue—domestic immigration policy supersedes international agreements, and this is confirmed by the UK reservation entered in the UNCRC.

There are two areas of concern: one is the principle of detention itself; the other relates to the conditions within detention facilities.

In relation to the principle of detention, a series of studies provide clear evidence which dispute the “flight” argument. Secondly, it is clear from a number of studies both within the UK and beyond, that appropriate alternatives to detention are available with considerable cost savings.

If the Government insists upon pursuing a policy which detains children, they must recognise the responsibilities that this entails and ensure the implementation of a safe and transparent system of detention with clear timescales, legal representation, advocacy and independent review.

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THE POLICY CAUSES OF DESTITUTION—EVIDENCE FROM RESEARCH STUDIES

In only two years (2004–06), at least 16 empirical research studies investigating destitution experienced by asylum seekers and refugees have specifically linked it to particular policies. They give evidence of the specific causes of this destitution, and describe the myriad of consequent effects. This could be used to focus on policy changes which require attention.

<i>Policy</i>	<i>Studies linking policy to destitution</i>
Absence of a policy of support before a claim is made	3
Dispersal policy	1
Legal Aid restrictions 2004	3
Poor implementation of policy	4
Section 55	9
July 2002 withdrawal of permission to work	5
Withdrawal of NASS support following a failed claim	7
Section 9	2
Section 4 administration	3
Section 4 voluntary returns condition	6
Termination of NASS support after a positive decision	6

GENERAL POLICY CLIMATE

Refugee Survival Trust found that specific policy-induced causes of destitution accounted for 15% of their sample (2005:3). They also state that destitution is experienced at every stage of the asylum process: “the problems of destitution are not related only to specific policies, but are inherent in the underlying policy-framework” (2005:5).

Refugee Action state that government policies which are “linked to, or have resulted in the withdrawal of support from asylum seekers” include: Section 55, Section 57, Section 4, Section 9, Section 10 and restrictions on Legal Aid (2005:9).

ABSENCE OF A POLICY OF SUPPORT BEFORE A CLAIM IS MADE

During the Refugee Action survey in Leicester in which 168 destitute individuals were identified over the period of a month, 7% (11 people) were destitute because they were new arrivals who were not yet in the Home Office system (2005:20).

Outreach teams who participated in the London Housing Foundation survey identified one homeless person who had not yet registered as an asylum seeker, and two who had entered the UK illegally (2004:26). Out of a total of 72 homeless refugees and asylum seekers identified, these numbers are low, accounting for 1% and 3% of the total respectively.

Refugee Survival Trust (2005) note that 17% of their grant applications were for travel to Liverpool in order to claim asylum, following a decision not to allow this to happen in Scotland except under special circumstances.

DURING A CLAIM

Dispersal policy

London Housing Foundation found that of the 244 whose cause of homelessness was recorded by residential services, six (2%) were homeless as a result of claiming only subsistence support rather than accommodation to avoid dispersal from London (2004:18). Outreach services identified that six (8%) of 72 clients were subsistence only cases (2004:26).

Legal Aid restrictions 2004

Jackson states that asylum seekers often do not have money to pay for legal advice and therefore are dependent upon legal aid. A shortage of legal aid solicitors results in cases not being given a proper hearing and therefore resulting in valid cases being lost, and difficult to challenge through the appeals process (2006:15).

Brown adds that the LSC changes to Legal Aid in 2004 resulted in many private law firms in the Leeds area closing their immigration and asylum departments, leaving only the Refugee Legal Centre and the IAS providing legal representation (2005:10). The effect of this is large numbers of asylum seekers without legal representation which causes operational problems in court, and means asylum seekers are much less likely to win appeal hearings, have their support terminated and ultimately become destitute (2005:10–11).

Malfait & Scott-Flynn discuss the lack of access to legal representation or advice as a contributing factor to destitution. For example in some cases, they have found people who are unaware of having received a positive decision on their asylum claim (2005:10). A third of their sample had received either very poor legal advice or no legal advice/representation at all, which has resulted in, for example, missing appeal dates, or delays in gaining representation which led to their NASS support being terminated (2005:10–11).

Poor implementation of policy

Malfait & Scott-Flynn state that some people become destitute due to “bureaucratic mistakes or confusing and unhelpful implementation of the laws and provisions that do exist” (2005:4)

Refugee Survival Trust found the main cause of destitution among their grant applicants to be “administrative error and procedural delays” (2005:3), accounting for 52% of all applications. NASS/Home Office was deemed the cause of 95% of these errors and delays.

During the Refugee Action survey in which 168 destitute individuals were identified over the period of a month, 6% (10 people) were found to be destitute because of Home Office/mainstream services administrative errors or delay (2005:20).

Dunstan (2006) gives great detail on this issue specifically relating to S4 policy (see below).

Section 55

Section 55 has been the best documented cause of destitution; however now relatively few are denied support on these grounds since a 2004 Court of Appeal ruling that the Home Office was in breach of Article 3 of the ECHR.

Section 55 is mentioned by Prior (2006:14) as a reason for many asylum seekers being made destitute from January 2003–June 2004. Malfait & Scott-Flynn estimate this accounts for less than 10% of the destitute, and that this figure is decreasing (2005:9).

Refugee Action note that while S55 used to be a major cause of destitution amongst asylum seekers, it no longer does so (2005:5). This is confirmed by the results of their 2005 survey when only one individual out of 168 identified was destitute due to this policy (2005:20).

Refugee Survival Trust found that Section 55 accounted for the greatest policy-induced cause of destitution (2005:3). Data collection stopped in 2004, and this reflects this finding.

Dwyer & Brown use evidence from their interviews to demonstrate the effect of this policy upon asylum seekers. The majority of interviewees showed that those without rights to social benefits (either under Section 55 or failed asylum seekers) were destitute (2004:9, 12, 15).

The GLA (2004) have estimated the numbers of asylum seekers in London who are made destitute by S55. They estimate that 10 000 per annum or 200 per week are refused support under S55; childless women are particularly at risk. Of the 1000 asylum seekers seen by respondents, 240 (24%) had been refused support under S55, and 66 of these had spent the previous night sleeping rough, but most shelter within the refugee community.

The IAP and Refugee Council undertook research into the effects of Section 55 in 2004. The former report, for example, saw almost 3,000 clients affected by this policy during the three month survey period, and estimated that they only see 18% of clients falling into this category.

London Housing Foundation found in their survey of residential services that of the 244 whose cause of homelessness was recorded, five (2%) were homeless as a result of Section 55 policy. Outreach services found that of the 72 clients identified, four (6%) were homeless due to Section 55 policy (2004:26).

July 2002 withdrawal of permission to work

Prior explains that those awaiting an asylum decision or those who have failed in their claim are forced into destitution because they are not permitted to work. This results in pressure upon the voluntary sector to provide support, or illegal working and exploitation (2006:6).

Tesfagiorgios (2005) notes that all 400 in his sample were refused asylum and are now destitute since they are not allowed to work.

Brown blames the current level of destitution in Leeds (estimated at thousands) mainly on the fact that asylum seekers who have a final, negative decision on their claim are not permitted to work and have no recourse to public funds (except for Section 4) (2005:6).

Rogers states that “Many people have told us that destitution would be avoided if people who have had their application for asylum refused were given permission to work. Indeed, it has been argued that if all Asylum Seekers were given work permits and paid for their own accommodation and food they would make a financial contribution to our society” (2005:9).

According to Malfait & Scott-Flynn, destitute asylum seekers say that the most important change that could help them to get out of destitution, apart from a change in fundamental legislation, would be permission to work (2005:8).

WITHDRAWAL OF NASS SUPPORT FOLLOWING A FAILED CLAIM

Malfait & Scott-Flynn estimate that “end of process” clients who are failed asylum seekers account for 60–70% of destitute asylum seekers/refugees (2005:9). This concurs with Refugee Action findings that destitution now occurs mainly among asylum seekers who have come to the end of the process ie claims determined or not continuing further (2005:5). During the Refugee Action survey in which 168 destitute individuals were identified over the period of a month, the majority 70% (118 people) were destitute due to them having a failed asylum claim or having not initiated new legal proceedings (2005:20).

The 400 Eritrean asylum seekers in Tesfagiorgios’ study (2005) were refused asylum and are all now destitute. Rogers also reports on those made destitute due to having a failed claim (2005:6).

Dwyer & Brown use evidence from their interviews to demonstrate the effect of destitution upon failed asylum seekers. The majority of interviewees showed that those without rights to social benefits, including failed asylum seekers, were destitute (2004:9, 13, 15).

Brown blames the current level of destitution in Leeds (estimated at thousands) on the fact that asylum seekers who have a final negative decision on their claim are not permitted to work and have no recourse to public funds except for Section 4 (2005:6).

London Housing Foundation found that of the 244 whose cause of homelessness was recorded by residential services, six (2%) were homeless as a result of being at the end of the process, having failed their asylum claim (p18). 11 people (15%) of the 72 identified by outreach services also fell into this category (2004:26).

Section 9

Again, this policy has caused much concern about its potential effects but is not currently being rolled out as formal evaluation of the pilots have not yet been published.

Refugee Council (2006) demonstrated the clearest evidence of destitution as a direct consequence of policy. Of the 116 families in the S9 pilot areas of Manchester, Leeds and London, at least 60 families are assumed to now be destitute:

- 32 families absconded as a result and are assumed to be destitute.
- 60 families were not receiving any support at all (26 of these as a direct consequence of the S9 policy).
- 9 families were withdrawn from the pilot as they had had their cases reviewed.

If this policy were to be implemented nationally, and the patterns seen in the pilot were repeated, the numbers of destitute families would rise dramatically.

Malfait & Scott-Flynn mention this but also that it has not yet been fully implemented in Birmingham yet (2005:11).

Section 4 administration

Prior states that it can take up to two months to process a S4 application, and that this is likely to result in homelessness during this period (2006:17).

Fox states that following a negative decision on their asylum claim, singles and childless couples become destitute awaiting a S4 decision (2006:17). Support is given by the local community, particularly RCOs (but homeless organisations are rarely approached). Fox anticipates an increase in destitution following the Home Office review of S4 support to Iraqi Kurd failed asylum seekers (2006:18).

Dunstan (2006) links destitution to S4 administrative failure throughout the UK. Casework evidence during 2005 from the regions with the most S4 clients (London, Y&H, WM, NW) provides 20 case studies of where S4 administrative failure has resulted in destitution for the following reasons:

- delay and process error in the determination of S4 applications;
- delay in delivery of support by accommodation providers (including instances of NASS failure to inform providers);
- difficulty identifying and contacting the responsible caseworker in the NASS S4 team;
- failure by NASS S4 team to undertake the necessary action after contact;
- NASS to claim no record of S4 applications and related correspondence; and
- inadequate resourcing of OSS specifically relating to S4 support and more generally.

In addition to administrative failure, S4 policy itself also causes destitution, evidenced by the case studies, due to:

- Cashless nature of S4 support.
- Lack of clarity of the relationship between S4 support and VARRP.
- Limited access for failed asylum seekers to free medical care.
- Right of appeal against refusal of S4 support hindered by absence of regional appeal centres and lack of legal aid representation at ASA hearings.

Section 4 voluntary returns condition

Jackson's survey results show most of those 308 identified in Leicester are failed asylum seekers who are not prepared to sign up to VARRP on the grounds that their countries were still unsafe (2006:12). It attributes destitution primarily to this condition of S4 support.

Prior alludes to this as a cause: "to agree to return to their country of origin. . . is something that most are not prepared to do as their trust in the State's judgment on what is or is not safe has been seriously undermined" (2006:6). States that most don't apply for S4 support as "they have lost faith in the decisions of the Home Office regarding their safety" and therefore those applying for S4 are a minority of those who are destitute. He also points to the low uptake of VARRP as evidence that those who have failed in their asylum claim have fled in genuine fear or persecution, as economic migrants would be likely to take advantage of a scheme that would significantly improve their economic wellbeing at home.

Malfait & Scott-Flynn state that "Many asylum seekers will not sign up for section 4 support as they do not feel able to commit to returning to their home country. . . asylum seekers need access to good advice to help understand the implications of what they may be signing" (2005:11).

Fox states that the majority of destitute asylum seekers in Derby are Iraqi Kurds who are unwilling to apply for, or have been refused, Section 4 support due to an unwillingness to sign up to the VARRP programme (2006:41).

The tiny proportion of those willing to sign up for VARRP is confirmed by the Refugee Council report into the effects of the S9 pilot, where only 3 of the 116 families signed up for VARRP (2006:7).

Brown also describes the requirement to agree to voluntary return as a "particular barrier to hard case support", and thus only relatively few failed asylum seekers receive S4 support because they either will not apply or are refused (2005:6). The large number of destitute not claiming support is evident from the temporary policy change for Iraqis in late 2004 which withdrew the requirement for signup to VARRP to receive S4 support. This resulted in a massive increase in S4 applicants by this one nationality alone (2005:6).

TERMINATION OF NASS SUPPORT AFTER A POSITIVE DECISION

Following a positive decision, single people often become destitute as they are unable to get Local Authority housing, and are forced to rent from the private sector where rents are often higher than housing benefit. Families too become destitute as they only have 28 days to find an alternative to NASS accommodation (Fox 2006:17). Evidence of this includes projects addressing this problem: Toc H Day Centre in Leicester supports destitute refugees (Refugee Action 2005:5), and "To try and help refugees leaving NASS accommodation, RHA runs a Floating Support Service of 47 units, which is being cut to 12

units in 2006. Support is given for up to two years to help people find accommodation, and sustain their tenancies by giving advice on their rights and obligations as tenants, as well as advice on welfare benefits, budgeting, health, education and other issues.” (Fox 2006)

Malfait & Scott-Flynn (2005:4,10) estimate that the 20–30% destitute due to reasons excluding legal aid, mistakes, end of process and Section 55, include those who are unaware of receiving a positive decision, and those in the transition phase between NASS accommodation and finding accommodation after a positive decision (2005:10).

London Housing Foundation found that of the 474 asylum seekers and refugees identified during a one night count of 58 hostels, the “vast majority” were refugees (2004:3). Of the 244 whose cause of homelessness was recorded by residential services, 76 (31%) were “move on cases” ie homeless as a result of positive decision and had left their NASS accommodation (p18). In addition, they also found that the majority 151 (62%) were long-term UK refugees who were homeless as a result of other factors unrelated to the asylum process (p18). Outreach services found that 35 (49%) of the 72 that they identified were “move on” cases, and 13 (18%) were long-term refugees (p26).

RCOs in Leeds have also reported destitution occurring among those who have received a positive decision and granted refugee status (Brown 2005:14). During the Refugee Action 2005 survey in which 168 destitute individuals were identified over the period of a month, 1% (two people) were destitute because they were refugees but do not fall into a priority housing group.

EU accession means some are no longer seen as asylum seekers—European nationals without regular income or funds may approach refugee organisations as they have been granted refugee status in another EU country. Under S54 NIA 2002 Sch3, the local authority can only provide support for destitute children from European national families. (Refugee Action 2005:13). Refugee Action state that the destitute seen at the Toc H Day Centre in Leicester include those who qualify as European nationals (2005:5).

ESTIMATES AND COUNTED NUMBERS OF DESTITUTE ASYLUM SEEKERS AND REFUGEES

<i>Region</i>	<i>Area</i>	<i>Estimate/research sample</i>	<i>Source</i>
West Midlands	West Midlands	5,000–10,000	Refugee Network and WMCARS, cited by Malfait & Scott-Flynn (2005)
	Birmingham	1,000–2,000 2000 (2004) 684 (since 2003)	Malfait & Scott-Flynn (2005) Woodcock (2004) No. grants made from BMAG Destitution fund
	Wolverhampton	100	Woodcock (2004)
	Coventry	Hundreds	Woodcock (2004)
East Midlands	Derby	800–2,000	Fox (2006)
	Leicester	> 308 168	Jackson (2006) Refugee Action 2005
Yorkshire & Humberside	Leeds	“Thousands”; 504 identified 23 interviewed	Brown (2005) Dwyer & Brown (2004)
	Sheffield	1,000 altogether, 100 pa 300	Assist (2005) Woodcock (2004)
London	London	10,000/year; 200/week 474 on one night	Greater London Authority (2004) London Housing Foundation (2004)
North East & Scotland	Newcastle	> 300	Prior (2006)
	North East	500	Rogers (2005)
UK wide	Scotland	896 (2000–2004)	Refugee Survival Trust (2005)
	UK Eritreans	2000	Tesfagiorgios (2005)
	Leeds/London/Manchester	60 S9 families	Refugee Council (2006)
	UK	2,904	IAP (2004)
	UK	> 9,000	Refugee Council (2004)

EFFECTS OF DESTITUTION

This section includes some examples of the effects of destitution raised in the research studies; they are not exhaustive. Malfait & Scott-Flynn suggest 75–80% of destitute asylum seekers/refugees are male, and the majority are aged between 20 and 40 years (2005:10). While they do not form the majority of the destitute asylum/refugee population, it is important to consider those who are particularly vulnerable:

- The particularly vulnerable include women who are vulnerable to sexual exploitation, women who are HIV positive, and the elderly (Malfait & Scott-Flynn 2005:10).
- Refugee Council reports increased health and mental health difficulties due to destitution (2006:3).

- Brown reports malnutrition, depression (2005:8), self harm and suicidal tendencies (p12), and mental illness (p14).
- RST (2005) case studies demonstrate the effects upon mental health, including acute anxiety, stress and depression. It also notes that 42% of its applicants were from people with dependant children or who were expecting children.
- Jackson (2006) found 88 of destitute service users in Leicester had dependents. Most service users were aged 25-44, but 53 were under age of 24 and 18 were over 55. The youngest person surveyed was 13yrs old.

There are many wider social implications related to destitution, including health risks, overcrowding, street homelessness, sexual exploitation:

- Brown. (2005:14) mentions RCOs reporting increase in crime, illegal activities and prostitution due to destitution. One case study reports illegal working for £1/hr (p15).
- Dwyer and Brown use case study examples to demonstrate reliance of the destitute upon their friends (2005:15).
- RST reports that a third of their grant applicants had no fixed address (2005:4). They also state that more than 75% of applications were for food and basic necessities and through case studies demonstrate the resulting disempowerment and impacts upon family and friends which are both material and legal.
- A strain on voluntary sector (Brown 2005:12) resources, services, staff etc. and RCOs experiencing in addition increased intra-community tension, insecurity, criticism, increased black market activity, domestic violence and alienation from society (p14).
- GLA (2004) found that most asylum seekers affected by S55 stay with other members of the asylum/refugee community, which means overcrowding and has public health implications. It also reported increased strain upon refugee and asylum seeker communities resulting in community tensions.

POLITICAL SUPPORT FOR THE DESTITUTE

Early Day Motion no.2264 “Living Ghosts Campaign” has been signed by 58 MPs since raised by Labour MP for Leeds West, John Battle on 25.05.06 (signatures correct on 15.08.06).

“That this House believes that the principle of ‘work for those who can, support for those who can’t’ should extend to everyone in the UK, including people seeking asylum; notes that thousands of people seeking asylum are ending up destitute rather than returning to poverty or persecution; supports Church Action on Poverty’s Living Ghosts campaign, which aims to end the needless destitution of people seeking asylum; further believes that it is in the interest of the whole of UK society for people seeking asylum to be allowed to take paid employment while they are in this country or to be given National Asylum Support Services support if they are unable to work; and recognises that this would stop many people disappearing into destitution.”

INFORMATION ON STUDIES CITED ABOVE—REFERENCE AND METHODOLOGY

Brown D (ed.) (2005) *Destitution of Asylum Seekers in Leeds*; Report by Leeds Destitution Steering Group, January 2005. This study was based upon a snapshot survey of five agencies undertaken in November and December 2004, which revealed 504 destitute asylum seekers during the survey period, and estimates that there are thousands in Leeds, given the reluctance of many agencies to share information and the available Home Office statistics (pp4–5). The report includes nine case studies of individual destitute asylum seekers.

Dunstan R (2006) *Shaming destitution. NASS section 4 support for failed asylum seekers who are temporarily unable to leave the UK*. CAB evidence briefing, June 2006. Citizens Advice Bureau; London http://www.citizensadvice.org.uk/index/campaigns/social_policy/evidence_reports/er_immigrationasylum/shaming_destitution. Casework evidence from CAB during 2005 from the 4 regions with the most S4 clients—London, Y&H, WM, NW plus SW—provides 20 case studies of where S4 administrative failure has resulted in destitution.

Dwyer P and Brown D (2004) *Meeting Basic Needs? exploring the welfare strategies of forced migrants*. ESRC funded. www.leeds.ac.uk/sociology/people/pddocsl. A qualitative study undertaken in January—June 2004 which conducted in-depth interviews with 23 forced migrants (5Rs, 7AS, 6HP, 5failed) and 11 service providers.

Fox S (2006) *Filling the Gaps. Services for Refugees and Asylum Seekers in Derby*. Refugee Action and Refugee Housing Association, January 2006 <http://www.refugeeaction.org/information/documents/Fillinthegaps-servicesforrefugeesandasylumseekersinDerby.pdf>. Data collected from Derby via interviews

with 60 service providers and RCO representatives who gave evidence of destitution eg 20 destitute receive weekly food parcels from Derby Refugee Forum. Estimate up to 2000 destitute asylum seekers/refugees in Derby. Destitution appears on every agenda of both voluntary and statutory sector Forums.

Greater London Authority (2004) *Destitution by Design. Withdrawal of support from in-country asylum applicants: An impact assessment for London.* Greater London Authority; London. Feb 2004 <http://www.london.gov.uk/gla/publications/refugees.isp>. Quantifies the number of those affected by S55 from a survey of voluntary and community groups across London.

Inter-Agency Partnership (2004) *The impact of section 55 on the Inter-Agency Partnership and the asylum seekers it supports.* Refugee Council, February 2004. http://www.refugeecouncil.org.uk/NR/rdonlyres/2A5E5C6C-F447-4A4A-8DD8-59F5A96390B4/0/iap_s55_feb04.pdf. Conducted a survey of the six IAP agencies from September–December 2003 and interviews. 154 AS surveyed: 53 pending, 101 refused support.

Jackson G (2006) “What am I living for?” *Living on the streets of Leicester. A report on destitute asylum seekers and refugees.* June 2006. Leicester Refugee and Asylum Seekers’ Voluntary Sector Forum. Diocese of Leicester; Leicester. <http://www.leicester.anglican.org/bsr/destitution.html>. Data collected from a survey of destitute service users by eight agencies from 06.02.06-13.03.06. Identified (but thought to be an underestimate) 308 destitute service users in Leicester—a rising trend compared 2005 survey. Found the majority (200) are off-street homeless and that 100 had been destitute for 6–12mths, 101 for 12–18mths, 19 for 18mths–2yrs.

John Rogers & Associates (2005) *A paper on the situation of destitute asylum seekers in the north east of England,* June 2005. <http://www.vonne.co.uk/issues/asylum/index.htm>. States an estimate by regional agencies of 500 destitute in the North East (covering Northumberland, Durham, Tyne&Wear, Cleveland). This includes 22 who are accommodated by Open Door and 10 by volunteer hosts. The study includes 19 case studies of destitute individuals living in the North East during 2005.

London Housing Foundation (2004) *Survey of homelessness sector services provided to asylum seeker and refugee clients.* London Housing Foundation Oct 2004. <http://www.lhf.org.uk/Publications/RefuaeeReport.pdf>. Undertook a snapshot survey of 63 residential services plus 14 day centres and eight outreach teams during July August 2004. Identified 474 asylum seekers/refugees (mainly African refugees) in a one-night count of 58 hostels (= 19% of available 2,431 spaces). Identifies cause of homelessness.

Malfait R & Scott-Flynn N (2005) *Destitution of Asylum Seekers and Refugees in Birmingham.* Restore of Birmingham Churches Together and the Church Urban Fund, May 2005. Data collected from: steering group meetings; interviews in Birmingham, Coventry, Leicester and London; analysis ‘ of documents relating to destitution.

Patel B & Kerrigan S (2004) *Hungry and homeless: the impact of the withdrawal of state support on asylum seekers, refugee communities and the voluntary sector. Findings from research into the impact of Section 55 of the NIA Act 2002.* Refugee Council, April 2004 http://www.refugeecouncil.org.uk/NR/rdonlyres/8E8BEF85-204F-47B4-9DA6-33598E258B18/0/hungry_homeless_apr04.pdf. Conducted a survey of 132 organisations in December 2003, and interviewed a selection of respondents. Includes 8 case studies. Found that 74% ie 98 organisations reported S55 clients sleeping rough, refused support despite applications within few days of arrival; clients lacking essential supplies.

Prior J (2006) *Destitute and Desperate. A report on the numbers of “failed” asylum seekers in Newcastle Upon Tyne and the services available to them.* Open Door (North East) April 2006. http://www.opendoor-ne.org/destitute_and_desperate.pdf. A survey Oct–Dec 2005 of Newcastle Citywide Asylum Seekers Support Group on numbers of failed asylum seekers seeking services. He gives excerpts from transcripts of interviews with four failed asylum seekers who are destitute.

Refugee Action (2005) *A Report of Destitution in the Asylum System in Leicester; Leicester Refugee and Asylum Seekers’ Voluntary Sector Forum,* June 2005. <http://www.refugee-action.org> or <http://www.refugeeaccess.info/default.asp?step=4&pid=332>. Survey by seven agencies of destitute asylum seekers/refugees requesting help from Jan–Feb 2005 identified 168 destitute people. The majority (70%) were destitute because they had failed their asylum claim. 18% (30) had dependents (adults and children), 40% (68) were long term destitute (over 6mths), 38% (64) between 1-6mths. Classed 37% (62) as Category 3 risk—high vulnerability ie no support mechanisms, poor health and personal circumstances, probably rough sleeping. 150 times (87%) reported previous night at friends house.

Refugee Council (2006) “Inhumane and Ineffective—Section 9 in Practice.” *A Joint Refugee Council and Refugee Action report on the Section 9 pilot.* January 2006 <http://www.refugeecouncil.org.uk/policy/position/2006/section9.htm>. Data on the families in the pilot was collected based on casework experience of Refugee Council and Refugee Action through their offices in the pilot areas, where they had contact with many of these families.

Refugee Survival Trust (2005) What's going on? A study into destitution and poverty faced by asylum seekers and refugees in Scotland. A research project for the Refugee Survival Trust. An Oxfam funded study, April 2005. Refugee Survival Trust; Edinburgh.

http://oxfamgb.org.uk/resources/downloads/Whats_going_on.pdf. Summary available at <http://www.rst.org.uk/>. The study is based upon 896 applications for grants to RST from 2000–04 and 20 interviews undertaken Sept–Oct 04 which are presented as case studies.

Tesfagiorgios P (2005) Refugees and the Development of Africa, The case of Eritrean Refugees in the UK. Supported and sponsored by: The Royal African Society, JCWI, Eritrean Education Trust, Eritrean Elders Welfare Association and Migrant and Refugee Communities Forum. August 2005. http://www.irr.org.uk/pdf/eritrean_refugees.pdf. Analyses transcripts of Home Office interviews of over 400 Eritrean failed asylum seekers; and re-interviewed 30 post-negative decision. Report concludes with six case studies. Estimates that 2,000 Eritreans refused asylum in 2003; 60% women, most aged under 40. Most been in UK for over a year; some up to seven years.

64. Memorandum from Caroline Sawyer

THE SCOPE OF THIS CONTRIBUTION

I am a currently non-practising academic lawyer and am contributing in particular on the question of children. Children are not within the definition of asylum seeker contained in s 18A Nationality, Immigration and Asylum Act 2002 but are within those foreseen to be affected by 9 A(TCetc)A 2004, as well as explicitly within this consultation. UK-British citizen children can also fall under the effects of the legislation being considered in this Inquiry. The EU Qualification Directive 2004/83, which comes into force next month, requires the welfare of children to be a primary consideration and may affect some children. This, unlike the ICESCR, is of direct effect and gives the right of individual petition and a liability for damages for breach.

LIMITATION TO OBLIGATIONS UNDER THE ICESCR

Like the European Convention on Human Rights, the ICESCR appears to have universal application but that may similarly turn out not to be the case. Article 2 appears potentially ambiguous. The grounds on which discrimination may not take place under Article 2 (2) do not include nationality. Article 2 (3) allows undeveloped countries to restrict the rights granted to non-nationals, which implies but does not state that all individuals have full rights in developed countries. Article 4 says that limitations may be placed on rights if necessary to the general welfare of a democratic society. The desire of a state to control its boundaries is often presented as an issue of public order vital to a democratic society. An obligation to provide for non-nationals who are not lawful residents comes close to direct interference with immigration policy. It may be that the ICESCR would be interpreted in the light of these current concerns—that is, it will not easily apply to those without immigration status.

ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

S 9 AI(TCetc)A 2004

S 9 AI(TCetc)A 2004 allows for the withdrawal of support from children. It has for that reason been politically particularly difficult to use in practice, although it appears not to have been seen as being in breach of the UK's obligations under the United Nations Convention on the Rights of the Child, given its reservation to that Convention preventing its application in immigration matters and the general practice of overlooking the personhood of children who are with their parents.

TREATMENT OF CHILDREN

For many of the welfare purposes on which this Inquiry focuses, “asylum seekers” are defined by s 18A Nationality, Immigration and Asylum Act 2002 as including those who resist removal under Art 3 ECHR (that is, they may never have sought protection under the 1951 United Nations Convention on the Status of Refugees) but it excludes children, who are specifically mentioned as of concern to this Inquiry. Although the definition of “asylum seekers” under s 18A will include those whose asylum claims have failed but who seek the protection of Art 3 ECHR, those people are for other related subsistence purposes in no special position but are without immigration status, and thus in the same position as overstayers or those who have lost their status. They may or may not be on temporary admission, which is lawful presence for the purposes of certain bilateral treaties on social assistance. As the subsistence of those in this position, and their children (including where those children are UK British citizens), has been reformed by the legislation aimed at primarily at asylum seekers, they will be included below, especially as otherwise children tend to get left out altogether as they cannot be “asylum seekers” within the terms of s 18A NIAA 2002 and they are often otherwise overlooked if they are with their parents.

An aspect of this often overlooked is that it affects UK-British children as well as foreign children, whether asylum-seeking or not. The UK has not ratified Protocol No 4 to the ECHR (prohibition on expulsion of citizens), again on the basis that non-UK British nationals must be expellable (as the East African Asians), and there is no clear domestic constitutional right for UK-British citizens not to be expelled. Thus where a British child's foreign carer parent is to be removed or deported, the British child may be expelled with them. If the British parent wishes to retain contact with the child the foreign carer parent will usually be given some form of leave to remain entitling them to subsist, but there is some incentive in domestic law for the British parent to have them removed, as it could well be a practical way of avoiding a claim for maintenance. I have evidence of this issue not being addressed. The Parliamentary Under-Secretary of State for Children regards these UK-British children as a matter for the immigration policy of the Home Office. The Home Office has a long history of declining to reveal the numbers of UK-British children so expelled, whether to Parliament or in answer to my Freedom of Information Act question on the point. The Foreign and Commonwealth Office however has confirmed that it does not keep any record of these children for the purposes of consular assistance in their parents' country of origin. Insofar as the asylum-seekers regime that gives rise to this JCHR consultation is designed to achieve the departure of adults without status, taking their children with them, it may therefore also be achieving the effective expulsion (this characterisation is accepted by various Government departments) of more UK-British children.

Most children born to asylum seeking families in the UK will not be British; since refugees are no longer granted Indefinite Leave to Remain, their children also will not necessarily be born British. The effect of the reservation to the UNCRC in relation to children may have begun as an immigration policy point but it becomes a domestic constitutional issue for UK-British children when no provision for them is made separately. The Department for Constitutional Affairs in reporting to the UN did not mention this effect of the reservation and it has not answered a query about the failure to address this point. Instead, it passed the query to the Home Office for them to restate the existing immigration rules. These do not allow a child to seek family reunion in the UK with a parent in any circumstances.

The usual argument produced at this point is about how foreign parents often take their British children abroad and there should be no intervention where this is uncontentious. However, these acts of expulsion belong to the UK itself, which carries out the effective expulsion of UK-British children either indirectly, by removing the means of subsistence (claims for benefits must be made through parents, who may be precluded) or directly, by putting them on an aeroplane.

The only alternative is for the child to be taken into care. However, the grounds for a care order in the Children Act 1989 do not really cover the situation where a parent's problem is poverty. Moreover the enforced separation of a child from a willing and able parent is politically difficult in various ways.

This situation is being reconsidered by the courts especially in the light of the recent Court of Appeal case of *Huang*, which stands for hearing in the House of Lords, as it may be found at the domestic level to be a breach of Article 8. Previous attempts to use Article 8 for this purpose have failed, including at Strasbourg. However, it may be that some form of welfare assessment process will be introduced or the courts given some power to prevent the expulsion of UK-British children to manifestly harmful circumstances.

The rights of children are likely to be affected in the immediate future by the provisions of EU Directive 2004/83. The best interests of children must be a primary consideration and the treatment of children who fall within that Directive must be equal to that of nationals. Therefore I think this would mean that asylum seeking children (who are not however asylum seekers within the meaning of the NIAA 2002) who are the responsibility of local authorities must have the same access to foster care, rather than hostel accommodation, as British or other settled children. You may see from your other contributors whether this is always the current practice of local authorities, but I believe not. The requirement for the best interests of children to be a primary consideration may also present difficulties for the current practice of removing such children when they reach majority, as the knowledge that they will have to go to a country they possibly do not remember, or remember only with fear, must affect their development.

USE OF DETENTION AND CONDITIONS OF DETENTION AND METHODS OF REMOVAL OF FAILED ASYLUM SEEKERS

Other people and organisations will deal with the physical aspects of this question.

Children may be particularly adversely affected by the conditions of detention and especially by the methods of removal, especially where this involves frightening night-time raids on their homes or the physical maltreatment of their parents as well as what happens to them directly.

On the use of detention, the Home Office has not answered a Freedom of Information Act question about the numbers of UK-British children in "immigration" detention. This must have happened and it is highly likely there are some there now, but there is no way of finding out. The problem will be compounded because: it is not clear that the Home Office enquires as to the nationality of the children it detains; parents may not realise the child is British, or may not realise that that could matter (although, of course, it appears it does not) and so may not make it known; even if parents were to try to make the point, the physical availability legal advice and assistance is extremely limited in detention; outside detention the restrictions on the giving of legal advice on immigration matters without the necessary qualifications having been made a criminal

offence, legal advice is very hard to obtain; the restrictions on legal aid funding mean that there are far fewer solicitor practitioners still doing immigration law; it is difficult to obtain legal advice generally, but especially in immigration matters, without financial resources.

TREATMENT BY THE MEDIA

The media does not deal with the question of the expulsion of UK-British children. It is not clear whether this is because people do not believe it happens (even courts may believe that it cannot, because they erroneously believe that the foreign parents would be allowed to stay—this is apparent from court reports up to and including the European Court of Justice at Luxembourg) or because they do not think the public is interested.

Caroline Sawyer
Senior Lecturer in Law

65. Memorandum from the Children & Young People HIV Network and the Children's HIV Association for the UK and Ireland (CHIVA)

We are very pleased that the JCHR is conducting an inquiry into the treatment of asylum seekers in the UK, and enclose written evidence based on research-in-progress that focuses on the specific situation for HIV infected and affected children in asylum seeking families.

SUMMARY

The specific issues that HIV presents to a child and their family can be exasperated by the present asylum system. The main areas covered in this memorandum are that both parent and child:

- have access to specialist health care;
- be provided with housing outside the NASS system of dispersal;
- be accommodated in safe and healthy housing;
- be in receipt of an adequate income standard;
- have access to fresh, healthy and nutritious food;
- and being exempt from being placed in an Immigration Removal Centre (detention centre).

The Children & Young People HIV Network is based at the National Children's Bureau. It aims to give a voice to and reflect the life experiences of children and young people in the UK who are either infected with or affected by HIV in policy and practice development.

The Children's HIV Association for the UK and Ireland (CHIVA) is an association of professionals who are committed to providing excellence in the care of children infected or affected by HIV and their families. There are currently more than 100 CHIVA members, embracing many different disciplines including nursing, GU Medicine, paediatrics, community child health, child development, psychology, social work, dieticians, pharmacists and support services.

The Children & Young People HIV Network with the support of CHIVA has been undertaking research that will feed into a report being published at the end of 2006 on the current situation for children who have insecure immigration status and are also infected with or affected by HIV. Case studies have been gathered through interviews with practitioners, and further information has been gathered through questionnaires to assess specific issues that face this particularly vulnerable group.

TERMINOLOGY

HIV Infected refers to an individual living with the HIV virus.

Affected refers to an individual who has one or more family members infected with the HIV virus.

Families living with HIV refers to the family having at least one member of the direct family infected with the HIV virus.

Insecure immigration status refers to those waiting on an asylum claim, those waiting on an appeal, visa overstayers and those who are undocumented.

The following sections relate to the experiences of families living with HIV. Some elements are relevant to all families with insecure immigration status; others are specific to the additional impact of HIV.

1. *Inadequate levels of welfare benefits and inadequate housing and their effects on a child's health and well-being*

The UN Convention on the Rights of the Child gives all children the "right to an adequate standard of living".

The standard of housing and level of benefits awarded to families seeking asylum seems to vary. From our research, families claiming refugee status under article 3 of human rights legislation seem to be living in what can only be described as abject poverty.

One case is of a Mother who came with her three children (13 years, 11 years and 4 years) to the UK on a work visa after the father died. The health of her youngest child deteriorated soon after their arrival. During a period of hospitalisation, the child was diagnosed HIV positive and then the Mother tested and received a positive diagnosis. From this point the Mother could not work, as she had to care for her sick child. She made a Human Rights Application to remain in the UK in May 2005, and was told that while this was processed, she would not receive support through NASS, but that Social Services would support her.

Initially Social Services granted her a very limited amount of money to cover school meals, school uniforms and some food, but set up no sustainable system of financial support. Eventually, after a year, they agreed that the Mother would receive £51 per week. She was told in June 2006 that she would also start to receive an additional £46 per week. She is still waiting for this additional payment to commence.

The only way the family has been able to remain housed is by sub-letting rooms. In May 2006, Social Services agreed to pay the rent, on the condition that a rent book was produced. But the Landlord will not provide a rent book, so the rent is still being paid by renting out rooms to other families, and Social Services has not at any point offered to re-house the family in emergency accommodation. At one time the entire family lived in one room.

What must not be forgotten is that the woman and her youngest child are both living with compromised immune systems. During the winter, the gas was disconnected for a short time. The child had chicken pox and a bout of diarrhoea. A child living with a compromised immune system needs good living conditions to maintain their health.

All children need access to a balanced diet to develop and thrive. For a family of 4 living on £51, a balanced diet is not an option. At times it was reported that the families cupboards were empty. When living with HIV, access to such a diet can ensure less ill health and fewer periods in hospital. This not only benefits the child, but also benefits the costs to the NHS.

Cases such as the one above are not uncommon. Another such case is a woman who tested HIV positive when pregnant, at which point her husband abandoned her and left the country. He had the student visa, leaving her in the UK undocumented.

She applied to remain under Article 3 and Social Services housed her when the baby was born. Initially Social Services did not send her any money, but she received one food parcel a week, child benefit which covered utilities costs and a bag of nappies. She was fortunate that the Community HIV Nurse ran a scheme for free baby milk and equipment to bottle-feed (an essential element for prevention of Mother-to-baby transmission of HIV). After a few months, Social Services replaced the food parcels with £27 per week, which combined with child benefit is meant to cover food, utilities, clothes, baby equipment and nappies.

The mother is extremely isolated, her health is not good, and she was hospitalised with depression during her pregnancy (after the HIV diagnosis and her husband abandoning her). She has suffered from post-natal depression since the birth of her child.

A standardised system of financial support needs to be put in place for families outside of NASS jurisdiction. The impact on children's health and well-being cannot be underestimated.

2. *The provision of health care*

The UN Convention on the Rights of the Child (CRC) states that:

“The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”

In brief, the prevention of vertical (Mother-to-baby) transmission of HIV in the UK is nothing short of a public health triumph. Prior to having the interventions in place, an HIV positive pregnant woman had between a 1 in 3–4 chance of transferring the virus to her baby. Now, with a simple set of interventions that include: avoiding breastfeeding; antiretroviral treatment to mother in pregnancy and to baby after delivery; and appropriately planned delivery, (whether elective caesarean section or vaginal delivery which is possible for women with completely suppressed HIV viral load on treatment.) Mother-to-baby transmission of HIV in the UK is now as low as 1 in 100.

These interventions virtually guarantee the child will be HIV negative; therefore successfully stopping transmission, saving the NHS future costs for the care of this child and upholding UNCRC Article 6 (the child's right to survival and development).

At present the DoH's guidance to NHS Trusts sets out that maternity is seen as immediately necessary treatment, and that Trusts must charge failed asylum seekers but must not withhold or withdraw services due to inability to pay. In short, failed asylum seekers will receive a bill, but it is up to individual Trusts to decide whether to pursue payment. Part of antenatal services is a routine opt-out HIV test.

HIV treatment will be continued if an asylum seeker's claim fails, but once categorised as a failed asylum seeker, or if the person is a visa overstayer or undocumented, HIV treatment will be charged. Even if the Trust decides to not pursue collecting the money, the uncertainty and the thought of being billed for

thousands of pounds means that many women would not wish to access the treatment they and their child may need. Thus the present NHS system for charging overseas visitors may be putting children at a great risk of being infected with HIV.

The state will intervene to protect the child's health and well-being. Yet, it can be argued that the state is putting children of failed asylum seekers and visa overstayers at risk and undermining its duty of care to children as outlined in the Children Act 1989 and Articles 2 (right to life) and 3 (freedom from inhuman and degrading treatment).

Stopping Mother-to-Baby transmission of HIV is both a public health and a safeguarding issue. It is a time limited intervention which in the long term may save a child's life and save the NHS money.

3. *Treatment of HIV infected children*

Although changes have been made to the dispersal of HIV infected asylum seekers under guidance set out in NASS Policy Bulletin 85⁴⁵⁴, it does not prevent the movement of HIV infected children. Paediatric HIV is a very specialised field. Medics have attempted to counter the impact of dispersal that has seen HIV infected children being moved into areas where there are no Paediatric HIV services. However, the reality is that even with the development of national and regional clinical networks, the best and most complete multi-disciplinary specialist health care is offered at the hub centres in London. They offer family clinics with psychologists, dieticians, health visitors and the leading Paediatric HIV Consultants on staff.

An example of this is where a sub-Saharan family where both mother and father were HIV infected, but did not know it, were dispersed to a town with no specific care facilities for HIV infected families. Mother declined an HIV test in pregnancy, and no-one reviewed that decision with her, as would most likely have happened if she had been in a London hospital. She subsequently delivered a baby who was HIV infected and presented very ill to the local hospital with AIDS at eight weeks of age. The baby's condition deteriorated significantly and despite obtaining advice from one of the specialist HIV centres in London, the local team felt out of their depth caring for a very severely immunocompromised child. Special arrangements were made with the help of NASS to have the family re-located back to London so that the child could have here care in a specialist centre. This of course took months to organise, but the family were very happy to be relocated.

The family described that when they received their HIV diagnoses they felt extremely unsupported, as there was no multidisciplinary support available. They also felt "like they were in a zoo" as an HIV infected baby was such a rare phenomenon in the hospital and everyone came to examine at the child. Their experience would have been significantly alleviated if they had either remained in London, or been dispersed to an area with more appropriate and developed services.

We regard it as unethical to be moving a chronically ill child with complex medical needs who needs to be closely monitored, and whose continuing good health is reliant on having access to the most up-to-date research and treatments that only these hub centres can offer.

There are approximately 50–100 HIV positive children entering the country each year. Over all, whether these families are dispersed or not is unlikely to make an impact on national dispersal figures.

4. *Use of detention and conditions of detention and methods of removal of failed asylum seekers*

Children infected with HIV should not be held in detention centres. Although we believe that to date there have been few cases of this happening, when it has occurred it has been left up to Consultants to contest the decision and ensure that the children are removed from these places.

An example of this was where one family were taken with no notice to a detention centre. The mother and one of the two children were HIV positive and on treatment with full viral suppression and they were not allowed to take their HIV medications with them. After being alerted by the family's solicitor, many hours were spent by the family clinic consultant on the phone trying to speak to a person in authority at the detention centre who had responsibility for the health needs of the family, but no medical person was ever available. The staff spoken to from the centre did not have any understanding of the management of HIV or the significance of the risk of missing even one dose of medication, which could lead to HIV rebound and development of resistance. Luckily the family were released after 24 hours and only a single dose of medications omitted.

Families with HIV may be admitted to detention centres without the health care team being made aware and risk treatment failure if they do not have their appropriate treatment. This is sub-optimal care for these children.

Under DoH directives a failed asylum seeker is entitled to the continuation of an already established health service. Paediatric HIV is a specialist service and it is unrealistic to expect this level of specialism from detention centre Health staff. We would argue that a detention centre is no place for a child, and in particular no place for a chronically ill child with complex health needs.

⁴⁵⁴ National Asylum Support Service (Dec 2005) Dispersing asylum seekers with health care needs. NASS Policy Bulletin 85.

5. Recommendations

(i) All asylum-seeking families applying under Article 3 should obtain the same level of state support as those applying through NASS. The amount and who is responsible for this should be clearly set out in guidelines.

(ii) Local authorities still have a duty of care to children of failed asylum seeking families. This needs to be clarified and guidelines produced to set out who has responsibility for what and what is the minimum level of income on which a family is expected to live.

(iii) All HIV infected pregnant women, regardless of immigration status, should have access to free antenatal care and the interventions necessary to stop vertical transmission of HIV.

(iv) Children with complex health needs, whether this be through HIV or any other chronic illness or disability, must have their basic needs acknowledged. These include access to:

- Appropriate specialist health care. Realistically in the case of HIV this has to mean that they are exempt from dispersal, as continuous contact with the same expert specialist paediatrician will support a healthier child and therefore costs the NHS less money in health care services in the long term.
- A minimum income level that is sufficient to cover the needs of both parents and children. Children with compromised immune systems must live in healthy housing, enjoy a balanced and healthy diet, and be able to travel to hospital and health clinics. The long-term cost benefits to the NHS outweigh the shorter-term costs to the benefits system. The present level of income support for a Mother and her child is set at £119.28 per week. As HIV is now classified as a disability at the point of diagnosis (DDA 2006), the family would also be entitled to an additional £45.08 per week disabled children's allowance, making a total of £164.36. Under NASS support this family would receive 30% less than the income support rate, £83.50. We recommend that all HIV infected children living on public funds should be entitled to disabled children's allowance.
- Secure accommodation to a standard that will not cause or intensify health problems. Moving families who need to adhere to complex drugs regimes can impair health further and makes little economic sense.

(v) Acknowledgement needs to be given to the impact the present system has on families. The uncertainty causes a tremendous degree of anxiety. This comes on top of multiple problems with the families already have, including: cultural displacement; lost family members; bereavement; ill health; poverty; language difficulties and coming to terms with an HIV positive diagnosis. We recommend a review of the time that is taken for a case to be processed, appeals to be held and decisions made to take this into account.

66. Memorandum from Oxfam

Oxfam's UK Poverty Programme together with partner organisations and networks (in Wales, Scotland and London—membership annexed) welcome the JCHR inquiry into the human rights issues raised by the treatment of asylum seekers in the UK. We believe that all the elements to be considered by the Committee raise human rights concerns for asylum seekers. However we will focus specifically on the "Treatment by the Media" element of the inquiry.

ABOUT OXFAM'S UK POVERTY PROGRAMME

Oxfam's UKPP has been working in the UK since 1996. The Programme's work is organised around three key themes: sustainable livelihoods; gender and race equality; and asylum seeker and refugee protection.

In relation to asylum, Oxfam has:

- Supported advocacy and campaigning on poverty and destitution issues, including abolition of the vouchers system.
- Supported the introduction of gender guidelines to the asylum process.
- Supported the analysis and influence of the media's portrayal of asylum seekers in the UK.
- Analysed the international aspects of UK asylum policyⁱ

NETWORKS SUPPORTING THIS SUBMISSION

Oxfam has supported partners and organisations working with asylum seekers and refugees to encourage balanced and accurate reporting of asylum issues in the UK. Oxfam has been founding members of, and actively involved in, the following networks who support this submissionⁱⁱ:

- Wales (Refugee Media Group Wales—from 2000);
- Scotland (Asylum Positive Images Network—from 2004); and
- London (most recently from 2006, Asylum Refugees and the Media in London).

This work has involved considerable effort and has been sustained by organisational and individual concerns about the effects of media coverage on public and political attitudes as well as the belief in the need for collective action to address these issuesⁱⁱⁱ.

This practical support work and research has included: media monitoring, polling, analysis of public attitudes research, training in media skills to asylum seekers and Refugee Community Organisation (RCO) leaders, relationship building with journalists, and advocacy based on the documented findings.^{iv} The work carried out by these networks (and others) demonstrates that there continues to be negative, misleading and often false portrayal of asylum seekers and refugees in the media. The media is an important factor that influences public attitudes and affects the climate within which national policy is formulated. They also affect the lives of asylum seekers living in the community, and can have significant impact on community relations and social cohesion.

HUMAN RIGHTS CONTEXT

As a signatory to the 1951 UN Refugee Convention, which has helped to save thousands of lives since its introduction, the UK has a humanitarian obligation to provide protection to those fleeing persecution or human rights abuse. This obligation must be upheld by full and fair assessment of the claims of each individual applicant for asylum in the UK. State parties must also fulfil positive obligations to protect asylum seekers and refugees from unjustified interference with their right to respect, dignity, privacy, and physical integrity whatever their status while in the UK.

In accordance with Article 19, all individuals, including refugees and asylum seekers, have a right to freedom of expression and access to information. This also implies that a full range of refugee voices and information about refugees and asylum seekers should be reflected in the UK national and local media. The evidence of this submission suggests that the UK could do more to support the rights of asylum seekers and refugees being met under Article 19.

The International Convention on the Elimination of all Forms of Racial Discrimination's Committee on the Elimination of Racial Discrimination (CERD) last considered the UK's 16th and 17th periodic reports in 2003 and noted concerns and made recommendations related to asylum seekers:

13. The Committee is concerned about the increasing racial prejudice against ethnic minorities, asylum seekers and immigrants reflected in the media and the reported lack of effectiveness of the Press Complaints Commission (PCC) to deal with this issue.

The Committee recommends that the State Party consider further how the Press Complaints Commission could be made more effective and could be further empowered to consider complaints received from the Commission for Racial Equality as well as other groups or organisations working in the field of race relations.

The Committee further recommends that the State Party include in its next report more detailed information on the number of complaints received for racial offences as well as the outcome of such cases brought before the courts.

14. The Committee remains concerned by reports of attacks on asylum seekers. In this regard, the Committee notes with concern that antagonism towards asylum seekers has helped sustain support for extremist political opinions.

The Committee recommends that the State Party adopt further measures and intensify its efforts to counter racial tensions generated through asylum issues, inter alia by developing public education programmes and promoting positive images of ethnic minorities, asylum seekers and immigrants, as well as measures making the asylum procedures more equitable, efficient and unbiased.

Additionally the UK Independent Race Monitor's report in 2005 recommended:

7. The Need for a Balanced Public Discussion

7.1 As indicated in my previous reports I am concerned about the effect of hostile, inaccurate and derogatory press comment and comments by a few politicians. I do not doubt that this negative atmosphere can affect decision-making on individual cases, as it makes caution and suspicion more likely. The Government has an important role to play in helping to set the tone and encouraging balanced and well-informed discussions on immigration. Repeated references to abuse and reducing the numbers of asylum applicants tend to reinforce popular misconceptions that abuse is enormous in scale when in fact it is a small proportion of people who enter the UK.^v

While the UK Government has acted on some of the above issues the ever-changing policy framework and lack of policy and practical initiatives have exacerbated many of these difficulties. Increasing racial prejudice towards, and attacks on, asylum seekers and refugees, reflect experience across the UK, especially since 1999 when asylum seekers were first dispersed throughout the country to host communities that were, in the main, neither consulted nor prepared.

In the devolved administrations there has been some differentiation in terms of more positive political leadership, discussion and supporting practical initiatives. This has resulted to some degree in generally more positive attitudes to asylum and refugee issues in Scotland and Wales than in England^{vi}.

NEGATIVE PORTRAYAL OF ASYLUM SEEKERS AND REFUGEES IN THE UK MEDIA

Research demonstrates that political and media discourse have played a central role in raising public fears and exacerbating hostility towards asylum seekers, resulting in threats and abuse for asylum seekers and refugees. Clearly sections of the general public remain misinformed about many asylum issues. MORI polling evidence on asylum in 2002^{vii} showed that public perception was that the UK hosted 23% of the world's refugees and asylum seekers, rather than the true figure of 1.89% as well as providing evidence of generally negative perceptions of asylum seekers and refugees in the UK.

The Association of Chief Police Officers (ACPO) 2001 *Policing Guide: Asylum Seekers and Refugees* included a section on the media to challenge the "ill-informed adverse media coverage" which was contributing to increases in racial tension and public disorder. It stated further that:

Racist expressions towards asylum seekers appear to have become common currency and acceptable in a way which would never be tolerated towards any other minority.

Media monitoring and research on the media around asylum and refugee issues continues to show much misrepresentation and negative portrayal^{viii} that is having negative effects in communities in terms of harassment and racial abuse.^{ix}

There are differences in the reporting of the broadsheet papers and the tabloids and again among the tabloids, but the majority of the tabloids are highly negative. Print, radio and television coverage of asylum issues also show real differences. However there is growing evidence of the broadcast media being heavily influenced by print media and reinforcing its messages.^x Television news programmes and broadsheet papers can often be balanced in their coverage but that may be countered by a negative and or stereotyped image accompanying the article or in the foreground of a television programme. Local media, especially where engaged with by refugee support networks, has been found to be considerably more positive.

IMPACT OF MEDIA PORTRAYAL OF ASYLUM ISSUES ON PUBLIC ATTITUDES

Research into attitudes of the public and host communities to asylum seekers and refugees demonstrates the influence of the media in a number of ways. This work demonstrates that the media:

- Informs opinion and knowledge about asylum seekers and refugees (and is for many people the primary or only source of information on these issues).
- Causes confusion because of the conflation of terminology (eg, failure to distinguish properly between asylum seeker, refugee, illegal immigrant, migrant worker and so on).
- Uses provocative ("swamping", "invading" or negative ("scrounging", "criminal") terminology which becomes the "common-sense" language used in host communities about asylum.
- De-humanises asylum seekers and refugees through media portrayal of them as criminal/illegal/other, combined with media sources that are in the main elite sources (ie government officials or organisations that speak of statistics and numbers) and fails to represent actual asylum seekers or refugees in their own voice. This makes it much easier for those who have never encountered an asylum seeker except in the media to dismiss them and their claims. They are numbers, official "problems", not real people.
- Portrays asylum seekers and refugees as "threatening young men", rarely mentioning refugee women who remain almost invisible. For the reading public, it is much easier to believe that "hordes" of dangerous young men should be deported than it is to think the same of vulnerable women and children.^{xi} Often focuses on a person's immigration status within articles, negating the main story; this is a form of discrimination but is not recognised as such under the Discrimination Article (12) of the Press Complaints Commission Guidelines.

Greenslade in *Seeking Scapegoats: The coverage of asylum in the UK Press* concludes that:

Prejudices amongst some sections of the public towards all incomers to Britain, normally held discretely, have been aroused . . . there was no widespread public outcry against asylum-seekers prior to a press campaign of vilification which had the effect of legitimising public hostility . . . Much of what has been published has been calculated to inflame a sensitive situation. (Greenslade 2005:29).

These attitudes contribute to negative public beliefs towards asylum seekers and refugees that strain community relations and can, and have, led at their most extreme to harassment and racially motivated attacks.^{xii}

I just do not like to be at the forefront, on the picture, because there have been many incidents, attacks on people like us and you never know who the next-door person is . . . Male Asylum Seeker from Bhutan in UK for two years.^{xiii}

IMPACT ON ASYLUM SEEKERS AND REFUGEES

Asylum seekers and refugees have faced increased racial abuse, harassment and attacks throughout the country especially since the dispersal policy began in 1999. Media vilification can be shown to have increased locally, and especially nationally, through the tabloid press in the same period^{xiv}.

This has been born out in research and acknowledged by organisations such as the CRE and ACPO issuing guidance and support in this area. The number of support initiatives that struggle to address this issue is indicative of a real problem^{xv}.

I feel like nobody here, ashamed like everybody hates me, but they don't know me they only know what they read in the newspapers—and that's not me
Female Statistician from Sudan

Asylum seekers and refugees themselves are surprised by the level of hostility they face in the media and also the difficulty in engaging with the press, even when putting themselves forward for interview or as “experts”.^{xvi} Many asylum seekers also fear putting themselves forward, afraid that it may affect their asylum claim.

However, when support is provided to both journalists and asylum seekers to meet, the results can be very positive, with journalists better informed and equipped to write about the lived experience of asylum seeking men and women^{xvii}.

GOOD PRACTICE

As mentioned previously the work of many networks has helped to combat some of the negative media portrayal. Additionally there have been positive initiatives by press organisations such as Presswise/Mediawise (initiating projects such as the Refugees, Asylum Seekers in the Media [RAM] Project and the Exiled Journalists Network) as well as progressive work/support by the National Union of Journalists often supporting refugee media support networks with the voluntary sector.^{xviii} This collective work was instrumental in pushing for PCC Guidance on reporting on asylum and refugees. However this remains too general and weak and is “disappointing” in its enforcement.^{xix}

These initiatives have been in the main from the voluntary sector. Time and resources as well as funding have been limited. Such initiatives have been most influential at the local level where direct contact with journalists has tended to produce reporting in the local media that is generally felt to be more balanced and representative of asylum seekers and refugees. Sometimes there is good investigative journalism which makes clear why asylum seekers are here and what they contribute to this country: that they have fled persecution and are now living and integrating into local communities.^{xx} The national tabloid press remains problematic and has repeatedly refused to engage with researchers, or, when journalists have agreed to be interviewed they have wanted to remain anonymous because of anxieties about editorial or ownership control.^{xxi}

Many of the most dearly held characteristics of the media in a democracy: the “independence” of the press, freedom of speech, balance and impartiality, objectivity, can be a double-edged sword in these contexts where news editors for example feel that any overt monitoring or real critique of what they are doing, is likely to infringe all of these time honoured journalistic values.^{xxii} Much reporting is also driven more by the political motivation to embarrass the government than any consideration of the effects media stories may have on community relations or individuals.^{xxiii} This is of course again about press ownership, the economics of selling newspapers, and the complex relationships between these agendas, as well as the journalists’ understanding of “news value”.^{xxiv}

The Home Office supported National Refugee Integration Forum has brought attention to this matter at the policy level through one of its working sub-groups (Communities and the Media). However there has not been enough positive articulation, advocacy or discussion around these issues at the political level.

There has not been much discussion or policy initiative about the need for information and communication to “host” communities about the issue of asylum seeking, in forms other than those provided by the media. This work should be being done in schools, in workplaces, and in communities. Some of this work is directly media related, and would involve improving media literacies so that people examine the media more critically. The IPPR and ICAR research referred to above has shown how badly this is needed if tensions arising from myth and misinformation are to be avoided. One message which could be communicated and which would make a huge difference would be the information that asylum seekers cannot work because of government policy, not because they do not want to work. The media could help here, but that would mean changing journalists’ ideas of what has news value and of what they are there to do.

Political leadership is necessary in order to reverse rather than exacerbate this climate of hostility but it has not to date been strong. Politicians are influenced by both the public and the media. Much policy seems to be media driven and even senior broadcasters, seem to believe that the tabloids “have got it right on

asylum”.^{xxv} Asylum seekers and refugees themselves, despite many research efforts which have shown how their voices are ignored in favour of elite sources, continue to have little influence on how these issues are portrayed and yet are the most directly affected by them.^{xxvi}

I don't want asylum seekers or asylum policies to be taken as a political gimmick . . . things to laugh at because at any time there are elections every political party takes migration as a target . . . They will use the situation to demonise asylum seekers/refugees and will not even recognise the good aspect of the asylum seekers. All the media, the government will start saying is how to detain, how to deport and how to make things harder for asylum seekers. Instead of trying to say things that are positive . . . and to make sure how asylum seekers feel at home . . .

James, Asylum Seeker from Sierra Leone, four years in UK^{xxvii}

RECOMMENDATIONS

We re-iterate the CERD and UK Independent Race Monitor's recommendations made above. We also concur with many of the recommendations made by ippr, ICAR and Article 19 reports previously. These include that:

- Politicians and government officials should present asylum issues in a balanced way, as well as provide statistics that are clear and with detailed and contextual accompanying analysis.
- The Press Complaints Commission guidance on asylum seeker and refugee reporting should be reassessed, with a view to strengthening it. Its work and findings in this area should be widely publicised.
- The media should be held responsible for sourcing statistics and information accurately, contextualising asylum related stories, and presenting asylum seekers and refugees as individuals.
- The government should provide greater support for monitoring mechanisms and research to explore the correlations between media reporting and coverage, and public opinion in relation to asylum and refugee issues.
- Media and government should pay more attention to the different experiences of men and women seeking asylum, and how gender issues interrelate with other aspects of identity. In particular, they should explore how female asylum seekers are often underrepresented, ignored, and invisible within media coverage.
- Communication initiatives need to extend beyond the media to other institutions that construct and represent asylum if human rights issues are to be addressed.
- Attention should be paid, and increased resources committed, to measures to tackle prejudice through meaningful contact between refugee and host communities (eg schools, sports clubs, faith groups).

I think that the British media need to highlight the roots behind the issues of asylum seekers in the UK because I am quite sure that most of the refugees and asylum seekers each one of them has a human rights problem behind his coming to this country. But if you just concentrate on the impact of the refugee issue on the social, economic and cultural life of this country and you forget the roots of the problem which has driven these people out of their countries, absolutely you are not going to tell the truth . . .

Male Asylum Seeker from Sudan, in UK more than two years^{xxviii}

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ⁱ See www.oxfamgb.org/ukpp

ⁱⁱ Membership annexed.

ⁱⁱⁱ This work also should not be seen in isolation as many other areas/cities have initiated similar networks for similar reasons such as the national Refugees and the Media (RAM) Project as well as numerous smaller initiatives of refugee community and or support organisations in different localities.

^{iv} Funding support from and including Oxfam, Comic Relief, EQUAL-ESF, NUJ, Amnesty International, University of Cardiff, and others.

^v <http://www.ind.homeoffice.gov.uk/6353/aboutus/independantracemonitor.pdf#search=%22Independent%20race%20monitor%22>

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^{vii} Mori Social Research Institute 2002.

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- xix Buchanan S, et al (2003).
- xx Cookson and Jempson (2005); ICAR (2004).
- xxi Buchanan S (et al) 2003.
- xxii Prof, Terry Threadgold, Head of Cardiff School of Journalism, Media and Cultural Studies, Cardiff University, reflecting on recent attempts to gain access to TV newsrooms in London in order to complete Oxfam research on these issues.
- xxiii Greenslade (2005).
- xxiv Prof, Terry Threadgold, Head of Cardiff School of Journalism, Media and Cultural Studies, Cardiff University, reflecting on recent attempts to gain access to TV newsrooms in London in order to complete Oxfam research on these issues.
- xxv Of the record discussion with Prof. Terry Threadgold, Head, Cardiff School of Journalism, Media and Cultural Studies, Cardiff University.
- xxvi Terry Threadgold (2006) *Dialogism, Voice and Global Contexts: Asylum, Dangerous Men and Invisible Women*, In Anne Genovese and Mary Sponberg eds, *Australian Feminist Studies*, 21st. Birthday Issue.
- xxvii ECRE Refugee Stories Project 2006, online from Nov 8: <http://www.ecre.org/refugeestories>
- xxviii Buchanan S, et al (2003).

Annex

NETWORKS AND ORGANISATIONS SUPPORTING OXFAM SUBMISSION TO JCHR ASYLUM INQUIRY

Refugee Media Group Wales (est. 2000) including:

Oxfam Cymru
 Cardiff School of Journalism, Media & Cultural Studies (JOMEC), University of Cardiff
 Welsh Refugee Council
 Cymru Refugee Academic Council
 Displaced Persons in Action (DPIA)
 Refugee Voice Wales

South People's Project
Wales Local Authorities Consortium for Refugees and Asylum Seekers

Asylum Positive Images Network Scotland (est. 2004) including:

Oxfam in Scotland Scottish Refugee Council
Amnesty International
British Red Cross
Commission for Racial Equality (CRE) in Scotland
Scottish Iraqi Association
Karibu
Media Co-op
National Union of Journalists
Refugee Survival Trust
Dr Anthea Irwin (Glasgow Caledonian University)
Dr Jairo Lugo (School of Journalism University of Stirling)

Asylum, Refugees and Media Network in London (est 2006) including:

Oxfam GB
Exiled Journalists Network
Refugee Council
Education Action International
European Council for Refugees and Exiles (ECRE)
Hammersmith and Fulham Refugee Forum
Horn Development Foundation
Institute for Race Relations (IRR)
International Tamil Refugee Network
Media in Mind
Media Trust
MediaWise
Migrants Resource Centre
Refugee Arrivals Project (RAP)
Refugees in the Arts Initiative
Refugees in Effective and Active Partnership (REAP)
Save the Children
West London Refugee Partnership

67. Memorandum from the Inter Agency Partnership

INTRODUCTION

1. The Asylum Support Programme Inter-Agency Partnership (IAP) consists of six agencies: Refugee Council, Refugee Action, Migrant Helpline, Refugee Arrivals Project, Scottish Refugee Council and Welsh Refugee Council. It also reflects representations from subcontractors and refugee community organisations (RCOs).

2. The IAP delivers asylum support services to asylum seekers across the UK as contracted with the Immigration and Nationality Directorate (IND) of the Home Office. The IAP advises and assists asylum seekers with their asylum support applications, and provides subsidiary advice to failed asylum seekers requiring support.

3. The IAP welcomes the inquiry and the opportunity to submit evidence to the committee. This submission focuses on access to accommodation and financial support for asylum seekers and failed asylum seekers and argues that in many instances, the treatment of asylum seekers in this area constitutes potential breaches of human rights legislation.

4. The IAP wishes to endorse the separate submission to the inquiry from the Refugee Council concerning the treatment of asylum-seeking children and access to health care for asylum seekers and failed asylum seekers. The IAP also supports the submission from Refugee Action on destitution.

KEY POINTS

5. Despite the fact that there is little evidence to suggest that the support provisions of a host country impact on the decisions of asylum seekers,⁴⁵⁵ asylum support provision is increasingly wielded by government as a tool to both discourage people from seeking asylum in the first instance, and to coerce voluntary return.

6. In addition, the bureaucratic structures set up to support asylum support legislation are weak. Throughout the process many asylum seekers who are entitled to support are denied it as a result of failures in the systems set up to administer support. In the first quarter of the 2006/2007 financial year the IAP agencies saw 3,170 clients who, while eligible for Home Office asylum support, had been made destitute as a result of weaknesses in the administration of asylum support in the Home Office⁴⁵⁶.

7. The impact on asylum seekers and failed asylum seekers of these political and structural impediments to accessing support is devastating. Without adequate support or the right to work, many asylum seekers and asylum seekers whose claims have been refused become destitute and desperate.

PART ONE: POTENTIAL HUMAN RIGHTS BREACHES AS A RESULT OF LEGISLATION AND GOVERNMENT POLICY

BARRIERS TO CLAIMING ASYLUM

- The inability of asylum seekers to access support because of the limited accessibility of Asylum Screening Units results in serious suffering and is potentially a breach of Article 3 of the European Convention on Human Rights (freedom from inhuman and degrading treatment).

8. Any asylum seeker who does not claim asylum at port must lodge a claim at an ASU within three days of arriving in the UK to access support. Once a claim is lodged, the person is granted access to Initial Accommodation under section 98 of the Asylum and Immigration Act 1999 pending an assessment of the eligibility for section 95 support. Without a claim, no support is available.

9. There are two ASUs in the United Kingdom: one in Liverpool and one in Croydon. The ASUs are open from 9 am to 1 pm on working days: while vulnerable clients⁴⁵⁷ can access initial accommodation at all times, non-vulnerable clients can only make a claim and thereby access initial accommodation at these times.

10. The IAP has long argued that the limited spread of the ASUs and the rigid opening hours exacerbate destitution amongst asylum seekers attempting to lodge a claim. If, for instance a single claimant or childless couple arrives in Glasgow on a Friday night, they would need to travel to Liverpool over the weekend in order to be able to present to the ASU before Monday at 1 pm. This situation would also apply to someone arriving in Plymouth and then having to travel to the Croydon ASU to claim. The effect of this is that the asylum seeker is required to spend a night, unsupported, in either Croydon or Liverpool. Office's criteria of "vulnerable" (visibly pregnant, elderly, families, clear care needs). Please see Appendix C for a paper written by Refugee Action in 2004 outlining the situation in the areas in which they work. Unfortunately, the situation is still as it was in 2004.

11. A recent case example shows the effect of the limited ability of asylum seekers to access ASUs:

We had a man arrive on the Friday before Bank Holiday Monday in May. He was sent by Leeds Immigration office to our office. There was no charitable accommodation available. He was almost turned away with nowhere to go but eventually an unoccupied house which belonged to a friend of a staff member was found where he could stay for the weekend. We paid for him to travel to Liverpool to claim asylum. *Refugee Council, Leeds*

SECTION 55 OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002 (NIA ACT 2002)

- Denial of subsistence-only support to a person deemed not to have claimed asylum "as soon as reasonably practicable" causes hardship that potentially breaches an applicants rights under both Article 3 of the ECHR and articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (the right to social security and the right to an adequate standard of living).

12. Section 55 of the NIA Act 2002 allows the Secretary of State for the Home Department to deny support to asylum seekers if they fail to claim asylum "as soon as reasonably practicable" (s 55.1). A statement by the Home Secretary in December 2003 interpreted the notion of "as soon as reasonably practicable" as being within three days of arriving in the country.

⁴⁵⁵ A 2002 Home Office report, "Understanding the decision-making of asylum seekers", found that "[t]here was little evidence that respondents had detailed knowledge of UK immigration or asylum procedures, entitlements to benefits in the UK, or the availability of work in the UK. *Findings*, 172, Research, Development and Statistics Directorate, Home Office, 200s, <http://www.homeoffice.gov.uk/rds/pdfs2/r172.pdf> (accessed 12 August 2006).

⁴⁵⁶ Survey of IAP agencies April to June 2006.

⁴⁵⁷ Vulnerable clients include those with children, pregnant women and anyone who has a community care need or health need.

13. When it was enacted on 8 January 2003, section 55 made a huge impact on the welfare and wellbeing of asylum seekers as huge numbers of them were deemed ineligible for support from the National Asylum Support Service (NASS). Throughout 2003, 64% of asylum seekers referred for a section 55 decision were denied support⁴⁵⁸. This amounted to 9,415 individual asylum seekers who received no form of government support whatsoever.

14. In February 2004, the Inter-Agency Partnership produced a report on The impact of section 55 on the Inter-Agency Partnership and the asylum seekers it supports. 154 asylum seekers refused support under section 55 were interviewed in order to learn first hand their experience of the impact of section 55. Of these asylum seekers:

- 61.3% were sleeping rough;
- a further 8% faced imminent homelessness;
- 70% experienced great difficulty in accessing food on a daily basis; and
- 57.4% reported that the irregular diet and lack of shelter had a negative impact on their health.

15. The following quotes from IAP case advisors working with clients declined support under section 55 and asylum seekers themselves demonstrate the situations of their clients trying to survive without support⁴⁵⁹:

“I was sleeping in a church but they told me yesterday I cannot sleep there anymore as some church members have started to complain.” 29 year old Congolese male. (*Migrant Helpline*)

“He is sleeping rough, sometimes by an underground station or on the street. No proper food for most days, no shower for 12 days. Now getting food from the Refugee Council. As a result of his experiences here in the UK, has developed a serious gastric problem and is vomiting blood. 32 year old Eritrean male. (*Refugee Council*)

Section 55 post-Limbuela Judgement

16. In May 2004 the Home Office suspended section 55 decisions pending the House of Lords judgement in the case of *Limbuela*⁴⁶⁰. In October 2005 the Law Lords found that support should be provided when “an individual faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life.” (paragraph 8). Furthermore, they went on to say that Article 3 of the European Convention of Human Rights would be breached if “there was persuasive evidence that a late applicant was obliged to sleep in the street (. . .) or was seriously hungry, or unable to satisfy the most basic requirements of hygiene” (paragraph 9).

17. Following the *Limbuela* ruling, the Home Office reinstated section 55 decisions, however in general a negative section 55 decision is only considered if an applicant applies for subsistence support only (that is, they have access to accommodation independent of NASS) or an applicant is in NASS accommodation and applies for a change of circumstances to subsistence only⁴⁶¹.

18. The IAP acknowledges that the *Limbuela* judgement addressed many of its concerns regarding section 55 and its impact on the wellbeing and rights of asylum seekers. However agencies still consider that the denial of support under section 55 to those who apply for subsistence only support potentially breaches an applicant’s rights under both Article 3 of the ECHR (freedom from inhuman and degrading treatment) and articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (the right to social security and the right to an adequate standard of living).

19. The following two case studies demonstrate the situations in which subsistence only support can be withheld on the basis of a Home Office assessment that the asylum claim was not lodged as “soon as reasonably practicable”.

An Iranian man who entered the country on 7 March 2005 and claimed asylum 24 October 2005 was denied subsistence-only support. The applicant said the delay was due to fear of being deported to Iran, and ignorance of the asylum system. [*May 2006, Refugee Action*]

A young Somali woman was denied subsistence-only support under Section 55. The reasons were very trivial—such as getting the date of entry into the UK slightly wrong. [*May 200, Refugee Action*]

20. Under s55, the burden of proof placed on the asylum seeker is high, and the decision to refuse support heavily influenced by the immigration officers’ subjective perception of the applicant’s credibility. The limitations of this approach are illustrated by the draft policy bulletin on s55, circulated to the voluntary sector for comment in August 2006. The draft includes a case study, in which immigration officers are

⁴⁵⁸ Home Office quarterly Asylum Statistics for 2003, <http://www.homeoffice.gov.uk/rds/immigration1.html>

⁴⁵⁹ From “The impact of section 55 on the Inter-Agency Partnership and the asylum seekers it supports”, February 2004. pp 25, 26.

⁴⁶⁰ R (oao Adam, Limbuela and Tesema) –v– SSHD [2005] UKHL 66.

⁴⁶¹ Vulnerable applications—such as pregnant women and people with a serious illness—are also exempt by the Home Office from a section 55 decision.

advised that an asylum seeker's "well-presented and clean-shaven" appearance at the time he arrived at the Asylum Screening Unit to make his claim should be taken as evidence that his story of spending two weeks inside a lorry was false.

21. Basing a decision to deny all material support on a subjective assessment of personal hygiene is manifestly flawed. In its submission on the draft policy bulletin, the IAP urged the Home Office to consider the fact that many cultures place a high value on appearance when presenting to authorities, and that it doesn't take much time to have a shave and tidy oneself up.

22. If the Secretary of State does not consider that the asylum seeker applied as soon as reasonably practicable, the asylum seeker must then prove that no other source of support (apart from accommodation), including charitable support, is available to them. As part of the consultation on the Home Office's Policy Bulletin 75 the IAP recommended that the Home Office accept that the charitable sector is not able to provide sustainable support to asylum seekers and that to require individual asylum seekers to prove this on a case by case basis places an unnecessary burden upon the asylum seeker.

SECTION 4 OF THE ASYLUM AND IMMIGRATION ACT 1999

- The use of vouchers and poor quality accommodation constitutes inhuman and degrading treatment (Article 3 of the ECHR) and does not provide for an adequate standard of living, including adequate food, clothing and housing and the continuous improvement of living conditions (Article 11 UNHCR International Covenant on Economic, Social and Cultural Rights (ICESCR)).
- Significant delays in the provision of support to applicants who are by definition destitute, results in "serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life" (Article 3 of the ECHR as interpreted by the Law Lords in *Limbuela*).

23. Section 4 of the Asylum and Immigration Act 1999 (as amended by section 49 of the Nationality and Asylum Act 2002) allows the Secretary of State to provide support, in very limited circumstances, to refused asylum seekers. The purpose of section 4 is to provide temporary support to people who are destitute and who, through no fault of their own, are unable to leave the UK. This may be because there is no viable route of return to their home country, because they have submitted a fresh asylum application, or because they have a medical condition, including pregnancy, that prevents them from travelling.

24. The number of people applying for and receiving section 4 support has increased exponentially since January 2005. Between 2004 and 2005, the number of people applying for section 4 support increased by 433%: from 3,000 applicants in 2004 to 16,000 in 2005⁴⁶². Approximately 6,945 failed asylum seekers, excluding dependents, are currently in receipt of section 4 support⁴⁶³. The average time on section 4 support is 8.7 months.⁴⁶⁴

25. The IAP has recently completed a report on the *Impact of Section 4 Support*. The report found that *Section 4 support has evolved beyond its original policy intention to provide limited and temporary assistance to people unable to leave the country through no fault of their own. It is the sole means of support to people for considerable lengths of time and is failing to meet their most basic needs.*

26. We consider that the use by the IND of vouchers and poor quality accommodation constitutes inhuman and degrading treatment (Article 3 of the ECHR) and does not provide for an adequate standard of living, including adequate food, clothing and housing and the continuous improvement of living conditions (Article 11 of the UNHCR International Covenant on Economic, Social and Cultural Rights (ICESCR)). Furthermore, the deprivation of support for long periods of time due to delays in processing applications for already destitute applicants could be a breach of Article 3 of the ECHR on the grounds of inhuman and degrading treatment.

Vouchers

27. Because section 4 support is intended to 'convey the message of return', the support provided is inferior to that provided to those receiving section 95 support. The most significant difference between section 95 and section 4 support is that section 4 is cashless: support is provided to clients through supermarket and luncheon vouchers. IAP agencies have consistently opposed the use of vouchers for asylum seekers throughout the asylum process because they are inflexible, they stigmatise the user, and they are not cost effective.

28. The Government has recently confirmed its support for vouchers through the passing of the Immigration and Nationality Act (2006), clause 43 of which stipulates that section 4 support is only available through non-cash means, ie vouchers or full board accommodation.

⁴⁶² NASS briefing note to NASS Forum members, 12 January 2006.

⁴⁶³ Supplied by IND officials at the IND/IAP Operational Interface Meeting, 16 August 2006.

⁴⁶⁴ From statistics provide by NASS to external stakeholders at the NASS Forum, March 2006.

29. This clause also gives the Secretary of State flexibility to provide additional support when necessary to cover items such as nappies, razors, clothing etc. While section 43 will provide additional assistance to some section 4 recipients and is welcomed by the IAP it is likely to be difficult to access, with strict eligibility rules. The impact on the wellbeing of unsuccessful asylum seekers is therefore likely to be limited. The fundamental problems created by a non-cash system will continue to cause distress and hardship for people supported under section 4 and will continue to impact heavily on the IAP agencies and other stakeholders.

Vouchers do not provide an adequate standard of living

30. Section 4 accommodation providers are responsible for issuing vouchers worth £35 per week to claimants placed in their accommodation. The type of voucher issued to a claimant is decided by the accommodation provider—and may vary from a voucher that can be used at any supermarket in the area to “luncheon vouchers” that may be used in only one supermarket.

31. The IAP has regularly provided evidence to NASS on the inability of vouchers to meet people’s most essential needs. Commonly reported problems include:

- Mothers of new-born babies being unable to purchase the items necessary to care for their babies, including clothing, formula, and adequate bedding.
- People being unable to purchase halal meat.
- People being unable to purchase toiletries and cleaning products at supermarkets, especially in the areas where they have been issued with luncheon vouchers.

32. In addition, vouchers cannot be used to purchase travel so asylum seekers, often in poor health and/or with children, have to walk long distances to attend medical appointments and go to the supermarket. 83% of respondents to a questionnaire compiled by the Home Office in 2002 as part of its review into asylum seekers’ experiences of the voucher scheme in the UK stated that they had been unable to attend an appointment because of insufficient cash for fares⁴⁶⁵.

33. It should also be noted that the vulnerability of this group of people is exacerbated the fact that the NHS does not allow them access to free health care because of their status as asylum seekers whose claims have failed. The Refugee Council and Oxfam report *First do no harm: denying healthcare to people whose asylum claims have failed*⁴⁶⁶ documents the impact of this policy on asylum seekers and recommends the restoration of access to free health care.

34. The use of vouchers causes particular hardship and suffering for pregnant women, and new mothers. Leading up to the birth pregnant women receive the standard £35 in food vouchers, which are restricted to the “big four” supermarkets where the range and nutritional value of the food is in many cases limited, and indeed more expensive than local grocers. Women are unable to buy the foods that would suit their diet more effectively. They are often unable to buy culturally appropriate foods, such as Halal meat or African ingredients and foods—which can have an impact on their diet. They are required to walk further to reach the specific supermarkets, even in late stages of pregnancy or with newborn babies.

35. Once the baby is born the restrictions of the vouchers become more apparent. New parents are unable to buy clothes, creams, sterilisers etc for their babies using the voucher system. The Refugee Council in Leeds reports that:

“On some occasions they are even refused nappies and other toiletries [. . .]. We have a number of calls on our advice line from concerned health visitors and workers who continually ask if cash support can be provided. The health workers are often concerned that women are unable to buy appropriate clothing and basic items for their babies as the vouchers are so restricted. The voucher system provides added stress to women who are already experiencing a difficult time with the arrival of a new baby. Women often walk miles carrying their babies (as they have no cash for prams) across town to access services and do their shopping as they have no cash for bus travel”.

36. Other problems arise from the administration of vouchers. The Ipswich office of the Refugee Council recently reported to the IND the following incidents in relation to the provision of vouchers:

Clients [have been] informed that, rather than receiving vouchers on a weekly basis, they must wait until one month’s worth of vouchers have been accumulated, and then they will be given these all at once.

A specific day [is] being set for delivery of voucher, which is then not adhered to. In one case, a client received a phone call telling him to come to an address at the back of Ipswich railway station at 10 pm to receive his vouchers.

37. Similarly, the Welsh Refugee Council reports that [the accommodation provider] “went through a period of ‘posting’ via ordinary mail vouchers to clients and frequently they did not arrive—on occasions clients would go several weeks with no vouchers at all.”

⁴⁶⁵ “*Asylum seekers’ experiences of the voucher system in the UK—fieldwork report*”, Andrea Eagle, Lesley Duff, Carolyne Tah and Nicola Smith, Home Office Research, Development and Statistics Directorate, March 2002, p 13.

⁴⁶⁶ *First do no harm: denying healthcare to people whose asylum claims have failed*, Nancy Kelley and Juliette Stevenson, Refugee Council and Oxfam, June 2006.

38. Vouchers are the sole means by which section 4 recipients can purchase their food and other items essential for survival. Systems which fail to ensure that the safe delivery of vouchers to those who need them cause a level of suffering which, in our opinion potentially breaches Article 3 of the ECHR.

39. Appendix A to this report provides case studies demonstrating the hardship and suffering caused by the use of vouchers.

VOUCHERS ARE DEGRADING

40. IAP case advisors report that the stigmatisation of clients through the use of vouchers is common. This has significant implications for community cohesion and the mental health and wellbeing of people supported under section 4.

41. As part of the Home Office's 2002 review of vouchers, 205 asylum seekers completed a questionnaire outlining their experiences of vouchers. The review report summarised the feelings of the respondents when using vouchers as follows:

- 70% felt embarrassed when using vouchers because they felt they were being looked at.
- 68% felt embarrassed because they had difficulty adding up the cost of their shopping and knowing which vouchers to use⁴⁶⁷.

The inadequate standard of section 4 accommodation

42. Accommodation provided for those receiving support under section 4 of the 1999 Act is frequently of a much lower quality than that provided under section 95 of the Act. While there is no legislative basis for this variation in the quality of accommodation, government ministers, as reported by NASS officials, consider that section 4 accommodation is “designed to convey the concept of return” and should therefore differ from section 95 support⁴⁶⁸. Accommodation providers are able to exploit this difference without sanction due to the vagueness of the section 4 accommodation specification.

43. IAP agencies have frequently presented to NASS concerns regarding the quality of section 4 accommodation. Common problems reported by One Stop Service case advisors include:

- Rooms without locks in shared accommodation (this is especially traumatic for single women who have experienced rape and sexual harassment).
- Inadequate bedding.
- Lack of facilities for new-born babies—eg bedding, sterilising equipment, prams.
- Lack of heating, or heating that requires coins to activate (this is difficult when people on section 4 support are only issued with vouchers).
- Unclean premises—and no equipment with which to clean them.
- Special needs being ignored—such as needing a ground floor flat due to a physical disability or needing their own room due to mental illness.

44. The IAP considers that, in many instances, the accommodation provided to asylum seekers on section 4 support is of such poor quality that it causes sufficient suffering to constitute potential breaches of Article 3 of the ECHR and article 11 of the ICESCR. An example of the conditions experienced by tenants in section 4 accommodation is described below. Further case studies are shown in Appendix B.

One Angolan lady is on section 4 support due to medical reasons. She takes 12 tablets a day and receives three injections from her health visitor every week. Her housemate also suffers from asthma. One month ago the ceiling in the kitchen fell in. One month later the ceiling is still not repaired. Neither the provider nor the landlord will take responsibility for the matter and at present there is still a huge gaping hole in the ceiling. The house is also full of damp with green mould all over the kitchen cupboards. The shower also leaks onto the main street. The health visitor was appalled by the conditions. [*Refugee Council, Leeds*].

Delays in the provision of section 4 support

45. IAP agencies report that one of the main causes of destitution amongst their clients is the delays experienced in accessing section 4 support.

46. In July 2005 in response to the burgeoning demand for section 4 support and resultant delays in awarding support, NASS, in consultation with the IAP, introduced a system of prioritisation of section 4 applications to ensure that the most vulnerable clients (“Priority A” applicants: pregnant women, and those with health or mental health needs) received swift decisions on their claims. Priority A clients should receive a decision on their section 4 application and accommodation within 48 hours of the application, whilst Priority B clients should receive a decision within five days.

⁴⁶⁷ Op cit, p 11.

⁴⁶⁸ Jeremy Oppenheim, former Director of NASS at the NASS Stakeholders Forum, March 2006.

47. As of July 2006, the average waiting time (decision only) for Priority A applications was five days and for Priority B this was 15 days⁴⁶⁹.

48. It should be noted that following a positive section 4 support decision, the applicant must then confirm with NASS that accommodation is still required and then wait for accommodation to be allocated. The Birmingham office of the Refugee Council has started collecting data on the time taken to process, approve and accommodate section 4 support applications.

49. Based on 56 applications which reached conclusion by the end of June, it shows a mean waiting time of 21 days, or three weeks, between application and accommodation. On average, 10 days lapsed before an applicant was accommodated following the approval of the application.

50. Given that 70% of section 4 applications are successful, it is fair to say that the overwhelming majority of applicants are required to wait for long periods of time to receive the support to which they are legally entitled.

51. Delays in priority A cases are of most concern to IAP agencies because of the additional vulnerability of the client. The following case study illustrates the level of need of priority A cases, as well as the kind of delays that are experienced in the administration of their claims for support.

Case Study: Iranian client suffering from Post Traumatic Stress Disorder, on medication (anti-depressants) [Refugee Action]

17/07/06	Section 95 support discontinued. A section 4, priority A application was submitted to NASS on the grounds of being unfit to travel (mental health).
20/07/06	Case referred onto NASS medical advisor.
24/07/06	Application refused. An appeal to the Asylum Support Authority was submitted on the same day.
02/08/06	The ASA found in favour of our client and ordered that he should be granted section 4 support.
03/08/06	NASS authorised accommodation but no appropriate accommodation was available (client requires quiet housing due to mental health problems). Client became extremely distressed; not able to buy the medication he requires. Concerns were raised by his GP.
22/08/06	Refugee Action submitted a further request for appropriate housing to NASS, supported by a letter from the client's Community Psychiatric Nurse.
31/08/06	Alternative accommodation provider authorised to accommodate client but no vouchers issued.
12/09/06	Still no vouchers issued. The client is destitute, is suffering a mental health illness and has been without any means of support for almost two months.

52. The IAP has urged the IND to adopt a two pronged approach to alleviating the hardship caused by section 4 delays. The IAP recommends that section 95 support be continued until voluntary or forced removal from the UK to eliminate the gaps in support. This would require legislative change. In the meantime, the IAP recommends that section 4 support be granted immediately if the IND has reason to believe a client could be destitute, with ongoing support to be provided pending a full investigation of the case.

53. UNSUCCESSFUL ASYLUM SEEKERS WITH NO SUPPORT

54. Whilst the unsuccessful asylum seekers described above receive support through section 4 of the Asylum and Immigration Act 1999 because there are recognised barriers to their return home, large numbers of unsuccessful asylum seekers receive no support whatsoever because they are unwilling to sign up for Voluntary Return and there are no recognised barriers to their return. While these people's asylum claim has been refused, in most cases they are simply too terrified to return home and so do not sign up for Voluntary Return. The consequence of this is that they receive no support whatsoever. While it is difficult to know the number of people in this situation, the National Audit Office estimates that more than 200,000 rejected asylum seekers in the UK have not been removed and cannot be accounted for. Without support and without the right to work many of these people will be destitute.

SECTION 9 OF THE ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS ETC) ACT 2004

- The withdrawal of support to families whose asylum claim has been refused can cause serious suffering potentially breaches article 3 of the ECHR and Article 11 of UNHCR International Covenant on Economic, Social and Cultural Rights (ICESCR).
- The forced removal of children from their families following the withdrawal of support potentially breaches Article 8 of the ECHR on the right to family life.

⁴⁶⁹ NASS Stakeholders Forum, Hilary Tarrant, Head of Casework Transformation at NASS.

55. In April 2005 the government commenced a pilot programme to test section 9 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. This Section rules that families who have reached the end of the asylum process and who have been refused leave to stay are no longer entitled to housing and support until they leave the country. Instead, to qualify for support they must sign up to return voluntarily, or lose all welfare support and risk their children being taken into care.

56. The IAP opposed section 9 as an inhumane and unworkable policy. Using the threat of being parted from their children to coerce parents into signing up to return is grossly unjust and in our opinion, clearly breaches Article 8 of the ECHR on the right to the maintenance of family life.

57. The pilot has shown the policy to be spectacularly unsuccessful. Instead of meeting the government's aim that more families return voluntarily, barely any have signed up to go home. What is worse, some families have become so frightened of being separated that they have gone into hiding. This is absolutely contrary to the best interests of the child.

Impact on families

58. In July 2005 NASS contracted Refugee Action and Refugee Council asking them to provide outreach services to families affected by the section 9 pilot. The IAP noted the following information about the 35 families who contacted the OSS families' and their needs.

- 73 children ranging in age from three months to 17 years were affected by the pilot.
- 80% of parents had mental health problems ranging from depression to self-harming behaviour.
- 10% of women were in the late stages of pregnancy.
- 36% of families had other significant physical health conditions including untreated shrapnel wounds, sickle cell anaemia, gynaecological and paediatric health needs.

59. Refugee Action has maintained contact with ten families who have had their support terminated, of these:

- Two families have been evicted from their Home Office accommodation. One family now resides with a friend while receiving s 17 Children Act 1989 support from social services for their child from the local authority. The other family resumed Home Office support after lodging a fresh asylum claim and were dispersed to South Yorkshire. The family are now extremely anxious that they may become destitute and homeless again at any time. The family is highly vulnerable with limited social networks.
- One family, from Zimbabwe, resumed Home Office support after submitting a fresh asylum claim, and were dispersed to the West Midlands.
- One family resumed Home Office support following their application for Humanitarian Protection.
- One family is destitute but receives £100 per month from the British father of one of the children.
- One single parent family is receiving considerable financial and social support from the head teacher at her son's school, who is prepared to accommodate them if they are evicted from their Local Authority accommodation.
- Three families struggle greatly. Two families reside in local authority accommodation and receive some social services support. One couple receives treatment for depression. A single parent family receives some support from her brother who has status in the UK. Social services have offered to accommodate and support the family under s 17 of the Children Act 1989 at 70% of income support levels. The third family resides in local authority accommodation and receives food from a local charity with input from social services.
- The final family has disappeared.

60. The Refugee Council in Leeds has been able to provide the following update on families who had their support terminated under section 9.

- Three families registered for the Voluntary Assisted Return and Reintegration Programme (VARRP). The OSS advised the families about the reintegration package and their options.
- Two families received positive decisions. One family has accessed mainstream support but no information is available on the second family.
- Three families reside in private accommodation with friends or family, and have not responded to Refugee Council invitations to appointments with independent advisers. The Refugee Council is aware from the Refugee Legal Centre that one family has resumed Home Office support (subsistence only) following lodging a fresh asylum application.
- Leeds Social Services are accommodating and supporting the children of two families under s 17 of the Children Act 1989. Charities are supporting the parents, the Leeds Asylum Seekers Support Network hardship fund, through a weekly allowance.

- Huddersfield Social Services are accommodating and supporting the children of two families only under s 17 of the Children Act 1989. The parents receive no support at all. However, this family is receiving a higher rate of section 17 payment for the children than the families in Leeds; the reason for this is unclear.

61. The IAP recommends that section 9 be repealed immediately.

PART TWO: ADMINISTRATIVE ROUTES TO DESTITUTION

- Asylum seekers and refugees are often deprived of support due to administrative errors and delays across government, resulting in sustained periods of suffering and potentially breaching Article 3 of the ECHR and articles 9 and 11 of the IESCR.

62. The IAP One Stop Services deal with thousands of clients every year who have been made destitute because of structural weaknesses and failures at the Immigration and Nationality Directorate. In the first quarter of the 2006–07 financial year the IAP agencies saw 3,170 clients who, while eligible for Home Office asylum support, had been made destitute as a result of weaknesses in the administration of asylum support in the Home Office⁴⁷⁰. It should be noted that this figure does not represent the whole population of destitute asylum seekers as only a portion of asylum seekers access IAP services.

63. In addition to the problems discussed in other parts of this report, the main areas where bureaucratic failures or weaknesses lead to destitution are:

- Terminations in error: people's support is terminated due to an error on the part of the IND.
- Difficulties accessing mainstream support once refugee status has been granted and NASS support has finished.

Terminations in error

64. Support to asylum seekers is sometimes erroneously terminated by the IND. The time taken to rectify this mistake can be prolonged, causing significant hardship to asylum seekers who have no other means of support.

65. The Refugee Council in Leeds reports the following:

The time taken between termination (in error) and then subsequent restart can take many weeks leaving the client without support in the meantime. Each week we see 3–4 terminations in error. In most cases it is very clear that the asylum case is ongoing as many have often not even had their first refusal. The NASS termination letter creates a great deal of stress and anxiety for the clients as they believe the NASS termination letter to be the official Home Office refusal letter. Many think Immigration will be at their doors the next day to deport them. It creates unnecessary stress and also adds further administrative pressure in restarting support which should never have been terminated.

One Afghani client recently waited five weeks for his NASS support to restart. This was because NASS did not know which address he was at even though his provider was fully aware he was still in initial NASS accommodation. After receiving initial confirmation that support would be restarted on the 15 August, he has only now received Emergency money from NASS in the post today (7 September 2006).

This creates unnecessary stress for the client and prolonged periods where they have no support and no access to food.

Accessing mainstream support following a positive refugee grant

66. Asylum seekers who have been granted refugee status can face destitution as they fall between the gaps of asylum support provision and mainstream benefit and housing support.

67. The reasons for this enforced destitution are largely bureaucratic, caused by administrative delays, lack of housing provision, and poor understanding amongst Department of Work and Pensions and Local Authority staff of the rights and needs of refugees recently granted status. These problems could be minimised through the SUNRISE programme, which allocates a caseworker to every “new” refugee. It is currently only a pilot in four regions of the UK, and only deals with the very short-term issues of integration.

⁴⁷⁰ Survey of IAP agencies April to June 2006.

68. The following case studies demonstrate how these can combine to cause prolonged suffering for a very vulnerable group of people.

A Sudanese client spent two months without Job Seekers' Allowance due to a delay in processing application. A back-payment was applied for in November 2005 and processed in August 2006.

One housing association refused to even interview the client due to "health and safety concerns" as he did not speak English (H&S procedures could not be explained to him due to the language barrier) and the client was advised to contact them again once his English has improved (NB no accommodation was available at the time anyway). No interpreting facilities were available.

No emergency housing was available as client was assessed as not being a priority. He was advised to seek private accommodation but he did not have any money for a deposit. Hostels for the homeless were inappropriate due to drug/alcohol dependencies and racial tensions.

Only one housing association offered to interview the client despite no accommodation being available at the time and he was accommodated on 19.12.05, a month after having been evicted from NASS accommodation. [*Source: Refugee Action*]

A Ukrainian man granted Humanitarian Protection applied for Job Seekers' Allowance on 13 July 2006. Due to various delays and mistakes on the part of the Department of Welfare and Pensions, he did not receive his first benefit payment until 5 September, seven weeks following the initial Job Seekers' Allowance application. On no occasion was the client offered the facilities of an interpreter despite the fact that both he and the Welsh Refugee Council (WRC) requested one for several of the interviews.

He was evicted from his NASS accommodation on the 2nd August 2006; he attended a homeless interview at his local council but was deemed not to be in priority need. The WRC assisted him to apply to four local housing associations in late July 2006. To date (September 2006) he has not received one interview. The WRC has assisted the client to register with all the private letting agencies and local landlords in the area and he has yet to be offered any type of accommodation. In addition, even if he was offered accommodation he has no money for a deposit. There is an acute housing shortage both in the private and public sector locally which has further exacerbated the situation.

The client has been street homeless since 2 August. There is only one hostel with 11 bed spaces locally and despite contacting them on a daily basis since the beginning of August they have not had one single vacancy. The client has therefore remained street homeless for the last eight weeks and remains so to date.

There are no public bathing facilities and hence the client is forced to utilise the staff toilets in the WRC in an effort to meet his basic hygiene needs. The WRC also looks after his personal belongings and provides him with a sleeping bag each evening. He feels totally ashamed of his situation. He is too ashamed to sleep on the streets and spends most nights walking the streets and then sleeps in the waiting room of the WRC during the day and is offered tea and coffee. He is becoming increasingly depressed and his alcohol consumption is increasing. He speaks only a few words of English and feels totally isolated as there are no Russian speakers locally. [*Source: Welsh Refugee Council*].

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APPENDIX A

SECTION 4 VOUCHER CASE STUDIES

A Chinese lady came to our office seeking help. Since the birth of her new born baby one week ago she had carried him three miles across town in a towel as she did not have a pram or any cash or bus fare. She was both exhausted and distressed by the situation. (*Refugee Council, Leeds*)

A Pakistani gentleman suffers from terminal liver disease, suspected Parkinson's and continual shakes in his hands. He is on Section 4 support receiving £35 per week in vouchers. He has no cash to travel to his medical appointments and is often distressed and crying on the phone due to the situation he is faced with. He is 56 years old. He is unable to shop easily as his nearest supermarket is not close to his house. Due to the severe shaking in his hands he finds it very difficult to carry shopping too and from the supermarkets. If he was given cash payments he would be able to attend medical appointments and travel on the bus too and from the supermarket. (*Refugee Council, Leeds*)

An Eritrean man who is 60 years old has been on Section 4 support since July 2005. He has been receiving vouchers for over 12 months. He suffers from diabetes and has severe pain in his legs from shrapnel wounds. A number of health visitors have been in touch asking if he can be provided with cash payments as he finds it hard to travel and attend appointments. He also suffers from continual harassment from his housemate, who has mental health problems. He suffers from ill health and is forced to survive on vouchers for an indefinite length of time. (*Refugee Council, Leeds*)

One Zimbabwean lady who is on Section 4 support based on the fact that she has a fresh claim for asylum pending with the Home Office states that “on vouchers you can only shop at one place. You can’t always buy the food you want. The meat in the supermarket is too expensive and you want to buy it from the market but you can’t. When you use the vouchers you are not given change. If I want to spend £6 from a £10 voucher I have to lose the £4.00 change. On one occasion me and my friend went to Tesco, we wanted to buy deodorant and sanitary towels, we were told by the check out that we could not buy such luxury items”. (*Refugee Council, Leeds*)

Delivery of vouchers by certain housing providers is also very poor. Clients often wait in for days hoping vouchers will be delivered, eventually when they are unable to contact the provider they come to Refugee Council to try and seek help. An Iraqi man was told over three weeks that his voucher would be delivered by the provider however they never arrived. (*Refugee Council, Leeds*).

A woman in Leeds attempted to use vouchers to buy nappies and other toiletries for her child but was refused at Morrisons, Asda and Tesco. She also attempted to purchase phone cards with her vouchers but this was also refused at the supermarkets. [*Source: Refugee Council, Leeds*]

Asylum seekers in Newcastle are issued with ordinary luncheon vouchers, which can be exchanged for food only at Asda, Morrison and Tesco. These supermarkets are all out of town—there are smaller supermarket outlets (Iceland, Co-Op) in the centre of town, but they do not accept vouchers. [*Source: North England Refugee Service*]

Section 4 clients in West London are issued with vouchers that can be used in Somerfield or Quicksave supermarkets. Neither of these supermarkets provides halal meat. [*Source: Refugee Arrivals Project*]

The Welsh Refugee Council has persuaded Tesco Superstores to accept vouchers for non-food items. However the Superstores are a long distance away from client accommodation, and clients do not have money to pay for transport to and from the stores. [*Source: Welsh Refugee Council*]

A client in Plymouth who has regular medical appointments at a hospital following an accident is unable to get to his appointments as he is on section 4 support and cannot spend vouchers on transport there. There is no free hospital transport. There is a service for those who don’t have their own transport but there is a charge. [*Source: Refugee Action*]

A woman in Leicester RCA on section 4 support with a seven week old baby was refused baby nappies, lotion and shampoo when trying to spend her vouchers. She was not able to buy any baby clothes either. We referred to NASS who addressed the toiletries and nappies but said she would have to go to charity for baby clothes. [*Source: Refugee Action*].

An Iraqi (Kurdish) client was granted Section 4 support in January 2005 and has remained in receipt of Section 4 alone to date, over 20 months. He has received only vouchers and no additional financial support to enable him to meet his complex needs. He is disabled and has numerous injuries as a result of stepping on a landmine. He has a below knee amputation of his right leg, severe nerve damage to his left arm resulting in motor and sensory deficits. He has shrapnel embedded in various parts of his body which continue to cause him pain and discomfort. He is also suffering from depression and finds it extremely difficult to trust people and verbalize his thoughts. The Welsh Refugee Council (WRC) has referred him to his GP and the Asylum Health Visitors on several occasions however he has still not been offered counseling or medication.

His bedroom at his accommodation is on the first floor and he finds it extremely difficult to navigate the steep stairs; he also finds it extremely difficult to meet his own personal hygiene needs as the property, and in particular the bathroom, has not been adapted to meet his needs.

The WRC referred him to Social Services however the Community Care Assessment was not conclusive. In addition the WRC applied for a Free Travel Pass however he was refused this on account that he was not in receipt of Disability Living Allowance despite the fact that he is visibly disabled. He urgently requires at least a bath stool, bath mat and grip rails to enable him to access the bath however the client has been informed by the local Occupational Health Department that his case is not a priority and hence he will be assessed in approximately 18 months time.

The client has become increasingly withdrawn and depressed as he feels ashamed to crawl up the stairs to his bedroom and feels ashamed when he falls down when attempting to attend to his hygiene needs—such falls frequently requires the assistance from other residents in the house. The client has also expressed suicidal thoughts on a number of occasions.

To date the client has not received a full Community Care Assessment and has not been provided with any aids to assist his independent living. His case has now been referred to a Community Care solicitor in London who is taking legal action against the local Social Services and Occupational Health department; the client has also made fresh representations to the Home Office. The WRC approached several local solicitors regarding the client’s legal case and his unmet physical needs however no solicitor was willing to take instructions locally.

APPENDIX B

SECTION 4 ACCOMMODATION CASE STUDIES

CASES 1–5: REFUGEE COUNCIL, LEEDS

One Angolan lady is on section 4 support due to medical reasons. She takes 12 tablets a day and receives three injections from her health visitor every week. Her housemate also suffers from asthma. One month ago the ceiling in the kitchen fell in. One month later the ceiling is still not repaired. Neither the provider nor the landlord will take responsibility for the matter and at present there is still a huge gaping hole in the ceiling. The house is also full of damp with green mould all over the kitchen cupboards. The shower also leaks onto the main street. The health visitor was appalled by the conditions.

A few weeks back, a health visitor for a Chinese lady contacted us. The Chinese lady and her two week old baby were living in a basement flat. There was no natural light in the property and no windows that could be opened. She could not drag the pram up and down the stairs to the flat. The housing situation was resulting in the lady feeling very isolated and depressed.

One gentleman from Congo DRC stated that “they treat us like dogs”. This was after two weeks living without gas in his Section 4 accommodation. He was unable to cook any hot food and was walking five miles across town to take hot showers at his friend’s house. He had contacted the housing provider on three occasions; he was promised the matter would be resolved. Only after intervention from Refugee Council was the matter finally resolved.

For pregnant women once they have their babies it can become very difficult. Initially when they are housed they are housed in a single bedroom in a property with other pregnant women. Once the baby is born they remain in the same single room in the shared property. The housing provider often does not provide a cot immediately. Often the bedrooms are even too small to fit a cot. On one occasions one lady waited three weeks for a cot—during this three weeks she shared a bed with her tiny baby—this is always warned against by health workers. The speed with which accommodation is made more suitable for mothers and their new born babies is very slow and poses massive health and safety risk.

CASES 6–10: REFUGEE ACTION

A single Iranian man was taken to a property with no mattress, no light bulbs, a broken shower, no vacuum cleaner/brush/mop. The door to the room was broken and the gas cooker didn’t work properly. He complained to the landlord but no action was taken. He had to buy light bulbs, mop etc out of £35 vouchers which left him without enough money for food. The landlord said he would reimburse the client for this expenditure but still hasn’t.

Other residents of property treated the client badly because of his different faith (they ignored him, threw his food in the bin, didn’t let him use the same pots, cutlery etc). The client asked to be moved but the accommodation provider refused. Refugee Action requested that he be moved but was informed by NASS that clients must live with people of different religions and could not request to be moved on this basis. Tension in the property escalated until the client was physically threatened by a member of the house. The client called his landlord to tell him.

The landlord then told another house-member that the client had complained and as a result the house-member physically assaulted the client and threatened his life. The client called the police who intervened and advised the client that he was not safe at the property and needed to be moved immediately. Refugee Action called the Regional NASS office and it was agreed he should be moved. [*Source: Refugee Action*]

A mother and father of a three week old baby were placed in a filthy, bug-infested room in Leicester [they brought some of the bugs into the local Refugee Action office to demonstrate their size]. The father is HIV positive. The family were dousing their bedding in Dettol and sleeping on wet bedding because they were so concerned about the bugs, the husband’s HIV status and the risks to their baby. The clients initially complained to the accommodation provider but no action was taken. When Refugee Action complained, the accommodation provider said that they had asked the landlord to look into it and had informed the local council, but they wouldn’t move the family unless they received a letter from Council saying that the property wasn’t fit for human habitation.

An elderly couple had to wait two months before [the accommodation provider] arranged suitable accommodation for them. The accommodation offered had a number of structural issues: there was no bed, bedding or other facilities in the property. A choice of two bedrooms was offered: one did not have a door other was on the ground floor without a curtain. It appeared that several people had keys for this property and the couple did not feel safe. The couple was repeatedly asked to come to the property to be officially “accommodated”—and had to walk several miles to get there—several times either the provider did not meet them there as agreed, or the major issues had not been resolved.

CASE 11: REFUGEE ARRIVALS PROJECT

A single woman with a three month old baby was placed in section 4 accommodation with Caradon Estates that had no heating and was damp. Between October and December 2005 the woman complained repeatedly to Caradon Estates about the lack of heating and the effect it was having on her baby. She was supplied with an electric heater that did not work. Finally, after contacting Refugee Arrivals Project (RAP) in late December 2005, the woman was moved after repeated requests from a RAP case advisor. The woman and her baby had spent three winter months without heating.

The woman was moved into accommodation which had no cot for her baby. The property was filthy and no cleaning equipment has been provided. [Section 4 accommodation providers have a contractual agreement with NASS to either clean the property or provide the tenant with cleaning equipment]. The RAP case advisor made frequent calls to Caradon throughout January and February asking that the property be cleaned or a vacuum cleaner provided. On the 10 February 2006 the heating in this property also broke down. An electric heater was provided to the client four days later, but the woman and her baby did not have hot water until the boiler was repaired on the 6 March 2006. [*Source: Refugee Arrivals Project*].

CASES 12 AND 13: REFUGEE COUNCIL, BRIXTON

A family is living in a damp flat with water leaking through the ceiling from the flat above. The carpets are dirty, they have been provided with no cleaning equipment and a cleaner has not been for four months. There are rats in the bedrooms. The children have developed allergies and are frequently ill with colds, coughing and vomiting. The family has complained to the manger and accommodation provider but no action has been taken. [*Source: Refugee Council, Brixton*]

A copy of a client inventory for one provider's section 4 accommodation that a client brought into the Refugee Council described as "optional" the following items:

- Saucepan.
- Frying pan.
- Wooden spoon set.
- Kitchen knife.
- Chopping board.
- Tin opener.
- Kettle.
- Towel.
- Tea towel.
- Face cloth.

In this particular inventory, many of the above items and others not listed as optional were not provided to the client. Most notably, the inventory stated that the following items were not provided:

- a bed sheet;
- a saucepan;
- a wooden spoon set;
- a tin opener;
- a kettle;
- a towel; and
- a tea towel.

The IAP considers that all these items are essential to basic living and should be provided as a minimum and without exception in every section 4 accommodation premises. It should be remembered that those on section 4 support are destitute and survive on vouchers: their ability to survive on these vouchers will be undermined if such basis items as a kitchen knife or a tin opener are not available to them.

The same provider also required the client to sign a "licence to occupy". Among the stipulations of this licence is the requirement that the client is not permitted to "play . . . any radio, television or pre-recorded music, musical instrument . . ." This requirement seems unnecessarily harsh and is indicative of the diminished rights enjoyed by those on section 4 support. [*Refugee Council. Brixton*]

APPENDIX C

REFUGEE ACTION PAPER DECEMBER 2004 (UPDATES 2006)

CLAIMING ASYLUM “IN-COUNTRY” AND ACCESSING SUPPORT

This paper will summarise the current policy on how people are to claim asylum if they arrive “in-country” and some of the problems that this policy is causing Refugee Action (RA), our client group and other stakeholders involved in the process.

The Policy

Prior to the implementation of the Nationality, Immigration & Asylum Act 2002, asylum could be claimed by stating the request to an Immigration or Police Officer, or by submitting a postal application to the Home Office. Along with the implementation of certain sections of the Act (although not actually part of it), a restriction was introduced whereby asylum could be claimed only at the Asylum Screening Units (ASUs) in Liverpool, Croydon or Solihull. Regional Immigration Officers were obliged only to record the claims of those deemed “vulnerable”. “Vulnerable” was defined as: “unaccompanied minors; adults with children; visibly pregnant women; people with visible special needs.” Even these groups could be directed to an ASU if the regional office was unable to send officers. In July 2004 a Best Practice document (Best Practice 16) was distributed to all Immigration Officers, the voluntary sector was told this document advised Immigration Offices to make every effort to attend to people who were at a police station and wished to claim asylum. Subsequently, the voluntary sector was advised to send people to Police Stations, where they could wait for Immigration Officers. On 1 December 2004 it was announced that the ASU function at Solihull was to close two days later, due to declining numbers of asylum applications.

The underlying problem here is that the voluntary sector is unable to provide Section 98 support (EA) until people have made an asylum claim. This means that people are without any means of support (destitute) until an immigration officer attends to them at a police station, or until they are able to get to an ASU.

Immigration officers attending police stations

As outlined above, Immigration officers are advised by Best Practice document 16 to make every effort to attend to people who wish to claim asylum at police stations. The reality is that this is often not possible for Immigration officers in most of the cities where we work; the following outlines the various situations in each of these cities:

- Bristol: With persuasion, Local Immigration officers will screen most people
2006—Local IOs sometimes screen people locally and sometimes refuse.
- Leicester and Nottingham: Local Immigration Officers have come out to Police Stations only to screen visibly pregnant women. Usually though, they do not have the capacity to screen people at Police Stations
2006—Local IOs will rarely screen even pregnant women now in Nottingham. Occasionally they do so in Leicester.
- Manchester: Local Immigration will only screen heavily pregnant women, elderly people and large families, so apply a more restrictive definition than the usual vulnerable criteria. They will respond to Police Stations outside the city, but none within the city of Manchester.
2006—Local IOs do not screen even vulnerable clients now.
- Plymouth: Local Immigration will not see single applicants, unless they come via ferry. They will attend Police Stations to screen vulnerable clients, but no others.
2006—Local IOs do not screen even pregnant women now.

Local Police Stations will rarely allow people to wait there, particularly if Immigration has stated its inability to attend. Many local Police Stations are not staffed for 24 hours a day, so people seeking asylum are routinely turned onto the streets, for the lack of anywhere else they can go.

Getting to ASUs

Because of these difficulties in claiming asylum at police stations, for many clients the only option is to make their way to an ASU. Refugee Action has offices in Bristol, Leicester, Liverpool, Manchester, Nottingham and Plymouth. Only the Liverpool office has an ASU in the same city. Clients presenting at RA Manchester for support must travel approximately 30 miles. From all other RA offices the journey to an ASU is several hundred miles. Currently these journeys are managed in the following ways:

- Bristol: Bristol Defend Asylum Seekers Campaign Group has donated funds to RA to pay for travel to Croydon, this funding is limited and cannot continue indefinitely.
2006—Currently, we have run out of funding from BDASCG and have no RA money with which to fund travel to ASUs.
- Leicester: Families are funded by Social Services to make the journey. Singles are informed/ advised that they need to make their own way to an ASU. If a single client has no financial means and no local contacts, a referral is made to the Red Cross, which provides one night's accommodation and tickets the next day.
2006—As before.
- Manchester: RA has a small, independently funded, Destitution fund, which is used to buy bus tickets to Liverpool.
2006—as before. Destitution fund is running low.
- Nottingham: Nottingham Refugee Forum are currently providing funds for tickets, however they are running out of money and have signaled they will soon stop providing ticket money for adults with no children.
2006—Nottingham Refugee Forum is not able to provide funds for anyone any more. Refugee Action uses its small destitution fund but we are struggling as there has been an increase in new arrivals recently.
- Plymouth: tickets for cheapest bus travel (usually travelling at night) are arranged by a local voluntary agency. It has limited funds.
2006—as before.

It is evident from the above that most of these means of funding journeys to ASUs cannot be sustained, as funding is largely provided by other voluntary groups, who have limited funds to spare for this purpose. RA is not able to accommodate people until they have claimed asylum, except for families with children and visibly pregnant women (with the authorisation of the NASS regional manager). This leaves many adults abandoned in the towns and cities where their agent has left them, with no means or the knowledge to get to Liverpool or Croydon. The journeys are often complicated, involving a change of bus or train and this is extremely difficult for a person who has just arrived in the country. People in this situation are likely to be tired and confused, traumatised by whatever caused them to flee their home and by the journey to the UK. If they have little or no knowledge of English, the journey to Liverpool or Croydon will be even more difficult. This increases the likelihood of clients “disappearing” without engaging in the asylum process, as they simply may not make it to an ASU.

ASU opening hours

Even if people are able to get to an ASU, they can still face difficulties. Both the Liverpool and Croydon ASUs have limited opening hours: 0900–1600 for families with children, 0900–1300 for single adult asylum applicants. This means that many people will arrive at an ASU too late to claim asylum and so will face a night with no means of support. This increases the pressure on the resources of the voluntary agencies who are funding journeys to ASUs, for in most cases it is not possible for clients to leave one or our offices in time to claim asylum that day. Often then the voluntary agency has to pay for one night's accommodation for people in the city where they first present, so that they can leave for Liverpool or Croydon early enough to get there before 1300.

In an effort to avoid people being destitute, the Liverpool ASU has been referring clients, who present for asylum after the ASU opening hours, directly to an Emergency Accommodation Provider used by RA. RA is unable to accommodate these clients and obtain funding from NASS, as they have not yet claimed asylum. However the EA Provider is continuing to collect these clients and invoice RA for the cost. This is causing problems for RA, NASS and our EA provider.

Suggested ways forward

All of the above causes unnecessary work for both RA and NASS; phone calls are made, extra paperwork is generated and lots of time is spent trying work with immigration officers to get them to police stations and dealing with people who are unable to make the journey to the ASUs to arrive within the limited opening hours. More importantly, it causes a great deal of destitution for vulnerable people and increases the likelihood of people not engaging with the asylum process and simply disappearing. It is currently possible for NASS regional managers to authorise one night's accommodation in EA and subsequent travel to an ASU for:

- Families with children and pregnant women, where it has not been possible for local immigration to register their asylum claim.
- Clients who arrive at an ASU before the usual closing time, but after it has closed early (as sometime happens).

RA would suggest that the same process is simply adopted for all single asylum applicants.

We feel that this would not only solve the problems of RA and the ASUs in dealing with destitute clients, but would also relieve the pressure on immigration offices having to attend to police stations at all hours of the day and night. We would also stress that as the situation improves, as has been promised and has, to some degree, happened around local immigration officers coming out to police stations, then the need for such authorisation will decrease. At the moment though, we feel that our proposed solution is absolutely vital if we are to avoid large numbers of clients being destitute as they try to make their way to an ASU.

If the above were not possible, we would strongly urge that ASUs are resourced to allow single applicants to register their asylum claim until 1600 (not 1300), as this would at least solve some of the problems outlined above in getting people to the ASUs in time to make their claim.

68. Memorandum from the Joint Council for the Welfare of Immigrants

The JCWI (Joint Council for the Welfare of Immigrants) is an independent national organisation which has been providing legal representation to individuals and families affected by immigration, nationality and refugee law and policy since 1967. Our mission is to combat discrimination and injustice wherever they arise in immigration and asylum law and policy.

We note that the JCHR has called for evidence into human rights issues arising from the treatment of asylum seekers. JCWI seeks to address the JCHR specifically on the provision of healthcare to asylum seekers, the arbitrary use of fast track detention, and the treatment of asylum seekers by the media.

We would like to preface our comments on these specific areas with more general observations of factors which we believe materially affect asylum applicants' access to human rights.

Refused asylum applicants potentially constitute one of the largest groups of people present in an unregulated capacity in the United Kingdom. At its official upper estimate the irregular migrant population, which also includes overstayers and trafficked and smuggled persons, numbers 570,000. The failed asylum seeker population alone may number over a quarter of a million, as quoted in one of the upper estimates of the Public Accounts Committee report earlier this year. According to advice we have sought from Professor John Salt of University College London it is impossible to break down by immigration status or nationality the irregular population as a whole with any certainty and, given the nature of irregularity, definitive statistical coverage probably can never exist. However the factors uniting all irregular migrants including failed asylum seekers are as follows:

- The Government deems these groups, including the refused asylum applicant group, to be without rights, as is corroborated by its determination through *Baiai* to ensure these groups are not accorded the right to marry in a civil ceremony in the United Kingdom, its draft position statement on migrant rights at the UN High Level dialogue on migration which quite clearly sought to qualify the human rights of migrants; and its determination that workers here in an authorised capacity should be viewed primarily as illegal. For example Baroness Ashton of Upholland, responding to Baroness Turner of Camden during the passage of the Immigration Asylum and Nationality Act 2006 on the subject of irregular migrants rights, said: "I do not want to distort the fact that an illegal worker is an illegal worker or to take away from the critical need to support legal workers in this country appropriately."
- In effect lawful presence dictates the UK Government's readiness to accord individuals rights which via ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) it has previously recognised as "equal and inalienable".
- Because all these groups live under threat of removal they are effectively prevented from accessing a legal remedy against civil and criminal wrongs in the UK courts, including against the discrimination and exploitation to which they may be particularly prone in the workplace.
- The UK Government refuses to sign up to the 1990 UN Convention on the Rights of Migrant Workers and their Families; or to proactively engage in promoting any other alternative global standard for migrant rights; and is not engaging in dialogue on any broad programme of regularisation. Thus no increased human rights protection is imminent through either the global framework or a UK measure.

We would point out that the top ten refused asylum applicant nationalities and those in immigration detention would appear to be disproportionately drawn from countries in the global south—Africa, Asia and the Middle East—such that the failure to accord human rights to the failed asylum seeker group may be generally argued to have a racialised output and thus be discriminatory even if this is not an intended objective.

HEALTH

The UK Government through its ratification of the ICESCR has recognised “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. In addition by ratifying the UN Convention on the Rights of the Child (UNCRC) the UK has recognised “the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” and undertaken “to strive to ensure that no child is deprived of his or her right of access to such health care services”.

However in 2004 the Government implemented mandatory rules effectively restricting access by “overseas visitors” to non-urgent secondary health care including maternity services. Restriction on overseas visitors’ access to non-urgent primary health care is at the discretion of GPs. While “overseas visitor” would suggest a person who is not ordinarily resident in the UK, the changes in reality apply to irregular migrants who may have been living as members of UK society and making an economic and social contribution for some time. A recent Refugee Council report *First do no harm: denying healthcare to people whose asylum claims have failed [June 2006]* draws attention to the fact that this not simply a de jure situation but has resulted in a number of cases in which refused asylum applicants have effectively been denied access to health care, including patients denied treatment for cancer and pregnant women forced to give birth alone at home.

In an opinion that JCWI has obtained from Nadine Finch, barrister at Garden Court Chambers, she suggests that the Government has not acted outside its powers under UK legislation in implementing the rule changes to date. “Section 1(2) of the National Health Service Act 1977, whilst stating that in general treatment will be free of charge, reserves the power to make and recover charges in certain circumstances⁴⁷¹. Section 121 of the Act goes on to make express provision for the Secretary of State to make regulations imposing charges on persons who were not ordinarily resident in Great Britain⁴⁷².” In addition because the ICESCR cannot be directly engaged in the UK courts it is difficult to establish in law that the UK has violated any international obligation by restricting access to health services by irregular migrant groups. However, the ECHR can be engaged because it has been incorporated into UK law.

Ms Finch writes: “The ECHR is a convention, which primarily protects political and personal rights as opposed to social and economic rights. There is therefore no right to access free public health care as such but articles 2, 3 and 8 do provide rights which may be breached if free public health care is denied to an individual. Article 1 of the ECHR extends the protection of the Convention to anyone who is within the geographic jurisdiction of the country, which has ratified it. This article was not directly incorporated by the Human Rights Act 1998 but there is no limitation placed on the wide duty imposed by Section 6, so any illegal entrant, overstayer and/or failed asylum seeker who may be denied access to medical treatment could rely on rights derived from the ECHR.”

Once the ECHR is engaged the ICESCR and UNCRC do become relevant considerations. Ms Finch’s opinion argues that particularly in the case of refused asylum applicants, who can be shown are not fit to travel, children and those with a mental illness, the restrictions may well be challengeable. “For example Article 3 would be breached if a woman were denied hospital treatment which was necessary to prevent intense suffering to her or to her baby. One possible scenario would be where an expectant mother was HIV Positive and where unless she was provided with anti retroviral treatment and an elective caesarean there would be a high likelihood that the baby would also contract the virus. There will also be other pregnancy related conditions, which would also require treatment to avoid intense physical and mental suffering.”

Obviously in the currently polarised climate of opinion on immigration, any NGO or campaigning group will weigh up very carefully the gains to be obtained through a legal challenge on the denial of health care to overseas visitors. There is also the viability of persuading vulnerable and ill migrants who are denied care to participate in a legal challenge that would substantially realise Ms Finch’s arguments through a precedent in the case law. This means that we would prefer to *persuade* the Government and the public that the rules should be changed. Nevertheless, as Ms Finch’s opinion and the Refugee Council report suggest, the Department of Health may in certain scenarios be acting unlawfully and contrary to the spirit of human rights principles enshrined in international standards which it has previously recognised. In addition we note that no race equality impact assessment of the secondary health care rules changes was conducted by the DOH; and that to date they have conducted no such assessment of the primary health care rules, contrary to the guidance of the Commission for Racial Equality. This clearly has a racialised output when one consider the potential profile of refused asylum applicants we have detailed above.

⁴⁷¹ It states that “the services so provided shall be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed”.

⁴⁷² “Regulations may provide for the making and recovery, in such manner as may be prescribed, of such charges as the Secretary of State may determine—
(a) in respect if such services provided under this Act as may be prescribed, being
(b) services provided in respect of such persons not ordinarily resident in Great Britain as may be prescribed”.

FAST-TRACK DETENTION

Much of JCWI's expertise in relation to the detention of asylum seekers stems from the cases that it conducts on behalf of detained asylum seekers. JCWI's Casework Team participates in two schemes administered by the Legal Services Commission (LSC), namely the Harmondsworth Fast-Track rota scheme and the Detention Duty Advice Pilot for Harmondsworth and Yarl's Wood.

In addition to Harmondsworth and Yarl's Wood, Oakington Reception Centre also operates a "fast-track" determination procedure. The purpose of the procedure is to determine cases quickly and is one of administrative convenience rather than detaining those who are at risk of absconding. Indeed, access to the Oakington process depends upon the applicant having been assessed as *not* being an absconding risk. Consequently, the main consideration for detaining someone under this procedure is whether or not the case can be determined quickly. Asylum applicants are likely to be considered suitable for detained fast track on the basis of their nationality, and these nationalities are set out in the Home Office's "Fast Track Processes Suitability List". Although the Suitability List makes it clear that nationals of *any* country may be detained and fast tracked as long as their claim can be determined quickly, in reality the nationality of an asylum applicant will play a large part in determining whether or not they will be detained.

The terms of reference of the current JCHR inquiry rightly point out that if detention is arbitrary, then it will be considered a breach of liberty. The legality of detaining applicants for the "administrative convenience" of determining their asylum claims was challenged in the case of *Saadi*⁴⁷³. The case ultimately ended in the European Court of Human Rights which decided in July this year that detaining asylum seekers who were not at risk of absconding was in accordance with Article 5(1)(f) ECHR which permits detention in order to prevent a person making an "unauthorised entry" to a country. The European Court also found that detaining for a short, tightly controlled period of time was not disproportionate or unreasonable. In that particular case, the European Court held that the right to liberty had been violated because of a failure to provide sufficient timely reasons for detention.

Saadi was decided on the basis of the fast-track timescale that was in operation prior to September 2004, which set out a 7–10 day timetable during which the applicant could be detained. Following a legal challenge where it was decided that detention in excess of that Home Office policy was unlawful⁴⁷⁴, the policy was changed on 16 September 2004 by the then Home Office Minister, Desmond Browne. In a Parliamentary written answer he stated that his department's aim was to decide a case within a longer time period of 10–14 days, and that even detention beyond this length of time may be justified. However, the European Court has indicated that detention for administrative purposes, such as fast track, may be arbitrary and unlawful if detainees are held for significantly longer periods than seven days.

JCWI is aware of cases such as *Johnson*⁴⁷⁴ where asylum seekers have been detained for long periods of time under fast track and maintains grave concerns about the Home Office Minister's current more flexible policy. Such a policy extending fast-track detention beyond seven days, must render that detention arbitrary and unlawful.

MEDIA

The terminology around persons in the UK in an unregulated capacity, whether they are refused asylum applicants overstayers or trafficked people, is an issue of contention in the academic literature on migration. Terms widely used include "illegal", "undocumented", "unauthorised" and "irregular". Within the day to day political debate however, the government and politicians of all parties and the media frequently use the word "illegal" which risks influencing public discourse and attitudes toward migrants negatively given the usual association of the word illegal with "criminal". In addition, using the term "illegal" is contrary to the recommendations of the International Labour Organisation which has called upon all participating states to avoid this terminology.

We prefer the term "irregular" as most accurately describing the range of individuals who have entered and/or remained in the UK outside officially-regulated and sanctioned routes for entry and residence (as it is accepted that some refused asylum applicants cannot be removed). We also use it because it has a less "criminalising" effect on the migrant population as a whole. Migrants may have, knowingly or not, broken the immigration rules, but not obeying instructions to return to a war-torn or poverty stricken country to risk death or penury cannot be put on a par with offences such as theft, assault robbery or murder. Irregular immigration status is not a product of a person's moral intention but of the immigration regulations which are actually so complex and restrictive as to be easily broken.

In fairness to the UK media when they use the term illegal immigrant they are frequently reproducing the word as used by UK and European politicians, and also by the news agencies and international press which supply them with foreign copy. JCWI monitors all Web available news reports on migration from around the world daily and it is clear that the word "illegal" is in frequent media usage not only in the UK media but by leading and otherwise reputable international news media such as *Reuters* and the *International*

⁴⁷³ *Saadi -v- UK* (Appln No 13229/03).

⁴⁷⁴ *R (Johnson) -v- SSHD* [2004]EWHC 1550.

Herald Tribune. Their news coverage of African migrants who arrive on the shores of Malta and Spain via the Mediterranean and Atlantic frequently describe them as “illegal migrants” even though among them may be individuals with asylum claims.

The point is though that the general effect of “illegal immigrant” is to influence the public’s perception of a group of people negatively so to excite a negative clamour against them which generally results in politicians seeking to restrict these persons’ rights. In order to ensure that this vicious cycle is broken and that a culture of harmony for respect for human rights is fostered, politicians as well as the media have a duty to inform the public of the exact nature of migration, and it is necessary to give leadership on the type of terminology used. It should be obvious that “illegal” is inflammatory and compounds the stigma that is already widely attached to migrant status. It should also be obvious that while certain acts may be referred to as illegal there can be no such thing as an “illegal” person. Politicians above all need to be clear about the groups of migrants they are referring to, and to refer to them with respect for basic human dignity which is due to us all whatever our nationality or terms of our immigration status in the UK.

69. Memorandum from the Home Office and the Department of Health

1. INTRODUCTION

1.1 The Committee asked for written evidence in connection with human rights concerns relating to the conditions for asylum seekers and failed asylum seekers in the United Kingdom, focusing in particular on those relating to:

- access to accommodation and financial support;
- provision of healthcare;
- treatment of children;
- use of detention and conditions of detention and methods of removal of failed asylum seekers; and
- treatment by the media.

1.2 This document provides some general background information on UK asylum policy, and an overview on each of the five areas above, including information on the particular areas of concern raised by the Committee. It includes material provided by the Department for Constitutional Affairs covering the right to challenge detention decisions in the courts; and includes material provided by the Department for Culture, Media and Sport in the section on treatment by the media.

2. BACKGROUND INFORMATION

2.1 The UK is a party to the 1951 United Nations Convention relating to the Status of Refugees. Each claim for asylum is considered on its individual merits by specially trained caseworkers to determine whether the claimant has demonstrated a well-founded fear of persecution in his or her country of nationality or habitual residence for one of the reasons set out in the Convention. These are reasons of race, religion, nationality, membership of a particular social group or political opinion.

2.2 The United Kingdom is also a party to the Convention for the Protection of Human Rights and Fundamental Freedoms, commonly referred to as the European Convention on Human Rights (ECHR). This precludes us from removing people in some circumstances, in particular where removal of a person to another country would expose them to a real risk of torture or inhuman or degrading treatment or punishment. The ECHR also has implications for the detention of, and the provision of support, healthcare and education to, asylum seekers. Guidance and training for Home Office caseworkers requires them to have regard to the ECHR where it may have an impact on how asylum seekers are treated. Home Office Legal Adviser’s Branch also regularly conduct workshops for caseworkers on ECHR issues.

2.3 This country has a long and honourable history of offering sanctuary to genuine refugees. The Home Office is working to ensure that we continue to offer that protection. However we are equally determined that those who are not entitled to benefit from the provisions of the 1951 Convention or the ECHR are dealt with swiftly, and those whose applications have been refused and whose appeal rights are exhausted (known throughout this document as “failed asylum seekers”) are removed from the UK.

2.4 In recent years the Government has introduced major pieces of legislation: The Immigration and Asylum Act 1999 (“the 1999 Act”), The Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), The Asylum and Immigration (Treatment of Claimants etc) Act 2004 (“the 2004 Act”), and The Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”). These Acts have created a firm foundation for tough measures we have taken against traffickers and others seeking to abuse our immigration controls, for improved systems for processing claims and for providing appropriate support for asylum seekers.

2.5 The European Union Council Directive, 2003/9/EC, laying down minimum standards for the reception of asylum seekers in the United Kingdom, has been implemented into UK law. Where specific implementation was required the relevant instruments came into effect by the 6 February 2005 deadline.

2.6 The Government approach to immigration and asylum issues was recently set out in the document “Fair, effective, transparent and trusted. Rebuilding confidence in our immigration system”⁴⁷⁵. On asylum the objective is to “fast-track asylum decisions. Remove those whose claims fail and integrate those who need our protection.” To achieve this objective we are currently implementing the New Asylum Model. The Model offers a more credible and sustainable end-to-end system. Under the Model specialist case owners are responsible for managing the claimants and their cases through the whole system to either removal or integration as a refugee. Faster and higher quality processes will lead to a better deal for the well founded claimant.

3. ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

Summary of available support options

3.1 Asylum seekers⁴⁷⁶ and their dependants⁴⁷⁷ often arrive in the UK without money or anywhere to stay. They may apply to the Home Office for asylum support under section 95 of the 1999 Act while their asylum claim is being considered. While the Secretary of State determines whether applicants qualify for section 95 support those who appear to be destitute and require support immediately are provided with “initial accommodation” under section 98 of the 1999 Act.

3.2 A temporary and limited form of support may be provided under section 4 of the 1999 Act for failed asylum seekers unable to leave the UK due to factors beyond their control. Section 10 of the 2004 Act allows the Secretary of State to make provision of section 4 support dependent on participation in community activities.

3.3 Local authorities have a duty under section 21 of the National Assistance Act 1948⁴⁷⁸ (“the 1948 Act”) to provide residential accommodation (and associated support) to adult asylum seekers who by reason of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them and which has not arisen solely because they are destitute or because of the physical effects or anticipated physical effects of them being destitute. Local authorities also have a duty of care under the Children Act 1989⁴⁷⁹ to provide suitable housing and support for children—including unaccompanied asylum seeking children (UASC). (See paragraphs 5.6 to 5.10 of the Treatment of Children section for further information on support available for UASC).

3.4 The Government has introduced various restrictions in recent years to discourage the making of non-genuine claims for asylum for economic benefit. These include section 55 of the 2002 Act, which limits the provision of support for asylum seekers and failed asylum seekers who fail to claim asylum as soon as reasonably practicable after arrival in the UK, and Schedule 3 to the 2002 Act, which lists five classes of person deemed to be ineligible for support. Section 9 of the 2004 Act (which added the fifth class of ineligible person to Schedule 3) provides for the withdrawal of asylum support from failed asylum seeking families who are certified to have failed, without reasonable excuse, to take reasonable steps to leave the UK.

Initial accommodation for asylum seekers

3.5 The Home Office provides initial accommodation for asylum seekers who appear to be destitute and require accommodation immediately, while they are: (a) being supported under section 98 of the 1999 Act and awaiting a decision on whether they are eligible for asylum support; or (b) awaiting transport to their dispersal accommodation.

3.6 This is intended as an interim measure, for short term use, and typically comprises: full-board former and operating hotels; houses in multiple occupation; hostels; or self-contained, self-catering properties. The services provided to asylum seekers supported in initial accommodation can include assistance in applying for section 95 support, briefing on the asylum process, and health assessments (see paragraphs 4.10–4.11 for more information on health assessments in initial accommodation).

Accommodation and subsistence support for asylum seekers under section 95 of the 1999 Act

3.7 Section 95 support is available to asylum seekers aged over 18 (and their dependants) whose asylum claims have not yet been finally determined and who would otherwise be destitute or likely to become destitute. It is also provided to asylum seeking families whose claims have been finally determined where the household includes a dependent child who was under 18 at the time of the claim being finally determined.

⁴⁷⁵ Home Office July 2006.

⁴⁷⁶ “Asylum seeker” is defined in section 94(1) of the 1999 Act.

⁴⁷⁷ “Dependant” is defined in section 94(1) of the 1999 Act.

⁴⁷⁸ All references to the National Assistance Act 1948 also mean the Social Work (Scotland) Act 1968—this is the equivalent provision that applies in Scotland.

⁴⁷⁹ All references to the Children Act 1989 also mean the Children (Scotland) Act 1995—this is the equivalent provision that applies in Scotland.

3.8 Section 95 support is provided subject to various terms and conditions, and may be suspended or discontinued in the circumstances set out in regulation 20 of the Asylum Support Regulations 2000. These circumstances (which also apply to the provision of section 98 support) include: failure to comply with various prescribed standards of behaviour; failure to reside at the authorised address; failure to attend interviews relating to eligibility for support; failure to comply with a request for information relating to the asylum claim; concealment of financial resources; and failure to comply with a reporting requirement. Support may also be suspended or discontinued if the supported person or dependant previously made a claim for asylum which has not yet been determined, and makes or seeks to make a further, separate claim. Any decision to discontinue support must be taken individually, objectively and impartially and account taken of whether the person concerned is a vulnerable person (as defined in the Reception Conditions Directive). Any decision to stop providing section 95 support before it would otherwise have come to an end attracts a right of appeal to an Asylum Support Adjudicator.

3.9 Section 95 support can be in the form of accommodation and subsistence, accommodation only or—for those staying with friends, family or other third parties—subsistence only.

Section 95 accommodation

3.10 Section 97(1)(b) of the 1999 Act requires the Secretary of State to have regard to the desirability, in general, in providing accommodation in areas in which there is a ready supply of accommodation (in contrast to areas such as London where there is an acute shortage of accommodation).

3.11 Accommodation is provided on a “no-choice” basis as section 97(2)(a) of the 1999 Act prevents the Secretary of State from having regard to a person’s preference as to the locality in which the accommodation is to be provided.

3.12 However the Home Office takes care to ensure that any decision to allocate a person with accommodation in a particular area is reasonable and compatible with the ECHR. If, for example, an applicant requires a specific network of support in a particular area the Home Office may decide not to disperse him/her away from that area. An example would be where an asylum seeker has a sick child who requires specialist medical treatment which would take time to replicate elsewhere.

3.13 Accommodation provided under section 95 is required to meet a strict specification laid down by IND to ensure that it is appropriate. This is subject to monitoring to ensure those standards are maintained. Details are set out in the Statement of Requirements accessible on the Home Office website⁴⁸⁰. Where problems are identified these are addressed promptly.

Section 95 subsistence support

3.14 The levels of subsistence support provided under section 95 of the 1999 Act are set at 70% of Income Support levels for adults and 100% for dependants aged under 18 years. The rates are uprated each year when Income Support levels are raised. The levels of support payable to adults reflect the temporary nature of support to an asylum seeker and the fact that supported asylum seekers do not pay utility bills.

3.15 Asylum seekers can access their subsistence support at designated Post Offices by means of an Application Registration Card. Arrangements are in place to allow emergency payments to be made where there is a temporary problem with accessing support from the Post Office.

Support for failed asylum seekers under section 4 of the 1999 Act

3.16 Failed asylum seekers are required to leave the UK. However, it is accepted that there will be some who are destitute and unable to leave immediately due to circumstances beyond their control. In these cases the failed asylum seeker can request the provision of support under section 4 of the 1999 Act.

3.17 A failed asylum seeker may be granted section 4 support if he appears to the Secretary of State to be destitute and meets one or more of the conditions set out in the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005, namely:

- (a) he is taking all reasonable steps to leave the UK or place himself in a position in which he is able to leave the UK;
- (b) he is unable to leave the UK by reason of a physical impediment to travel or some other medical reason;
- (c) he is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return;

⁴⁸⁰ www.homeoffice.gov.uk

- (d) he has made an application for judicial review of a decision in relation to his asylum claim—
- (i) in England and Wales, and has been granted permission to proceed pursuant to Part 54 of the Civil Procedure Rules 1998,
 - (ii) in Scotland, pursuant to Chapter 58 of the Rules of the Court of Session 1994 or
 - (iii) In Northern Ireland, and has been granted leave pursuant to Order 53 of the Rules of the Supreme Court (Northern Ireland) 1980; or
- (e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights within the meaning of the Human Rights Act 1998.

3.18 Section 4 support is intended as a limited and temporary form of support for people who are expected to leave the UK as soon as they are able to do so. It is normally provided in the form of self-catering accommodation, although full-board accommodation may be used where available. Service users and any dependants in self-catering accommodation each receive £35 per week in vouchers to meet food and essential living needs connected with accommodation. The legislation does not allow the Government to provide cash. The required standards for section 4 accommodation can be found on the Home Office website⁴⁸¹. In the future section 4 support is likely to be provided in line with the Statement of Requirements mentioned in 3.13. This should help to address concerns sometimes expressed about the suitability of some of the accommodation currently utilised to house those getting section 4 support.

3.19 Arrangements are in place to review cases where support is being provided through section 4 to ensure that the eligibility criteria continue to be met. The continued provision of accommodation is also provisional upon the failed asylum seeker complying with reporting conditions and specified steps to facilitate his departure from the UK, specific standards of behaviour, and continued residence at the authorised address.

3.20 The receipt of medical treatment in the UK will not normally confer any right on a failed asylum seeker to remain in the UK to continue such treatment, even if it is not available to the same standard in the failed asylum seeker's home country. The House of Lords' judgment in the case of *N*⁴⁸² (a failed asylum seeker), considering her rights under the European Convention on Human Rights, included the statement of the principle (paragraph 50) that "aliens who are subject to expulsion cannot claim any entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social or other forms of assistance provided by the expelling state."

Section 10 (2004 Act)

3.21 Section 10 of the 2004 Act added a regulation making power to section 4 in order to, *inter alia*, specify the criteria to be used in determining whether or not to continue to provide section 4 support. The regulations also give the Secretary of State the power to require failed asylum seekers on section 4 support to carry out activities on behalf of the community as a condition of continued support. The provision was considered in detail during the passage of the 2004 Act.

3.22 The relevant regulations are the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005. The regulations set out in more detail the eligibility criteria for section 4 support, including provision relating to community activities. As no arrangements to allow relevant community activities to be undertaken are in place the performance of community activities has not been made a condition of support to date.

Support provided to asylum seekers with care needs under section 21 of the 1948 Act

3.23 Section 116 of the 1999 Act amended section 21 of the 1948 Act and section 120 of the 1999 Act amended section 12 of the Social Work (Scotland) Act 1968 so as to prevent local authorities from being able to provide residential accommodation—and associated support—to asylum seekers and failed asylum seekers whose need of care and attention has not arisen solely because they are destitute or because of the physical effects or anticipated physical effects of them being destitute (ie where they do not have a "care need").

3.24 The effect of these amendments is that the Home Office supports adult asylum seekers—and eligible failed asylum seekers—who do not have a specific care need. However local authorities continue to have a duty to provide residential accommodation and associated support to adult asylum seekers and failed asylum seekers under section 21 of the 1948 Act, where they do have a care need. (This is subject to the effect of Schedule 3 of the 2002 Act.)

3.25 Local authorities have a duty to conduct a Community Care Assessment, upon application, under section 47 of the National Health Service and Community Care Act 1990 where it appears that any person for whom they may provide or arrange for the provision of community care services may be in need of any

⁴⁸¹ www.homeoffice.gov.uk

⁴⁸² *N (FC)* -v- *SSHD* [2005] UKHL 31.

such services. Having regard to the results of that assessment, the local authority shall then decide whether the individual's needs call for the provision by them of any such service. Clear and urgent cases will be referred by the Immigration Service to the local authority in which they present.

3.26 Where an asylum seeker has a dependent child who has a care need, the Home Office will provide accommodation and support adequate for the needs of the child, and the local authority will assess whether any additional care support is necessary and provide that care support under the Children Act 1989.

3.27 Where an asylum seeker has an adult dependant who has a care need, the local authority will consider whether it should also support the asylum seeker under the 1948 Act. Where an asylum seeker has a care need and has an adult dependant, the local authority will consider whether it should also support the adult dependant under the 1948 Act.

3.28 Where an asylum seeker with a care need has dependent children (under the age of 18), the local authority will provide accommodation and support to the parent. However, the local authority will also arrange accommodation and support which is adequate to provide for the whole family. The Home Office will then make an agreed financial contribution to represent the children's share of the accommodation and their subsistence support.

3.29 In Northern Ireland there is an integrated Health and Social Services system. This means that Health and Social Services Boards—the equivalent to Primary Care Trusts—the provider Trusts and independent contractors may assess both healthcare and social care needs (or refer the patient to such services within the system). Local authorities in Northern Ireland have no involvement in this process.

Restrictions on the provision of support

Section 55 of the 2002 Act

3.30 Section 55 of the 2002 Act came into effect on 8 January 2003, and provides that asylum support under sections 4, 95 and 98 of the 1999 Act shall not be provided unless the Secretary of State is satisfied that the asylum claim was made as soon as reasonably practicable after the person's arrival in the UK. Section 55 also places restrictions on the provision of support under section 2 of the Local Government Act 2000 and under certain sections of the Housing Act 1996 and the Housing (Scotland) Act 1987. Section 55 does not prevent support being provided to those with dependent children or with particular care needs. Most significantly it does not prevent the provision of support if it would be a breach of ECHR not to provide it.

3.31 Section 55 was introduced as part of a wider package of measures aimed at tackling abuse of the asylum system and removing incentives to the making of non-genuine claims for asylum. The sooner an asylum claim is made, the sooner the processing of it can begin, and the greater the chance of being able to obtain factual information and travel documents which will assist in the determination of the claim.

3.32 The initial presumption was that prospective asylum claimants should apply immediately on arrival at their port of entry unless there were good reasons for not doing so. The policy was refined with effect from 17 December 2003 in the light of operational experience. From that date, where it was accepted that an asylum seeker arrived within the previous three days and had no opportunity to claim asylum within that time, for example because they did not encounter an Immigration Officer on entry, they have been accepted as having claimed as soon as reasonably practicable.

3.33 In June 2004 a further significant operational change was made as a result of the judgment by the Court of Appeal in the case of *Limbuela and Others*⁴⁸³. The case concerned the issue of when it is necessary to provide support to an asylum seeker who has not claimed asylum as soon as reasonably practicable in order to prevent a breach of Article 3 ECHR. In line with the Court of Appeal's judgment, and the House of Lords' judgment that followed it⁴⁸⁴, the Home Office does not refuse support under section 55 to anyone who does not have some alternative source of support available, including overnight shelter, adequate food and basic amenities.

3.34 We recognise that there have in the past been some concerns about increased levels of destitution as a result of section 55. However there have always been a number of important safeguards built into section 55 to ensure that those who are vulnerable are protected. Even before the *Limbuela* case there was very little firm evidence of an increase in rough sleeping as a direct result of section 55.

3.35 A person falls to be refused under section 55 only if, having regard both to the practical opportunities for claiming asylum and to his personal circumstances, he could reasonably have been expected to claim asylum earlier than he did. It follows that any person who has acted reasonably will not be denied support.

⁴⁸³ R (*Limbuela, Tesema, Adam and others*) -v- SSHD [2004] EWCA Civ 540.

⁴⁸⁴ R (*oao Adam, Limbuela and Tesema*) -v- SSHD [2005] UKHL 66.

3.36 The majority of cases are now decided on the basis of information provided at the initial screening stage. The Home Office no longer requires all claimants to attend a detailed interview specifically for the purposes of the section 55 decision. However no claimant is refused support under section 55 without first being offered the opportunity of an interview.

3.37 Statistics on section 55 decisions can be found in the Annual and Quarterly Home Office Statistical Bulletins⁴⁸⁵.

Schedule 3 to the 2002 Act

3.38 Schedule 3 to the 2002 Act deals with migrants' eligibility for local authority and Home Office support. It was designed to minimise the possibility that people would migrate to the United Kingdom solely to claim state benefits. To that end it lists five classes of person deemed to be "ineligible persons":

- (i) people with refugee status abroad (ie someone who is not a national of an EEA State and has been accepted as a refugee by one of those States) and the dependants of such people;
- (ii) EEA nationals and their dependants;
- (iii) failed asylum seekers who have failed to co-operate with removal directions and their dependants;
- (iv) persons unlawfully in the UK (who are not asylum seekers); and
- (v) failed asylum seekers with families if the Secretary of State has certified that in his opinion the person has failed without reasonable excuse to take reasonable steps to leave the UK or place himself in a position to do so (inserted by section 9 of the 2004 Act).

3.39 There are various exemptions to Schedule 3, one of which covers children. Further, the Schedule explicitly does not prevent the exercise of a power or the performance of a duty to the extent necessary to avoid a breach of a person's human rights under the ECHR or Treaty rights.

3.40 Whilst Schedule 3 generally disqualifies failed asylum seekers from access to support and assistance, families—unless within the third or fifth class above—will continue to receive asylum support.

3.41 Schedule 3 imposes reporting obligations on local authorities and they must inform the Secretary of State of anyone presenting himself/herself who falls into one or more of the prescribed categories of "ineligible persons". Schedule 3 also allows for local authorities to provide travel assistance to nationals of other EEA Member States and those with refugee status abroad (as defined in Schedule 3) to travel to the relevant EEA State and, where they have a child, to provide temporary accommodation to such people pending their departure from the UK. Where there is a child, local authorities are also able to provide accommodation to those unlawfully present in the UK whilst they await removal directions.

Section 9 of the 2004 Act

3.42 The fifth class of ineligible person under Schedule 3 was added by section 9 of the 2004 Act. This provides for the withdrawal of asylum support from those failed asylum-seeking families still supported under section 95 of the 1999 Act (by virtue of section 94(5)) whom the Secretary of State certifies have failed without reasonable excuse to take reasonable steps to leave the UK voluntarily, or to place themselves in a position in which they can do so. The use of section 9 is intended to act as an incentive to return voluntarily before removal is enforced. It is not designed to make families destitute, or to split up families; support will be provided for as long as families co-operate with the process.

3.43 Families whose asylum support is withdrawn are ineligible for assistance from local authorities, most notably under section 21 of the National Assistance Act 1948 (equivalent provisions in: Social Work (Scotland) Act 1968; Health and Personal Social Services (Northern Ireland) Order 1972) and section 17 of The Children Act 1989 (equivalent provisions: The Children (Scotland) Act 1995; The Children (Northern Ireland) Order 1995). Local authorities may use their statutory powers to accommodate children or to support children as dependants within a family.

3.44 In consultation with local authorities and other interested Non-Governmental Organisations, the implementation of section 9 was initially tested in three areas (Croydon/East London, Manchester and Leeds/Bradford) with the aim of identifying fair and clear processes which would deliver the outcome required by the Government before further roll-out took place.

3.45 In the course of the pilot the Home Office took special care, over a staged process lasting a number of months, to inform and engage with families. This was to ensure they fully understood the requirement to cooperate with a voluntary return; how to do so, and the implications of not doing so. This engagement allowed individual families the opportunity to identify any ECHR issues that meant that it would not have been appropriate for support to be discontinued. Where the courts considered individual decisions made under section 9 they supported the decision to withdraw support—or referred them for further consideration if additional considerations had come to light.

⁴⁸⁵ www.homeoffice.gov.uk

3.46 The Government is committed to ensuring that unsuccessful asylum seeking families do not remain in the United Kingdom indefinitely—and that those who need our protection are successfully integrated. The importance of dealing effectively with all failed asylum seekers was recognised in the recent IND Review. The New Asylum Model will ensure that new asylum cases are resolved quickly, with prompt removal for those who do not qualify for leave to remain. Case owners will have end-to-end responsibility for cases—including encouraging voluntary returns and making arrangements for removal. We will also deal with the legacy of older cases that have yet to be fully resolved within the next five years. Cases will be dealt with on their individual merits, taking account of all relevant considerations. Consideration is still being given to the role that section 9 might play in individual cases in the future as part of the wider programme of work that is required.

4. PROVISION OF HEALTHCARE

Entitlement

4.1 The legislation concerning provision of healthcare for asylum seekers and failed asylum seekers in England is a matter for the Department of Health. Health matters are devolved in Scotland, Wales and Northern Ireland.

4.2 A person who has formally applied for asylum is entitled to NHS routine hospital treatment without charge for as long as his application (including any appeal) is under consideration. Any asylum seeker who receives NHS treatment for which a charge may be made, such as NHS prescriptions, is entitled to the same exemption from charges as a person who is ordinarily resident in the UK. For example children under 16 receive free prescriptions as do people aged 60 and over. A pregnant woman may apply for an exemption certificate as could someone suffering from one of the specified medical conditions set out in the FP92A application form (held by doctors) eg diabetes.

4.3 Supported asylum seekers also qualify for an HC2 certificate (on the basis of the income based assessment carried out by IND) for help with free NHS prescriptions, free NHS dental treatment, free NHS wigs and fabric support, necessary travel costs to and from hospital for NHS treatment, free NHS sight tests and the full value of an NHS optical voucher towards the cost of glasses or contact lenses. These certificates are issued on behalf of the Department of Health by IND. In addition, an asylum seeker not supported by IND may make a low income scheme claim for a certificate for help as above. Arrangements are in place to ensure that such claims are given priority.

4.4 Asylum seekers may apply for registration with a general practice to join its list of NHS patients. A practice must consider such an application on its merits and should decline it only if its patient list is formally closed to new registrations or if the practice has other good non-discriminatory reasons for refusing that individual. Some practices have been set up specifically to meet the needs of asylum seekers. Extra initial help is available to asylum seekers in initial accommodation in the form of health assessments.

4.5 Failed asylum seekers lose their entitlement to free routine NHS hospital treatment. For primary medical care in England existing guidance is set out in Health Service Circular (HSC) 1999/018 and in Wales Welsh Health Circular (WHC) 1999/032. The guidance discourages practices from registering failed asylum seekers. Practices do, however, retain the discretion to register such individuals (or to continue an existing registration) as NHS patients. Policy guidance on access to Health and Social Services, which outlined services asylum seekers and refugees are entitled to was issued in Northern Ireland in 2004. No specific guidance for primary care practitioners was issued in Scotland but the position there remains similar to that in England and Wales.

4.6 The NHS (Charges to Overseas Visitors) Regulations 1989, as amended (“the charging regulations”), apply to hospital treatment in England and Wales. The Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2005 make similar provision in Northern Ireland. The NHS (Charges to Overseas Visitors)(Scotland) Regulations 1989, as amended, lay similar obligations on NHS Boards in Scotland. They differ in some particulars because of the differences in health care in Scotland which have emerged since 1999. However each set of regulations places a legal obligation on NHS trusts to identify those who are chargeable under the provisions of the Regulations. If they are, NHS trusts are obliged to levy the charge and take such steps as are reasonable in the circumstances of each case to recover it. There is a specific exemption from charges for asylum seekers whose applications, including any appeals, are still under consideration but there is no exemption under the arrangements described in paragraph 4.2 above. A failed asylum seeker will usually be required to pay for NHS hospital treatment unless it is ongoing treatment that began while the asylum claim was still being decided, either until it is completed or until they leave the UK or are deported, whichever happens first. (Also see paragraph 4.19.)

Delivering health services

4.7 Revenue funding is allocated to Primary Care Trusts (PCTs) on the basis of the relative needs of their populations. A weighted capitation formula is used to determine each PCT’s share of available resources. From 1999–2000, the formula has included an English Language Difficulties Adjustment to reflect the extra costs in providing interpretation, advocacy and translation services to minority ethnic patients (including asylum seekers), who experience difficulties with the English language.

4.8 PCTs, in consultation with Strategic Health Authorities, NHS trusts and local stakeholders determine how best to use their funds to meet national and local priorities for improving health, tackling health inequalities and modernising services. The planning priorities for 2005–06 to 2007–08 require that PCTs should ensure that their local plans are in line with population needs, deliver equity and address service gaps.

4.9 PCTs and their partner organisations should demonstrate that they have taken account of different needs and inequalities within the local population, including asylum seekers, in respect of area, socio-economic group, ethnicity, gender, disability, race, age, faith, and sexual orientation, on the basis of a systematic programme of health equity audit and equality impact assessment. Decisions as to what healthcare an individual should receive is a matter of clinical judgement in each individual case. (Paragraphs 4.7–4.9 describe the position in England.)

Initial help for asylum seekers

Health assessments in initial accommodation area

4.10 Health assessments and screening for tuberculosis are offered to those asylum seekers who spend time in Home Office initial accommodation in England prior to dispersal. The health assessment aims to identify and address immediate health care needs and to identify ongoing and non-urgent health care needs for attention in dispersal areas. Initial testing avoids possible uncoordinated duplication later, enables a better use of interpreters to record medical histories and creates expertise in the medical personnel involved in treating health conditions not normally seen in the indigenous population. The Department of Health supports those local PCTs in England who have initial accommodation with total funding of £1 million per year to carry out this service.

4.11 The Home Office gives careful consideration to health needs when determining where to place those asylum seekers supported by IND. Detailed guidance on handling cases of supported asylum seekers (and their dependants) who have healthcare needs is provided in Asylum Support Policy Bulletin 85. This guidance was developed in response to a recommendation from the Review by Hilary Scott, former Deputy Health Service Ombudsman, entitled “Meeting the healthcare needs of people seeking asylum” which was published on 16 December 2004.

In dispersal areas

4.12 As part of the dispersal process, asylum seekers will be briefed by a Home Office accommodation provider in a language they understand about details of local GP surgeries, how to get there and how to register. Asylum seekers with existing specified healthcare needs (ie a pregnant woman or someone suffering from heart problems, asthma, diabetes etc) will be taken by the housing provider to be registered with a GP. To support this process the Department of Health has run training days for accommodation providers to encourage effective liaison with the NHS and produced a fact sheet in 42 languages to explain the role of the NHS to asylum seekers.

The NHS charging regime for overseas visitors

4.13 Entitlement to access free NHS hospital treatment is based on whether someone is ordinarily resident in this country, not on British nationality or the past or present payment of National Insurance contributions or UK taxes. Anyone who is not ordinarily resident is subject to the charging regulations. (See paragraph 4.6.)

4.14 These regulations provide for the making and recovery of charges for hospital treatment from people who are not ordinarily resident in the UK or otherwise exempt from charges under one of a number of exemption categories listed within the regulations. The regulations relate to Special Health Authorities, NHS trusts, NHS Boards in Scotland, NHS Foundation Trusts and PCTs. The regulations place the responsibility for establishing whether a patient is chargeable on the NHS body providing treatment (in practice almost always a NHS trust).

4.15 In order to close loopholes in the system which meant that some people were receiving free NHS hospital treatment inappropriately, and after a public consultation exercise, the charging regulations were amended in England in April 2004 and in Wales in May 2004 and in Scotland in September 2004. Comprehensive guidance on how to implement the charging regulations was revised and issued to the NHS at the same time. This has had the effect of raising the profile of the charging regime so that more NHS hospitals are carrying out their duties in this area more rigorously.

4.16 NHS trusts are under strict instructions never to withhold or delay treatment which is, in a clinical opinion, immediately necessary, because of doubts over a person's chargeable status or if they have the funds to pay. This includes all maternity treatment. The NHS is essentially a humanitarian service and no one in need of immediately necessary or urgent treatment will ever be left to suffer just because they cannot pay.

4.17 However just because immediately necessary treatment has been given does not mean that charges will not apply. If the patient is chargeable, the charge will stand and cannot be waived. However, whilst trusts should take reasonable measures, based on each individual case, to pursue overseas debt, they can elect to write off the debt if it is evident that it would not be cost-effective to try to recover it. Where the patient is established as being a chargeable overseas visitor and the treatment required is clinically judged to be non-urgent, the guidance says that treatment should not be initiated, ie by putting the patient on a waiting list, until a deposit equivalent to the estimated full cost of treatment has been obtained. This is not refusing to provide treatment, it is requiring payment conditions to be met in accordance with the charging regulations before treatment can commence.

Asylum seekers/failed asylum seekers

4.18 One exemption from the charge category relates to asylum seekers. Anyone who has made a formal application for asylum in the UK is entitled to free NHS hospital treatment for as long as that application, including any appeal, is being considered. (There is also a specific exemption from charges for anyone who has been granted refugee status in the UK.)

4.19 Failed asylum seekers are not entitled to free NHS hospital treatment except for ongoing courses of treatment, or in cases where the treatment received is itself exempt from charges (eg that given in an Accident and Emergency Department).

4.20 However the Department of Health and the Home Office have been reviewing the position in relation to NHS hospital care of failed asylum seekers who are nevertheless eligible for some form of state support because of their particular circumstances. This includes, but is not exclusively, those receiving support under the provisions of section 4 of the 1999 Act. This is part of a wider package of joint work between the two departments aimed at strengthening the approach to dealing with those people (including, but not exclusively failed asylum seekers) who use the NHS free of charge when they are not entitled to do so. No decisions have yet been made.

Changes in 2004

4.21 Another exemption in the charging regulations is known as the "12 month residency" exemption. Prior to April 2004 anyone who had been in the country for 12 months prior to receiving treatment was eligible for that treatment free of charge. A person now needs to have resided in the country lawfully for the 12 months prior to receiving treatment to qualify under the "12 month residency" exemption. This means that some people who are in the country illegally (including, but not exclusively, some failed asylum seekers) are now charged for the hospital treatment they receive.

4.22 However, in what is known as an "easement clause", the Regulations were also amended so that anyone who has begun a course of treatment free of charge, will continue to receive it free of charge until the course finishes or they leave the country, whichever comes sooner. Therefore there is no question of, say, an asylum seeker undergoing treatment (including maternity or HIV treatment) having that treatment withdrawn, or being asked to start paying for it, if their asylum application is turned down.

Consultation on entitlement of overseas visitors to NHS primary care services

4.23 Department of Health Ministers wish to bring greater clarity and consistency to the rules regarding access to primary medical services, and have undertaken a public consultation on proposals to change the rules of entitlement of overseas visitors to NHS primary care services. A similar exercise was also carried out in Wales.

4.24 The White Paper "Our health, Our Care, Our Say: a new direction for community services" (paragraph 3.24) reaffirms this commitment. At present, Ministers are still considering the results of the public consultation and the issues which that raised before announcing the way forward. Until then, the HSC and related legislation continue to apply.

Immigration removal centres

4.25 Immigration Service removal centres are the responsibility of the Home Office. However, the healthcare providers at five of the six private sector removal centres in England are to be registered with the Healthcare Commission, as independent providers. The healthcare at the other centre, Tinsley House, is an extension of an established NHS medical practice. This will mean that the centres will comply with the

standards in place for private sector healthcare (National Minimum Care Standards), although these are currently in the process of being amalgamated with the standards that apply to public sector health services (Standards for Better Health). This will help to ensure equivalence of scrutiny for health services in immigration removal centres with those in the community. A seventh privately run centre is based at Dungavel in Scotland.

4.26 In addition to those run by the private sector, there are three immigration removal centres, Lindholme, Dover and Haslar, which are currently and will continue to be run by the Prison Service. Dover and Haslar have previously been part of the programme to transfer prison health services to the NHS. Arrangements are now underway to facilitate the transfer of health services for these removal centres to the NHS. It is expected that health services in both these centres will transfer by April 2007, working in shadow form from October 2006. Lindholme Removal Centre is co-located with HMP Lindholme and uses that prison's health services, which have already transferred to the NHS.

5. TREATMENT OF CHILDREN

Infancy

5.1 The Asylum Support Regulations 2000 allow for additional payments to be made for supported women who are pregnant, and children under the age of three.

5.2 Pregnant women and young children aged between one and three years each receive an additional £3 a week; babies under one year of age receive an additional £5 a week. A single one-off payment of £300 may be provided to asylum seekers to help with the costs arising from the birth of a new baby.

Education

5.3 The Government is committed to securing improved access and additional educational support to enable all children to achieve their potential. The children of asylum seekers and refugees have the same opportunity to access education as all other children. There is a broad recognition that teaching the children of asylum seekers and refugees can be both challenging and rewarding: newly arrived children from overseas need help to settle in and they can greatly enrich the school community.

5.4 Families supported under section 95 which include children of school age will normally not be dispersed if one or more of the children has attended the same school for more than twelve months and is in a critical exam year.

5.5 Local education authorities have a legal duty to ensure that education is available for all children of compulsory school age in their area appropriate to age, abilities and aptitudes and any special education needs they may have. This duty applies irrespective of a child's immigration status or rights of residence in a particular location.

Unaccompanied asylum seeking children ("UASC")⁴⁸⁶

5.6 The Home Office does not support UASC directly but currently funds local authorities to provide appropriate support and care under provisions in the Children Act 1989. Local authorities have the same duties of care to these children as they do to other children in need, including British citizens and other permanent residents.

5.7 The particular services provided to a UASC depend on a detailed assessment of need carried out under Framework for the Assessment of Children in Need and their Families. On the basis of that assessment support is usually provided under one of two different sections of the Children Act:

- Section 20 allows for a child to be taken into the "looked after" system. This would normally entail placement with a foster parent or in residential care for those under 16, although more independent living arrangements, for example in shared flats or supervised accommodation, might be found to be appropriate for the older age group.
- Support under section 17 might be appropriate if the assessment found that the young person was able to look after himself/herself and did not wish to become "looked after". Those supported under section 17 are often placed in shared accommodation or hostels and provided with subsistence payments. The person would still have access to a social worker for advice and guidance.

⁴⁸⁶ UASC are defined as children under the age of 18 who apply for asylum and have no responsible adult to care for them in the UK.

5.8 The Home Office, with DfES, has been considering a number of improvements to the way that UASC are supported and plans to publish proposals soon. There is already much good practice among local authorities in supporting UASC, for example in providing specialist therapeutic services to the victims of trauma, and we need to ensure this is being applied consistently. In order to make this happen it will probably be necessary to find ways of ensuring that UASC are in future only placed in areas of the country where the necessary specialist infrastructure to support them is already in place.

5.9 UASC whose asylum applications are refused and who cannot be returned to their countries of origin (eg because of the lack of suitable reception arrangements) are usually granted discretionary leave to remain until their 18th birthday. Their support entitlement when they turn 18 depends on a number of factors. Those UASC who apply for an extension of discretionary leave before their 18th birthday will have an entitlement to DWP benefits until their application and any appeal is decided (and for longer if their application is granted). Other former UASC may be eligible for asylum support under section 95 of the 1999 Act (for example, if they have not been granted discretionary leave or have not made an application for an extension of leave before turning 18, but they still have an outstanding asylum application or appeal).

5.10 Additionally, those UASC supported by local authorities under section 20 of the Children Act 1989 may be entitled to leaving care assistance from their local authority once they turn 18. In the first instance, entitlement to leaving care assistance is established through provisions within the Children Act 1989 and depends on the nature of the support provided by the local authority up until the point the person turns 18 (in the same way that these factors apply to any child, including British citizens and other residents, who is the responsibility of the local authority). However, certain UASC who would otherwise have an entitlement to leaving care assistance may be ineligible to receive it because of the effect of Schedule 3 of the 2002 Act. The classes of persons ineligible to receive leaving care assistance because of Schedule 3 are described in paragraphs 3.38 to 3.46.

6. THE USE AND CONDITIONS OF DETENTION AND METHODS OF REMOVAL OF FAILED ASYLUM SEEKERS

Detention

6.1 Immigration detention is used to prevent unauthorised entry into the UK or when action is being taken with a view to removal or deportation from the UK. Detention may for example be appropriate in the following circumstances: where a person's identity and basis of claim are being decided; where there are reasonable grounds for believing that a person will fail to comply with the conditions of temporary admission or release; to effect removal; and for applicants whose asylum claim appears to be capable of being decided quickly as part of a fast-track asylum process. Decisions to detain are made on a case by case basis taking into account the particular circumstances of the individual.

6.2 The Home Office notes that the Committee asserts that "the use of detention for certain categories of asylum seekers is in practice arbitrary" although it does not make specific reference to what categories of case are referred to. There is a detained Fast-Track process which has been tested and upheld by the High Court and the Court of Appeal. The process contributes to the overarching objective of determining claims fairly but quickly.

6.3 Certain persons will be detained only in exceptional circumstances. Elderly persons, pregnant women, those suffering from serious medical conditions including or alternatively those who are mentally ill, and those where there is independent evidence to show that they have been tortured would be included among those persons who would normally be considered unsuitable for detention. Officers will always consider on a case by case basis whether detention is appropriate in any particular case.

6.4 There is detailed guidance for caseworkers who interview possible victims of torture which takes account of advice from the Medical Foundation for the Care of Victims of Torture. There is also guidance on dealing with medical reports, again drafted in consultation with the Medical Foundation. Where doctors at Immigration Service removal centres are of the view that a detainee may have been tortured they are required under the terms of the Detention Centre Rules 2001 (No 238) to report that to the centre manager who, in turn, is required to report this to Immigration Service officials located in the centre. It is the responsibility of the Immigration Service official to ensure that such information is brought to the attention of the caseworkers dealing with the case.

6.5 When the routine use of prison accommodation for those held solely under Immigration Act powers came to an end (in January 2002) it was made clear that there would remain a need to use such accommodation in individual cases for reasons of control and security.

6.6 There is provision for all persons detained solely under immigration acts to challenge the lawfulness of their detention before the courts and tribunals. An application for release from detention, on immigration bail, can be made before the Asylum and Immigration Tribunal (AIT). The AIT has jurisdiction to grant bail regardless of whether the detainee has lodged a notice of appeal before it against a substantive immigration decision. An additional remedy can be sought before the High Court through the process of judicial review and habeas corpus.

6.7 Where a bail application is made access to legal representation is given, and provision of legal aid made available, to ensure fair and just access to justice is given in line within the requirements of international law. The remedies provided for challenging the lawfulness of a detention decision, and the availability of free legal assistance where necessary for the detainee to make an effective application for release, must be operated in compliance with Article 5(4) of the ECHR.

Removal

6.8 Criticisms of the methods used to remove failed asylum seekers have included suggestions that families and other vulnerable groups are being targeted and that unnecessarily heavy handed methods are used.

6.9 There is no targeted removal of families and other vulnerable groups beyond that of removing failed asylum seekers who have no lawful basis to remain in the United Kingdom.

6.10 One of our main priorities is to ensure the safety and welfare of those we are attempting to remove, particularly families and other vulnerable groups. Immigration officers will research the circumstances of each individual family prior to planning a visit in order to ascertain at what time of day everyone would usually be present, and whether, for example, members of the family have any particular health needs. The number of officers conducting a visit will be risk assessed, taking into account factors including the size and layout of the property, the number of persons present and the ages of the family members.

6.11 Personal Protective Equipment (body armour) must be worn in line with the risk assessment but in view of the nature of this type of visit it is preferable that, where possible, this be worn covertly. Immigration legislation permits officers to use reasonable force where necessary in exercising their powers.

6.12 The control and restraint of minors is limited to where the situation is such that it becomes necessary for an officer to use physical intervention to prevent harm to the child or any individual present. It is not to be used simply to enforce the removal of children where there is no threat of violence and in the vast majority of cases there will not be a need for officers to exercise physical control or restraint of minors.

6.13 In cases where physical intervention is deemed necessary, officers must ensure that their actions are reasonable, justifiable and proportionate. All physical interventions should be in line with officer safety training. Officers are reminded that this training does not restrict them solely to the techniques taught, a fact that should be borne in mind when dealing with minors in particular. At all times, officers are accountable for, and may have to justify, any decisions and actions they take.

6.14 The then Immigration Minister, Tony McNulty, announced on 10 January 2006 that IND would review the way family removals are conducted. This review is currently in progress.

7. TREATMENT BY THE MEDIA

7.1 The Home Office does not disclose details of asylum claims to the media, and nor will it confirm a person's immigration status, including if they are an asylum seeker or refugee, unless the information is already in the public domain.

7.2 The Home Office's press office tries to ensure that journalists use the correct terminology and will seek to correct inaccuracies where appropriate. In addition, a sub-group of the National Refugee Integration Forum chaired by Joan Ryan—Parliamentary Under Secretary of State for Immigration and Citizenship—is working to ensure that the media is aware of all facts relating to refugees and asylum seekers so that coverage has a greater potential to be fair and inclusive.

7.3 The Reporting Diversity⁴⁸⁷ booklet—developed by the Society of Editors and the Media Trust and funded by the Race, Cohesion and Faiths Directorate (formerly part of the Home Office, now part of the Department for Communities and Local Government)—provides a practical guide for journalists aimed at ensuring fair and accurate reporting of diversity related issues.

7.4 In relation to current broadcasting arrangements, the responsibility for what is broadcast on television and radio rests with the broadcasters and the organisations which regulate broadcasting—the Office of Communications (Ofcom), the Governors of the BBC and the Welsh Fourth Channel Authority (S4C). They are independent of the Government and responsible for safeguarding the public interest in broadcasting. They set out the rules and guidance with which broadcasters must comply.

7.5 Within this framework, it is the broadcasters' job to make judgements about what individual programmes should contain and the time at which they are broadcast. It is a long-standing principle that the Government does not interfere in programme matters, either on arrangements for scheduling or on content.

Liam Byrne

16 October 2006

⁴⁸⁷ The booklet was published on 21 October 2005. It is available at www.communities.gov.uk

70. Memorandum from The Immigration Law Practitioners' Association

INTRODUCTION

1. The Immigration Law Practitioners' Association (ILPA) is a professional association with some 1200 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA aims to promote and improve the giving of advice on immigration and asylum, through teaching, provision of high quality resources and information. ILPA is represented on numerous government and appellate authority stakeholder and advisory groups and has provided oral and written evidence to the Joint Committee on Human Rights on many occasions.

2. ILPA welcomes this enquiry. Rights under human rights instruments, and most notably the ECHR, are guaranteed to all within the jurisdiction. The failure to respect the rights of people seeking asylum is as much a breach of the UK's international obligations as a failure to respect the rights of nationals would be. We have, of necessity, been selective in the points we have highlighted in this response. We are happy to provide further information where this would be helpful. ILPA has had sight of the submission of the Housing and Immigration Group (HIG) to this inquiry and we concur with all the points made in their submission. HIG includes ILPA members.

ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

3. The rules about welfare benefits and immigration status are complex. For the purpose of this submission we focus only on the benefits available to or denied asylum seekers or failed claimants. The support system is designed so that some people, especially those at the end of the process, have no entitlement to any support whatsoever, save insofar as they can make out a case on human rights grounds. Since 8 January 2003, rules have been in force excluding certain groups from the National Assistance Act and certain provisions of the Children Act 1989 (along with a number of other forms of state support including asylum support). These groups are:

- A person granted refugee status by an EEA state other than the UK.
- An EEA national (other than a UK national).
- A person who has ceased to be an asylum seeker and who fails to co-operate with removal directions issued in respect of him/her.
- A person who is in the UK "in breach of the immigration laws" (broadly this means someone who requires leave to be in the UK, but does not have it) and who is not an asylum seeker.
- A person who is the dependant of someone who falls into the first three of these groups.
- A failed asylum seeker with family (newly inserted para 7A of Sch 3, Nationality, Immigration and Asylum Act 2002) if a certificate has been validly issued by the SSHD.

4. In addition asylum support can be denied to asylum seekers who do not claim asylum as soon as practicable after their arrival in the UK (s 55 of the Nationality, Immigration and Asylum Act 2002). The House of Lords in *R v Secretary of State for the Home Department ex parte Limbuela et Ors* [2005] UK HL 56 EWCA Civ 540—found that denial of support to such claimants could breach rights under Article 3 ECHR—"that threshold may be crossed if a late applicant with no means and no alternative sources of support, unable to support himself, is by deliberate action of the state, denied shelter, food or the most basic necessities of life". (Baroness Hale at para 79). The Lord Hope stated:

"Where the inhuman or degrading treatment or punishment result from acts or omission for which the state is directly responsible there is no escape from the negative obligation on states to refrain from such conduct, which is absolute".

Despite the *Limbuela* judgment, s 55 has not been abandoned—the HIG submission to this enquiry details Home Office efforts to revive it. Certainly the requirement to have made a timely asylum application is utilised to deny assistance to failed asylum seekers who remain in the UK.

5. Enforced destitution has become an immigration control policy. It is the stick to inculcate timely asylum applications (as in *Limbuela*) and to force failed asylum seekers to return to their homes. Failed asylum seekers with families must decide whether to secure Children Act support for their children and live apart from them in destitution.

 THE USE OF DETENTION AND CONDITIONS OF DETENTION AND METHODS OF REMOVAL OF FAILED ASYLUM SEEKERS

6. Enforced destitution has produced great hardship and has not had the desired effect of motivating claimants to leave the UK. The government has utilised this policy against families, the sick and elderly as well as against single claimants. (see: s 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004, by which families who do not cooperate in efforts to remove them can be denied support) The policy is known to produce privation and cause great suffering. The policy takes no account of the personal circumstances of claimants.

7. Numbers of failed asylum seekers will have lost their asylum claims through inadequate representation or missed appeal hearings following NASS dispersal. Such failures are common in the asylum system. Many asylum applicants who were disbelieved retain their palpable fear of return to their home countries. The policy does not have regard to this fear and that it is their fear which often keeps claimants here in such privation. Others cannot return home as their countries are generally unsafe; or they have no travel documentation and little prospect of obtaining it.

8. The distress, poverty, illness and trauma produced by destitution policies are being documented by government and non-government agencies. Their data makes shameful reading. It is even more distressing when one realises that some of those suffering enforced destitution almost certainly have meritorious claims to remain in the UK.

9. Over many years the Home Office has developed internal policies under which they undertook to grant temporary or indefinite leave to remain to the nationals of certain war-torn and unsafe countries. These policies were rarely published and not widely circulated. In the case of *Rashid, R (on the application of) v Secretary of State for the Home Department* [2005] EWCA Civ 744 (16 June 2005) the Court of Appeal held that Iraqi claimants who would have been granted refugee status and indefinite leave to remain under the terms of a policy applicable at the time their cases were decided should get indefinite leave to remain, notwithstanding that the policy was now redundant. The Court noted in respect of the Home Office secrecy concerning and their inconsistent application of this general policy to all Iraqis from outside the Kurdish Zone, that it amounted to “flagrant and prolonged incompetence”.

“It is difficult to understand how the failure to apply the correct policy to the claimant can have been persisted in for such a long period. Understanding is more difficult when we are told by Mr Tam that Iraq was at the material time a ‘top asylum country’ in that there were many applicants from there. The situation there was of great public concern and I am unable to understand why a fundamental element in the asylum policy, the question of internal re-location to the KAZ, was unknown to all those who dealt with the claimant’s case . . . the degree of unfairness was such as to amount to an abuse of power requiring the intervention of the court. The persistence of the conduct, and lack of explanation for it, contributes to that conclusion. This was far from a single error in an obscure field. A state of affairs was permitted to continue for a long time and in relation to a country which at the time would have been expected to be in the forefront of the respondent’s deliberations.” (at paras 33, 36 and 53 per Pill and Dyson LJ)

10. The Home Office has belatedly published a description of the Iraqi claimants who stand to benefit from the policies exposed in *Rashid*. They have yet to publish the terms of policies which would provide similar benefits to certain Somalis, Kosovans, Rwandans, Sierra Leoneans, Angolans (to name but a sample of the relevant nationalities for which there were beneficial leave policies). It is within this context that the destitution policy should be considered. The destitution policy is not simply directed towards persons who have “chosen” to remain here unlawfully. This prescriptive policy has also affected persons who should have been granted leave to remain, who are almost certainly unaware of the hidden Home Office policies applicable to their case and who have been denied the benefit of such policy concession because of Home Office secrecy, incompetence and inattention.

11. ILPA is also concerned at the arrangements for asylum support for those claimants seeking asylum. The provisions dealing with their entitlements to accommodation and financial support are complex and applicant must negotiate an elaborate bureaucracy. There is no publicly funded legal representation before the Asylum Support Adjudicators. The Asylum Support Appeals Project (ASAP), which provides free legal advice and representation on a pro bono basis and with very limited resources has recorded that 62% of the people who were represented by ASAP at their hearings have had their cases allowed or remitted to NASS to make the decision again. Only 20% of people appealing who had no representation won or had their case remitted⁴⁸⁸. Those who are successful can encounter payment delays. The National Asylum Support Service

⁴⁸⁸ ASAP newsletter July 2006 available from www.asaproject.org.uk

(NASS) may take time to implement the decisions of asylum support adjudicators and those found to be entitled to support, including on human rights grounds, may not get that support for days or even weeks although the obligation to provide support arises as soon as the appeal is won, and a condition of winning is that the person is destitute.

12. Human rights applications are frequently the only defence against destitution. This makes it imperative that people have access to high quality legal advice and representation so that they can assert their rights. This is not always on offer:

The DCA and the Legal Services Commission are consulting on a new funding structure for legal aid in, inter alia, immigration and asylum⁴⁸⁹. The proposal is that only 30 minutes work on asylum support would be included in the proposed (very low) fixed fee. Other work would have to be done under welfare or housing contracts. The fixed fee scheme, whereby fees are set at a level that will make it difficult to provide representation in the asylum case itself, will make it difficult for immigration specialists to work alongside their welfare or housing counterparts to supply the necessary information⁴⁹⁰.

13. It has long been ILPA's contention that the relationship of the support and asylum determination systems is marred. We see evidence of this continuing in the New Asylum Model (NAM). For example, we are told that while the asylum support system can cope with early refusals of asylum, it cannot currently cope with early recognition of a person as a refugee, because the appropriate accommodation arrangements cannot be met. Since this was raised at stakeholder meetings, we understand that discussions aimed at resolving this problem are to take place to ensure that NAM can deliver on its objective of "front-loading" all claims.

14. ILPA is working with organisations, namely Refugee Action and Amnesty International, currently undertaking research into the destitution of failed asylum seekers. This research is set to be published on the 10 November 2006 and we commend the research reports of Amnesty International and Refugee Action to the Committee.

PROVISION OF HEALTHCARE

15. There has been considerable UK litigation on the human rights implications of removal of people with terminal illnesses or suicide risk. In the case of *N v Secretary of State for the Home Department* [2005] UKHL 31 the House of Lords held that a person with AIDS, on antiretroviral treatment but facing extreme suffering and early death if returned to country of origin, was not entitled to protection under Article 3. ECHR. In *ZT v SSHD* [2005] EWCA Civ 1421 (CA) Sedley LJ noted concerning the setting of the bar in both Article 3 and Article 8 cases unusually high for removal cases:

"When in *N v Home Secretary*, Lord Nicholls described these questions as "not capable of satisfactory humanitarian answers" he might have added "or jurisprudential ones". If HIV were a rare affliction, readily treatable in the UK but not treatable except for the fortunate few in many other countries, the courts would have little hesitation in holding removal of sufferers to such countries to be inhuman treatment contrary to Article 3. It is the sheer volume of suffering now reaching these shores that has driven the Home Office, the Immigration Appellate Authority and the courts to find jurisprudential reasons for holding that neither Article 3 nor Article 8 can ordinarily avail HIV sufferers who face removal. Only cases which markedly exceed even the known level of suffering—an example is the expectant mother in *CA v Home Secretary* [2004] EWCA Civ 1165—now qualify for protection."

Although Sedley LJ seemed disposed to reserve the high barrier to HIV cases, the effects of the N judgment can be felt in other areas, for example in cases where the act of expulsion is likely to provoke a suicide attempt (see eg *KK v SSHD* [2005] EWCA Civ 1083). Almost all medical refusal cases are now treated under the N doctrine. This approach is of real concern to ILPA and arguably represents a diminution of the State's Article 3 responsibilities.

16. Those medical cases who are not in practice removed from the UK, but who are not given status here, are denied access to other than primary health care under the NHS Charges to Overseas Visitors Regulations 1989 (SI 1989/306) and the NHS (Charges to Overseas Visitors) (Amendment) Regulation 2004 (SI 2004/614). We refer to the Refugee Council's June 2006 Briefing paper First do no harm: denying healthcare to people whose asylum claims have failed⁴⁹¹ for an examination of the effect of the regulations.

⁴⁸⁹ *Legal Aid: A sustainable future* CP 13/06, DCA and Legal Services Commission.

⁴⁹⁰ See ILPA's submissions to the Constitutional Affairs Committee *Inquiry into Implementation of the Carter Review*; and response to the LSC/DCA consultation *Legal Aid: A sustainable future* both available on www.ilpa.org.uk

⁴⁹¹ Kelley, N. & J. Stevenson Refugee Council & Oxfam June 2006, available from <http://www.medact.org/content/refugees/Health%20access%20report.pdf#search=%22first%20do%20no%20harm%20refugee%20council%22>

TREATMENT OF CHILDREN

17. ILPA has published two documents on children subject to immigration control: *Working with children and young people subject to immigration control: Guidelines for Best Practice*⁴⁹² and *Child first, migrant second: Ensuring that every child matters*⁴⁹³. ILPA has asked the Immigration and Nationality Directorate (IND) to adopt the recommendations set out in the latter report to ensure that the DfES Every Child Matters⁴⁹⁴ framework applies to all children in the UK; IND has not yet done so, but equally has not yet said that it will not.

AGE DISPUTES

18. Until such time as an age dispute is resolved in a child's favour, the Home Office continues to treat the child as an adult: determining their claim for asylum through adult procedures and using against them the powers it has available to use against adults under immigration control.⁴⁹⁵ Although the Oakington Fast Track detention criteria were modified following litigation in the High Court (*D (2) Z (R on the application of) v Secretary of State for the Home Department* (2005) (Application) Case No: CO/988/2005, CO/2920/2005 Date: 23/11/2005) our members continue to report cases of detained children and Home Office failures to consider and follow their own procedures concerning disputed age cases.

19. ILPA is currently funded by the Nuffield Foundation to conduct research on the experiences of children seeking asylum whose age is disputed. There is evidence of an increase in age disputes over recent years. Since 2004 when the Home Office started to publish figures on the number of age disputed cases, there is statistical evidence on the scale of the problem. In 2005 nearly half (45%) of all applications made by those presenting as separated children seeking asylum were age disputed and treated as adults. Many of these disputes remain unresolved.

20. ILPA's research has been undertaken with the assistance of the Home Office and 14 local authorities and examines existing policy and practice in relation to age assessment by IND, local authorities and others and the implications of age dispute issues and of a child being treated as an adult. The early findings of the research suggest that there is currently an over-reliance upon physical appearance as a proxy indicator for chronological age, even though this is notoriously unreliable given the varied ethnic and social backgrounds of those who seek asylum. This leads to children being placed in adult processes with the consequences that this brings, including a failure to consider child specific protection needs, detention, inappropriate accommodation provision by local authorities and NASS, and lack of access to existing child protection mechanisms.

21. There is also increasing evidence that asylum applicants whose age is disputed are often unaware of their rights to challenge that decision or of the mechanisms for doing so. This is because they often do not have access to the specialist legal advice and representation needed to request a formal age assessment by social services or commission expert evidence. The Legal Services Commission and DCA proposals for a fixed-fee funding regime envisage exempting unaccompanied children from the fixed fee scheme and contracting with specialists to represent them. In our response to the Consultation, among the many questions we have about the proposal, we have asked the LSC and DCA to clarify whether their proposals are intended to cover age-disputed cases. It is important that the LSC tendering process for child representation work should focus on recruiting specialist, conscientious practitioners and is not simply driven by cost considerations.

22. ILPA's research will be completed early in 2007 and will provide concrete and practical policy recommendations on an appropriate process for agreeing age in the asylum context, and on the relationship between the process of age assessment, the asylum determination process and support and leaving care arrangements. Ultimately, if put into practice, this could lead to improved outcomes for children and young people and more efficient—and better quality—initial decision making and service provision. An added benefit will be the reduction of the cost currently associated with age disputes and a major source of potential and actual conflict between different service providers who should be working together.

23. An effective procedure for age assessment would ensure respect for the rights of children seeking asylum in accordance with the UN Convention on the Rights of the Child and in particular Articles 2, 3, 4, 19, 20, 22, 27, 28, 34, 37 and 39 and the provisions of paragraphs 213 to 219 of the UNHCR Handbook. It would also ensure that the UK could give effect to its obligations under the EU Reception Directive⁴⁹⁶ which requires that "The best interests of the child shall be a primary consideration for Member States when implementing the provisions of the Directive that involve minors."

⁴⁹² *Working with children and young people subject to immigration control: Guidelines for best practice* Crawley, H, for ILPA, November 2005.

⁴⁹³ Crawley, H, for ILPA, February 2006.

⁴⁹⁴ Green Paper 2002 and see DfES 2004 *Every Child Matters: Next Steps*.

⁴⁹⁵ See *Child First, Migrant Second*, op cit, Chapter 4 pages 26–27.

⁴⁹⁶ Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers.

24. Although we are not yet in a position to make our own detailed recommendations to the Committee, we strongly support the recommendations made by the Office of the Children’s Commissioner in its submission to this Inquiry: that the processing of the asylum claim itself should be delayed until the age dispute is resolved; that the government urgently launches a review of the current arrangements for determining age; that those whose age is disputed should be made aware of the mechanisms for challenging such a decision; and that further work should be conducted on the annual asylum statistics to allow the reasons for the resolution of the age dispute to be disaggregated.

OTHER MATTERS

25. The UK’s reservation to the UN Convention on the Rights of Child (UN CRC), condemned by the Committee on the Rights of the Child as “contrary to the objects and purposes of the convention”⁴⁹⁷—ie an illegal reservation under the Vienna Convention on the Law of Treaties,—remains in place. Despite government claims that it does not affect the treatment of children while they are in the UK, in practice it has been interpreted to limit the application of the UN CRC to other aspects of a child’s life⁴⁹⁸. The Refugee Qualification Directive’s⁴⁹⁹ adoption of the “best interests” principle for all matters dealing with refugee children⁵⁰⁰, makes the reservation to the CRC even less defensible. The government has committed itself under the Directive to operate the core CRC principle when dealing with refugee children. The Convention itself should become a part of general immigration operations.

26. As we explained in our submission to this Committee’s Inquiry into Trafficking, the current immigration control regime militates against protection of children under immigration control at risk of exploitation and abuse. We refer you to that submission⁵⁰¹. In particular we highlight that the current situation, whereby unaccompanied children are all too often “accommodated” rather than “taken into care” by local authorities. No one in the UK has parental responsibility for such children and their welfare and needs may not be met. The lack of guardians in children’s cases is a desperate lacuna, affecting support entitlements as well as the child’s ability to pursue the claim to asylum⁵⁰².

27. Members of the Committee will be familiar, from our briefings on what became the Immigration Asylum and Nationality Act 2006, as well as previous submissions to the Committee, with our views on many aspects of immigration control as they affect children. We pause to note the failures to pick up matters highlighted during those debates, notably:

28. The evaluation of s 9 of the Asylum and Immigration (Treatment of claimants, etc) Act 2004⁵⁰³, repeatedly promised during debates and culminating in the enactment of s 44 of the 2006 Act, which provides for repeal of the section by order, has never been published. Nor, despite the promulgation of two commencement orders (SI 2006/1497 (C 50) and SI 2006/2226 (C 75), has s 44, which is no more than a power to repeal by order, been commenced. Section 9 gives rise to risks of breaches the rights of children under the UN CRC Articles 2–6, 9, 18, 22,24, 26–27, 31, and 39; Article 8 (and in some cases Article 3) of the ECHR. We endorse the submissions of the Office of the Children’s Commissioner.

29. Despite fulsome promises made to the Earl of Listowel during debates in the House of Lords⁵⁰⁴, there has been no response from the government to the overwhelming case for including the immigration service in the safeguarding powers under s 11 of the Children Act 2004, made first by the Earl Howe in debates on the 2004 Act and then by the Earl of Listowel in debates on the 2006 Act⁵⁰⁵. This lacuna gives rise to risks of breaches of Articles 8 and 3 of the ECHR and Articles 2,3, 19, 22, 37 and 39 of the UN CRC. We endorse the submissions of the Office of the Children’s Commissioner.

30. The government issued a consultation on use of private contractors under s.40 and 41 of the 2006 Act⁵⁰⁶ which made no reference to safeguarding children, a matter debated at length during the passage of that Act, and envisaged timescales that could not possibly allow for the training and vetting envisaged in government promises made during debates⁵⁰⁷. The provisions as enacted give rise to risks of breaches of Articles 8 and 3 ECHR, and Articles 2, 3, 19, 22, 37 36, and 39 of the UN CRC.

⁴⁹⁷ UN Committee on the Rights of the Child, *Concluding observations on the United Kingdom of Great Britain and Northern Ireland* para 47ff. Discussed in the JCHR’s 17th Report of 2005.

⁴⁹⁸ See the discussion in *Child First; Migrant Second*, *op cit*, Chapter 2 pages 7 to 8.

⁴⁹⁹ Council Directive 2004/83/EC of 29 April 2004.

⁵⁰⁰ *Ibid.* Article 20 (5).

⁵⁰¹ See also *Child First, Migrant Second*, *op cit*. Chapter 6.

⁵⁰² See *Child First, Migrant Second*, *Op cit*. Chapter 4, and in particular the section on Guardianship at page 32.

⁵⁰³ See *Child First, Migrant Second*, *Op cit*. Chapter 5.

⁵⁰⁴ *Hansard* HL Report 14 March 2006, col 1206.

⁵⁰⁵ *Hansard* HL Report 14 March 2006, col 1202ff.

⁵⁰⁶ *Private Freight Searching and fingerprinting at Juxtaposed controls* Home Office Consultation Document of May 2006, available at <http://www.homeoffice.gov.uk/documents/private-freight-juxt-controls/>

⁵⁰⁷ See *Hansard* HL Report 17 January 2006, cols GC 230ff; 7 February 2006, cols 577ff, 14 March 2006, cols 1187ff.

 USE OF DETENTION FOR ADMINISTRATIVE REASONS ONLY—IE TO “FAST-TRACK” THE PROCESSING OF ASYLUM CLAIMS

31. The ECHR recently held in the case of *Saadi* [13229/03] that detention for this reason was compatible with Article 5 but only by a majority of 4 to 3. A reference has been made to the Grand Chamber. The British judge said that the detention in this case was only in compliance with Article 5 because it was for no longer than seven days. The Court was considering the “Oakington regime” at a time when detention to process an asylum claim was limited to seven days—since then the Government has changed its policy so that some persons are detained in Oakington for up to 14 days. They have also introduced the “super fast track” in Harmondsworth and Yarlswood where most cases are decided in seven days but some are not; cases that are appealed are detained for in excess of seven days. The “super fast track” also involves the hearing of any appeal within an extremely short period of time (commonly within five days of a decision) and only 1% of appeals were allowed in Yarlswood fast track and 3% in Harmondsworth fast track—compared with an allowed appeal rate ranging from 14% to 28% in non fast track appeals⁵⁰⁸. The divergence in success rate on appeal raises concerns that those detained in super fast track are being denied equal access to justice. Legal Aid for an appeal is not “as of right” available in fast track asylum appeals despite the short time limits: the same merits tests have to be applied as for the standard appeal timetable leaving many unrepresented. The recent BID report on unethical practices by some lawyers funded by the LSC in the fast track process exposes the vulnerability of these applicants and the need for the LSC to give priority to competent ethical firms when choosing suppliers for fast track contracts.

The “fast-track” system is, at best, on the borderline of human rights compliant. Article 13 of the International Covenant on Civil and Political Rights requires that an appellant facing expulsion be allowed to be represented on an appeal. International human rights law requires that any tribunal must ensure respect for the principle of procedural equality and there should be a reasonable opportunity to present ones case under conditions that do not place the individual concerned at a substantial disadvantage vis a vis his opponent and to be represented by counsel for that purpose. In the case of the fast track, to comply with these international obligations, impecunious detainees should have a right to free legal aid without a merits test. It should be remembered that fast-track detainees are cases that are considered straightforward, not cases considered frivolous, vexatious or clearly unfounded. If they were any of the latter the Home Office has the power to certify them and thus deny an in-country appeal. The fact that there is going to be an appeal in-country should lead to these cases being granted public funding.

32. ILPA would therefore wish to see all those detained in fast-track guaranteed legal representation (through Legal Aid in the form of Legal Help and Controlled Legal Representation) up to and including the appeal hearing.

FAILURE TO RESPECT THE RIGHTS OF DETAINEES

33. In a number of recent cases the Immigration Service has been found to have acted unlawfully by:

- (i) Failing to give detainees written reasons for their detention so that they can know why they are detained and what arguments they need to meet to secure release (found to be in breach of Article 5 in the case of *Saadi v UK* ECHR 11 July 2006 where a delay of 78 hours in giving written reasons for detention was not prompt enough to comply; and in the case of *Faulkner* [2005] EWHC 2567 by detaining a foreign prisoner on completion of his sentence for two months under the Immigration Act without him being given written reasons for his detention).
- (ii) Failing to allow detainees enough time to consider decisions and mount challenges to prevent removal (found to have occurred and rendered the detention unlawful in the case of *Karas* [2006] EWHC 747 where the Judge held that it was oppressive, unreasonable and unnecessary to detain the claimant for removal on the next day when the application had been outstanding for three years and was only decided 4 hours prior to detention. The Judge reached the view that the claimants detention was deliberately planned with a collateral and improper purpose—the spiriting away of the claimants from the jurisdiction before there was likely to be time for them to obtain and act upon legal advice or apply to the court/)
- (iii) Failing to act on High Court injunctions ordering a stay on removal (leading to contempt proceedings against IND and the immigration officers concerned).⁵⁰⁹
- (iv) Failing to carry out medical examinations on asylum seekers within 24 hours of arrival at a detention centre in breach of Detention Centre Rules, such examinations required in particular to identify those unsuitable for detention such as torture survivors (this failure rendered detention unlawful in the cases of *D & K* [2006] EWHC 980).

⁵⁰⁸ See Quarterly Asylum Statistics, 2006. During the first three months of 2006, 410 new asylum applications went into Harmondsworth, of which 81% (330 people) received an initial decision. 99% were refused asylum with less than five people recognized as refugees. See: Table 19, <http://www.homeoffice.gov.uk/rds/pdfs06/asylumq106.pdf>

⁵⁰⁹ *Fadile Parmaksiz v SSHD* [2006] EWHC 2235 (Admin) Ms Parmaksiz was removed from the UK despite a court order prohibiting this. Mr Justice Collins was highly critical of the Home Office failure to follow its own procedures.

34. The EU Reception Directive⁵¹⁰ requires that “reception of group with special needs should be specially designed to meet those needs”⁵¹¹ and that member states “take into account the specific situation of vulnerable persons such as minors, unaccompanied minors . . .”⁵¹². Article 18 requires that “The best interests of the child shall be a primary consideration for Member States when implementing the provisions of the Directive that involve minors”. Article 17 requires special access to rehabilitation services for minors who have been victims of abuse⁵¹³. The detention of children in families cannot be squared with these obligations.

TREATMENT BY THE MEDIA

35. An aspect of the treatment of people seeking asylum in the media that ILPA wishes to highlight is the criticism levelled at judges determining rights and obligations, including human rights in immigration cases, culminating in the Sun’s campaign to get the UK to withdraw from the ECHR. The willingness of government Ministers to criticise individual judges in the media has fed, and in some cases contributed to, this media coverage. Human rights cannot be respected in a system that is not subject to the rule of law, and attempts by the Executive to put pressure on the Judiciary constitute attempts to interfere with the rule of law.

36. In the case of *Limbuella*, cited above, the then Home Secretary David Blunkett MP and the Prime Minister were quick to criticise judges in the lower courts. The Prime Minister condemned as an “abuse of common sense” the decision of Mr Justice Sullivan in the long running Afghan case of *R (GG et ors) v SSHD CO/4987, 4991-8/2005*, where he found that the Home Office actions constituted an abuse of power. The case was on its way to the Court of Appeal at the time and that Court upheld the decision of Mr Justice Sullivan. Giving judgement, Lord Justice Brooke said: “We commend the judge for an impeccable judgment.”

37. We suggest that the questions of the rule of law and respect for the independence of the Judiciary may be matters to which the Committee could usefully turn its attention.

October 2006

71. Memorandum by the Scottish Refugee Policy Forum

This response has been produced by the above organisation (RPF) which is a federation of Refugee Community Organisations in Scotland (RCOs) which unites the groups in Scotland who are organised by refugees, for refugees.

Over 30 refugee community organisations are working closely together to represent the views of asylum seekers and refugees to government in the UK, Scotland and to the other big service agencies which affect our lives. We meet regularly to try to influence the policies and practices which affect us and lobby those responsible for the conditions we live under.

We have recently secured agreement from the immigration service to meet on a regular basis with senior operational staff and with the Regional Director regarding issues about policy and its implementation. We are aware that civil servants do not create the policies which affect our lives and while we value this contact we are clear that Westminster politicians need to create the context for change to take place.

We know that as asylum seekers we seem to be an easy target and that it is tempting for some political parties and organisations to blame us for many things for which we are not responsible. We therefore welcome this opportunity to be heard directly by the select committee.

OUR RESPONSE TO THIS REVIEW

This response builds on other work which has been completed by the refugee policy forum and tries to identify the human rights issues which we feel have arisen from them.

Where possible we have attempted to relate our comments to the different sections of the relevant Human Rights Frameworks which we are aware of these are the:

- European Convention on Human Rights 1950 (ECHR).
- The International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR).
- International Covenant on Civil and Political Rights 1966 (ICCPR).

These are in addition to the UN convention of 1951 itself. We have tried to indicate which sections of these treaties affect our rights next to each point. Where no such reference exists our comments are more general. However we are not human rights lawyers and do not have the expertise or the resources to research the case law where there is any doubt on our part we have included the reference.

⁵¹⁰ Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers.

⁵¹¹ Preamble.

⁵¹² Article 17.

⁵¹³ Article 17.

We also believe that it is important to state that the human rights of asylum seekers are being generally affected by a system which has many aspects which when added together can be very traumatic for us as individuals and especially for our children. From the beginning of the process when we are not being helped to prepare our cases in the way we should be. The pressures of poverty, the length of time we have to wait, the constant pressures of the reporting process and the forced removals of those of us who are refused by an inadequate system and yet know that we cannot go back without facing further persecution.

While we are here the system itself is full of errors including lost documents regarding our claims and financial support stopped in error. We believe that for many people in the process all of these factors taken together undermine the rights of people who are after all simply exercising their right to claim asylum. At our conference in Glasgow in April the UNHCR representative supported this view when she commented on her experience at the conference by stating that;

“More must be done to ensure that the process of applying for asylum and undergoing interviews to determine refugee status respects the need to avoid bringing old traumas back to the surface and remains as humanitarian as possible.”

Firstly our submission will attempt to address the issues which have been identified as being of interest or concern to the committee.

Secondly it will attempt to deal with access to justice issues. We also understand that the select committee must prioritise the issues which it is prepared to consider regarding the human rights issues faced by asylum seekers but regrets the decision to exclude evidence or testimony which relates to the impact of the asylum decision making process. We feel very strongly that the many of the most serious infringements of the human rights of those seeking asylum in the UK relate to this process, its underlying flaws and the catastrophic effect on individuals and families to whom it denies justice. In accordance with our mandate to represent the interests of asylum seekers and refugees in Scotland we feel that we must include the testimony and experience of our members—the majority of whom remain in the asylum system and who have been in it for a number of years.

This contribution should therefore be viewed as an interim response from our organisations and is not a substitute for the much more extensive consultation with refugee organisations about all of the relevant issues including the decision making system itself. This should begin with a debate about who should be consulted and how.

We have also included as appendices the full versions of other work which we have submitted on areas which may be of interest to the select committee, most notably our submission to the Immigration and Nationality Directorate consultation on family removals policy which was initiated following a range of concerns expressed in Scotland.

In summary the contents of this submission to the current enquiry are drawn from the following sources.

- Discussion at the refugee policy forum itself on the matters identified in the call for evidence.
- Issues and proposals drawn from the draft report of the RPF Journey to Justice conference in April 2006.
- RPF submission to the IND review of Family Removals policy—July 2006—attached.
- Submissions from member organisations eg Karibu African Women’s Group—sample attached.
- RPF Submission to meeting with the Scottish Children’s Commissioner—April 2006.
- The draft report of the RPF women’s strategy group and its underpinning research and action plan—Including quotations—attached.
- RPF policy discussion on reporting, detention and removal—December 2005.

ROLE OF SCOTTISH REFUGEE COUNCIL

We are grateful for the assistance of the Scottish Refugee Council have assisted us to put together this submission since:

- English is not our first language.
- Within the group we use many different languages.

The community development team has helped us to consult our members, draft our evidence and clarify what we wish to say in a coherent fashion. We can confirm that these are the collective views of our organisations and that we have achieved this by:

- Pulling together the information described above from existing documents.
- Inviting the member organisations to contribute new information.
- Working in a sub group to refine the material and comment on the draft.
- Signing off the document as an accurate record of our position.

Signed on behalf of the Refugee Policy Form

COMMENTS UNDER THE HEADINGS IN THE CALL FOR EVIDENCE

1. ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

Housing—Our experience suggests that the standards of housing available to asylum seeker families are not always equal to the minimum standards of provision allowed for British families. In Glasgow the Council attempted to give us similar rights to those it gave to its own tenants, unfortunately this standard is not being maintained by all of the new providers specifically the Angel group. We take the view that this is an infringement of our rights to equality of access to housing which is of a tolerable standard—even if this is on a temporary basis. Specifically we are concerned with the following inequalities.

- We believe that in some cases asylum seekers are now living in housing which is of a lower standard and for longer periods than British families. Often this accommodation is not scheduled for significant improvement. In Glasgow investment in our homes is minimal because it is due for demolition.
- With some of the new accommodation providers in Glasgow, living areas are treated as bedrooms and this means that we are being placed in overcrowding situations for long periods of time with boys and girls or parents and children sharing sleeping accommodation for longer than is tolerable for the community at large. This is permitted under the Home Office regulation of housing requirements and we believe that this is wrong (ECHR Article 8).
- We believe that we do not get the access we need to adapt appropriate housing for those of us who have disabilities or special health needs. We have known people who have the necessary documentation from medical staff and yet wait two years to be told that they are not eligible to be moved despite their situation.
- We believe that it is wrong for individuals and families to be moved without their consent from one house to another without good reason. In Glasgow the recent changes to the housing contract which introduced new housing providers has led to the relocation of about 500 people. In most cases there has been virtually no choice about where individuals and families are moved to. In some cases we are being coerced to move to areas which require our children to change schools and move from areas where we have already begun to put down roots and integrate. In some cases we believe that people have been moved from areas in which they feel safe, to other areas where racism is more of a problem and they no longer feel safe. We believe that this situation undermines our human rights in terms of access to education and the right to Liberty and security (ECHR Articles 5 and 14).
- We believe that our rights to a private life and privacy in life in general are being undermined in many ways. Specifically related to housing we are often subject to inspections of our property, often without appointments and during which our homes are inspected our cupboards looked into etc. We feel that this is unnecessarily intrusive. We feel that we should be entitled to be treated in a similar way to British tenants in terms of being given the courtesy of prior notice of visits and to have our privacy respected some providers are better at this than others but in general Home Office and other staff from housing providers should not assume the right of access to our homes (ECHR Article 8 and ICCPR Article 17).

Financial Support—In general we believe that the fairest way to approach the setting of support levels for asylum claimants would be to ensure that they are linked to the benefit levels of UK citizens with the same basic survival needs. Even where there may be differences in the way this is worked out it should be the same in real terms. We believe that there are a number of other issues which are relevant to our human rights. These are:

- We believe that our right to work is very clearly undermined by the current policy which denies this right to us even though we may have been in the EU and stuck in the asylum system for a number of years. The recent EU directive which grants the right to work to those without an INITIAL decision helps very few people since most are in limbo between the initial and final decisions (ICESCR Articles 6 and 9).
- We believe that it is particularly brutal to deny the right to work to those at the end of the process but who are unable to be returned. We believe that it is surely a breach of these peoples human rights and that in this case they are effectively being forced to choose between going home and placing themselves in danger or being destitute here in the UK. For those without travel documents or a safe route home even this “choice” is not available. We cannot understand how a government who are committed to promoting human rights can believe that it is acceptable to place people in absolute poverty with no status for an indefinite period. We urge the committee to push for this group of people at least to be allowed to work with some form of temporary status similar to Australia and we believe the Netherlands (ICESCR Articles 6, 7, 11 and 9).

- Section Four Support—The waiting times for processing requests for section four support are unacceptable. This breaches the human rights of individuals by forcing them to deal with their destitution by depending on charity or by engaging in illegal activity including working in unregulated and unsafe situations. In extreme cases—such as that which took place in Morecambe bay, this situation can undermine the right to life for those affected. We also believe that having removed the stigmatising and impractical system of vouchers for asylum seekers, generally there is no justification for reintroducing them for those of us forced to rely on section four support. (ICESCR Articles 7, 9 and 11).
- Administration Errors—It is unacceptable for asylum seekers to face temporary destitution for administrative reasons and yet recent research by the Scottish Refugee Council confirms that this is the case. We have experience of individuals and families who have been made destitute for days and in some cases weeks because of faulty entitlement cards, false accusations of failure to report or other delays in processing mainstream benefit claims. The best that people can expect during this period is the issue of emergency vouchers or charity payments. We find it difficult to believe that this situation would be acceptable if it was being experienced by UK citizens entitled to claim benefits we believe that this contravenes our right to equal treatment and that it may even be institutionally racist (ICESCR Articles 9 and 11).
- We believe that the decision to remove the clothing grant from asylum seekers contravenes our economic rights and should be reversed.
- We believe that all individuals in the UK require to eat, have shelter and should be entitled to assistance which will sustain them until they are able to support themselves. This is a tradition at the heart of the British welfare system. We cannot accept that it can be right for people who continue to have these same needs to have different levels of support provided purely because of their immigration status. We ask only for equal treatment which is sustained until the point when we are granted the right to support ourselves or until we leave the UK. (ECHR Article 14 and ICESCR Articles 9 and 11).

2. THE PROVISION OF HEALTHCARE

We are opposed to the proposals to remove access to primary health care from these who may need it even if they are refused asylum seekers. This is true of those who may be at the end of the process and are awaiting removal and is even more of an issue for those who are in this position but who are also deemed to have no safe route home, cannot obtain travel documentation and are therefore not entitled to essential services or able to leave the UK (ECHR Articles 2 and 14 and ICESCR Article 12).

We believe that the health of asylum seekers must be taken into account when their claims are being considered. Specifically we believe that it is an abuse of the right to life to determine that someone may survive the journey to their home country if they are removed against their will if in fact it is clear that sending them back will lead to their death in the longer term. In our experience this happens in cases where necessary medical treatment or the availability of drugs may be available in countries of origin but that the individual has little chance of being able to access this treatment which may be essential to their survival or for the maintenance of a reasonable quality of life (ECHR Articles 2 and 14 and ICESCR Article 12).

We believe that many of the more complex factors affecting the mental health of refused asylum seekers who require support under community care legislation are not being adequately addressed. This is particularly important for those who are ineligible for support under the asylum system and then rely on other sources to support them during vulnerable periods especially those people who may be eligible for Social services financial support when they have been made destitute (ECHR Articles 2 and 14).

Health risks in home countries should be considered especially endemic diseases such as malaria and yellow fever. Our children have no immunity to these illnesses and are very much at risk if returned without adequate medical preparation (ECHR Article 2 and ICCPR Articles 6 and 24).

Some of our members believe that they will not even be placed on the waiting list for particular kinds of treatment eg transplants because they have not yet received a status decision. If this is true we believe that it is an abuse of the right to life. At the very least this issue requires to be clarified urgently (ECHR Articles 2 and 14 and ICESCR Article 12).

The Policy Forum has its own sub group on the rights end experience of asylum seeking and refugee women in relation to health. It also made the observation that the asylum system affected women's health to a greater extent than men's, particularly mental health and many women suffered from depression. Women described the asylum process as "heartbreaking" and "very difficult" (ECHR Articles 2 and 14 and ICCPR Article 3).

"Women who make it through the asylum process should be awarded a medal because it's so difficult and it takes so much endurance. It is more of a burden on women because they worry not only about themselves but also about their families and children."

3. TREATMENT OF CHILDREN

We believe that children suffer a great deal of upset and trauma whilst going through the asylum system. The main points as we see them are listed below.

- Our children have often been victims or witnesses to the abuse of our human rights back home—they are very sensitive to the unfairness of the asylum system and live in fear of being returned (ICCPR Article 24).
- Many have been separated from a parent, brother or sister and live with this in their daily lives this also increases their fear of return.
- Children are often witnesses to very distressing events such as the handcuffing of parents or the detention of other families. This heightens their constant sense of fear and alarm whenever the door is knocked or the bell rung (ICCPR Article 24).
- We are concerned that our children express fear at having to report to Immigration at the Reporting centre. The more recent detentions of families at the Reporting centre itself has made the process of attending the centre even more of an ordeal (ICCPR Article 24).
- We do not think it is acceptable that children are fingerprinted and searched on a regular basis when they report. In our minds and in theirs this is something which is done to criminals and is a constant reminder of the suspicion with which we are treated (ECHR Article 5 and 8 and ICCPR Article 24).
- Our children are badly affected by the deliberate poverty traps which we are placed in. They face daily comparisons with the Scottish community and are unable to interact with them in activities which cost money—this places a lot of stress on families (ICESCR Articles 9 and 11).
- Many women expressed dissatisfaction at the fact that their children were present at lawyers' appointments and Home Office interviews because of a lack of childcare. Officials seem to expect that women can leave their children with friends, but this is not always the case, especially soon after arrival when a woman has yet to make any links:
 “Everything happens so quickly, as soon as you arrive so how can they expect you to have childcare?”
- Women reported that their children were upset or traumatised by sitting in on these interviews:
 “The children have suffered enough from where they came from, they've experienced so much and you come here thinking 'at last they're going to have a childhood' and they can't because they're hearing things and they're being psychologically affected by these things” (ICCPR Article 24).
- Children can neither work or access higher education in the way that British children can. This is discriminatory (ECHR Protocol 1—Article 2 and ICESCR Articles 12 and 13).
- Many children have been born here or lived a long time here. We believe the impact of being removed to a strange country should be considered—for those born here this process is more like being exiled than removed to somewhere you already know (ECHR Protocol 4 Article 4 and ICCPR Article 24).

4. THE USE OF DETENTION AND CONDITIONS OF DETENTION AND METHODS OF REMOVAL OF FAILED ASYLUM SEEKERS:

- The removal process is very traumatic and has many unnecessary elements eg Immigration Officers arriving early in the morning, handcuffing some people and often separating parents from children (ECHR Article 8).
- Our members report an increase in aggression from IND officers including the use of battering rams to break down doors and people being moved by van for long periods to the detention centres and the airports we are currently trying to gather individual evidence of this from individuals and families. We are also very concerned about the claims of degrading treatment in the centres themselves including assaults, racism and lack of support for breastfeeding mothers.
- We are concerned that birth certificates are taken from parents when they are being removed. Although we are told this is for documentation purposes for travel, we are concerned there are no methods in place to ensure these are returned to parents on their arrival in other countries (ICCPR Article 24).
- We believe that there should be automatic review of decision to detain as existed before 1999 when claimants had a right to a court hearing. Detentions should also be time limited and regularly reviewed by the courts as in Australia (ECHR Article 5 and Protocol 7 Article 1).
- The system needs to be made more humane. The fact that people fear removal so much is due to the fact that many of us who have been refused have simply not managed to convince the Home Office that we have a justified claim—this is not the same as conceding that we don't have a justified case. The system is very inflexible and makes it difficult to put together a good case in the first place

when we are very stressed and difficult to introduce new evidence later on. These are the reasons why some people who have been refused would rather take their own life than be returned home to further persecution or death (ECHR Article 13 and ICCPR Article 9).

- Detention is often arbitrary has a serious psychological effect on those who experience it and particularly those who have faced significant persecution in the past. Many of those who are detained are then released and readmitted to the asylum process or allowed to submit a fresh claim—why then were they detained in the first place (ICCPR Article 9).
- We believe that detention should never happen at the reporting centres since this creates a climate of terror amongst our families and children whenever they have to report.
- What little people have is often lost when they are removed. People should be assisted to identify and pack their belongings, leave things with friends and in some way be assisted to move with some dignity.
- The apparent emphasis on the removal of families when many single applicants do not appear to be being removed seems to us to be unfair and discriminatory. Recent public debates and media investigations into the asylum process, and the removal of foreign offenders, suggest that this is a cynical exercise in improving the statistics about the effectiveness of removals in response to short term political priorities (ECHR Article 13 and 14).
- We believe that the committee should examine compassionate issues such as the length of time spent awaiting a decision and the effect this has on adults who have put down roots, young children whose memories of home are now almost non-existent and children born here (ECHR Protocol 4 Article 4).
- For those whose claims have been rejected but yet are unable to return home safely we believe that they must be granted some form of status which allow them to exist and support themselves. Forcing such people into destitution is an affront to the values of British Society (ECHR Articles 13 and 14 and ICESCR Articles 6, 7, 9 and 11).
- The point at which people are detained prior to removal seems almost to be designed to make it difficult for us to contact our lawyers and to make arrangements for our belongings and for our relative's friends and supporters to find us in the detention centres. We believe that the system should be more open and that we should be able to keep our mobile phones, for example (ECHR Articles 5 and 13).
- Families who are released from detention sometimes experience harassment and bullying of their children because communities believe they must have done something wrong. This is another reason why mistakes in the system must never result in detention and potentially removal. If there is any doubt then there should be no detention.
- We cannot accept that there is any justification for the restraint and handcuffing of anyone within the process and that this happens to often at the moment. We do not believe that it should ever happen with children and yet sometimes it does with older male children. It is difficult to believe that proper "risk assessments" are carried out by IND (ICCPR Article 24).
- We believe that immigration staff should never force children to go with them separately from parents. This happens in Glasgow and we believe is in breach of right to family life (ECHR Article 8 and ICCPR Article 24).
- The timing of removals should seek to avoid disrupting children's education eg during exams and ensure that certificates are taken with families when they are removed.
- Health risks in home countries should be considered especially endemic diseases such as malaria and yellow fever. Our children have no immunity to these illnesses and are very much at risk if returned without adequate medical preparation (ECHR Article 2 and ICCPR Articles 6 and 24).
- It is unacceptable that some people are detained when they still have a legal remedy to explore or in some cases when an application for judicial review has been lodged. The IND has a responsibility to ensure that this does not happen (ECHR Article 13 and ICCPR Article 9).
- In general the Home Secretary's aspiration to make detention "the norm" is unacceptable and in breach of the UN convention and all other human rights frameworks. It is used too often and in too many circumstances with some people being detained for as much as two years and other being detained when they arrive in the UK this does not relate to INDs claim that detention is a measure of last resort (ECHR Article 18 and ICCPR Article 9).

5. TREATMENT BY THE MEDIA

The Refugee Policy Forum endorses the Oxfam submission and our members have been involved in its development. We would like to emphasise the following points which affect our safety and security.

- Inaccurate anti asylum seeker stories often have direct consequences for our members who are more likely to be victims of racist attacks when they are published (ICESCR Article 5 and ICCPR Article 9).

- Use of language remains an important issue we welcome the fact that term “bogus asylum seeker” is no longer used very often. We would take the view that the term “failed” asylum seeker should be replaced with the more accurate “refused” asylum seeker.
- We believe that media outlets should recognise their own role in perpetrating human rights abuses or potential abuses. Every pogrom, every genocide depends on convincing the majority community that it is acceptable to persecute the minority. The British media need to be made to confront the extent to which they are part of this and take responsibility. Communicating the truth is all we ask (ICESCR Article 5 and ICCPR Article 9).
- We must congratulate the media outlets who work against this trend as many do.
- Would it be possible to use the Law as it exists in the UK to prosecute media outlets who wilfully misrepresent the issues in ways which cause the human rights of asylum seekers to be breached and force them to confront the direct or indirect consequences of their actions?

ADDITIONAL ISSUES WHICH SIGNIFICANTLY AFFECT THE HUMAN RIGHTS OF ASYLUM SEEKERS

The asylum decision process—As previously stated the RPF believes that the human rights of asylum seekers cannot be separated from the human rights issues in the process of asylum decision making. We believe that our members and their families are regularly denied justice by the asylum system and that this places them in great danger if and when they are returned to their countries of origin. It is for this reason that people will fight with all means at their disposal to remain safe in the UK.

People do not contemplate suicide lightly, families do not take the decision to try to live outside the system lightly. Working illegally, with children who have no rights to education and increasingly healthcare is not something which people submit to unless they believe the alternatives are worse. No assessment of the human rights issues in the asylum process can be said to be complete without consideration of the human rights issues inherent in the asylum decision making process itself. We urge the committee to consult widely on this issue as part of its investigation. In the meantime we would like to raise the following points for consideration—most of these have implications under ECHR Articles 5, 6 and 7.

- The UN convention was not designed to take into account all forms of persecution which exist today eg gender based or non state persecution. There have been many calls to review it but most have come from those who wish to make claiming asylum more difficult for us. If it is to be reviewed it should be to improve the rights of asylum seekers in modern circumstances rather than lowering standards and diminishing their rights (ICCPR Article 5).
- We understand that the Home Office has a duty to help us make our claim effectively and that the process should be a supportive one based on a “helpful and active” dialogue from the outset and not become adversarial until after the initial hearing. We do not accept that it does this. We need to insist that they do, as is the case in the Netherlands and we would urge the select committee to satisfy itself that this it is being done as is envisaged by the UN conventions. (ECHR Articles 2, 3 and 6 and ICCPR Article 2).
- We believe that a balanced and independent system from the beginning, as in Canada, would be a better way to hear our cases and meet international legal standards in terms of delivering fairness and improved decisions free from political interference (ECHR Article 2, 3 and 6).
- There should be an independent and open inquiry into how decisions are made, by whom and based on what information. In particular the quality and accuracy of country reports should be looked at (ECHR Articles 2 and 3).
- An independent body should review initial interview decisions for quality and accuracy. This panel should have the power to refer decisions back if they are clearly unfair in the way they have been taken (ECHR Article 6).
- We ask the committee to call for the incorporation of the UN Convention on the Rights of Child into UK law and consider how this affects children in the asylum system.
- We urge the committee to work with others to defend and improve the independent regulation of UK immigration policy and practice. The key issues relating to this are access and quality of legal advice, providing people with the help they need to make a credible claim based on the facts of their case, the maintenance of effective rights of appeal with a minimum of two levels. We also believe that other UK immigration laws such as the Immigration Act 1971 (ECHR Article 6 and ICCPR Article 2).

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- We urge the committee to investigate the nature of legal advice and the realities of access to it. The committee should challenge it where it is poor and work with those who wish to improve it. This should include encouraging people to complain to the OISC or the Law Society. Specific recommendations based on the experiences of our members are as follows: >
 - Lawyers should have more time to prepare case—tight time restrictions cause mistakes to be made.
 - Lawyers should be able to attend initial interviews and advocate for those making a claim.
 - All communication interpreting and translation needs should be met more effectively than at present.
 - More reasonable proposals for the submission of fresh evidence at key stages in the process should be developed—if there are good reasons for not considering this at an earlier stage.
 - There should be easier access to legal aid to allow proper consideration at ALL stages of the process (ECHR Article 6 and ICCPR Article 2).
 - The system should have a compassionate dimension for those who have been stuck in it for a long time. Some form of status should be granted automatically after an agreed period. Refugees and asylum seekers should be involved in deciding what this time limit should be.
 - There is a need for a broader interpretation of the UN Convention to take account of the needs of women. This should involve human rights organisations together with UNHCR and the legal profession (ECHR Article 14 and ICCPR Article 3).
 - There should be an open and transparent review of the implementation and impact of UNHCR, Home Office and immigration Appellant Authority gender guidelines—this should involve asylum seeking women themselves. This should build on the work currently being undertaken by Asylum Aid (ICESCR Article 3).
 - The Home Office need to create a safe environment for women to disclose sensitive issues eg sexual violence (ECHR Article 14, ICESCR Article 3 and ICCPR Article 3).
 - The right to make a claim is undermined by the existence of a list of so-called “safe countries” we urge the committee to argue that all cases are treated on their merits (ECHR Articles 3, 5, 6 and 14 and ICCPR article 5) and that there should be no list of so called “white list” countries.
 - We believe that the system should make more effective use of UNHCR guidelines to improve the quality of decisions eg on decisions or detention.
 - We believe in the accreditation of asylum caseworkers to UNHCR standards. Without this standards cannot be acceptably maintained (Article 13).
 - We recognise that the New Asylum Model might resolve some of these problems but we also believe that it introduces new difficulties for people getting into “segments” of the process where they will receive a fair hearing. We urge the committee to monitor the implementation of NAM and work with groups representing refugees and asylum seekers to do this. Again we urge the committee to consult RCOs about their views about the system as it is currently being proposed.
 - Many of us will not be helped by the new asylum model because our cases were determined by the existing system. We would argue that the radical changes in the NAM are themselves an admission of the flaws in the existing system. We therefore call on outstanding cases to be reviewed with a view to checking them for access to real justice prior to any further removals.

GENERAL PROPOSALS

- The committee should consider identifying the best aspects of asylum systems from around the world to inform its understanding of the human rights impact of the process on individuals and families.

72. Memorandum from Karibu

1. ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

Some key points:

- The issue of destitution in Scotland has mostly affected single people.
- Living on 70% of income support and the reduction of the support for children (aged 16) and the education maintenance allowance forces families into poverty. In our experience it is cheaper to look after the 5 years old than a 16 years old.
- I know they are asylum children but they also want to look like other teenagers and a lack of adequate financial support prevents this.

- Unnecessary disruption of support provision which is not explained in advance.
- Forced dispersal with new NASS contract for who have been already settled in their areas and see no reason for moving which causes disruption.
- In Scotland there is a problem of accommodating large families and overcrowding—boys and girls are being forced to share a room even when they are old enough not to share the bedroom.

2. THE PROVISION OF HEALTHCARE

Some key points:

- Some GP don't want to take on asylum seekers, why?
- Provision of health care should be free for all irrespective of status.
- Better interpretation services for non English speakers.
- Mental health issues in relation to asylum which remain undiagnosed and untreated.
- The challenge of HIV/AIDS and limited work being done in this areas in Glasgow.

3. TREATMENT OF CHILDREN

Some key points:

- Discrimination in access to nursery placement for asylum seekers children because the priority for local nursery places is for local people and recognised refugees. The impact of that on the mother/parent/guardian. The child misses out on early learning issues and subsequently, encounters problems when they start schools.
- Support to 16 years and over who still go to school and need school uniforms. They are not entitled to free school meals but the parents are prohibited to work.
- We know that support is reduced for all 16 years old but the local 16 years old have the rights to work and they also have access the education maintenance allowance. Why not our children?
- Prohibition of access to full time professional courses at Colleges and University education.
- The requirement for children to report at immigration centre is very traumatic and it has devastating effects on children's education and well being.

4. THE USE OF DETENTION AND CONDITIONS OF DETENTION AND METHODS OF REMOVAL OF FAILED ASYLUM SEEKERS

- People who are detained at the reporting centre never get the chance to pack their belongings.
- Even those who are detained at home the restriction for them to do their own packing is extreme even if it is for safety reasons. For example, one woman was not allowed to pick her own underwear.
- The separation of the children from the parents even when the children are very young.
- The handcuffing of parent or big children has an impact on children.
- The perceived relationship between handcuff and criminals.
- The absence of proper medical care while in detention.
- The role of the police at the point of removal contradicts their role in the community as promoters of peace and problem solvers.
- Injury as result of people resisting removal and immigration officers beating people to force them. Eg A woman was removed to France after being beaten so badly and France refused to take her as a result of her bad condition.
- A Kenyan woman who died as result of pain the process of removal.
- Untold suicide cases and hunger strikes in detention.
- Specified meal times in removal centres are convenient for children who are not used to routine meal times.
- Breastfeeding mothers are not given milk and are told to drink water.
- The Immigration Service rules state that families should not be detained beyond a certain period but we know of cases where they have been detained for months and longer for example, the Ayr Family case.

5. TREATMENT BY THE MEDIA

- The media portrayal of asylum fuels racial tensions and exacerbates racial harassment. Each time there is a bad article on asylum and immigration someone is bound to be attacked on the street.
- The media have to be stopped their use of the term “illegal asylum seeker”. In the UN Convention terms there is no illegal asylum seeker term.

73. Memorandum from UNHCR

The United Nations High Commissioner for Refugees is mandated to provide international protection to refugees and facilitate solutions to their plight. This responsibility includes that of supervising, in cooperation with States, the application of the 1951 Refugee Convention.

Signatories to the 1951 Refugee Convention, which include the United Kingdom, have specific responsibility to protect people forced by a well-founded fear of persecution to flee their countries and seek asylum. A commitment to this Convention was reaffirmed by States, in their adopting the 1967 Protocol relating to the status of refugees. These instruments remain the cornerstone of the international refugee protection regime.

It is within this context that the United Nations High Commissioner for Refugees welcomes the Joint Committee on Human Rights inquiry into the treatment of asylum seekers and would like to respond specifically to the “Treatment by the media” element of this inquiry.

SUMMARY

The United Kingdom’s responsibility to protect refugees must extend to those people who have applied for asylum and are awaiting a decision.

Asylum seekers in the UK have been subjected to particularly hostile reporting in recent years by some sections of the UK press. It is the view of the UN High Commissioner for Refugees that the negative effects of this tone of reporting have not been tempered by enough substantive reports on conditions in countries of origin behind the claims of persecution and war, or stories highlighting the individual asylum claimants and their reasons for fleeing abroad.

Guidance from authorities such as the Press Complaints Commission needs to be enhanced and expanded to take into account the shift in the misuse of terminology, in particular, towards a conflation of issues in regard to migration and refugee movements, as well as media reports that equate asylum seeking with terrorism suspects.

TREATMENT OF ASYLUM SEEKERS BY THE MEDIA—INTOLERANCE AND INDIFFERENCE

Refugees are victims of intolerance, virtually, by definition: it is most frequently political, social, religious or ethnic intolerance that forces them to leave their own countries for fear of persecution. Unfortunately, they are increasingly victims of intolerance in host countries as well, including the United Kingdom.

In recent years, a number of asylum seekers and refugees have been targeted and killed despite having expressed escaped persecution for the safety of industrialized democracies like the United Kingdom. And for each one who is murdered, hundreds are assaulted and thousands are verbally abused. Some of the murders and most savage assaults are covered by the media. Some are barely noticed. The rest of the physical and verbal abuse tends not to register on the general public. Sometimes intolerance manifests itself as simple indifference to the plight of others.

In the United Kingdom, asylum seekers—and the refugees among them—have increasingly become tools for politicians, or have been turned into mere statistics by the popular press. Asylum seekers are easy to demonize. They are foreign, so an attractive target for those who are suspicious of, or actively dislike, foreigners or minorities with foreign origins. Asylum seekers are not a “race”, nor do they belong to a single religion. As a result, they are not protected by race-relations laws. Indeed asylum seekers have become victims of hatred by the very act of claiming asylum.

UN High Commissioner for Refugees, Antonio Guterres noted earlier this year in regard to the trial of British National Party Chairman, Nick Griffin, “It is chilling to read that a European politician, albeit one from a minor party, was recently in court for—among other grotesque statements—describing asylum seekers as ‘cockroaches’”.

The UN Refugee Agency observes that so-called abuses of the asylum system have been a hot topic in the UK for a number of years but that abuse of asylum seekers has not. The EU, the Council of Europe and the UN have, between them, assembled an impressive array of bodies devoted to researching and making recommendations about how to deal with the wider issues of racism and xenophobia. But these discussions have been drowned out by other political debates—border controls against terrorism, the failure to manage integration in some multicultural societies, and freedom of speech versus respect of religions.

The asylum debate in many industrialised countries is essentially a public debate, with politicians responding to what they perceive to be the mood of their electorates. The numbers of both of refugees and asylum seekers are at their lowest levels for 13 years. In the view of the UNHCR, the UK now has the time and the space to take a more rational approach to the management of asylum, and to make a concerted effort to dispel some of the hysteria surrounding the issue.

The immediate causes of refugee flows are readily identifiable: serious human rights violations, persecution, violent political, ethnic or religious conflict, or international armed conflict. However, these causes often overlap with, or may themselves be provoked or aggravated by, such factors as economic marginalization and poverty, massive unemployment, environmental degradation, population pressure and poor governance. This complexity must not be allowed to confuse the issue, however. Conflation of issues of voluntary economic migration—in the main part resistance to it—with issues surrounding forced migration by the sections of the media is irresponsible.

In international and national law, distinctions are made between refugees, asylum seekers, legal and illegal economic migrants, minority citizens, travellers and others. These distinctions are all too easily lost by the media, and most particularly in the tabloid press.

Attempts to dehumanize asylum seekers—presenting them as menacing statistics, as criminals and bringers of disease, or as some other form of generalised abstract aberration that is easy to hate—continue, despite a lessening in frequency since the well-documented most vitriolic reporting in 2003. There are numerous examples of this highlighted in UNHCR’s Refugees magazine Number 142 “*Victims of Intolerance*”. History tells us that fomenting hatred of foreigners is a dangerous path for any society to follow. At the far end of that path lie the horrors that create refugees in the first place.

The Press Complaints Commission’s guidance [<http://www.pcc.org.uk/news/index.html?article=OTE>] on the issue of misuse of terminology in relation to asylum has been a mixed success.

While the introduction on PCC guidance was welcomed, the guidance needs strengthening and should take account of new shifts in media misrepresentation: recent months have seen some media outlets merge or confuse stories relating to economic migration and forced population movements. Articles on asylum regularly appear alongside reports on economic migration. Editorial concerns are expressed almost in the same breath. Indeed it is common to see reports on “the coming influx” of EU accession state economic migrants alongside articles about refugees and asylum seekers—often with one as an inset of the other.

This intertwining of refugees, who flee as a result of conflict or persecution, with voluntary population movements due to migration, presents a serious challenge to the protection of refugees when the host country population here in the UK does not grasp the very real elements of persecution that force people around the world to flee into exile.

Rather than bow to populist opinion, the UK’s media outlets must hold fast to universal values and principles like the need to protect those in need of international protection. It is the view of the UN Refugee Agency that tolerance is not the mark of any specific civilization, but of civilization itself.

RECOMMENDATIONS

1. *Strengthen PCC guidance*

The UN Refugee agency welcomed the Press Complaints Commission’s publication in 2003 of guidance on the reporting of asylum and refugee issues. UNHCR believes that the publication of the PCC guidance was a valuable step in reminding editors of their responsibility to report stories accurately.

UNHCR has continued to express its grave concern that the UK’s tabloid press continues to publish inaccurate and misleading stories which are a danger to good community relations. UNHCR’s concerns that incorrect and alarmist reporting propagates an atmosphere of fear and hostility towards foreigners, including asylum seekers and refugees, remain despite the PCC’s guidance.

Hostile and alarmist media coverage of asylum and refugees undermines the lives of those who have had to flee persecution, usually from countries where there is no free press, rather than inform any legitimate public debate on these issues.

UNHCR recommends that the PCC’s guidance be reissued with an accompanying media campaign to boost awareness amongst the press. Furthermore, UNHCR advises strongly that the language of the PCC guidance be made more robust and wide-ranging to take into account recently emerging patterns in press coverage such as the conflation of asylum, migration and terror issues.

2. *A more balanced political voice*

The Government and Parliamentarians must take all reasonable steps to ensure that asylum issues are presented in a balanced way with accurate and responsible use of statistics. UNHCR naturally acknowledges the right of the state to control its borders and is also concerned about abuse of the asylum system. It should be a source of gratification and pride that Britain provides refuge to people fleeing

persecution. It is the view of UNHCR that media reports and comments concerning irregular migration need to be balanced by a declaration of the number of people fleeing persecution and war that Britain has given protection by offering them refuge.

3. *More-in depth analysis and context—country of origin and refugee voices*

It is the view of UNHCR that media should focus greater attention on conditions in the countries generating asylum seekers and commit to increasing the use of refugees' own voices in reporting.

4. *Attention to gender and age*

Media must reflect the diverse needs and situations of asylum seekers and refugees, young and old, male and female. Too often, representations of asylum seekers are of young men failing to take into account the situation of women and children who are often unaccompanied. Frequently, asylum seekers and refugees are reluctant to share their stories with journalists because of a fear of reprisals in their countries of origin, or because the prevailing negative coverage and public hostility makes them reluctant to do so. But media outlets can find ways to report on these groups without endangering their security. Around a quarter of asylum seekers are female. Most of their stories go unreported in the UK media.

5. Establishment of an awards scheme to recognise good practice

UNHCR recommends that the Government, possibly working in conjunction with bodies like the Local Government Association, establish an awards scheme to highlight good practice amongst the regional and local press in its coverage of refugee and asylum issues. Mayor Ken Livingstone's London's London Press Awards scheme is one such effort to recognise good practice in coverage of refugee and asylum issues by the local, regional, faith and Black, Asian and minority ethnic newspapers based in London. It is the view of the UN Refugee Agency that it may serve as a model for an expanded initiative.

Regional and local media outlets are highly influential and often well-disposed to reporting in more sympathy on refugees and asylum seekers. It is also useful for these outlets to provide coverage for their readers on the situations and events in foreign lands that force people to flee their homes and surrender their possessions in order to flee for their lives. The UN Refugee Agency believes that such coverage and an awards scheme would boost support also for initiatives like the Gateway Protection Programme, the Home Office's resettlement scheme which, since 2004, has brought some 500 refugees to the UK.

The UN Refugee Agency wishes to thank the Joint Committee on Human Rights for seeking its views and remains available to provide further clarifications and comment, as may be necessary.

Bemma Donkoh

Representative to the United Kingdom

74. Memorandum from Save the Children

Save the Children fights for vulnerable children in the UK and around the world who suffer from poverty, disease, injustice and violence. We work with them to find lifelong answers to the problems they face.

1. INTRODUCTION

Save the Children welcomes the Joint Committee on Human Rights' inquiry and its scope. This submission is based on our direct work with both separated asylum seeking children and young people and children and young people in families of asylum seekers in the UK.

Save the Children argues that detention of asylum seeking children in families is overused, unnecessary and violates a number of international and domestic commitments to protect the rights and welfare of all children in the UK. A report⁵¹⁴ addressing this issue is being submitted under separate cover by the *No Place for a Child* coalition, of which Save the Children is a founding member.

Key recommendations

- The UK government should withdraw its reservation to article 22 of the UN Convention on the Rights of the Child (UNCRC), which goes against the object and purpose of the Convention.

⁵¹⁴ "Alternatives to immigration detention of families and children." A discussion paper by John Bercow MP, Lord Dubs and Evan Harris MP for the All Party Parliamentary Groups on Children and Refugees. Supported by the No Place for a Child Coalition. July 2006.

- The government should address the particular situation of children in the reform of the immigration and asylum system to bring it into line with the principles and provisions of the UNCRC as detailed specifically throughout this document.
- We urge the JCHR to investigate the compliance of the draft Unaccompanied Asylum Seeking Children (UASC) Reform Programme with the Human Rights Act, the UNCRC and other international human rights instruments.

2. TREATMENT OF CHILDREN

Reservation relating to immigration and citizenship to the Convention on the Rights of the Child

Despite calls to do so by the UN Committee on the Rights of the Child in 1995 and 2002 and the JCHR, there has been no progress on removing the general reservation to the UNCRC relating to immigration and citizenship.

On a number of occasions government ministers have confirmed they have no plans to remove the reservation.⁵¹⁵

The UK government should remove the general reservation to the UNCRC on immigration and citizenship, which goes against the object and purpose of the UNCRC.

Non-child centred asylum system

In October 2002, the Committee on the Rights of the Child recommended that the UK government “Address the particular situation of children in the ongoing reform of the immigration and asylum system to bring it into line with the principles and provisions of the Convention.”⁵¹⁶

However, despite the government’s commitment to honor the spirit of the UNCRC in relation to the standards of care and treatment available to asylum-seeking children⁵¹⁷, reforms to the asylum system do not consider the impact on children and continue to move it away from the principles and provisions of the UNCRC.

*Save the Children supports the Council of Europe’s Human Rights Commissioner’s call for a review of asylum laws to make them compliant with the UNCRC.*⁵¹⁸

Punishing children who arrive undocumented

An area of great concern for us is the effect that section 2 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004⁵¹⁹ could have on children. Guidance on section 2 provides little detail on the treatment of children and procedures mainly rely on Police and Criminal Evidence Act codes of practice, which were never developed to address the specific needs of children seeking asylum.

Concerns with section 2 have been expressed by the Council of Europe’s Human Rights Commissioner⁵²⁰ and the European Commission against Racism and Intolerance (ECRI).⁵²¹

If fully implemented, section 2 could result in a number of adverse outcomes for children: parents could be imprisoned and separated from their children, parents and children could be placed in detention together, or non-documented separated children could receive a custodial sentence.⁵²²

Section 2 should not be applied to separated children or families seeking asylum.

⁵¹⁵ eg in a debate on the UNCRC in October 2005, the Minister, Baroness Crawley, said: “. . . in regard to the reservation on asylum seeking children we believe that we honour the spirit of the Convention in relation to the standards of care and treatment available to children in the UK. Including asylum-seeking children. But we have no plans, as yet, to review our decision to maintain our reservation in respect of those immigration matters.”

⁵¹⁶ UN Committee on the Rights of the Child (2002) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, Paragraph 47.

⁵¹⁷ House of Lords Hansard 19 October 2005. Column 747.

⁵¹⁸ “The Rights of the Child—present challenges” Presentation by Thomas Hammarberg, the Council of Europe’s Human Rights Commissioner. Third Intergovernmental conference on making Europe and Asia fit for children. 19 June 2006.

⁵¹⁹ This Act introduced an offence of entering the UK without a passport, carrying a maximum two year custodial sentence.

⁵²⁰ Council of Europe (2005) *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom 4–12 November 2004 for the attention of the Committee of Ministers and the Parliamentary Assembly.*

⁵²¹ European Commission against Racism and Intolerance (2005) *Third Report on the United Kingdom*, Council of Europe.

⁵²² For more details on the overuse of detention and its negative effects on children, please see “*Alternatives to immigration detention of families and children.*” A discussion paper by John Berrow MP, Lord Dubs and Evan Harris MP for the All Party Parliamentary Groups on Children and Refugees. Supported by the No Place for a Child Coalition. July 2006.

Differential treatment of children from “White List” countries

UNHCR, Save the Children and the other members of the Separated Children in Europe Programme are concerned about the use of “white lists” of countries, where it is assumed that children (and adults) coming from these countries will have an asylum claim that is “clearly unfounded”. Due to this assumption, children from these countries are given a less substantive interview and less consideration is given to the child’s particular circumstances. Save the Children is concerned that this system could lead to some children not having a valid asylum claim recognised, especially as there is a lack of awareness of, and training in, child specific forms of persecution.

Concern about the use of “White List” countries has also been raised by the European Commission against Racism and Intolerance (ECRI)⁵²³ and by the Independent Race Monitor.⁵²⁴

Children seeking asylum should not be treated under “White List” procedures.

Local authority care for UASC following Hillingdon⁵²⁵

A 2005 Save the Children study found that some local authorities were not able to allocate all children and young people with a social worker and that the quality of accommodation and support, provided by some private semi-independent accommodation service deliverers, was not always adequate.⁵²⁶

Many local authorities reported concerns about a lack of resources, the quality of leaving care provision that they could provide, insufficient numbers of personal advisers, and “extreme difficulties in providing support to 18-year-olds who have outstanding immigration issues”.⁵²⁷

Local authorities also reported many barriers to fully implementing Local Authority Circular (2003) 13 and the Hillingdon judgement. These included: Insufficient DfES leaving care grants; Home Office grant levels being too low and based on the age of the children rather than their needs; a child’s immigration status taking precedence over entitlements under children’s legislation in “end of line” cases; and staffing issues— inadequate staff numbers, lack of training for staff members, and misconceptions among staff about asylum-seeking children.

Case studies 4, 5 and 6 (in Annex 1) clearly demonstrate how levels of support have a detrimental affect on the lives of vulnerable children.

Adequate levels of funding should be available to local authorities for the care of UASC and the quality of service provision should be monitored.

Access to good quality legal advice

Both the New Asylum Model (“NAM”) and the UASC Reform Programme will result in children seeking asylum being dispersed to areas where there is an inadequate provision of legal advice.

Save the Children is already concerned that the current low levels of specialist legal advice, coupled with a total lack of independent advocacy for separated children, results in poor quality decision-making in relation to children’s asylum claims. These reforms will exacerbate this problem unless the government ensures that at the same time there is adequate funding for legal advice for asylum seeking children.

Availability of good quality legal advice should be ensured in all government reform initiatives.

Age disputes and age assessment

In 2005, age disputed cases continued to be on the increase despite younger and younger children claiming asylum. The onus is placed on the age disputed child to prove that they are under-18.

Age disputed children are treated as adults (in violation of article 22 of the UNCRC), which means that they do not receive adequate support and can be placed in detention with adults (in breach article 37 of the UNCRC), therefore putting children at risk.

According to the Refugee Council, in 2005, 60% of age disputed cases at Oakington Immigration Removal Centre were found to be children following age assessments by social services. In some months of 2005, 91% of age-disputed cases were eventually found to be children.

Immigration officers should be provided with improved training and guidance on age assessment and the stated government policy of giving children the benefit of the doubt should be implemented.⁵²⁸

⁵²³ European Commission against Racism and Intolerance (2005) Third report on the United Kingdom.

⁵²⁴ Annual Report 2004–05, Independent Race Monitor Mary Coussey, 5 July 2005.

⁵²⁵ The Hillingdon Judgement ruled that UASC are entitled to the same leaving care support as citizen children.

⁵²⁶ Save the Children UK (2005) Local Authority Support to Unaccompanied Asylum-Seeking Young People. Changes since the Hillingdon Judgement.

⁵²⁷ *ibid*, p 6.

⁵²⁸ Immigration and Nationality Directorate (30 August 2005) Disputed age cases (third edition).

An independent age assessment dispute panel should be established, comprised of social workers, experienced paediatricians and other relevant professionals.

Recent thinking in the Immigration and Nationality Directorate (IND) suggests a move towards the introduction of a blanket age assessment for all UASC. Such a practice would mean *de facto* disputing the age of all UASC. As well as being an expensive practice, it would also increase the mistrust that children have in the asylum system.

Cases 1, 2 and 3 (in Annex 1) give the child's perspective of age-assessment, illustrating the trauma and distress that age disputing can have on children and young people.

Forced returns of separated children

Save the Children is very concerned that IND is looking at how it can remove children who have not been given discretionary leave. It is planning to introduce a pilot scheme of forced returns for separated children to countries like Vietnam, Albania, Angola and the Democratic Republic of Congo.

We are extremely concerned about the assumptions the returns programme is based on; the envisaged systems for its implementation; and the capacity of the target countries to provide the care and protection these children will need:

- The best interest of the child principle (article 3 of the UNCRC) will be ignored in decisions to return—the draft policy framework explicitly states: “There are likely to be occasions when IND takes a decision to remove a child/young person which is not in accordance with the best interests of the child but is necessary for immigration control”.
- There is no solid basis for agencies with a duty to safeguard and promote the welfare of children under section 11 (1) of the Children's Act (2004) to make the decision to return. The final decision on the return of separated children sits with the Home Office, which is exempt from section 11.
- In the absence of a guardian or independent advocate (see below) the child's views and best interests will not be adequately considered in the decision-making process.
- The proposed inter-agency planning meetings (IAPMs), whose recommendations will form the basis of the decision to return, do not allow for the in-country situation to which a child will be returned to be adequately known and scrutinised.
- The quality of safeguarding and care arrangements in the locality to which the child will be returned will also not be considered at the proposed IAPMs. This could mean that a child is returned to a country without a functioning child welfare system or arrive without adequate arrangements being in place.

A returns programme should only be considered if our recommendations for a child-centred asylum system are implemented and:

- *The best interests of the child is at the heart of the programme.*
- *A system of guardianship or independent advocates is in place to ensure the child's voice is taken into account in the decision-making process.*
- *An anti-trafficking action plan is in place to minimise the risk of re-trafficking for returned children.*⁵²⁹
- *Priority is given to the use of non-institutional forms of care in the countries of return.*

In the long term the UK government should start starting to tackle the root causes of the migration of separated children and encourage and financially support child welfare reforms in those countries where it wants to return children.

Access to education

In 2002, the Committee on the Rights of the Child recommended that the UK government ensure that asylum-seeking children have access to education,⁵³⁰ yet through our work with displaced children we are aware that asylum seeking children are still not have their right to education realised under articles 28 and 29 of the UNCRC.

Specifically, asylum seeking young people who want to go on to Higher Education are categorised as Foreign Students for the purpose of fees and asylum seeking children in England and Wales are not entitled to Educational Maintenance Allowances.

Case studies 7–10 (in annex 1) highlight the issues of access to education experienced by young people in our Brighter Futures project.

⁵²⁹ It is very disconcerting that the profile of children considered for the returns to Vietnam programme is similar to the profile of many victims of trafficking: between 12 and 15 years old and female.

⁵³⁰ UN Committee on the Rights of the Child (2002) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, Paragraph 48(b).

Training should be available to staff in education institutions so they can address the specific needs of asylum seeking children; career and educational advice should be improved; and more financial support should be available to children and young people wishing to stay on in further and higher education.

Save the Children in Scotland has anecdotal evidence that citizen families are prioritized over asylum seeking families in the allocation of free places at council nurseries for three and four year-olds despite Scottish Executive's policy stating that: "Free pre-school education is provided regardless of a child's status, citizenship or ethnic background provided the child is residing in Scotland".⁵³¹

Young asylum seeking children in Scotland should have the same opportunities for play and informal learning as citizen children as is stated in Scottish Executive policy.

3. ACCESS TO ACCOMMODATION AND FINANCIAL SUPPORT

Poor financial support and uprooting families for administrative purposes

Save the Children UK remains concerned that asylum-seeking families continue to receive much less financial support than other destitute citizen families. The average adult rate of benefit for asylum seekers remains at only 70% of that given to non-asylum-seeking adult claimants.

Additionally, regulations which came into force in June 2004 scrapped Single Additional Payments, which allowed asylum seekers to apply for a one off payment of £50 every six months for essential "living needs".⁵³² Asylum seeking families have been forced to rely on benefits since the right to work⁵³³ was removed in July 2003. In October 2002, the Committee on the Rights of the Child recommended that the UK government ensure that there is "no discrimination in benefit entitlements for asylum-seeking families which could affect children."⁵³⁴

Save the Children also has anecdotal evidence of local authorities discriminating against asylum-seeking children in terms of the financial support they receive as demonstrated in case study 4 (in Annex 1).

The government should not discriminate against asylum-seeking families by providing them with lower benefits, whilst at the same time denying them the right to work.

We have anecdotal evidence in England, Wales and Scotland that families are being moved into accommodation in response to the new private provider contractors. They are being uprooted from schools and childcare services which has a negative impact on their care, support and educational needs. We also have anecdotal evidence of poor quality accommodation provided by these private contractors.

Decisions to move asylum-seeking families should be based on the best interests of the child rather than cost and it should be ensured that accommodation provided by private contractors are of an adequate standard.

Destitution policies affecting children and young people

In recent years the UK government has passed legislation that removes entitlement to financial support and accommodation to particular groups of people, at the end of the asylum process, to "encourage" them to leave the country.

Schedule 3 to the Nationality, Immigration and Asylum Act 2002 has received little public and media attention, but has the potential to have a devastating effect on one of the most vulnerable groups—young people who have turned 18.

It puts a number of separated children who turn 18 and whose asylum application has been turned down in the category of people unlawfully in the country, denying them leaving care support and most basic types of support available to asylum seekers. Although the Home Office is aware of the devastating effect of Schedule 3 it hasn't agreed to alternative options.

We are expecting the Home Office to allow this group to access support similar to the so-called "hard case" support under Section 4(1) of the Immigration and Asylum Act 2002. However, this would be inadequate support for care leavers, who have been formerly looked after under section 20 of the Children Act (1989), particularly given the length of time they may have to spend in the UK due to factors which are out of their control.

The Government should not use destitution to coerce vulnerable young people to leave the country.

⁵³¹ Robert Brown Deputy Minister for Education & Young People S2W-25281 4.05.06.

⁵³² Regulation 4 of the Asylum Support (Amendment) (N 2) Regulations 2004.

⁵³³ For those who had in been in the country for more than six months.

⁵³⁴ UN Committee on the Rights of the Child (2002) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, Paragraph 48(b).

UASC Reform Programme

Save the Children is very concerned by comments in the preliminary UASC Reform Consultation that it does not make sense to spend public money on discharging duties under child welfare legislation to people who “should not be in the UK”.

We urge the JCHR to investigate the compliance of the draft UASC Reform Programme with the Human Rights Act, the UNCRC and other international human rights instruments.

Munira Hassam
Public Affairs Officer
Save the Children

Annex 1

BRIGHTER FUTURES

Submission for Joint Committee on Human Rights Inquiry into Treatment of Asylum Seekers

BACKGROUND

Brighter Futures is a network of young refugees and asylum seekers aged 15–21, who want to improve the lives of other young people in similar situations by giving them a voice. Groups of young people meet weekly in the Tees Valley, Manchester and London to:

- Discuss issues chosen by the young people.
- Plan activities.
- Socialise.
- Support each other.
- Collectively campaign.

The groups are supported and co-ordinated by staff from Save the Children’s England programme.

The case studies below have been written by members of Brighter Futures who wanted to share experiences and difficulties they have experienced as children and young people in the asylum system with the Joint Committee on Human Rights.

CASE 1

Age Dispute

My name is Sally, I am 18 years old from Liberia. When I came to the UK and I sought asylum, my age was disputed.. A lady looked at me and decided that I was 18 or 19 years old, yet I had three months to my 17th birthday. As a result I had difficulties on how to cope with life in the UK. I was affected because I didn’t have proper support [from social services] and was treated like an adult. I was given a place to live with older people, no proper food to eat: they only fried chips which were our daily meal and they gave us £5 a week. I was suffering as I didn’t have anyone my age to talk to and there was no one to help me. So now that I have the opportunity to express myself, I want the government to put a stop to age disputing so that other young people cannot suffer the way I did. Because such an experience really affects young people who are coming in the UK to live safe lives.

CASE 2

Age Assessment

I came from Sierra Leone and my port of entry was Heathrow airport, where I sought asylum but I was detained by two immigration officers. The reason they detained me was, they didn’t believe me when I told them that I was 16 years old, so they decided to call a doctor to examine my teeth, for an age assessment. After they finished examining me, they found that I was actually 16 years old. I really felt bad about the whole situation because I was expecting that they would treat me in good manner but they ended up treating me like an animal. Is it because am a refugee and I came to seek refuge in their country!

I don’t like the way they treat refugees in the UK and I think they need to start treating us with respect and care. I think they need to welcome any refugees and start treating everyone equally with respect and stop treating us like we are nothing.

CASE 3

Age dispute

My name is Bosco. I was originally born in Rwanda. I came in UK in 2003 after conflict in my country. Things could have been much better had I not had age dispute. At the time I arrived I was 17 years of age with my brother age nine. The immigration officials looked in my face and presumed I was over 18 years old after all I didn't have any documentation to prove my date of birth. They called a senior social worker to witness. She asked me some questions about my education and after that she wrote that she doesn't believe I am the real age I am claiming to be. After that I was taken to live in a hotel with adults under NASS support where I stayed for three weeks. At NASS, the welfare officer approached me and my brother and we had some discussion, then she sent us to Hillingdon social services. The social services agreed with my age without any question. So I was put under care of social services. Looking at immigration, my age was still a problem to them regardless social services accepting my age. At college my welfare officer referred me to a specialist at Ealing hospital to assess my age. The specialist doctor agreed with the year I was born, 1986, which means I was 17 at the time. I went to court and the judge had no hesitation that I was the age I claimed when I first arrived at the airport. But having other issues in my case still I got refusal from the court. It could only take one day to make a difference in my life had the immigration officials agreed with my age. For the reason I could have been given exceptional leave to remain in the UK till I was 18yrs but that didn't happen with age dispute.

CASE 4

Transition at 18 and financial support

My name is Christiana; I am 18 years old and a Liberian. When I turned 18 I was taken in by social services who I feel treated me differently from other young people. For example they gave me £32.50 a week for living expenses while other young asylum seekers that we shared the same accommodation with received £60 and £65 per week! The social services also gave them different accommodation and bought them the necessities that they needed to furnish their places. I was given accommodation with no furniture it only had carpets and I was expected to use the £32.50 to buy a bed, cooking equipment, a cooker, fridge plus pay for my other living expenses! Why do the social services give no reason for giving young asylum seekers different amounts?

CASE 5

Quality of services

Ever since I came into this country they insisted that that I was under 16 and I insisted in telling them my real age was exactly 16. I was taken to Hounslow borough where I got assessed on my age again and in this council the person who assessed me said that I was 15 instead of 16. I had to confirm her as well that I was really 16, not until when she called another person to look at me as if I was telling lies to be 16.

After making a decision I was taken to a house in Harrow borough. This house had two key workers. I found three other girls who they were looking after and I was allocated a room and a social worker who came the next day and was a Nigerian man.

The social worker of mine was really horrible. I used to tell him what my problems were and went on raising my hopes that he will be doing everything possible.

One day I told him about a school trip and he promised to pay for it. Then the next meeting when I asked him about it he again said he would pay for it in the next meeting, this went on until I missed my trip. I started realising that it wasn't my right to receive such money. I didn't know my rights, or where to complain from as I couldn't remember my way back to Hounslow Council to tell the lady who said I should call them in case of problems. My social worker also discussed my case with my key workers without my consent and that really hurt me.

I have a permanent disability resulting from a broken leg. I told the social worker that the bed I was sleeping on was causing me pain if it was possible to replace it. The social worker said that that was all they had and that I should count myself lucky, other asylum seekers sleep on the floor so I should thank God for the bad bed!

When my leg got worse the doctor ask me where I lived with and I poured my problems to him. He helped my situation and I got another social worker and I moved accommodation. I was so happy when they changed my old social worker and key workers. Now I have my [refugee] status. I really appreciate everything they have done for me since changing my social worker and key workers and I now see where my future is.

CASE STUDY 6

Accommodation problems—Transition at 18

When I came here I was 17, I was under social services care. I came here on my own. The problem that I faced first was when I turned 18 years of age; I had a big problem of accommodation. Social service who were paying for my rent send me a letter saying that I have to leave my accommodation because I have turned 18, the big problem here was no one called me from social service to discuss about that so I had no warning. The next step I did is that I took that letter to my solicitor. It was very urgent for me to do that because the letter was sent to me on Monday and they were telling me to leave on a Friday. This made me feel very confused and worried a lot not knowing what to do. My solicitor tried to solve that problem and since then I'm quite ok with the rest of my stuff.

CASE 7

Education

I am a girl and I came from Iran. I am 17 years old. Since 2005 when I came to this country I had a big problem about my language, and because of that I couldn't do anything. I remember I went to the school, but they didn't accept me as a student because of my speaking. After that I went to college but because I did not have my previous education certificates they put me in a basic class without examination. It was very boring for me because in my country I was already in high school.

CASE 8

Education

I am Mr X age 17. I came from Africa and have been in the UK for one year and three months. I am studying information technology (IT) course, Level 2 at the college. I am very happy with this course, and I would like to continue and go to Level 3. The College wanted me to do Key Skills Level 2 in English and Maths to enable me to go to Level 3 IT course. My dream is to go to university and do IT, but my worry is that the University is not going to accept me without GCSE in English and Maths and Level 2 English and Maths is not going to be enough for the University.

CASE 9

Education

I am a young man age 18 from Africa. I studied English at school up to year 10 which is equal to GCSE in this country, so I am fluent in English. I wanted to continue my education here and do GCSE level, but my problem was that I was not able to show any previous certificates because I lost them through my travelling. The college admissions told me but there was no way they could assist me, and that I would have to start all over again. The starting point was ESOL, not GCSE maths which is what I wanted and am able to study. The college did assess me on English and maths, but the exam was for level one and was too easy for me. I would recommend that colleges should be able to assist people whichever level they are on and recognise previous education.

CASE 10

Education

I am from Free Town. I am 17 years old. Presently I am doing brick laying at college. Actually this is not what I wanted to do. When I went to college to enrol I told the lady at the reception desk that I came to enrol myself for building construction not knowing that the course is delivered in a different department. My idea was to do civil engineering in building construction. Although I stressed that I wanted to study civil engineering they eventually turned that down. Then I had no "alternative" but to do the brick laying. For me I consider that a waste of time because when I finish the two year course I will have to enrol again to do the area of course that I wanted to achieve. This is not equal treatment. I will be 20 years old starting civil engineering rather than if I was given the opportunity this time to enrol on that area at the age of 17 years.

We asylum seekers are looking forward to getting equal opportunity because we also have important role to play in the United Kingdom to contribute meaningfully to the economy.

As long as you have the skills to access college education and want to go to university they should allow you to get the quality education you want. If Britain wants to have good human rights record and give people their rights especially children, they should make sure that people who need the United Kingdom protection should be treated equally to British citizens.

75. Memorandum from Education Action International and Liberty

INTRODUCTION

1. Fundamental human rights, like the right to a fair trial and to freedom from inhuman and degrading treatment, are not earned by paying taxes; do not come from the possession of a particular passport. The rights and freedoms protected by the post-war human rights framework belong to every human being, by virtue of their humanity and regardless of race, religion or nationality. This is why the Universal Declaration of Human Rights proudly announces belief in the “inherent dignity” and “equal and inalienable rights of all members of the human family” [emphasis added].⁵³⁵ Asylum seekers in the UK have the same human rights and fundamental freedoms as British citizens (subject only to such qualifications as are truly necessary and proportionate to the fair administration of the asylum system), and the UK has the same obligations to respect and to protect them.⁵³⁶ Following the horrors of the Holocaust and the Second World War, the international community also recognised the right of people fleeing persecution to receive protection elsewhere in the world. Those claiming asylum in the UK are exercising rights recognised in international instruments⁵³⁷ and domestic law.⁵³⁸

2. Despite this asylum seekers in the UK have been treated in inhumane, degrading and discriminatory ways as a result of laws passed by Parliament, Government policies and insensitive decision-making. We are delighted that the Joint Committee on Human Rights (the “JCHR” or the “Committee”) has decided to undertake an inquiry into the many human rights concerns raised by the treatment of asylum seekers. We provide a number of stories of the unacceptable treatment suffered by some of the asylum seekers that Education Action has worked with. We urge the JCHR to hear, first hand, some of these compelling stories and to call for and end to the inhumane laws and practices their stories reveal.

3. We also urge the Committee to consider why “asylum” has become a dirty word, why asylum seekers have been demonised and marginalized and why there is so much political capital in inhumane asylum policies and laws. To some extent this must be attributed to the misrepresentation of asylum seekers in some parts of the media as scroungers, a drain on state resources, a threat to British identity and even a danger to our health and national security. The stereotypes have inflamed public prejudice, inciting violence and damaging social cohesion and personal esteem.⁵³⁹ The Committee may wish to invite the media executives responsible for these damaging portrayals to give evidence to its inquiry. However, the media alone cannot be responsible for the damaging and widely held misconceptions about asylum seekers. Political actors must bear equal responsibility. The “politics of asylum” has operated not only to create and/or reinforce hostile public perceptions; it has also served to undermine the developing values and law of human rights in this country.

POLITICAL AND MEDIA REPRESENTATION

4. “The media”, as an apparently homogenous group, is often blamed for the irresponsible reporting of asylum issues. There is also a tendency to focus blame on the “right wing media”. Of course, these blanket assertions are far from true. Some parts of the media, from across the political spectrum, have been instrumental in highlighting laws and practices which have seriously damaged the human rights of asylum seekers. The press has also provided an important mechanism for telling the compelling stories of individual asylum seekers, vital to the pressing need to re-humanise this group of people. The local media has, in particular, played an important role in this, providing support for groups campaigning against the destitution, detention and removal of local asylum seekers and families.⁵⁴⁰ We greatly welcome the Greater London Assembly’s Press Awards scheme which aims to recognise and reward the fair and balanced coverage of refugee and asylum seeker issues. As the Mayor commented when he launched this year’s awards:

“It is essential that the reality of the positive contribution of asylum seekers and refugees to London is reflected in our media. Too often unbalanced and even racist reporting in our press can isolate communities and deny them their right to fair coverage and voice.”⁵⁴¹

5. Sadly there is no shortage of the kind of reporting to which the Mayor refers. Some sections of the media, again from across the political spectrum, have misrepresented asylum seekers as a homogenous group of scroungers, a drain on state resources, a threat to British identity and even a danger to our health and security. Examples of such coverage are numerous. The following examples are merely illustrative:

⁵³⁵ Preamble.

⁵³⁶ Cf Article 1 and 14 of the European Convention.

⁵³⁷ Cf Article 14 of the Universal Declaration of Human Rights and the Refugee Convention 1951.

⁵³⁸ Cf Sections 77, 78, 82 and 84 Nationality, Immigration and Asylum Act 2002.

⁵³⁹ Cf The Information Centre About Asylum and Refuge (ICAR): <http://www.icar.org.uk>

⁵⁴⁰ Cf *Hackney Gazette*, “Ernesto Wins the Right to Stay”, 8 September 2006, *Hornsey & Crouch End Journal*, “Family’s 11th Hour Reprieve”, 26 July 2006 and *The Enfield Independent*, “Star Student Facing Deportation”, 25 August 2006 <http://www.enfieldindependent.co.uk/misc/print.php?artid=894180>

⁵⁴¹ www.london.gov.uk/mayor/equalities/pressawards

- Over the last few years there have been a number of stories which create the erroneous impression that asylum seekers are connected with the spread of AIDS in the UK. In 2003 the *Daily Mail* ran a story with the headline “HIV refugee crisis” arguing that the number of HIV-positive asylum seekers is overwhelming hospitals in the UK and that “a rise in infection in Britain suggested that recently arrived patients are having unsafe sex”.⁵⁴² In 2004 there was a story in the paper misleadingly entitled “Asylum seekers raising HIV risks” (in fact the story was about how asylum seekers with HIV faced increased risks as a result of dispersals which interrupted their treatment).⁵⁴³ In September of this year it ran a story with the headline “Asylum seeker gave six women HIV”.⁵⁴⁴
- In May of this year, Tony Parsons wrote a piece in the *Daily Mirror* entitled “Rights Mess Makes Britain a Soft Touch” in which he commented that because of the Human Rights Act “We are stuck with a Nigerian woman shrieking for a free operation for her dodgy ticker.”⁵⁴⁵ This story is illustrative of the hysterical approach often taken to asylum seekers and immigrants and to complex questions relating to the provision of vital care and support and the cost to the public purse. The story pointedly overlooked the terrible facts of the Nigerian lady to which it refers. Mrs Alabi suffered from serious heart disease which could only be cured by a heart transplant. She was put on a low-priority transplant list due to her immigration status, as a result of a policy designed to deter health tourism.⁵⁴⁶ She died three days after Mr Parson’s piece was published leaving behind two three month old children. She would not have been in a fit state to be “shrieking” for anything when the piece was written.

This de-humanisation of asylum seekers in some sections of the media is encapsulated in the comment in the *Daily Express* that “Refugees are flooding into the United Kingdom like ants.”⁵⁴⁷

6. This type of media coverage has been very damaging to the public’s perception of asylum seekers. Nevertheless, we are committed to free speech and would vehemently oppose legal restrictions on press freedoms to prevent such coverage. Of course we will not always agree with the content or angle of a story in the press but that is inevitable. As the post-war human rights instruments demonstrate, in a democratic society a free press plays a vital role. A responsible media is central to informed public debate about difficult questions relating to immigration control, conflicting demands on limited state resources and public safety. This is not assisted by misleading, scare-mongering and sensationalist stories like those referred to above. Ethical restraint on press coverage in this context must, however, result from editing and self-regulation, perhaps by further development of agreed industry codes of practice policed by the Press Complaints Commission.⁵⁴⁸

7. Another dominant theme in the reporting of asylum has been the suggestion that there is a connection between asylum and immigration, on the one hand; and serious crime and terrorism, on the other. Underlying this coverage is a worrying political tendency to treat counter-terrorism as though it were primarily a question of immigration control. Since 9/11 we have seen a growing tendency to treat counter-terrorism as a question of immigration control. For example, the Government’s immediate legislative response to the events in the United States was to create discriminatory powers to detain foreign nationals who were considered a threat to national security. The House of Lords in the *Belmarsh Case* declared these powers to be discriminatory and incompatible with fundamental rights. Unfortunately, despite this unequivocal judgment, the Government does not seem to have learnt that unnecessary and excessive powers, targeted solely at unpopular minorities, are unacceptable in a modern liberal democracy. Immigration and asylum played a similarly part of the response to the events in this country on 7 July. Promises were made to “secure our borders”, to “extend powers to strip people of citizenship” and to “refuse asylum to anyone who has . . . anything to do with [terrorism] anywhere in the world”.⁵⁴⁹ Many of these proposals were realised in the Immigration, Asylum and Nationality Act 2006.

8. From a political perspective the benefits of treating counter-terrorism as a question of immigration control are obvious—such measures appear “tough” on terrorism without being “tough” on the majority of the voting population. Eliding counter-terrorism and immigration does, however, have its downsides. It suggests that there is a connection between someone’s nationality and the question of whether they pose a threat to national security. Although of course untrue, this suggestion has fed into community unrest, as well as racial and religious discrimination and even violence. Immigration measures also fail to tackle the threat of terrorism posed by British citizens. As 7 July so tragically demonstrated, terrorists are not

⁵⁴² 16 March 2003, Tim Utton.

⁵⁴³ 6 August 2004.

⁵⁴⁴ 14 September 2006.

⁵⁴⁵ 15 May 2006.

⁵⁴⁶ Mrs Alabi came to Britain legally on a short-term visa to visit her husband who was legally here. There is no evidence that she came here to take advantage of our NHS, in fact she had a return ticket to Nigeria. Sadly, while she was here she fell ill and could not return home. Despite her critical illness she was not given priority status for a heart transplant due to rules designed to prevent health tourism.

⁵⁴⁷ 7 November 2001.

⁵⁴⁸ There are a number of guidelines that promote the accurate and unbiased reporting of asylum and refugee issues in the media. These include topic-specific guidance notes, as well as more general codes of conduct and practice that contain relevant clauses on principles such as accuracy and discrimination (cf: <http://www.icar.org.uk/?lid=1958>)

⁵⁴⁹ The Prime Minister’s 12 Point Anti-Terror Package (5 August 2005).

exclusively foreign nationals. Finally, many of these measures seek to deport individuals who are considered to be a threat. Rather than exporting risk, it is better for world and national security if, wherever possible, truly dangerous suspects are prosecuted.

POLICIES OF FORCED DESTITUTION

9. Asylum seekers are often, through no fault of their own, in acute need of accommodation and financial support:

- They are prohibited from being employed unless, exceptionally, they have written permission to work from the Home Office.⁵⁵⁰ It is therefore almost impossible for them to earn the money to support themselves.
- They are likely to be without family, friends or contacts in the UK.⁵⁵¹
- Only rarely will they be able to speak English as a first language.⁵⁵²
- Often they will be subject to the stress of fleeing, and the inexperience of life in the United Kingdom.⁵⁵³

In this context, it is hardly surprising that the failure to provide accommodation and support to asylum seekers will lead to serious human rights concerns.

10. Without state assistance an asylum seeker will often be unable to provide for him/herself and to meet his/her basic needs. Given the shortage of voluntary assistance, s/he will often be forced into destitution, a degrading and dangerous life sleeping on the streets and begging for food. Such treatment may well amount to inhuman or degrading treatment, prohibited by Article 3 of the European Convention on Human Rights and the Human Rights Act 1998. This was the situation created by the Government's application of Section 55 of the Nationality, Immigration and Asylum Act 2002. Under s55 those who did not apply for asylum at the earliest opportunity were not provided with the limited support normally made available to destitute asylum seekers. The House of Lords has acknowledged that in many cases this would constitute treatment prohibited by Article 3.⁵⁵⁴ The JCHR rightly expressed concerns about s55 as the Bill was passing through Parliament.⁵⁵⁵ In light of *Limbuella*, we urge the Committee to undertake post-legislative scrutiny of s55 and to recommend that it be repealed.

11. Another statutory provision restricting the availability of support to the destitute which has given rise to serious human rights concerns is Section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. It allows support to be withdrawn from a failed asylum seeker, even where s/he has a dependant child, if the Home Secretary considers that s/he has failed to take reasonable steps to leave the United Kingdom voluntarily. This could lead to an asylum seeker's children being taken into care.⁵⁵⁶ Failed asylum seekers have been threatened with this if they do not "voluntarily" leave the UK.⁵⁵⁷ This constitutes a severe interference with the right to respect for family life guaranteed by the European Convention and the Human Rights Act (Article 8). It also violates rights protected by the UN Convention on the Rights of the Child, which the UK has ratified, ie:

"State parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities . . . determine . . . that such be necessary for the best interests of the child."⁵⁵⁸

Like s55 we urge the Committee to recommend that this provision be repealed.

12. The above provisions and the restrictive application of Section 4 of the Immigration and Asylum Act 1999 are designed to use destitution or the threat thereof as a means of immigration control. Not only do such policies have serious consequences for the human rights of those concerned, they are also founded on a doubtful premise. Research carried out by Barnado's and the Refugee Children's Consortium has shown that, as a result of the implementation of s9, no families left the UK but 35 went into hiding.⁵⁵⁹ This is neither a legitimate nor an effective tool of immigration control. It is likely to create a sub-class of illegal workers, children excluded from health and education services and ultimately a group hidden from the immigration service itself.

⁵⁵⁰ Section 8(1) Asylum and Immigration Act 1996 and Immigration (Restrictions on Employment) Order 1996 (SI 1996/3225).

⁵⁵¹ As the Court of Appeal noted in *R v Secretary of State for Social Security, ex p. JCWI* [1997] 1 WLR 275.

⁵⁵² *Ibid.*

⁵⁵³ As the Court of Appeal recognised in *R v Westminster CC, ex p. M and Others* (1997) 1 CCLR 85, the asylum claimant.

⁵⁵⁴ *R (Limbuella) v Secretary of State for the Home Department*, [2005] 3 W.L.R. 1014.

⁵⁵⁵ Cf, 2001–02, "Twenty-second Report: The Case for a Human Rights Commission: Interim Report", HL 160/HC 1142.

⁵⁵⁶ A local authority has a continuing responsibility for providing accommodation for the child under section 20 of the Children Act 1989 if the adult claimant is unable to provide it.

⁵⁵⁷ Cf the case of the Sukula family: <http://news.bbc.co.uk/1/hi/england/manchester/4181700.stm> and <http://www.liberty-human-rights.org.uk/news-and-events/1-press-releases/2005/asylum-family-threatened-with-losing-childre.shtml>

⁵⁵⁸ Article 9.

⁵⁵⁹ "The End of the Road: Families and s9 of the Asylum & Immigration (Treatment of Claimants) Act 2004", Barnado's and the Refugee Children's Consortium.

13. Fariha's case, described below, demonstrates that it is not only how asylum seekers are treated in law which gives rise to human rights concerns but also mistakes and carelessness by those responsible for arranging support and assistance. Fariha's treatment by the National Asylum Support Service ("NASS") shows a complete lack of respect for her basic needs, and left her in a situation in which she was unable to maintain her dignity and self-respect. Given the level of suffering caused, Article 3 may have been violated by her treatment. Her case would clearly engage "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing".⁵⁶⁰ We urge the Committee to consider what safeguards could be put in place to make this kind of treatment less likely. In particular, we would suggest that the Committee consider the ability of those in receipt of NASS support, to challenge the adequacy of their accommodation.

Fariha Bhatti—inadequate accommodation

Fariha Bhatti is a 36-year-old asylum seeker from Pakistan. She has disabilities which stop her from standing up or walking for long periods of time. As she cannot climb stairs, Fariha's accommodation must be on the ground floor flat or have a working lift. She also requires a toilet with handles and either a bath that is not too high for her to climb into and out of or a shower with a chair.

In April 2005 Fariha was dispersed from London to Middlesbrough. She was concerned that her new accommodation in Middlesbrough would not be suitable. She visited NASS three times before being dispersed to check whether the accommodation would be suitable. On each occasion she waited from 11 am till closing (5 pm). On the final day she was reassured that she would be provided with adequate accommodation.

She arrived in Middlesbrough at 4 am and waited for the asylum support office there to open. When she was finally taken to the new flat she discovered that it was on the 2nd floor, that the lift didn't work and that no provision had been made for her disability. The landlord said that she hadn't been informed of her disability needs by NASS and Fariha was told to wait a few hours while they sorted it out. In fact, 10 days passed without any assistance. Fariha was unable to bath for that whole period, causing distress and humiliation.

When Fariha tried to resolve this problem she was told that NASS was not concerned about the unsuitable accommodation as they were intending to withdraw her support because her asylum claim had been rejected. Fariha had, in fact, made an appeal and faxed the documents to prove this to NASS. They did not respond and sent an eviction notice. Fariha was traumatised by the idea of being evicted in a city where she knew nobody and would have to live on the streets.

Fariha finally left the flat and went to the library to find out how to get the coach back to London, as nothing was being done about her situation and she was about to be evicted. She couldn't carry her luggage so left it behind, carrying only her legal documents, medication and two changes of clothes.

When she returned to London, she went to NASS where they denied any knowledge of her disability (even though she had NASS documents to prove she had informed them of it) and said they had no record of her appeal (even though she had re-faxed it to them). It took her a further two and half months to argue her case and ask for them to bring her luggage back from Middlesbrough (they told her she should get it herself).

Fariha suffers from severe depression and anxiety due to circumstances in her country which made her seek protection in the UK. She was very frightened and traumatised by this experience. She couldn't sleep properly for three months afterwards; such was her anxiety that she would be evicted. She felt humiliated by not being able to wash herself. Sadly this was not the last time that she was moved to unsuitable accommodation. In December 2005 she was moved to a flat which had a toilet she could not use. She suffered an injury trying to use it and ended up in hospital as a result.

14. The case of Afshin Azizian demonstrates the importance of ongoing support for the many failed asylum seekers who have to stay in the UK when there is no safe route of return. It also shows how long asylum determinations and appeals can take, the impact that this uncertainty can have on the well-being of asylum seekers and the importance of information being provided to the individuals concerned.

*Afshin Azizian*⁵⁶¹

Afshin is a 37 years old male asylum seeker from Iran who has been in the UK for 11 years. His asylum claim was refused in 2002 but he is still awaiting a decision on what happens to him. In the meantime he was left destitute and homeless for four years, until he was taken in by the Columban Fathers (Monks) in Hampstead earlier this year.

⁵⁶⁰ Article 11 of the International Covenant on Economic Social and Cultural Rights, which the UK has ratified.

⁵⁶¹ See also: <http://www.ncadc.org.uk/archives/filed%20newszines/oldnewszines/newszine49/afshin.html>
<http://www.indcatholicnews.com/afshi215.html>

During this time he suffered severe psychological and physical damage. Whilst homeless he feared for his life. He also became severely malnourished. He has various physical problems as a result, including with his stomach and eyesight. Afshin was already suffering psychological trauma from his experiences in Iran. He suffers from severe depression and has attempted suicide on three different occasions. He has medical records to support this.

Afshin is completely bewildered by the length of his case and has never received adequate information from the Home Office about why his case has not been granted. Afshin has campaigned tirelessly for his case to be resolved once and for all, so he can live a normal life, have the right to work, and not rely on charity. He feels that his treatment is “worse than an insect”. He came to the UK to seek protection from human rights violations in his country, and yet feels further violations to his rights and devastating impact on his self-worth by the Home Office.

HEALTHCARE

15. Asylum seekers, failed asylum seekers and refugees will often have complex and pressing healthcare needs:⁵⁶²

- Some will have been beaten, tortured, detained for lengthy periods of time or raped in their country of origin. Their persecution is likely to have caused acute mental and physical suffering, requiring treatment.
- As the cases of Fariha and Patrick demonstrate, the poor treatment of many asylum seekers could itself create or increase their healthcare needs.
- Practical difficulties in accessing healthcare services in the UK may be caused by a lack of information, a lack of money to pay for travel to a hospital or surgery and language difficulties.

16. The failure to provide vital medical care gives rise to a range of human rights concerns. The Universal Declaration of Human Rights provides that “Everyone has the right to a standard of living adequate to the health and well-being of himself and of his family, including . . . medical care”.⁵⁶³ Some healthcare rights are also recognised by the European Convention on Human Rights.⁵⁶⁴ A failure to meet the acute healthcare needs of asylum seekers could violate the right to life, to freedom from inhuman and degrading treatment, to respect for family life and the right against discrimination. In *Cyprus v Turkey*, for example, the Strasbourg Court stated:

“an issue may arise under Article 2 of the Convention where it is shown that the authorities of a Contracting State have put an individual’s life at risk through the denial of health care which they have undertaken to make available to the population generally . . . Article 2(1) of the Convention enjoins the State not only to refrain from the unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction.”⁵⁶⁵

17. We have concerns about the human rights and practical implications of refusing primary and secondary healthcare to failed asylum seekers. This has led to asylum seekers and refugees, legally entitled to free healthcare, being turned away from surgeries, refused healthcare or charged for it. This has occurred because medical staff may not have sufficient understanding of the (now relatively complex) rules governing entitlement, people have been mistaken for failed asylum seekers or because they have not been given the right documents. It is unrealistic to expect frontline NHS staff (ie GP receptionists) accurately to assess people’s immigration status and eligibility for NHS treatment. Failure to provide non-emergency treatment to failed asylum seekers is also likely to lead to more serious illness later on. As emergency treatment, rightly, continues to be provided free of charge to failed asylum seekers, we have serious doubts about whether it makes any financial sense to refuse non-emergency care. We are aware of pregnant failed asylum seekers who have been refused antenatal care, creating serious health risks for both mother and child and the risks associated with an unassisted home birth. It must also be remembered that many failed asylum seekers remain in the UK because it has not been possible for them to return to their country of origin, including due to the lack of a safe route of return. Denying such people free healthcare is unacceptable—they have no choice but to remain in the UK and could not for example return to their country of origin to seek treatment there. For those former asylum seekers in receipt of support under s4 IAA 1999 (which is only provided to those who are making efforts to return to their country of origin or those for whom return is acknowledged to be impossible) it is difficult to ascertain any rational basis for the refusal of treatment. Charging asylum seekers for medical treatment seems likely to be fruitless in all but the most exceptional cases, and we question the financial sense of attempting to administer such a scheme.

⁵⁶² For further information, see www.arrivalpractice.com.

⁵⁶³ Article 25(1). See also Article 12(1) of the International Covenant on Economic, Social and Cultural Rights, the UK is bound to “recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

⁵⁶⁴ Cf *LCB v UK* (1999) 27 EHRR 212, *Powell v UK* Application No 45305/99 and *Passante v Italy* (2002) 5 CCLR.

⁵⁶⁵ *Cyprus v Turkey* (2001) FN Application No 25781/94, para 219.

CHILDREN

18. The Convention on the Rights of the Child recognises the rights of children who are seeking asylum to appropriate protection and humanitarian assistance.⁵⁶⁶ We agree with the conclusion of the JCHR and the Committee on the Rights of the Child that the UK should withdraw its general reservation from the Convention regarding the entry, stay in and departure from the UK, of those children that are subject to immigration control. This reservation withdraws the protection of the Convention from a particularly vulnerable group of children and calls into question the UK's commitment to a Convention central to international human rights protection.

19. As noted above, we have profound concerns about the potential impact of Section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 on children and believe that the provision should be repealed. Other areas of concern that we urge the Committee to consider are as follows:

- The continued detention of children in immigration detention centres. The Refugee Council has estimated that over 2,000 children were detained in 2004 and that over 30% of them are detained for over seven days.⁵⁶⁷
- The age-assessment of unaccompanied asylum seeking minors and concerns that people are being wrongly-assessed as adults and thereby potentially detained with adults and denied the services available to children.⁵⁶⁸
- We believe that the Government is presently considering proposals to deny primary health care to failed asylum seekers/overstayers which could have devastating consequences on the health of children and the wider population generally through lack of public health provision.

DETENTION AND REMOVAL

20. We are delighted that the Committee has decided to look at the human rights implications of the detention and removal of asylum seekers. This is an important and pressing issue which has not received sufficient political attention, despite the dedicated work of a number of organisations working specialising in this field.⁵⁶⁹ We are particularly concerned about the amount of time people are spending in immigration detention, the failure to consider more proportionate alternatives to detention, the levels of self-harm of immigration detainees,⁵⁷⁰ the brutality experienced on journeys to and for airports, the lack of follow-up (particularly in respect lone young adults when returning to hostile home country environments) and difficulties experienced by detainees in communicating to outside world from within centres.

21. Patrick's story demonstrates the trauma associated with the often lengthy periods of immigration detention of those who are seeking or have sought asylum. It also shows the importance of detained asylum seekers being able readily to obtain advice about their legal rights to reduce the risk of illegal detention, illegal returns and ill-treatment. We are concerned about the existing levels of access to legal advice for detained asylum seekers. We fear that current legal aid proposals could make things even worse. The Legal Services Commission is presently consulting on proposals to award "exclusive" contracts from April 2007 to provide all legal services in detention centres.⁵⁷¹ The LSC envisages contracting with fewer providers than at present in order to reduce its administration costs. While the specific provision of legal advice to detainees is essential, we are concerned that the LSC's administrative convenience should not restrict a detainee's choice of representative. Some detainees will already have representation. Contracting with very few providers may mean that some detainees are unable to secure advice due to interruptions in service provision and/or conflicts of interest. Those few firms seeking to provide routine outreach sessions at immigration detention centres may not be best placed to launch higher-level or non-routine challenges, and the contracting system must not preclude the possibility of appropriate referrals to ensure that detainees' needs are properly met.

Patrick Ramazani—Prolonged Detention

Patrick is an asylum seeker from the Democratic Republic of the Congo (the "DRC"). He has spent 10 months in detention during which time he was twice threatened with illegal removal.

The most recent time was 19 December 2005 when he was handcuffed and taken to Heathrow airport, despite his case pending at the High Court. It was only because he was able to use one of the immigration officer's phones that he was able to contact his solicitor and take out an injunction to prevent his removal. On his return, he was held in a room for "difficult cases" for three hours. In response to a letter about the incident to John McDonnell MP, Patrick was given a written reply admitting a "mistake". If he hadn't been able to make the important call, this "mistake" could have had terrible consequences.

⁵⁶⁶ Article 22.

⁵⁶⁷ http://www.refugeecouncil.org.uk/gettinginvolved/campaign/our_campaigns/no_place_for_a_child.htm

⁵⁶⁸ Cf <http://adc.bmjournals.com/cgi/content/full/90/6/612>

⁵⁶⁹ Cf Bail for Immigration Detainees (<http://www.biduk.org/>) and Refugee Council (<http://www.refugeecouncil.org.uk/>)

⁵⁷⁰ Cf <http://politics.guardian.co.uk/print/0,,329557847-110247,00.htm>

⁵⁷¹ "Legal Aid: A Sustainable Future" consultation paper published by the Legal Services Commission, July 2006.

Being in detention was very traumatic for Patrick due to the experiences he had faced in his home country. On top of that, his detention was prolonged. Patrick went on hunger strike two times in protest against the length of his detention. He has also suffered depression due to the continued anxiety of being removed, despite having a legal right to stay until his case is exhausted. His suffering has been exacerbated by the ill-treatment and self-harming of those around him.

In addition to this, since being in detention he has lost contact with his wife and two children. They apparently left the DRC but he has no idea where they are. He has contacted the British Red Cross tracing service to find them but has had no luck. He believes that being moved around different detention centres “like luggage” has meant that his communication with his family was lost. He is very distressed by this and the ongoing uncertainty of his case and whether they will try to remove him again.

Jago Russell

Liberty

Sonia Omar

Education Action

76. Memorandum from the Press Complaints Commission

Thank you for inviting us to contribute to the Committee’s inquiry.

As you know, the PCC oversees a Code of Practice which acts both as a set of rules for journalists and a framework under which members of the public can complain. In promoting high journalistic standards, the PCC acts both reactively (to specific complaints) and pro-actively, by taking steps to raise awareness of the relevance of the Code in particular areas including asylum issues.

Of course, all this work takes place against the backdrop of the considerable rights to freedom of expression that the press rightly enjoys—which can in turn lead to instances of robust reporting on any number of public policy issues with which people may disagree.

The Code protects the rights of journalists and newspapers to comment freely and provocatively if necessary. However, it does contain rules on accuracy, which are as relevant to the reporting of asylum issues as anything else. Clause 1 of the Code says:

- (i) the Press must take care not to publish inaccurate, misleading or distorted information, including pictures;
- (ii) a significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and—where appropriate—an apology published; and
- (iii) the Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.

Clause 12 (Discrimination) is also relevant:

- (i) the press must avoid prejudicial or pejorative reference to an individual’s race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability; and
- (ii) details of an individual’s race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

Normally the PCC will act when it has the consent of the person concerned to investigate the matter—although third parties such as MPs, friends or support organisations can complain on their behalf.

In taking complaints under these and other clauses of the Code of Practice, the Commission’s first aim is to negotiate a suitable remedy to the complaint if it raises a possible breach of the Code. This might be a correction, apology, undertaking about future reporting, follow up piece, right of reply, published letter, private letter of apology from the editor, annotation of internal records and so on.

If that is not possible, the Commission may move to adjudicate the complaint. If the complaint is upheld the publication concerned must publish the ruling promptly and with due prominence. It is therefore a “name and shame” system which in the first place focuses the minds of editors on the need for compliance with the Code, and, subsequently, on the importance of resolving any disputes should they arise.

I am enclosing two examples⁵⁷² of upheld complaints concerning asylum seekers that show that the Commission has been taking a lead on this subject for some years. These rulings—issued in 1999 and 2000—gave an important signal to the whole of the press. It has not been necessary to issue similar rulings for some time. If you would like more information about our approach to complaints and the sort of matters we handle, our website—www.pcc.org.uk—includes thousands of examples of potential and actual breaches of the Code that the Commission has dealt with over the past 10 years.

⁵⁷² Ev not printed.

There are two further areas of relevance. One is the PCC's Guidance Note on Refugees and Asylum Seekers, which I enclose.⁵⁷³ This both raises awareness about the difference between refugees and asylum seekers, and draws attention to the need for care in the terminology used when describing such groups. In addition to this, we scan the whole of the British press for examples of possible breaches of this Guidance. When this occurs, I write to the editor concerned to remind them of the Note and to ask for confirmation that they accept its terms. This happens several times a year—more than we would like, but an improvement nonetheless on the situation some years ago.

The other area of pro-activity concerns our external relations work. This includes direct dialogue with asylum support groups and invitations to them to attend the numerous events and Open Days that we host, designed to improve understanding about the Commission's work.

There is, of course, always more to do to improve such understanding, and to underline the relevance of the Code of Practice in this area to editors and journalists.

The important thing is that there is a mechanism in place for handling complaints from anybody who is affected by inaccurate or intrusive reporting. Such complaints in turn help to raise standards generally. In the context of your inquiry, therefore, I believe that the current system fairly and effectively balances rights of freedom of expression with other rights such as the right to respect for privacy.

Sir Christopher Meyer

77. Letter from C L Thornber

RE: HUMAN RIGHTS ABUSES TO ASYLUM SEEKERS

I am writing to inform you that there are as many jailed asylum seekers who are resorting to begging and eating food from rubbish skips.

Others are caught up in a life of domestic violence, sexual exploitation and unpaid work from British companies.

Evidence shows that the majority of people given asylum have good lawyers who can work their way up the system. The majority of the jailed asylum seekers are the real genuine people who didn't have access to good lawyers and legal aid.

Besides, because many don't have access to medical care, we have a lot of them spreading treatable diseases like AIDS, TB and sexually transmitted diseases.

We are all human beings at the end of the day and deserve a right to a good life no matter where we are. It is in this regard that I urge your Committee to press the government for an Amnesty to all illegal immigrants and the rights to work.

Thank you. Let me know that deliberations of your Committee work.

78. Memorandum from the All African Women's Group, Black Women's Rape Action Project, Legal Action for Women, Women Against Rape

We would hereby like to submit evidence to your inquiry into the human rights issues raised by the treatment of asylum seekers. A brief description of our groups and our involvement in this issue is attached⁵⁷³.

For details of our substantive concerns about the human rights abuses of women and children in detention, please see "A Bleak House for Our Times: An investigation into women's rights violations at Yarl's Wood Removal Centre", published in December 2005. We enclose a copy for your consideration⁵⁷³.

In addition to the areas covered in Bleak House, we would like to ask the Committee to take oral evidence on the following points. In all cases we can provide women who could testify about their own experiences, so enabling Committee members to hear first-hand about the matters of concern.

(i) ACCESS TO ACCOMMODATION AND SUPPORT

This has been a major issue since the introduction first of Section 55 of the Nationality, Immigration and Asylum Act 2002 and more recently Section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004. Many women whose asylum claims have been refused and closed have been forced to depend on friends or acquaintances for long periods of time, leaving them vulnerable to sexual and other forms of harassment. Some have spent periods of time sleeping rough, including pregnant women or mothers and children. We know of at least one woman who was raped by a stranger who offered her accommodation when she was in this desperate situation. Another woman was raped in her NASS accommodation. When

⁵⁷³ Ev not printed.

she told staff what had happened they dismissed it and refused to investigate further. Lack of support has driven women into prostitution or other forms of illegal work in order to feed and clothe themselves and their families.

Black Women's Rape Action Project and Women Against Rape have repeatedly noted with great concern that the trauma of women who fled rape and other torture in their home countries is greatly exacerbated by the lack of and/or inappropriate/insecure housing, lack of health care, financial impoverishment and insecurity and detention which they face in the UK. We submitted evidence about this to, among others, the National Institute for Clinical Excellence, for their report on Post-traumatic stress disorder.

(ii) THE PROVISION OF HEALTH CARE

We are extremely concerned that the new plans to withdraw free health care from "failed" asylum seekers, will endanger their health and well-being and that of their children. Many women are unable to register with GPs leaving them without even the most basic health care. Some have been threatened with payments of thousands of pounds before they are guaranteed a hospital in which to give birth.

See chapters 9 and 10 of "Bleak House" for additional information on "Health of detained women and lack of care" and "Women at risk of suicide".

(iii) TREATMENT OF CHILDREN

See chapter 6 of "Bleak House"—Mothers and children in detention.

(iv) THE USE OF DETENTION AND CONDITIONS OF DETENTION AND METHODS OF REMOVAL OF FAILED ASYLUM SEEKERS

We are extremely worried about the violence many women suffer at the hands of security officials when they are about to be removed. We attach a detailed account of one case in which a mother and five children were illegally removed to Uganda despite a court injunction. Ms K was tortured in Uganda and has now returned to seek asylum in the UK after being forced to flee, leaving her children behind. She is available to give evidence to the Committee.

We have collected other testimonies from women about the violence they suffered during removals.

We are also particularly concerned about the routine detention of rape survivors which contravenes Home Office policy guidelines⁵⁷⁴ that advise against the detention of victims of torture. In addition, many women in Yarl's Wood are on the fast track⁵⁷⁵ in spite of being victims of torture.

Please also see Chapter 12 of "Bleak House": "Violent and/or illegal deportations" and "Danger on return".

We also draw your attention to the fact that one of the main problems for women asylum seekers is lack of legal representation. Even when women are able to find lawyers, they receive careless or bad legal advice which means that compelling evidence of the persecution women face is not put before the authorities and women's cases are summarily dismissed. (see WAR's Rights & Information Sheet for survivors of rape seeking asylum).

We hope your inquiry will take note of all evidence and propose significant changes to the way asylum seekers, especially women and children, are treated.

Betty Baliwana Kakunguru
All African Women's Group

Cristel Amiss
Black Women's Rape Action Project

Niki Adams
Legal Action for Women

Kristina Brandemo
Women Against Rape

79. Memorandum from Robin Esser, Executive Managing Editor, The Daily Mail

There are obvious difficulties in us presenting evidence which would help the Committee assess the State's duty to asylum seekers in respect of their human rights.

⁵⁷⁴ Immigration Service's Operation Enforcement Manual, May 2003.

⁵⁷⁵ A "fast-track" system was introduced at Yarl's Wood in May 2005. Women who claim asylum are detained at the beginning of their case on the basis that the case is "straightforward" and capable of being decided quickly. A duty list of legal representatives is administered by the Legal Services Commission and the cases are decided using a speeded-up process.

It is the duty of the media to report on crimes, no matter by whom they may be committed. It is also our task to report on failures of Government, public and local government services when they have failed in their duty of care to the tax-payers who fund their activities and the voters who put them there to do a job.

It is further our brief to report open justice and, where necessary, to criticise court decisions if we believe those decisions are not in the public interest.

We are not at all sure what you mean by the State's obligations to protect asylum seekers and failed asylum seekers from "unjustified interference with their right to respect for their dignity" etc.

However if that would imply some form of central censorship of free debate on matters of immigration and a free media we would regard that as undemocratic and unnecessarily dictatorial.

27 December 2006

80. Letter from the Office of the Children's Commissioner

Thank you very much for inviting us to give evidence to the Joint Committee yesterday; it was a very stimulating discussion and provided a welcome opportunity for us to reinforce the points we had made in our written evidence.

We informed the Joint Committee yesterday about the further information we had received since submitting our written evidence in relation to the policy and practice of "de-accommodation" in the London Borough of Hillingdon—we have written to the local authority about this issue. You asked us to send you copies of correspondence authority on this matter which I have pleasure in enclosing.⁵⁷⁶ We will let you know when we have received a reply.

In addition, there were a number of other items we undertook to send to you:

Figures of the differential in grants provided for under 16 and over 16s

Reference to this is made in our written evidence at footnote 39, Page 17. The figure is £650 for the under 16s and £350 for the over 16s (per week).

(If at all possible) figures for the number of young people who have been de-accommodated

We do not think these figures are currently available in an accessible form. Local Authorities would have to be contacted individually for such data. We will pursue this with Hillingdon.

Number of young people in prison for documentation offences

As indicated by Claire Phillips in our evidence yesterday, the Home Office and the Youth Justice Board are hoping to be able to gather data on this to cover the different parts of the juvenile estate. We will keep you informed of progress.

Case studies of young people who have been arrested on school premises by the immigration service

These will be forwarded under separate cover to you within the next few days. We would request in this case that the names of the schools and staff remain anonymous. As background information to this we shall enclose what we believe to be the latest version of the immigration service "family removals policy"⁵⁷⁷. It should be borne in mind that this is, we understand, under review. We do not know whether the review has been completed yet and whether the discretion to enter school premises will in itself be reviewed. We have made clear to the Home Office in discussions that we think this practice is unacceptable.

Finally, although you did not specifically request it, we enclose a recent letter⁵⁷⁸ to Immigration Minister, Liam Byrne concerning the making of regulations to enable pregnant and nursing mothers on section 4 support to have access to clothing and transport facilities as raised in our oral evidence.

Thank you once again and I look forward to providing the Joint Committee with further information as it becomes available.

Claire Phillips
Director of Policy and Research

⁵⁷⁶ Annex A.

⁵⁷⁷ Annex B.

⁵⁷⁸ Annex C.

Annex A**Letter to the London Borough of Hillingdon from the Office of the Children's Commissioner**

The office of the Children's Commissioner will be giving evidence before the Joint Committee of Human Rights on issues of asylum. As part of the evidence concerns the London Borough of Hillingdon, I have enclosed a copy of the evidence that will be presented.

I am sorry that, due to the pressure of time, we were not able to give you more notice of our concerns over the policy of de-accommodation practised by Hillingdon.

Under our powers contained in the Children Act 2004 the function of the Children's Commissioner is to promote awareness of the views and interests of children. Under this broad remit we may consider or research any matter relating to the interests of children. In so doing the Commissioner has the power to enter any premises (other than a private dwelling) to interview children accommodated or cared for there. The Commissioner is further entitled to any information in Hillingdon's possession relating to the care of, and de-accommodation of, unaccompanied asylum seeking children.

We would welcome the opportunity to discuss the issues raised in our evidence with you and Mr Dunnachie and would be grateful if you could contact me to arrange a suitable time to meet.

Professor Carolyn Hamilton
Senior Legal Adviser

Annex B**Evidence from the Office of the Children's Commissioner on the de-accommodation policy and practice of the London Borough of Hillingdon****ARRIVAL AND REFERRAL TO HILLINGDON SOCIAL SERVICES**

1. The majority of unaccompanied asylum seeking children (UASC) supported by the London Borough of Hillingdon arrive at Heathrow airport. Such children are referred by the Immigration Service either directly to the Asylum Intake Team (AIT)⁵⁷⁹ or the Emergency Duty Team (EDT) if outside of office hours.

2. The AIT also receives referrals from Colnbrook and Harmondsworth Immigration Removal Centres. Where an asylum applicant arrives and his or her claim to be a minor is disbelieved by the Immigration Service, the child may be treated as an adult and therefore detained. The AIT's role in such cases is to attend the detained individual and determine whether the local authority has a duty to them as a "child in need" under Part III of the Children Act (1989). If the detainee is found to be a child, he or she will be released into the care of the local authority.

3. New arrivals who are judged to be over the age of 16 are placed in the "emergency rooms" at a facility called Margaret Cassidy House—a remote setting near to Harmondsworth IRC. The emergency rooms are shared accommodation consisting of four beds to a room. Occasionally there are more than four young people occupying "emergency rooms".

4. The first part of this paper refers to the position for children who are already 16, deemed to be 16 or are nearing their 16th birthday.

INITIAL ASSESSMENT

5. In accordance with statutory requirements, an initial assessment of the young person will be undertaken within seven days of referral by the Asylum Intake Team (AIT). These assessments take place at the AIT office at Weir House. Although an initial assessment should be carried out within seven days, some may be carried out more quickly for two reasons: first where there is a perceived medical need or, second, where there are doubts about whether the young person is in fact a child. This latter possibility raises child protection issues as the emergency rooms at Margaret Cassidy are shared. The AIT may be alerted of the need to undertake a quick initial assessment either directly by the Immigration Service, or the EDT at the airport or by one of the "support workers" based at Margaret Cassidy House (however, support workers at MCH are discouraged from using interpreters due to costs).

HOUSING ASSESSMENT

6. If the initial assessment finds the young person to be 16+ they will be sent for a "housing assessment" by the Asylum Support Team (AST) who will check their "entitlement". It appears that what is actually checked is their immigration documentation. This may be to enable a claim to be made under the "UASC grant" from the Home Office. The AST will normally place the young person back in Margaret Cassidy House where, if the child is over 16, he or she will be placed in a single bedroom with shared cooking

⁵⁷⁹ <http://www.hillingdon.gov.uk/php/ebc.php?id=36>

facilities. The local authority employs “support workers” who are based at Margaret Cassidy House but who do not sleep there. This is apparently to avoid the facility being designated as a “children’s home” with the attendant requirement to register with the Commission for Social Care Inspection and undergo inspection. Another facility—“Halls Terrace”⁵⁸⁰ is used for UASC but this has no in-house staff. Outreach workers are used to support the UASC accommodated there.

REVIEW MEETING

7. Once the placement has been settled, the child is normally allocated a named worker. This can be a registered social worker, but may be a “personal advisor”, or a “children’s asylum worker”. These second two groups of staff are not registered social workers, but often undertake the initial assessment and take part in the review. Staffing constraints mean it is not always possible to allocate a named worker prior to the first review meeting in which case a “duty worker” who may be unknown to the child would attend with them on the day of the review.

8. A statutory looked after child review must be undertaken within 28 days of a child becoming looked after⁵⁸¹. The process of “review” of the case would “normally” take place between 21 and 28 days, although it is not unknown for this to happen more quickly—within a week or two of the initial assessment (and even on occasion within a few days). These reviews are chaired by an Independent Reviewing Officer (IRO)⁵⁸² with the young person, their allocated worker (or a “duty worker”) and an interpreter ordinarily being present. The purpose of the review is to monitor the child’s well-being, progress and future to ensure that, in accordance with their statutory duty under section 22(3) Children Act 1989, the child’s welfare is being safeguarded and promoted. Normally, the review would have before it information from professionals, carers, teachers etc to enable it to determine whether the child needs to remain looked after or can be rehabilitated with his family or found a permanent placement with another family. In the case of UASC children, the only information that will be before the review is the initial assessment, which is a short and fairly superficial document, generally containing information from the child alone, with perhaps some medical information.

9. The practice at these first review meetings is for the IRO to make a decision to “de-accommodate” a young person if they have already reached the age of 16 or will have reached that age by the time they are de-accommodated. The date for “de-accommodation” is generally set for just over 13 weeks from the initial assessment, the minimum necessary time period before a child can be considered eligible to receive leaving care services.

10. Prior to any decision being made about the child, it is the duty of the IRO to ensure that the child’s views are understood and taken into account.⁵⁸³ The local authority are also under a duty to ascertain the child’s wishes and feelings regarding de-accommodation and to give due consideration to those wishes, having regard to the child’s age and maturity (section 20(6) Children Act 1989). In order to have an effective consultation and for a child to be able to express their wishes and feelings about remaining in the looked after system, the child needs to understand what is being proposed. There is no indication that UASC children in Hillingdon receive clear advice on the difference between being in the looked after system and receiving services under leaving care provision. These children do not appear to have access to independent advocates who can explain these differences, nor is it clear that the IRO ensures that children’s wishes and feelings on this issue are considered, despite the duty on the IRO to assist the child to obtain legal advice and an advocate if necessary.⁵⁸⁴

11. The IROs chairing the reviews of UASC children appear to be registered social worker employees of Hillingdon. The Review of Children’s Cases Regulations 1991⁵⁸⁵ permits the appointment of social workers employed by the local authority in question as an IRO, but the appointee must not be involved in the case, or be under the direct management of a person involved in the management of the case. In addition the IRO must not be under the direct management of a person with control over the allocation of resources allocated to the case.⁵⁸⁶ It is not clear, in the case of Hillingdon, that the IROs appointed fulfill the criteria. Clearly all IROs are affected by the policy of their employer, the London Borough of Hillingdon, supported by the Children and Families Divisional Management Group and the Child Protection and Review Section, to de-accommodate UASC children after 13 weeks and thus arguably comes under the direct management of a person with control over the allocation of resources allocated to the case. The Green Paper on “Care Matters” has expressed concern over the lack of independence of IROs, and the potential conflict of interest

⁵⁸⁰ //www.hallsterrace.co.uk/

⁵⁸¹ (Reg 3 Review of Children’s Cases Regulations 1991).

⁵⁸² Section 26(2A) Children Act 1989 and Reg 2A Review of Children’s Cases Regulations 1991.

⁵⁸³ Reg 2A(6) Review of Children’s Cases Regulations 1991. The Regs make it clear that legal advice and an appropriate adult should be offered where the child is likely to want to make a complaint or legal proceedings. Where the child is unable to understand the consequences of the local authority’s proposals, whether due to age, maturity or simply ignorance of the English system and what the meaning of what is being proposed, an advocate should at the very least be appointed to assist the child to put their views to the review and have their voice heard.

⁵⁸⁴ Reg 2A(7) Review of Children’s Cases Regulations 1991.

⁵⁸⁵ As amended by the Review of Children’s Cases (Amendment) (England) Regulations 2004.

⁵⁸⁶ Reg 2A(4) Review of Children’s Cases Regulations 1991.

that arises from using local authority employees. We would submit that Hillingdon provides a very clear illustration of the problems faced by children where the chair of the review is not a totally independent reviewing officer.

12. Prior to the third quarter of 2006, the general practice was for the AIT to carry out a more in-depth assessment of the child, known as a “core assessment” before the child’s case was transferred to the “Youth Asylum Team” (16+ team). This does not now happen and it appears unlikely that any core assessment is in fact conducted before “de-accommodation” takes place. The failure to undertake a core assessment prior to de-accommodation means that decisions are made at the review on the basis of very sparse evidence.

13. The most striking feature of the arrangements after the third quarter of 2006 is the clear policy to de-accommodate children after 13 weeks. The decision does not appear to be based on a needs assessment, nor is there proper consultation with the child, or informed consent on the part of the child as required by law. In addition, in most cases there has been no effective social work input into the decision, the case having been allocated to a duty worker who is often not a registered social worker, due to pressure of time. The decision to de-accommodate will result in the child receiving a lesser form of service and a lesser form of protection.

14. The duties owed to a looked after child accommodated under section 20 Children Act 1989 are quite different to those owed to a care leaver. The local authority does not have parental responsibility for a care leaver and does not owe the duties of a corporate parent to such a child. Neither will a leaving care child have an allocated social worker, or statutory reviews. The local authority is under a duty to provide accommodation and maintenance unless satisfied the child’s welfare does not require it, but apart from this there is merely a duty to keep in touch with a “relevant” child (into which category the UASC de-accommodated care leavers fall), appoint a personal adviser and prepare a pathway plan.

15. The policy change on looked after UASC by Hillingdon has not been publicly announced, and thus the reasons for the change are unclear. However, it is likely that the need to make financial savings play a part. By de-accommodating UASC children after such a short period of time, social work time will be saved, there will no longer be a need for statutory reviews, saving IRO time and the services that will need to be offered to care leavers are likely to be very considerably less than those owed to looked after children. It has also been suggested that reducing the numbers of “looked after” children, also reduces the number of unallocated cases, thus shielding the authority from criticism on this issue.

RESPONSIBILITY FOR THE DE-ACCOMMODATION POLICY

16. It would seem that the de-accommodation policy is endorsed by senior managers of the Children and Families Divisional Management Group (C&F DMG), while its compliance and enforcement is being directed by the Child Protection and Review Section (CPRS). At the level of the individual child, the policy is being implemented by the allocated Independent Review Officer at the first review meeting.

17. We are deeply concerned that UASC children, who are frequently extremely vulnerable, are effectively being removed from the looked after system without due regard to the law, their needs or their welfare, and that their access to an appropriate level of service is thus prevented or restricted. We consider that the Hillingdon policy of de-accommodating UASC children at 16 is inimical to these children and fails to adequately safeguard and promote their welfare. We further take the view that the policy violates the child’s right to family life and private life under Article 8 ECHR and discriminates against UASC contrary to Article 14 ECHR. In addition, in introducing such a policy it would appear that the best interests of the child have not been the paramount consideration. The recent Green Paper “Care Matters”, states quite clearly that it is generally undesirable for children to leave care before their 18th birthday as most are unable to cope on their own below this age: the Green Paper recommends that all children should remain in care until they reach the age of 18. This applies to an even greater extent to UASC who are frequently unable to speak English, and have nobody exercising parental responsibility.

CHILDREN UNDER 16

18. Children aged under 16 on arrival do not go through the same process. They are either placed in foster care or in a children’s home. There is strong pressure to de-accommodate these children as they reach the age of 16 (when the grant arrangements change and the local authority gets considerably less remuneration from the UASC grant). This situation has led to numerous complaints from children in this situation who frequently wish to remain in their previous placement.

19. Under 16 UASC in Hillingdon are treated differently to other, domestic, looked after children, a practice which is potentially in breach of Article 8 and Article 14 ECHR. The main provision for UASC is a dedicated children’s home—“Charville Lane”⁵⁸⁷. Where there is no placement available here they are

⁵⁸⁷ Charville Lane Children’s Centre
<http://www.hillingdon.gov.uk/php/ebc.php?id=258>

generally placed with a private fostering agency “out of borough”. Domestic children with a “local connection” are placed in foster placements that are directly contracted by the local authority. The decision to de-accommodate at 16 raises the same issues as de-accommodation after 13 weeks. But, in addition, for these children, de-accommodation at 16 can lead to placement change, and as a result, loss of a school place, or difficulty in reaching the school, as the local authority are not under a duty to provide transport and children cannot afford to pay for such transport. Children moved at the age of 16 are also likely to lose valuable social and professional networks.

Carolyn Hamilton
Senior Legal Adviser, Office of the Commissioner for Children

Adrian Matthews
Consultant, Officer of the Commissioner for Children

6 January 2007

Annex C

**Letter to Liam Byrne, Minister for Immigration, Home Office from the
Office of the Children’s Commissioner**

RE: MEETING TO DISCUSS MUTUAL CONCERNS AND HOME OFFICE POWERS TO CLOTHE BABIES OF FORMER ASYLUM-SEEKERS

As you have now been in office for some time, I thought it would be timely for us to meet again in the New Year to discuss our concerns over asylum seeking children. I’m sure that you are aware that there is a great deal going on in this area. Would it be possible for your diary secretary to contact mine and arrange a mutually convenient date as soon as possible in 2007?

There is an immediate matter that I must raise which came to my attention via a recent BBC news report. The report drew my attention to a recent High Court decision, confirming that the Home Office has no power to provide clothing or travel warrants to former asylum-seekers who it is supporting under section 4 of the Immigration and Asylum Act 1999.

In the case in question, (*R (AW) (Kenya) v Secretary of State for the Home Department*), the woman, whose asylum claim had been dismissed, had submitted further representations which she was asking the Home Office to treat as a fresh claim for asylum based on fresh evidence. She had been waiting two years for a decision on whether it was to be recorded as such and had been provided with support under section 4. During this time she became pregnant and had given birth.

This mother now has a growing one year old boy for whom she needs replacement clothes. In addition to her accommodation she receives £35 per week for herself and £35 per week for her son in the form of Tesco vouchers This is intended to cover food, nappies and other essential toiletries.

Her case appears to have clarified that the section 4 power is to provide “facilities for accommodation” of a “failed asylum seeker” and that the expression does not include all “essential living needs” and, in particular, does not include clothing for mothers and their babies. The court noted that the position may be different when regulations are made under section 4(10) of the 1999 Act.

I understand that as long ago as May 2006, the Home Office circulated draft regulations under section 4(10) which would empower them to provide such families with vouchers for items such as necessities for babies, the cost of travel to medical and other essential appointments and clothing where there is an essential need. I further understand from the solicitors in this case that the Home Office does not intend to lay these regulations before Parliament until April 2007 at the earliest. I have to tell you as both Children’s Commissioner and as a paediatrician that the lack of urgency with which the Home Office appears to be dealing with this situation is likely to result in serious harm to these children.

I understand that section 4 support was originally intended as a temporary form of support, which may explain how this situation has arisen. Nevertheless, it is the case that the average section 4 supported household has now been living off vouchers for nine months. It also appears to be an anomaly that where an asylum-seeker gives birth to a child before the final refusal or appeal, they can continue to receive cash support at a higher level, whereas under section 4, a parent must struggle to meet their essential living needs from vouchers.

I would be grateful if you could assure me that the Home Office still intends to introduce these regulations and urge you to do so as soon as possible. In the meantime, the current situation is extremely damaging to the welfare of children and new mothers and the cost of remedying it would not be significant.

I hope you will give this situation your urgent attention and look forward to hearing from you early in the New Year.

Sir Albert Aynsley-Green

December 2006

**Letter from Claire Phillips, Director of Policy and Research, Office of the Children's
Commissioner**

Further to my letter of 9 January 2007, enclosing our evidence on the practice of "de-accommodation" by the London Borough of Hillingdon in respect of unaccompanied asylum seeking children in its care, I attach a copy of an email from Mr Paul Hewitt, manager of the Child Protection and Review Section at Hillingdon.

The submission of this further evidence has been necessary following a meeting between the Office of the Children's Commissioner and senior representatives of LB Hillingdon on Friday 26 January. At this meeting, Hillingdon's representatives refuted the existence of any policy of "de-accommodation" and informed us that they had written to you regarding the matter. They have not shared this submission with us. We presented them with the attached copy of the e mail from Mr Hewitt which we believe is hard to read in any other way than that such a policy exists.

We were able to reveal this particular document as it was sent to a number of members of staff. We do have additional confirmation that the policy exists, but some of this evidence is sensitive and could be traced to an individual recipient whose identity we wish to protect.

Please take the attached into consideration should you be minded to refer to the matter in your report.

1 February 2007

Doc Ref: Hillingdon 02

Date: 01/09/2006
Time: 08: 11.34
From: Paul Hewitt

Dear All,

Further to our discussions before I went on annual leave, I have now briefed the reviewing officers about those discussions. For all Hillingdon Judgment young people who are looked after, the expectation is that the first review will be held within 28 days. At that first review, a date will be set for the young person to begin receiving services under the Leaving Care Act 2000. This date will coincide with the 13 week requirement for a young person to have been looked after under the terms of the Children Act 1989.

On this basis, there will be no need to set a date for a second review and no expectation that the young person shall remain looked after past 13 weeks unless there is an exceptional reason. The threshold for a young person to remain looked after would have to be extremely high and would need to be agreed by a Service Manager.

Obviously problems will arise, if any of these young people have been placed in foster care settings. I hope we can avoid making these placements in the first place. However, I think all the young people in MCH and other semi-independent settings such as Halls Terrace can receive a leaving care package from 13 weeks and this policy can be applied to them with immediate effect.

The reviewing officers will be expecting an assessment to be done by the first review, and the ongoing work to be carried out on the basis of a Pathway Plan. We will look at streamlining the documentation to fit with statutory requirements in due course. The pathway plan will be the key document after the first review.

I hope this will help the throughput of cases from the AIT team and will enable the YAT team to concentrate on the Pathway Plan.

It is important that the admin support systems do work in harmony with this proposal. In other words, the care episode and placement, needs to be closed down on carefirst soon after the first 13 week mark, otherwise the system may begin to show reviews as being overdue.

I will be setting up a checking system in the reviewing section to make sure this happens. If the first reviews are chaired by external Aid Hour reviewing Officers, I will be expecting them to implement the same policy.

Please don't hesitate to contact me, if you wish to discuss further.

Paul Hewitt
Interim Service Manager, Child Protection & Reviewing Section

81. Memorandum from The Daily Express

1. INTRODUCTION

The *Daily Express* is a patriotic newspaper which believes in Britain. Our readers are public-spirited people who are deeply attached to the idea of the nation state.

They, and we, believe that the British Government owes its primary loyalty and obligations to the British people. We are not unsympathetic to the woes of other peoples and nations and have often acknowledged the country's duty to take its fair share of genuine asylum seekers. But we do not believe Britain should be expected to take on greater and greater obligations to foreigners at the expense of its own citizens.

Therefore we and our readers are particularly sensitive to examples of the needs of asylum seekers crowding out British citizens when it comes to public resources, particularly in housing and health.

We are not an ultra-nationalist newspaper of the hard Right, however, and we have stoutly defended the evolution of Britain into a fully-fledged and tolerant multi-racial society. We have crusaded against the BNP as energetically as any other newspaper in recent years.

But while we believe in a multi-racial Britain, we do not believe in a crude multi-cultural Britain where new ethnic groups are encouraged and enabled to rigidly maintain the culture of their country of origin rather than integrating into mainstream British culture.

We believe the unprecedented scale of immigration into Britain over the past decade has been profoundly damaging to race relations. We see the scale of asylum applications, particularly in the early years of this century, as an important component of that problem. We note that the majority of asylum seekers have been young men from chaotic and violent countries. We believe the asylum system has been widely abused as a way of entering and remaining in Britain by so-called "welfare tourists" and would-be economic migrants, many of whom end up working in the informal economy as well as receiving taxpayer-funded support. We are also disturbed by the proliferation of new ethnic criminal gangs within Britain's towns and cities and believe many of these criminals arrived in Britain through the asylum route in the first instance. We are equally disturbed by the number of asylum seekers coming to the attention of the police and MI5 as suspected terrorists and terrorist sympathisers. We find it intolerable that only around a quarter of failed asylum seekers ever leave Britain and believe this has brought the whole system into disrepute.

We therefore approach the issue of asylum with an agenda we believe to be in the public interest and make no apology for doing so. As a newspaper we are sceptical about the impact of the asylum system on national life and indeed about the alleged benefits of continued largescale immigration in general. In this we reflect the overwhelming views of our readers. We are one component of a free and diverse press and are not—and should not be—constrained by the sort of rules and regulations on coverage which bind, for example, broadcasters during general election campaigns.

Just as liberal internationalist newspapers such as *The Guardian* and *The Independent* and pro-multicultural broadcasters like the BBC make editorial judgments which often lead them to marginalise stories about asylum and immigration problems, so *The Daily Express* often makes editorial judgments leading us to highlight these issues which we regard as of major significance to the quality of life our readers enjoy.

We are deeply disturbed by attempts to cite the European Convention of Human Rights and/or the Human Rights Act as legitimising attempts to limit the right to freedom of expression enjoyed in Britain for hundreds of years.

We believe our readers are deeply hostile to the notion that their freedom of expression should be limited within Britain on grounds that such freedom may run counter to the human rights of asylum seekers from other countries.

2. CRIME

Despite the astonishing revelation last year that up to one in seven inmates in British prisons are foreigners (one in eight if inmates of unknown origin are not counted) the Home Office does not collate statistics on crime committed by asylum seekers or other categories of immigrant. So we have to rely on anecdotal evidence and news coverage of crime. This suggests a major problem.

It should come as no surprise if asylum seekers commit disproportionate amounts of crime. Most are young men from chaotic and violent countries, many of which have no tradition of respect for women's rights and abysmal standards of driving and road safety.

On 26 October 2006, Tory MP Philip Davies tabled a written Commons question asking how many adults convicted of crime over the past five years were asylum seekers. Immigration Minister Liam Byrne replied: "The information is not collated centrally and could only be provided at disproportionate cost."

Many *Daily Express* readers suspect this is wilful neglect because ministers do not want us to know the scandalous truth.

A typical reader's letter:
DAILY EXPRESS—20/06/2006

Will our leaders reveal immigrant crime figures?

EVERY day we hear about violence in our towns, cities and suburbs.

When will we realise that society has broken down, and there's no respect for our way of life?

I'd like to know how much crime is committed by illegal immigrants and failed asylum seekers, many of who pay nothing towards their upkeep, but receive state benefits and even the services of interpreters ("Cost of migrants robs our streets of bobbies", June 16).

Maybe figures are available, but the Government is too scared to reveal them and admit that it made a mistake by opening our borders to all.

Hopefully, Mr Blair and his family will never be adversely affected by the tide of undesirables who live in our midst and cause mayhem by breaking our laws.

D Tierney, Liverpool

Our primary duty is to investigate the legitimate concerns of readers like Mr Tierney.

Tarique Ghaffur, Scotland Yard's Assistant Commissioner and head of its specialist crime section, has often spoken out about the rise of new ethnic criminal gangs. Scotland Yard has identified 180 crime gangs, speaking 24 languages, who are thought to be responsible for a third of murders in London. (*Sunday Telegraph*, 23/4/06). It appears reasonable to assume many of these will be manned by asylum seekers as the gangs originate in countries from which asylum is or has been the major method of migration to the UK (Somalia, Sri Lanka, Iraq, Kosovo etc).

Scotland Yard has identified 16 ethnic groups containing significant criminal elements.

As well as keeping tabs on home-grown villains, the Yard is now having to monitor criminal gangs from Albania, Algeria, Bangladesh, China, India, Jamaica, Kosovo, Lithuania, Moldova, Nigeria, Pakistan, Romania, Russia, Somalia, Sri Lanka and Turkey. (*Daily Express* 22/11/2005).

Some of the most notorious murders of recent years have been committed by failed asylum seekers not removed from Britain, for example: In 2004 failed Algerian asylum seeker Kamal Bourgass was convicted of murdering PC Stephen Oake.

In 2006 failed Somali asylum seeker Yusuf Jama was convicted of murdering WPC Sharon Beshenivsky. His brother, Mustaf Jama, another failed asylum seeker, is wanted for the same crime but is thought to have escaped back to Somalia. Both the Jama brothers had been convicted of serious criminal offences, yet not deported, before the killing of Beshenivsky.

Asylum seekers and failed asylum seekers have also been convicted of a string of rapes and other serious sexual assaults. Dozens of these have been reported in the Daily Express and other newspapers and we would be able to furnish the committee with extensive examples if requested.

We have also covered dozens of cases in the last five years where asylum seekers or failed asylum seekers have been convicted of serious motoring offences, many resulting in the death of British citizens. This is clearly another legitimate concern for our readers.

3. TERRORISM

More than 230 foreigners identified by MI5 and Scotland Yard as suspected terrorists have been allowed to stay in Britain as asylum seekers.

Home Office records show that nearly a quarter of the 963 people arrested in counter-terrorism operations in England and Wales since September 2001 have claimed asylum, saying their human rights would be violated if they returned to countries such as Algeria, Iraq and Somalia.

While their applications are processed, all are entitled to state benefits such as free housing and legal aid to pursue their claims that they would be persecuted in their home countries.

Ministers have repeatedly admitted terrorism is the biggest threat Britain faces and John Reid has been explicit that terrorists have been able to enter Britain by using the bogus asylum route (see, for example, *Daily Express* 10/08/2006).

4. ASYLUM SEEKERS AND HOUSING

Housing shortages are now a major political issue in Britain, with the most acute impact being felt both by poor people who could previously have expected council housing and Middle Britain families whose grown-up children cannot afford anywhere to live.

The recent massive migration from Eastern Europe has exacerbated these pressures. But so has the needs of asylum seekers.

Over the nine years 1997–05 inclusive, the number of grants of asylum and Exceptional Leave to Remain totalled over 216,000 compared to just 167,000 additional social and local authority homes built throughout Britain in this period.

Therefore just successful asylum seekers—who must be housed by the State—were greater in number than the entire additional stock of social housing. This is disregarding the backlog of applicants in the system, the unsuccessful applicants who fail to leave and all the other types of immigration into the UK (eg from the rest of the EU).

5. ASYLUM SEEKERS AND THE NHS

Asylum seekers from south Asian and African countries are a major component of new cases of HIV and TB in Britain.

In November 2006, several national newspapers including ourselves reported the finding by the Health Protection Agency that 70% of diagnoses of TB, HIV and Malaria in England in 2004 came from immigrants. We made clear that this had not resulted in a surge in infections among people born in the UK, but the cost implications for the NHS are clearly substantial (*Daily Express* 16/11/2006).

Given the global concentration of these diseases in sub-Saharan Africa and, for TB, also in south Asia, a high proportion of these diagnoses would have been in asylum seekers.

The NHS is one of Britain's proudest achievements. But it is a national communal insurance scheme and is bound to lose public support if there is a high level of what economists term "free riding" (ie people who have not paid anything in, securing its benefits). The *Daily Express* has long supported the ideals of the NHS and sees the ability of asylum seekers and other foreign nationals to tap into its resources for nothing as potentially counter to its founding principles as a great NATIONAL enterprise. This is especially true at a time when NHS resources are particularly stretched and British citizens who have paid taxes in the UK all their lives are being denied life-saving drugs on the grounds of cost.

6. OUR CRUSADE AGAINST THE BNP

The racist BNP is a growing threat to mainstream British democracy. The *Daily Express* has ceaselessly crusaded against it, reminding our readers time and again that whatever criticisms they may have against mainstream parties or the Government, there is no excuse for voting BNP.

We have carried hundreds of critical articles about the BNP exposing the full extent of their race hate views and the criminal backgrounds of many of their organisers. (Again, we could easily furnish the committee with extensive examples). Our journalists have been the subject of threats and bitter complaints from BNP activists. At local election time we have stepped up our crusades in a bid to prevent the BNP from getting a foothold in town hall government.

We have done this because of our commitment to a multiracial society in which everyone is judged by how they behave and not by the colour of their skin.

But we believe that, while we have helped to hound the BNP, the failure of the British establishment to act on legitimate concerns over immigration and asylum has been its greatest recruiting sergeant.

7. OTHER POINTS

We warned that hundreds of thousands of Eastern European immigrants would come to Britain in the wake of the expansion of the EU, putting acute stresses on various aspects of British society. The Home Office's experts estimated between 5,000 and 13,000 would come. We were right.

While most of these, mainly Polish, immigrants have indeed come to work and contribute, the influx has placed massive pressure on many towns and cities; particularly their schools and housing stock. Several councils have had to appeal for more public funds to help them with the transitional costs. Unemployment among Britons has also been on a sharp upward curve since the migrant wave arrived. And even Labour MPs such as John Denham have acknowledged the influx has depressed pay rates for British workers in some sectors like construction.

During Labour's second term (2001–05), we exposed how ministers abandoned a manifesto promise to deport 30,000 failed asylum seekers a year. This cynical dumping of a promise, and the underhand way it was conducted, did huge damage to public confidence in the system.

We believe our concerns about these issues were vindicated when John Reid arrived at the Home Office and admitted the whole asylum and immigration system was "not fit for purpose".

In recent opinion polls between two thirds and three quarters of people have backed very sceptical views about immigration and asylum. In one recent survey, 76% said that they favoured an annual limit on immigration. Only 10% were opposed. So the vast majority of the British public share our concerns. To seek to gag us or expose us to being sued for alleged breach of the human rights of asylum seekers would completely disenfranchise this majority.

Experience suggests that people claiming asylum in their neighbouring countries during times of turmoil in their own are far more likely to successfully re-settle in their countries of origin after the crisis has passed. One example of this is Afghanistan where many thousands of the refugees who fled to Pakistan were successfully returned after the toppling of the Taliban. But only a handful of the thousands of Afghans who claimed asylum in Britain have ever returned (and not those who hijacked an airliner, who were spared deportation on “human rights” grounds which the former Home Secretary Charles Clarke has described as an outrage).

The cost of the asylum system alone has now topped £1 billion a year. The percentage of applicants granted asylum or exceptional leave to remain (and its successor status) has varied in recent years, but typically between 60 and 80% of applicants are turned down on all these tests despite a convoluted appeals system.

So the majority of asylum applicants have no case and many therefore merit being viewed as “bogus”, a word we reserve the right to use despite it being detested by the asylum and immigration lobby.

The vast majority of failed asylum seekers do not ever leave and therefore end up as a continuing burden on British taxpayers. We believe the public crisis of confidence about these issues will persist in Britain until the asylum system returns to its original purpose of giving sanctuary to those who are in active danger of torture, persecution or worse in their home countries, while swiftly removing those who are not.

82. Letter from Bail for Immigration Detainees

Thank you for the opportunity to give evidence to the Committee on 8 January, regarding the detention of asylum seekers.

Please find below information I agreed to send the Committee.

1. THE NUMBER OF MINISTERIAL REVIEWS OF DETENTION OF CHILDREN AT 28 DAYS

A question on this matter asked by Damian Green MP (14 Dec 2006 : Column 1320W) is copied below.

Damian Green: To ask the Secretary of State for the Home Department how many times exceptional circumstances required Ministers to authorise the detention of families with children for more than 28 days in an immigration detention centre between 1 January and 31 October 2006. [106731]

Mr Byrne: Local management information indicates that 63 families with children required ministerial authorisation for continued detention beyond 28 days between 1 January 2006 and 31 October 2006.

The figures provided do not constitute part of National Statistics as it is based on management information. This information has not been quality assured under National Statistics protocols and should be treated as provisional.

Quarterly snapshots are published in the quarterly asylum bulletin, showing the number of people detained under Immigration Act powers on the last Saturday of each quarter. Statistics on the total number of persons leaving detention each quarter are also published in the quarterly asylum bulletin.

In addition, the Earl of Listowel asked Ministers for the number of refusals of ministerial authorisation in debate (14 Dec 2006 : Column 1688). An answer has not yet been provided, but I am in contact with the Earl of Listowel and will provide this to the Committee when it is available.

The Earl of Listowel: In her latest report, Anne Owers also expressed particular concern about child protection, and she was not clear how reviews of children influence decision-making. How many cases have been triggered for release as a result of social work assessment? Has the Minister ever refused to authorise continuance of detention after 28 days?

2. STATISTICS REGARDING THE DURATION AND OUTCOME OF THE DETENTION OF FAMILIES

I attach an analysis by BID of the duration and outcome of detention for families, based on information provided to BID under the Freedom of Information Act.

3. NATIONALITIES OF WOMEN DETAINED IN THE YARL'S WOOD FAST TRACK SYSTEM

Figures requested by BID under the FOI Act, provide a break down of the nationality of the intake of women's cases at Yarl's Wood for the period 1/10/05 to 31/5/06. 50 nationalities are listed, with the most intake from Nigeria, Turkey, Pakistan and Uganda. A copy of this information is attached.

Official statistics provide a breakdown of nationality but list only those with a significant number. In the last available statistics (the third quarter of 2006), the nationality is simply listed as 35% of intake (10 women).

<http://www.homeoffice.gov.uk/rds/pdfs06/asylumq306.pdf>

Table 22

PRINCIPAL APPLICANTS⁽¹⁾ RECEIVED AT YARLS WOOD FAST TRACK,
BY NATIONALITY, QUARTER 3 2006

<i>Total Principal Applicants 25</i>		
<i>of whom</i>	<i>Percentage of principal applicants</i>	
Nigeria	5	22
Sri Lanka	5	17
Jamaica	*	9
Pakistan	*	9
Uganda	*	9
Other nationality	10	35

⁽¹⁾ Figures, other than percentages, are provisional and rounded to the nearest 5, with * = 1 or 2.

⁽²⁾ No final confirmation of a decision had been received when these statistics were compiled on 16/10/06.

⁽³⁾ Cases may be taken out of the Yarl's Wood Fast Track process if more complex issues emerge, which were not apparent at the initial screening stage, necessitating additional enquiries which cannot be conducted within the Yarl's Wood timescales, or when it is decided that for whatever reason, the applicant is no longer suitable for fast track processing.

4. EXAMPLES OF FAMILIES SPLIT BY DETENTION, IN PARTICULAR CASES OF WOMEN BREASTFEEDING INFANTS

I have been in contact with the relevant people about this, and will send details to the Committee as soon as they are available.

Please do contact me if you require further information on any of the above.

Sarah Cutler
Assistant Director—Policy

82. Further memorandum from Bail for Immigration Detainees

STATISTICS ABOUT CHILDREN IN DETENTION

Official statistics do now include better information about children (although there are still some figures that are not provided). (The full statistics can be accessed on the Home Office website <http://www.official-documents.co.uk/document/cm69/6904/6904.asp>)

Some of the key points from the 2005 statistics are summarised below:

- Official figures show that 29,210 people were detained under Immigration Act powers in 2005 (not including those detained in prisons and at Oakington Reception Centre).⁵⁸⁸
- The majority of people detained had claimed asylum at some stage (16,805 people or 58%).
- The vast majority of those detained (27350 people) were over 18 years of age. 1860 (6%) were children detained with their families.

(a) *Outcome of detention*

The outcome of detention for 20,420 (70%) people was removal from the UK. 7,290 (25%) were released, 130 granted leave to enter/remain and 1,370 bailed. (Table 6.5)

The outcome of detention for children is not provided in the official figures, but figures obtained by the charity Bail for Immigration Detainees (BID) under the Freedom of Information Act show that during the last three months of 2005, 30% of child detention (140 children) did not result in removal, but in release on TA or bail.

(b) *Age of children detained in 2005, broken down by length of detention*⁵⁸⁹

Of 1,860 children detained in 2005:

43% (795) children were under 5 years of age, (of whom 680 asylum seekers). 595 (75%) of this age group were detained for 7 days or less, 90 for 8–14 days, 95 for 15–29 days, 30 for 1 month to less than two months, 10 for 2 months to less than 3 months.

31% (585) children were aged between 5 and 11 years old (of whom 510 asylum seekers). 395 (68%) of this age group were detained for 7 days or less, 75 for 8–14 days, 80 for 15–29 days, 35 for 1 month to less than two months.

21% (395) children were aged between 12 and 16 years old (of whom 325 asylum seekers). 305 (77%) of this age group were detained for 7 days or less, 35 for 8–14 days, 40 for 15–29 days, 15 for 1 month to less than two months.

5% (85) children were aged 17 years (of whom 65 asylum seekers). 65 (76%) of this age group were detained for 7 days or less, 5 for 8–14 days, 10 for 15–29 days, 5 for 1 month to less than two months.

January 2007

83. Letter from Mr Andrew Dismore MP, Chairman of the Joint Committee on Human Rights to Mr Liam Byrne MP, Minister of State for Nationality, Citizenship and Immigration, Home Office

*JCHR oral evidence session on treatment of asylum seekers
Monday 5 February 2007*

My Committee has nearly completed its inquiry into the treatment of asylum seekers and has for some time been planning to hold the final oral evidence session with Ministers (you and Rosie Winterton from the Department of Health) at 4.15pm on Monday 5 February.

Judy Wilson, the Committee's Inquiry Manager, first attempted to check your availability for this date on 28 November, via an email to Phil Rawlinson, the Home Office's Parliamentary Clerk. The Department of Health confirmed to her two days later that Rosie Winterton would be available, but despite a further email on 7 December, and phone calls to Mark Lister and Gillian Unsworth in your office on 12 and 19 December, she still had no reply from the Home Office about your availability. Earlier this month we were told that the Home Office could find no trace of an invitation, but that the date and time would be kept free in your diary. However, when Judy Wilson spoke to your office last week, she was told that you were not available then, and that the earliest convenient Monday for you would be 12 March.

In these circumstances I am very reluctant to delay the Committee's inquiry and the publication of its report. The Committee is currently working on a number of different inquiries, and it is very difficult at this late stage to re-schedule its other commitments. Can I ask you to prioritise this matter and to make every effort to make yourself available for the oral evidence session on 5 February? Please could you let us know by return if you will be able to attend or not.

January 2007

⁵⁸⁸ See Table 6.5, Control of Immigration Statistics, 2005, CM 6904, Research and Development Statistics, Home Office, August 2006 available at: <http://www.official-documents.co.uk/document/cm69/6904/6904.asp>

⁵⁸⁹ See Table 6.6, Ibid.

84. Memorandum by the London Borough of Hillingdon

UNVERIFIED INFORMATION PRESENTED TO THE HEARING ON 8 JANUARY 2006 BY OFFICE OF THE CHILDREN'S COMMISSIONER

Thank you for giving London Borough of Hillingdon the opportunity to respond to the information placed before the Committee by the Office of the Children's Commissioner (OCC) about alleged practices by this Council relating to the care and treatment of unaccompanied asylum seeking children in this Council's care.

London Borough of Hillingdon very much regret that the OCC did not take the opportunity of discussing the information that it put to the Committee with this Council in advance to the said presentation, as this would clearly have provided the London Borough of Hillingdon with an opportunity to contextualise the information and reassure the Commissioner and the Committee about our practices.

London Borough of Hillingdon regret the impact that the OCC actions in this regard have had on staff working in Hillingdon, and the publicity that has been attracted through publicising unfounded allegations. This Council is particularly mindful of their responsibilities under the Race Relations Amendment Act for promoting community cohesion and of the need to ensure that local opinion is not inflamed or prejudiced by inaccurate information in the public domain.

We would like to both inform and reassure the committee of this Council's practices in relation to UASC. You will I am sure be aware that Heathrow Airport is within our borough boundaries and that as a consequence the Local Authority is responsible for safeguarding and promoting the welfare of all children who arrive in the country or pass through. As you will no doubt appreciate given Heathrow is the world's busiest international airport, this has provided the London Borough of Hillingdon the opportunity to gain an extensive experience and tradition in working with the children and the specific welfare issues that arise there.

At the current time Hillingdon is responsible for 1,137 UASC of these:

<i>Age</i>	<i>Number</i>	<i>Grant provided</i>	<i>Unit Cost</i>
0-15	96	£721	£794
16-17	258	£323	£477
18+	783	£100	£198

As a consequence of the Local Authorities support to UASC, this council has faced the following funding problems:

Funding Gap 2004-05 £1.6 million

Funding Gap 2005-06 £4.7 million

Funding Gap ongoing £6 million

London Borough of Hillingdon is currently pursuing a Judicial Review of the Government in respect of retrospective changes to grant funding which has created funding pressures for this Council.

All public bodies are required to operate within limited resources and London Borough of Hillingdon is no exception to this, however the pressure on this Council to fund services to UASC is far greater than that of any other Local Authority in the Country.

Despite this, London Borough of Hillingdon contends that their practices in regard to support to UASC are neither discriminatory or unlawful. The Council further contends that if greater funding was available there is no doubt that services to children and young people could be improved and enhanced.

The Council has had to make some difficult decisions and these have been that other services within the council have been cut in order to fund services to UASC and that there have been staff redundancies to fund the shortfall identified above in order that the statutory duty in respect of UASC can be met.

London Borough of Hillingdon have responded to each of the allegations made by the OCC in the attached document headed "Evidence from the Office of Children's Commissioner on the de-accommodation policy and practice of London Borough of Hillingdon" which was presented to your Committee on 8 January 2007. In summary however we contend that there is no formal or blanket policy to "de-accommodate" UASC. Our practice is to provide services on the basis of assessed need. Where that shows that young people's needs can be met through the leaving care system and the young person does not need to remain in the care of the local authority in order for their needs to be met they will be provided with leaving care services as required by legislation.

London Borough of Hillingdon's leaving care service is provided under Section 23 of the Leaving Care Act 2000 and includes the requirement for pathway plans and allocated Personal Advisers. The services provided through the Pathway Plan are the same as would be provided under Section 20 of Children Act 1989, with the exception that an Independent Reviewing Officer would not be required to undertake six monthly reviews of the pathway plan. The Personal Advisor would carry out these reviews.

In relation to the oral evidence provided to the Committee our response is detailed below:

DEACCOMMODATING AFTER 13 WEEKS

We believe that oral evidence here relates to newly arrived UASC aged 16–17 and not those who have been in Hillingdon’s care prior to being 16 years.

We wish to reassure the Committee that London Borough of Hillingdon does not de accommodate UASC in order to avoid leaving care costs. Following the case of *R v Berhe and others*, sometimes known as the “Hillingdon Judgement” in 2003 all UASC assessed as being under 18 years arriving via Heathrow are accommodated under Section 20 and after the expiry of 13 weeks in Local Authority care are thereafter entitled to services under the Leaving Care Act 2000 until they are 21 years or 24 years if in full time education.

London Borough of Hillingdon is of the view that there is very little difference between the services the Council provides to newly arrived UASC aged 16–18 years whether they are provided within the looked after system or within the leaving care system.

Services are provided on the basis of assessed needs. Although all UASC are vulnerable, the 16–18 population is mostly, in our experience, able to thrive in supported accommodation such as that provided at Margaret Cassidy House. Where this is not the case the young person will be offered alternative support in foster care or specialist provisions. All of our young people have access to education and health care and there is a specific project to address their mental health needs.

London Borough of Hillingdon may well discharge a young person from care after 13 weeks (13 weeks is the timescale that entitles young people to a leaving care service until they are 21 or 24 in full time education) provided that doing so would be consistent with their needs. If this happens the young people themselves generally experience no difference in the services they receive, they do not move placement, their education or other support is not changed in any way.

It would be most exceptional for this Council to admit one of their local young people to the care system if they were over 16 years of age as their needs would usually be provided for as children in need in the community, this would be in some ways similar to the leaving care service we offer to 16–18 year old UASC, in recognition of their transition to adult hood and their increasing need for independence.

We do not believe that children have “far less” protection under the care leaving system, as these young persons continue to have allocated workers, ongoing pathway plan reviews of their situation and help with education.

We do accept that it is very difficult to explain to a young person the difference between remaining looked after under section 20 of the Children Act 1989 and having services provided under Section 23 of the Leaving Care Act 2000 especially since in our view the young person will experience very little material difference.

We do provide advocacy services to our UASC and will make sure that this availability is reinforced in the light of the OCC comments.

We take the view that our practices are not unlawful or discriminatory in any regard, and are grateful for the opportunity to explain our practices to the Committee and welcome any support or recommendations from the OCC in promoting a better service for the UASC.

GREEN PAPER: CARE MATTERS

London Borough of Hillingdon whole-heartedly accepts the proposals in this Green Paper, however we believe that the proposals must be centrally funded in relation to UASC for whom Hillingdon has a disproportionate responsibility. We are opposed to a differential system of care for local young people and UASC and have stated this in our response to the Minister. We take the view that the Green Paper does not have any bearing on Hillingdon’s current practice.

Hillingdon do not move UASC from their foster homes simply because they turn 16 years of age, we have many examples of young people staying with their foster carers until the age of 18 years and beyond where they need to complete exams for example.

This does create a huge financial pressure on the Local Authority as mentioned above, but demonstrates Hillingdon’s commitment to the support of these vulnerable children and young people.

We are currently in extensive communication with the OCC with regards to providing the information the OCC require in furthering their enquires into this Council’s practice. Given it’s location this Council faces an unusual difficulty and as a public authority it has tried to offer the best service possible to UASC within its means.

We trust that we have been able to demonstrate in this letter and the attached document that this Council, as a public authority with clear statutory responsibilities in relation both to children generally, and to specific children, wishes to cooperate fully with the Committee and the OCC.

We trust the above and the attached document responds to your enquires, however we are more than willing to assist with any further information the Committee may require.

We would be also grateful if you could inform us of any further hearings that are scheduled on this matter and what the Committee proposals in relation to this matter.

Hugh Dunnachie
Acting Chief Executive
London Borough of Hillingdon

January 2007

Evidence from the Office of the Children's Commissioner on the de-accommodation policy and practice of the London Borough of Hillingdon: The following commentary in bold is provided by London Borough of Hillingdon

Arrival and Referral to Hillingdon Social Services

1. The majority of UASC supported by the London Borough of Hillingdon arrive at Heathrow airport and are referred directly by the Immigration Service to the Asylum Intake Team (AIT)⁵⁹⁰ or the Emergency Duty Team (EDT) outside of office hours.

Response by London Borough of Hillingdon (LBH):

This is correct

2. The AIT also receives referrals from Colnbrook and Harmondsworth Immigration Removal Centres. Where an arriving asylum applicant claiming to be a minor is disbelieved by the Immigration Service they may be treated as an adult and therefore detained. The AIT's role here is to attend the detained individual and determine whether the local authority has a duty to them as a "child in need" under Part III of the Children Act (1989). If the detainee is found to be a child they will be released into the care of the local authority.

Response by London Borough of Hillingdon:

AIT prioritise referrals from detention centres in order to ensure that a minor is not detained inappropriately and unnecessarily and for child protection reasons in the event the assessment identifies the young person as a minor. For those reasons the AIT undertakes assessments in relation to a child in need in the area of London Borough of Hillingdon in a timely fashion, employing the resources of two workers and interpreters to ensure that minors are not wrongfully detained.

3. New arrivals who are judged to be over 16 are placed in the "emergency rooms" at a facility called Margaret Cassidy House—a remote setting near to Harmondsworth IRC. The emergency rooms are shared accommodation consisting of four beds to a room. Occasionally there are more than four young people occupying "emergency rooms".

Response by London Borough of Hillingdon:

Margaret Cassidy House (MCH) is primarily a semi-independent unit for young people aged 16–18. It provides high quality individual self-contained accommodation and support to young people preparing the young people for semi-independent/independent living. Due to its proximity to the airport it is also used as a resource for new arrivals "deemed" at the point of referral to be 16+. It is not accurate to describe it as "remote" and it is in no way linked to Harmondsworth Immigration and Removals Centre.

The majority of placements occur via our Emergency Duty Team in the evenings and weekends. Emergency rooms are kept vacant for newly arrived young people. The room may intermittently be shared depending on the number of arrivals in that particular period (which of course London Borough of Hillingdon has no control over).

If the Emergency room needs to be shared this will be for a time-limited period only pending subsequent Initial Assessment and Age assessment by the AIT. There has been only one occasion recently that it was necessary for four young people to share an emergency room, due to the high number of new arrivals and no other rooms being available.

4. The first part of this paper refers to the position for children who are already 16, deemed to be 16 or are nearing their 16th birthday.

⁵⁹⁰ <http://www.hillingdon.gov.uk/php/ebc.php?id=36>

Initial assessment

1. Within seven days of referral to the Asylum Intake Team (AIT), the young person an initial assessment will be undertaken. These assessments take place at the AIT office at Weir House. Although an initial assessment should be carried out within seven days, this might be carried out more quickly for two reasons: first where there is a perceived medical need or, second, where there are doubts about whether the young person is in fact a child. This situation raises child protection issues as the emergency rooms at Margaret Cassidy are shared. The AIT may be alerted of the need to undertake a quick initial assessment either directly by the Immigration Service, or the EDT at the airport or by one of the “support workers” based at Margaret Cassidy House (however, support workers at MCH are discouraged from using interpreters due to costs).

Response by London Borough of Hillingdon:

Initial Assessments (IA) are undertaken within seven days in accordance with government guidance. It is very rare that we are able to carry out IA’s in less that seven days but where there are health concerns or advice that a new referral may be an adult it is appropriate that we should seek to prioritise an assessment.

LBH quite rightly need to take into consideration information provided by Immigration, as the Immigration Officers are normally the first source of referral; the observations of staff (employed by LBH) who have day to day contact with young people at MCH are also very relevant and important sources of information.

LBH is not aware of any workers at MCH being discouraged from using interpreters and Interpreters are regularly/frequently employed by the Asylum Service in working with UASC’s and in particularly newly arrived individuals but also throughout the provision of our ongoing support.

Housing assessment

6. If the initial assessment finds the young person to be 16+ they will be sent for a “housing assessment” by the Asylum Support Team (AST) who will check their “entitlement”. It appears that what is actually checked is their immigration documentation. This may be to enable a claim to be made under the “UASC grant” from the Home Office. The AST will normally place the young person back in Margaret Cassidy House, where if the child is over 16, he or she will be placed in a fully self contained studio flat. The local authority employs “support workers” who are based at Margaret Cassidy House but who do not sleep there. This is apparently to avoid the facility being designated as a “children’s home” with the attendant requirement to register with Commission for Social Care Inspectorate and undergo inspection. Another facility—“Halls Terrace”⁵⁹¹ is used for UASC but this has no in-house staff. Outreach workers are used to support the UASC accommodated there.

Response by London Borough of Hillingdon:

Once an Initial Assessment has been undertaken an internal (paper) referral is made to the LBH Asylum Accommodation Team requesting suitable accommodation for those accepted as age 16+ based on assessed need. This may result in the new arrival remaining at MCH unless the assessment has identified that they may have greater/different needs. It is important to stress that accommodation is provided on the basis of need at this early stage and indeed at any subsequent stage where it may become evident that a young person is not appropriately placed at MCH.

The accommodation at MCH consists of self-contained units. MCH staff provide full induction and support to newly arrived residents, staff are available on site during normal working hours and up to 8 pm every evening and at weekends to support and assist residents in developing their independent skills. MCH is home to the majority of young people there and every attempt is made to make it feel like home. Since the recent re-opening/refurbishment there is a communal area with lounge facilities, TV (all young people also have their own tv in their room) plus Groups ,Drop Ins, Voluntary support programmes are provided in relation to sexual health, wellbeing, English as a Second Language support etc.

The establishment is not registered as a children’s home as the needs of the young people do not require this level of care.

Review meeting

7. Once the placement has been settled, the child is normally allocated a named worker—either a registered social worker, a “personal advisor”, or a “children’s asylum worker”. These second two groups of staff are not registered social workers, but often undertake the initial assessment and take part in the review. Staffing constraints mean it is not always possible to allocate a named worker prior to the first review meeting in which case a “duty worker” who may be unknown to the child would attend with them on the day of the review.

⁵⁹¹ <http://www.hallsterrace.co.uk/>

Response by London Borough of Hillingdon:

Personal Advisors and Children’s Asylum Workers are selected because of their experience in asylum issues and are almost always very experienced workers. Many of the workers are from diverse cultural and ethnic backgrounds, have language skills and personal experience of asylum, which enhances their experience and understanding. A qualified manager from the Asylum Team supervises all work by unqualified staff.

As in our mainstream service allocation of social workers has been a challenge but we have recently offered 40 permanent contracts to staff, which has improved our overall position and level of allocation.

8. A statutory looked after child review must be undertaken within 28 days of a child becoming looked after⁵⁹². The process of “review” of the case would “normally” take place between 21 and 28 days, although it is not unknown for this to happen more quickly—within a week or two of the initial assessment. (and even on occasion within a few days). These reviews are chaired by an Independent Reviewing Officer (IRO)⁵⁹³ with the young person, their allocated worker (or a “duty worker”) and an interpreter ordinarily being present. The purpose of the review is to monitor the child’s well-being, progress and future to ensure that, in accordance with their statutory duty under section 22(3) Children Act 1989, the child’s welfare is being safeguarded and promoted. Normally, the review would have before it information from professionals, carers, teachers etc to enable it to determine whether the child needs to remain looked after or can be rehabilitated with his family or found a permanent placement with another family. In the case of UASC children, the only information that will be before the review is the initial assessment, which is a short and fairly superficial document, generally containing information from the child alone, with perhaps some medical information.

Response by London Borough of Hillingdon:

The review process is the same for all children in the care system, the timing is a regulation. It is accurate, that many initial reviews have limited information for Independent Reviewing Officers (IROs) and the review may be attended by duty workers who have met the child/young person only briefly if at all. In these instances, the IRO has the option of adjourning the meeting. This happens not uncommonly and can also happen where there is an age assessment pending, which may result in the young person being deemed ineligible for a looked after service, as they are deemed older than 18. There is no way of predicting the number of reviews that the Authority may have to carry out within 28 days due to the volatile nature of arrivals, and this means that in order to meet the regulation they can happen at short notice.

The practice at these first review meetings is for the IRO to make a decision to “de-accommodate” a young person if they have already reached the age of 16 or will have reached that age by the time they are de-accommodated. The date for “de-accommodation” is generally set for just over 13 weeks from the initial assessment, the minimum necessary time period before a child can be considered eligible to receive leaving care services.

Response by London Borough of Hillingdon:

All review meetings consider the pathway/care plan and the services required to meet the young persons needs. Consideration is also given as with all looked after children as to whether a child should continue to be a looked after child. This consideration is given after the 13 weeks so that the young person can be eligible for the leaving care services. Any decision made at the review can be changed by calling another review to consider new information. The pathway plan describes how the young persons needs should be met. In most cases the young person would only need to remain in care if they were exceptionally vulnerable and require specialist services such as mental health support or foster care. Our statistics show that we have a significant proportion of 16–17 year olds who continue to remain looked after children until they are 18 years old.

Prior to any decision being made about the child, it is the duty of the IRO to ensure that the child’s views are understood and taken into account.⁵⁹⁴ The local authority are also under a duty to ascertain the child’s wishes and feelings regarding de-accommodation and to give due consideration to those wishes, having regard to the child’s age and maturity (section 20(6) Children Act 1989). In order to have an effective consultation and for a child to be able to express their wishes and feelings about remaining in the looked after system, the child needs to understand what is being proposed. There is no indication that UASC children in Hillingdon receive clear advice on the difference between being in the looked after system and receiving services under leaving care provision. These children do not appear to have access to independent advocates

⁵⁹² (Reg 3 Review of Children’s Cases Regulations 1991).

⁵⁹³ S 26(2A) Children Act 1989 and Reg 2A Review of Children’s Cases Regulations 1991.

⁵⁹⁴ Reg 2A(6) Review of Children’s Cases Regulations 1991 The Regs make it clear that legal advice and an appropriate adult should be offered where the child is likely to want to make a complaint or legal proceedings. Where the child is unable to understand the consequences of the local authority’s proposals, whether due to age, maturity or simply ignorance of the English system and what the meaning of what is being proposed, an advocate should at the very least be appointed to assist the child to put their views to the review and have their voice heard . . .

who can explain these differences, nor is it clear that the IRO ensures that children's wishes and feelings on this issue are considered, despite the duty on the IRO to assist the child to obtain legal advice and an advocate if necessary.⁵⁹⁵

Response by London Borough of Hillingdon:

Interpreters are normally present at reviews and the IRO explains the process, so that young people are informed about the decisions. The Authority accepts that it is very difficult indeed to explain the legal processes to the young people although this is attempted. The young people do also receive copies of the review decisions. There is an independent children's rights service provided by National Children's Home (NCH) and Young people will be advised to seek independent legal advice and supported in seeking the advices should they wish to do so.

If the decision is that the young person is no longer to be a looked after child, the young person will continue to receive services under S23. Although there will be no further independently chaired reviews there will be continued reviews of pathway plans and the level of service to the child will remain the same, that is according to need. Services provided under S23 do not require the child to move placement or invoke other changes to their pathway plan unless this is in accordance with need.

1. The IROs chairing the reviews of UASC children appear to be registered social worker employees of Hillingdon. The Review of Children's Cases Regulations 1991⁵⁹⁶ permits the appointment of social workers employed by the local authority in question as an IRO, but the appointee must not be involved in the case, or be under the direct management of a person involved in the management of the case. In addition the IRO must not be under the direct management of a person with control over the allocation of resources allocated to the case.⁵⁹⁷ It is not clear, in the case of Hillingdon, that the IROs appointed fulfill the criteria. Clearly all IROs are affected by the policy of their employer, the London Borough of Hillingdon, supported by the Children and Families Divisional Management Group and the Child Protection and Review Section, to de-accommodate UASC children after 13 weeks and thus arguably falls under the direct management of a person with control over the allocation of resources allocated to the case. The Green Paper on "Care Matters" has expressed concern over the lack of independence of IROs, and the potential conflict of interest that arises from using local authority employees. We would submit that Hillingdon provides a very clear illustration of the problems faced by children where the chair of the review is not a totally independent reviewing officer.

Response by London Borough of Hillingdon:

The Child Protection and Reviewing Section are not part of the operational line management of any child's case. The manager at the present time is supervised by the Acting Deputy Director but has a direct opportunity to report to the Director of Children Services or the Chief Executive should matters not be resolvable, we have a policy to that effect and it our belief that many Local Authorities operate in a similar way.

12. Prior to the third quarter of 2006, the general practice was for the AIT to carry out a more in-depth assessment of the child, known as a "core assessment" before the child's case was transferred to the "Youth Asylum Team" (16+ team). This does not now happen and it appears unlikely that any core assessment is in fact conducted before "de-accommodation" takes place. The failure to undertake a core assessment prior to de-accommodation means that decisions are made at the review on the basis of very sparse evidence.

Response by London Borough of Hillingdon:

Core assessments as part of Government guidance are to be completed within 35 working days after the completion of the Initial Assessment. There has never been any decision to cease completing Core assessments, irrespective of any decision to discharge a young person from care as a Core Assessment is required to be completed.

It should be pointed out that the very nature of UASC referrals means that there is rarely any historical/factual information available and that information available at 1st, 2nd and even subsequent reviews is based on what the child/young person provides and the observations of those who are in contact/providing support subsequent to arrival in the UK.

2. The most striking feature of the arrangements after the third quarter of 2006 is the clear policy to de-accommodate children after 13 weeks. The decision does not appear to be based on a needs assessment, nor is there proper consultation with the child, or informed consent on the part of the child as required by law. In addition, in most cases there has been no effective social work input into the decision, the case having

⁵⁹⁵ Reg 2A(7) Review of Children's Cases Regulations 1991.

⁵⁹⁶ As amended by the Review of Children's Cases (Amendment) (England) Regulations 2004.

⁵⁹⁷ Reg 2A(4) Review of Children's Cases Regulations 1991.

been allocated to a duty worker who is often not a registered social worker, due to pressure of time. The decision to de-accommodate will result in the child receiving a lesser form of service and a lesser form of protection.

Response by London Borough of Hillingdon:

Any decision to discharge a young person from care before 2nd review will be based on the individual needs of the child/young person.

Allocation to a duty worker is not related to pressure of time but available resources. The care leaving service does not correlate to a “lesser form of protection” as young people are allocated to workers according to need whether they are looked after or care leavers. Hillingdon is making best use of all of its available resources in relation to children in their care and the constant volume of work generated within the asylum service.

14. The duties owed to a looked after child accommodated under section 20 Children Act 1989 are quite different to those owed to a care leaver. The local authority does not have parental responsibility for a care leaver and do not owe the duties of a corporate parent to such a child. Neither will a leaving care child have an allocated social worker, or statutory reviews. The local authority is under a duty to provide accommodation and maintenance unless satisfied the child’s welfare does not require it, but apart from this there is merely a duty to keep in touch with a “relevant” child (into which category the UASC de-accommodated care leavers fall), appoint a personal adviser and prepare a pathway plan.

Response by London Borough of Hillingdon:

The Local Authority does not have Parental Responsibility even under S20. So at no time does the Local Authority formally have parental responsibility. We undertake our Care Leaving responsibilities fully and in accordance with need and in accordance with S.23 Children (Leaving Care) Act 2000.

All these young people have pathway plans which are reviewed 6 monthly, the pathway plans describe how the identified needs will be met, this includes provision of education, maintenance and support. LBH provide an excellent outreach support to our service users, which is far beyond simply provision of accommodation and “keeping in touch”.

15. The policy change on looked after UASC by Hillingdon has not been publicly announced, and thus the reasons for the change are unclear. However, it is likely that the need to make financial savings play a part. By de-accommodating UASC children after such a short period of time, social work time will be saved, there will no longer be a need for statutory reviews, saving IRO time and the services that will need to be offered to care leavers are likely to be very considerably less than those owed to looked after children. It has also been suggested that reducing the numbers of “looked after” children, also reduces the number of unallocated cases, thus shielding the authority from criticism on this issue.

Response by London Borough of Hillingdon:

London Borough of Hillingdon have not had a formal policy change on provision of services to UASC, however LBH has its practices to ensure that it makes best use of all available resources. In some cases and according to need this may result in the needs of some young people aged 16–17 being met as care leavers rather than looked after children. We believe that this is a proportionate response to young people who are entering adulthood and do not require services of foster carers or children’s homes as their skills for independent living are either developed or developing in accordance with their age and aspirations.

All those young persons that are no longer formally “looked after children” continue to receive a service as Care Leavers (as eligible, relevant or former relevant young persons as defined by the Children (Leaving Care) Act 2000 . The service provided to care leavers would not be “considerably less” than a looked after child particularly for those who are already in semi-independent accommodation, but it would be proportionate to their needs. It is true to say that the resources of IRO’s would not then be needed for this group of young people and that would represent an appropriate efficiency for the local authority. However there is a review of the pathway plan and continued support provided by the young person’s personal advisor, duty worker or support worker and so there is an opportunity for additional needs to be identified should this arise.

Responsibility for the de-accommodation policy

16. It would seem that the de-accommodation policy is endorsed by senior managers of the Children and Families Divisional Management Group (C&F DMG), while its compliance and enforcement is being directed by the Child Protection and Review Section (CPRS). At the level of the individual child, the policy is being implemented by the allocated Independent Review Officer at the first review meeting.

Response by London Borough of Hillingdon:

Senior managers endorse a needs led approach to care planning which may include serious consideration being given as to whether a child should remain “looked after” or not and whether the young persons needs can be met within the care leaving system. The decision about whether a young person is ready to move from being a “looked after child” will only be made if it is consistent with the young person’s identified needs.

17. We are deeply concerned that UASC children, who are frequently extremely vulnerable, are effectively being removed from the looked after system without due regard to the law, their needs or their welfare, and that their access to an appropriate level of service is thus prevented or restricted. We consider that the Hillingdon policy of de-accommodating UASC children at 16 is inimical to these children and fails to adequately safeguard and promote their welfare. We further take the view that the policy violates the child’s right to family life and private life under Article 8 ECHR and discriminates against UASC contrary to Article 14 ECHR. In addition, in introducing such a policy it would appear that the best interests of the child have not been the paramount consideration. The recent Green Paper on “Care Matters” states quite clearly that it is generally undesirable for children to leave care before their 18th birthday as most are unable to cope on their own below this age, the Green Paper recommends that all children should remain in care until they reach the age of 18. This applies to an even greater extent to UASC who are frequently unable to speak English, and have nobody exercising parental responsibility.

Response by London Borough of Hillingdon:

LBH is of the view that it does not operate in the way that has been alleged. We should point out that it would be most unusual for Hillingdon to begin to accommodate a local young person under Section 20 of the Children Act 1989, as we are required to do for UASC. New referrals of local children of 16+ would normally except in exceptional circumstances, receive services under section 17 of the Children Act 1989 in recognition of their increasing age and independence. The main reason for looking after UASC under Section 20 is to ensure that their needs can be met in the longer term through provisions of the Children (Leaving Care) Act 2000.

Children Under 16

17. Children aged under 16 on arrival do not go through the same process. They are either placed in foster care or in a children’s home. There is strong pressure to de-accommodate these children as they reach the age of 16 (when the grant arrangements change and the local authority gets considerably less remuneration from the UASC grant). This situation has led to numerous complaints from children in this situation who frequently wish to remain in their previous placement

Response by London Borough of Hillingdon:

Most children placed in foster care remain there up to age 18. Those placed in Charville Lane children’s centre are usually only deaccommodated at 16+ if ongoing assessments (including the wishes and feelings of the child) suggest that this is appropriate, they then transfer to semi independent accommodation. Again the needs of the child/young person are considered and it is worth noting that LBH has recommended young people age 16+ as needing either foster care or additional support as they are too vulnerable to be de accommodated or placed in semi-independent setting.

19. Under 16 UASC are treated differently to other, domestic, looked after children, a practice which is potentially in breach of Article 8 and Article 14 ECHR. The main provision for UASC is a dedicated children’s home—“Charville Lane”⁵⁹⁸. Where there is no placement available here they are generally placed with a private fostering agency “out of borough”. Domestic children with a “local connection” are placed in foster placements that are directly contracted by the local authority. The decision to de-accommodate at 16 raises the same issues as de-accommodation after 13 weeks. But, in addition, for these children, de-accommodation at 16 can lead to placement change, and as a result, loss of a school place, or difficulty in reaching the school, as the local authority are not under a duty to provide transport and children cannot afford to pay for such. transport. Children moved at the age of 16 are also likely to lose valuable social and professional networks.

⁵⁹⁸ Charville Lane Children’s Centre
<http://www.hillingdon.gov.uk/php/ebc.php?id=258>

Response by London Borough of Hillingdon:

Most of our UASC under 16 are placed in foster care. There is care taken to identify/match children to suitable foster carers in relation to culture/religion etc. Due to the high level of demand, LBH does not have sufficient number of it's own foster carers to meet the requirements of all looked after children's in LBH's care. Therefore LBH have preferred provider arrangements with a range of private and voluntary agencies. It is our view that this is a problem for a number of London Local Authorities.

LBH does not remove children from foster care simply because they are age 16. Any decisions to move young people even at age 18 takes into consideration their educational needs and available accommodation. On many occasions LBH has arranged for young people to remain with foster carers post 18, in order to complete exams or courses of study.

Where possible LBH aims to access suitable accommodation in other boroughs but this is not always possible. In all circumstances we place a high priority in supporting young people to access education. We do not know of any situation where we would move a young person and simply refuse to assist them to access agreed education unless there were issues of acceptable alternatives to travelling long distances to colleges when local courses are available.

85. Memorandum from The Children's Society's Young Refugees North East Project in Newcastle

CASE STUDY

The following is a case study from The Children's Society's Young Refugees North East Project in Newcastle. One of our project staff helped him write down his story.

The name has been changed but the other details are correct.

Background

John is from the Angolan enclave of Cabinda in West Africa. He recently turned 18 years of age. He had been asked to report weekly to sign on at North Shields. John had also recently been refused asylum in the U.K. and had exhausted all of his appeal rights. When John went to sign on at North Shields, which he had done for a number of months he was detained. John was taken to North Shields police station and held there for two days before being transferred to Colnbrook Detention Centre. John had his mobile phone removed so he was unable to contact friends or support workers. John only had the clothes he was wearing at the time of detention. He had no money on his person.

John's Story

When I was detained didn't understand why they locked me up, I have done nothing wrong.

I was locked up in what was like a prison, I had to share a room with a man that had been in prison for five years and was waiting to be deported, it wasn't just failed asylum seekers. This man had mental health problems and I wasn't allowed to use the phone when I wanted, if someone called I wasn't allowed to answer the phone, I had to keep him happy. I was afraid of being attacked I felt threatened.

It was very stressful and I needed medication, as I was depressed, it was not always easy to see a doctor, and if you missed your turn you might have to wait a week.

There are times for everything, when they open your doors, when you have exercise, when you eat, when you get to see a doctor. Sometimes they would lock the room door for no reason, it felt like they (security) wanted you to have an argument, they would play with your mind.

If you said little and kept your head down not arguing with them (security) they left you alone, it was best to keep your head down to say little.

When I wasn't eating they threatened to put me in a room on my own, without a phone, bath that I would be kept in solitary, that is what they do to you if you don't eat. I started to eat, as I didn't want to be in solitary, they said to me that now I understood how things work.

I was threatened with solitary because they (security) said that I was receiving too many faxes. We only got 70p a day to make calls, how can you call a solicitor or to call BID (Bail For Immigration Detainees), How do you do this on 70p a day?

I received phone cards from The Children's Society Young Refugees Project and from Save the Children; this helped me to make the calls. I was very happy to receive a visitor from the London Detainee support group, they came each week on a Sunday, and it was good to be able to talk to someone face to face from the outside. I received telephone calls from The Childrens Society most days and sometimes calls from other working that know me.

The food was not good, sometimes I felt sick after it, they would just bang the food down onto your plastic tray, maybe it wasn't fresh I did think that sometimes it was food from yesterday.

I got lots of telephone calls from people to tell me eat when I wasn't, the food was no good but I had to eat.

All the time I would ask why do they keep me here? Why do they try to send me back to Angola when I am from Cabinda, I am very scared of being sent back, they (Home Office) don't seem to understand if they send me back to Angola I will have to go in the army, If I say no I will get locked up or killed, if I say yes I will be sent to fight, may be in Congo.

I am from Cabinda. If I get sent to Angola I will be in danger, Cabinda and Angola have been fighting I will not be safe.

When I was in detention there were people with medical problems (HIV) that needed help, they should not have been in there, they needed medical treatment, I should not have been in there.

It plays around with your head not knowing if tomorrow they would send me back.

When I went to court (to apply for bail) the judge was very good, I explained that I was from Cabinda not Angola, the judge told me that they couldn't do anything about my asylum claim as the hearing was about my bail application. We (me and my girlfriend) explained to the judge about our relationship and we had letters of support from people and organisations in Newcastle to support us.

The judge listened to us and I got free.

I have to sign at the immigration office each week, I am very scared that they will lock me up again, my girlfriend goes with me. If I see a police car I get scared as I think that they are coming for me, I don't blame the police they are just doing a job when they come with immigration for you, but I get scared.

I try to keep busy to stop my mind from thinking too much about all of this.

CASE STUDY

A practitioner at The Children's Society's Young Refugees North East Project, based in Newcastle, tells the following two stories.

Both girls were detained in 2006. Their names have been changed.

Annabel's Story

Annabel was being supported by the Unaccompanied Minors Team in Newcastle Social Services and The Children's Society's Young Refugees North East Project.

One Sunday afternoon, just weeks after her 18th birthday, Annabel went out from the flat she shared with several other young asylum-seekers, and decided to pay a visit to a friend. Her friend was also supported by the Unaccompanied Minors Team and shared a flat with her younger sibling; they both had leave to remain.

Whilst at her friend's flat, the Immigration Service called, looking for someone not known at that address or to the young people there. The Immigration Service questioned Annabel about her identity but she had no papers or ID with her and was unable to prove that she was being supported by the LA.

She was taken by the Immigration Service and detained.

Annabel was in detention for several months. Attempts were made to remove her, but failed. She did leave the UK on one occasion but was returned from a stop-over airport, before reaching her country of origin, and eventually she was bailed to the care of Newcastle Social Services.

Her young friend was shocked and distressed by this intrusion into her home, and Annabel's abrupt removal. The Children's Society has been working with both Annabel and her friend since.

Bella's Story

Bella, aged 19*, who had briefly shared accommodation with Annabel was detained the very same day that Annabel was granted bail. Bella was also supported by the Unaccompanied Minors Team. Her asylum claim had been rejected but she had been gathering evidence to submit a new claim. She was reporting regularly at North Shields, where on one occasion she was detained without prior warning.

Bella managed to get a message out that she had been detained, and her social worker and myself went to her flat to gather essential items of clothing and personal effects, which we took to the Police Station where she was being held, together with some cash.

We were not allowed to see her or speak with her, although we were assured that the items we had brought would be passed on. Bella was transferred to Yarl's Wood Immigration Removal Centre in Bedfordshire the following day. I maintained telephone contact on a regular basis. Bella was very anxious that friends should know where she was and what was happening to her.

I offered support to other young refugees who were very distressed at what had happened to a friend, and some young people who were very worried that this may happen to them.

Bella attempted self-harm whilst in detention, and was prescribed medication. She was extremely distressed and kept stating that she could not return to her country of origin.

A removal date was set and attempts were made by various agencies to delay removal on the grounds that Bella had physical and mental health problems that had not been addressed. Her removal was abandoned at the airport on health grounds and further attempts were made to secure her some legal advice. This proved very difficult and in the meantime new removal directions were issued. I offered some suggestions of what to do on arrival to keep safe in the event of removal going ahead.

Bella was returned to her country of origin, and some contact has been maintained with the Young Refugees Project by email and telephone.

*Bella's age was the subject of dispute, but had been determined at 19.

86. Letter from the Immigration and Nationality Directorate, Home Office

Thank you for your letter of 1 February, I was very pleased to see that your visit to Yarl's Wood went well, and we could provide useful answers to your questions. I hope I can be as successful with answers to the additional information you requested, and that you can complete your enquiry.

A SUMMARY OF THE CHANGES BETWEEN THE CONTRACT WITH GSL AND THE CONTRACT WITH SERCO (INCLUDING ANY CHANGES IN PRICE, STRUCTURE, SERVICE LEVELS AND STAFFING LEVELS)

The revised contract for the provision of service at Yarl's Wood is effectively the same contract. The main differences of the new Yarl's Wood contract being that it provides the Authority with right of step, a variable charging mechanism based on occupancy and variances between old and new staffing levels due to better profiling and efficiencies which is reflected in the reduction in operating fee. Details of actual staffing levels are confidential as is commercial information. However, I can tell you that the overall cost of the operating contract has reduced from £120,267,659 to £85,340,705 over the eight year contract period.

DETAILS OF THE FOOD PROVIDED TO DETAINEES AT YARL'S WOOD (THE COST OF FOOD PER DETAINEE PER DAY, FLEXIBILITY OF MENUS FOR DETAINEES WITH DIETARY PREFERENCES/NEEDS, SAMPLE MENUS)

The contractor is required to provide a varied and healthy menu to take account of the detainee's and or dependent children's religious, dietary, cultural and medical needs and festivals recognised by the Authority whilst maintaining compliance with all food safety regulations. The contractor provides detainees and dependent children with three nutritious, varied, sufficient in quantity and good quality meals each day including healthy options with the option of at least two hot meals each day consisting of three courses. Lunch and dinner menus are multi choice with at least four main courses at lunch and dinner on a first come first served basis (no pre ordering required). Halal and vegetarian options are available at each meal. Any special dietary needs are identified during the reception process and are catered for specifically as required. All meals following medical advice will be met. The menu's are on a four week cycle (menus attached). Within the four weekly menu cycle some additional choices are provided which are designed to be more suitable for children. Information relating to the breakdown of costs is not available as this is incorporated into the overall contract price. The average cost per night per detainee across the detention estate is £116 per night. The details pertaining to the cost of providing detainee food between the contractor and their suppliers is treated as commercial in confidence.

PROCEDURES FOR VISITS TO DETAINEES, AND CIRCUMSTANCES IN WHICH VISITS MAY BE ABORTED OR PREVENTED

Social Visits

These visits should be booked 24 hours in advance by calling the Visitors Centre and booking a visits slot. Social Visits are available in two slots each day, 2–5 pm and 6–9 pm. Visits may be terminated at any time with the authority of the Duty Manager if necessary to maintain the good order and security of the Centre. Visits will normally only be allowed for either the afternoon or the evening session not both, however, in special circumstances, but subject to space, the Duty Manager may allow a double a booking/visit to be made/take place. Likewise, the Duty Manager may also allow a visit to take place, which has not been pre-booked.

In exceptional circumstances, special arrangements may be made for visits to take place outside of these times, particularly for those detainees who are being removed from United Kingdom the following day.

A Detainee may be placed on closed visits when authorised by the Duty Manager. Detainees and visitors who are on closed visits must be told prior to each visit that their visit will take place under closed conditions. A decision is taken to place a detainee on closed visits if the individual poses a threat to the security of the Centre or may pose a risk to others in the Visitors Hall. This provision is available at Yarl's Wood but has never been used.

A visit may be prevented, with the authority of the Centre Manager, if he believes that the visitor may pose a threat to the security of the Centre. This authority was exercised recently when protesters who had also booked visits were denied access to the Visits Hall on the grounds that the Centre Manager believed that they would continue their protest inside the Centre.

Legal Visits

These visits can take place from 9 am–9 pm and subject to pre-booking of interview rooms. A legal visit would only be prevented if the Duty Manager believed that the visiting officer posed a threat to the security of the Centre. Legal Visits have never been prevented at Yarl's Wood.

THE NUMBER OF APPEAL HEARINGS (A) HEARD AND (B) WON BY APPLICANTS AT THE IMMIGRATION COURT AT YARL'S WOOD SINCE ITS OPENING, SHOWING SEPARATE TOTALS FOR (I) BAIL HEARINGS AND (II) SUBSTANTIVE HEARINGS

The following information is supplied by the hearing centre manger at Yarl's Wood AIT court

2005–06

224 substantive hearings

2 allowed

68 bail applications

9 granted, 34 refused, 25 withdrawn

January 2007

170 substantive hearings

8 allowed

81 bail applications

29 withdrawn, 42 refused, 10 granted

THE CIRCUMSTANCES OF THE TWO INDIVIDUALS WHO HAVE BEEN IN YARL'S WOOD FOR AROUND 18 MONTHS ARE AS FOLLOWS

Detainee A

A Jamaican national arrived at Yarl's Wood in September 2005 having served a prison sentence following a conviction for supplying class A drugs.

She was sentenced to 18 months imprisonment and recommended for deportation. On the basis of this she was served with a Notice of Decision to Make a Deportation Order and her appeal against this decision was refused in November 2005. She was served with a signed Deportation Order in January 2006.

The caseholder is continuing to make arrangements to obtain a travel document for her removal from the United Kingdom. However, this is taking longer because Detainee A has previously refused to give details of her true identity. She has been asked to assist in the progressing of her case, and therefore reducing the length of time she spends in detention and can speak to IS staff on site at any time for this purpose.

Detainee B

A Jamaican national arrived at Yarl's Wood in October 2005.

She is the subject of deportation proceedings initiated against her following her conviction for a serious criminal offence. She was convicted of supply and possession of a class C controlled drug, possessing a prohibited weapon and handling stolen goods. She was sentenced to a total of three years imprisonment.

She lodged an appeal in September 2005 after a notice of decision to make a deportation order was served on her; this was dismissed in December 2005. Permission to appeal this decision was sort but refused. A signed Deportation Order has now been served on her.

The caseholder awaits clearance from the Jamaican High Commission with regard to issuing her with an Emergency Travel Document and has asked Detainee B to provide any supporting evidence of her nationality.

A BREAKDOWN OF CURRENT OCCUPANCY AT YARL'S WOOD (WOMEN ON FAST TRACK, FAMILIES AWAITING REMOVAL WITH SEPARATE FIGURES FOR MEN, WOMEN AND CHILDREN EX OFFENDERS AWAITING DEPORTATION)

Fast Track: 64

NSA: 8

Families: There are currently 37 children in the Family Unit; the children are part of 14 different families. On this unit are five adult males who are husbands/partners detained with their wives/partner. In addition to this there are seven single parent mothers and one single parent father.

Ex FNPs: 54

Single Females: 252

INFORMATION ABOUT THE NUMBER AND DETAIL OF INCIDENTS IN THE LAST THREE MONTHS WHERE FORCE WAS USED OR DETAINEES PLACED IN TEMPORARY CONFINEMENT (TC) OR REMOVAL FROM ASSOCIATION (RFA)

A description of the rules governing; the use of force (41) Temporary Confinement (42) and Removal From Association (40)

Rule 40

Where it appears necessary in the interests of security or safety that a detained person should not associate with other detained persons, either generally or for particular purposes, the Secretary of State (in the case of a contracted-out detention centre) or the manager (in the case of a directly managed detention centre) may arrange for the detained person's removal from association accordingly.

Rule 41

A detainee custody officer dealing with a detained person shall not use force unnecessarily and, when the application of force to a detained person is necessary, no more force than is necessary shall be used.

Rule 42

The Secretary of State (in the case of a contracted-out detention centre) or the manager (in the case of a directly managed detention centre) may order a refractory or violent detained person to be confined temporarily in special accommodation, but a detained person shall not be so confined as a punishment, or after he has ceased to be refractory or violent.

I have attached the detail of each incident, in the form of excerpts from the incident log from the centre, for each month.

November

Rule 40 = 4

Rule 41 = 3

Rule 42 = 2

December

Rule 40 = 3

Rule 41 = 2

Rule 42 = 2

January

Rule 40 = 10

Rule 41 = 8

Rule 42 = 5

DESCRIPTION OF SIX OR SO CASES WHERE FAMILIES HAVE ABSCONDED TO AVOID REMOVAL

The following information is supplied by the E&R secretariat

Nigerian Mother + 2 children Served Self Check-in (SCI) removal directions on 16/08/06
Failed to attend for removal on 23/08/06
Enforcement visit 14/09/06—family had absconded from accommodation
No further contact

Pakistani Mother + 2 children Served SCI removal directions on 26/07/06
Failed to attend for removal on 29/07/06
Enforcement visit 17/09/06—family had absconded
Further representations received 27/11/06

Nigerian Mother + 1 child Served SCI removal directions on 07/08/06
Failed to attend for removal on 11/08/06
NASS visits on 28/08/06 and 31/08/06—family had absconded from accommodation
No further contact

Nigerian Mother + 1 child Served SCI removal directions on 09/08/06
Failed to attend for removal on 15/08/06
Enforcement visit on 20/09/06—family had absconded from accommodation
No further contact

Turkish 2 Parents + 2 children Served SCI removal directions on 19/08/06
Failed to attend for removal on 25/08/06
Enforcement visit on 20/09/06—family had absconded from accommodation
No further contact

Congolese 2 Parents + 3 children Served SCI removal directions on 05/09/06
Failed to attend for removal on 10/09/06
Enforcement visit on 14/09/06—family had absconded from accommodation
Wife submits fresh PA claim on 08/11/06

I hope the above answers are sufficient enough to complete your enquiries, please do not hesitate to contact me if you require further information.

David Robinson
Detention Services

February 2007

PROPOSED APRIL 2007

YARL'S WOOD IDC MENU WEEK ONE

MONDAY		TUESDAY		WEDNESDAY		THURSDAY		FRIDAY		SATURDAY		SUNDAY	
BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST	
Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice
LUNCH		LUNCH		LUNCH		LUNCH		LUNCH		LUNCH		LUNCH	
Spring Vegetable Soup *** Homemade Fish Fingers ▼(H) *** Lamb & Onion Pie (H) Vegetable Samosa V *** Sauté Potatoes Garden Peas *** Cheese & Tomato Sandwich V(H) Ham & Tomato Sandwich ▼ Tuna Salad ▼(H) V Chicken Salad ▼ *** Fresh Fruit or Doughnut	Mushroom Soup *** Tuna Filled Jacket Potatoes ▼(H) V *** Braised Liver & Onions Vegetable Spring Rolls V(H) *** Mashed Potatoes Sweetcorn *** Chicken Sandwich V(H) Egg Mayo Sandwich V(H) Corned Beef Salad Crabstick Salad V *** Fresh Fruit or Ice Cream	Mushroom Soup *** Tuna Filled Jacket Potatoes ▼(H) V *** Braised Liver & Onions Vegetable Spring Rolls V(H) *** Mashed Potatoes Sweetcorn *** Chicken Sandwich V(H) Egg Mayo Sandwich V(H) Corned Beef Salad Crabstick Salad V *** Fresh Fruit or Ice Cream	Mushroom Soup *** Tuna Filled Jacket Potatoes ▼(H) V *** Braised Liver & Onions Vegetable Spring Rolls V(H) *** Mashed Potatoes Sweetcorn *** Chicken Sandwich V(H) Egg Mayo Sandwich V(H) Corned Beef Salad Crabstick Salad V *** Fresh Fruit or Ice Cream	Chicken Soup *** Sausage Casserole *** Chicken Chow Mein (H) Vegetable Sausage Roll V *** Mixed Vegetables Savoury Potato Wedges *** Corned Beef Sandwich Cheese Sandwich V(H) Egg Salad V(H) Tuna Salad ▼(H) V *** Fresh Fruit or Sponge Cake	Minestrone Soup *** Homemade Pizza (H)V *** Cod in Batter Crispy Crumbed Vegetable Burger V(H) *** Mashed Potatoes Peas *** Ham Sandwich ▼ Egg Mayo Sandwich V(H) Cheese Salad V(H) Ham Salad ▼ *** Fresh Fruit or Yogurt	Minestrone Soup *** Homemade Pizza (H)V *** Cod in Batter Crispy Crumbed Vegetable Burger V(H) *** Mashed Potatoes Peas *** Ham Sandwich ▼ Egg Mayo Sandwich V(H) Cheese Salad V(H) Ham Salad ▼ *** Fresh Fruit or Yogurt	Minestrone Soup *** Homemade Pizza (H)V *** Cod in Batter Crispy Crumbed Vegetable Burger V(H) *** Mashed Potatoes Peas *** Ham Sandwich ▼ Egg Mayo Sandwich V(H) Cheese Salad V(H) Ham Salad ▼ *** Fresh Fruit or Yogurt	Minestrone Soup *** Homemade Pizza (H)V *** Cod in Batter Crispy Crumbed Vegetable Burger V(H) *** Mashed Potatoes Peas *** Ham Sandwich ▼ Egg Mayo Sandwich V(H) Cheese Salad V(H) Ham Salad ▼ *** Fresh Fruit or Yogurt	Country Vegetable Soup *** Vegetable Pasta Bake ▼V *** Spaghetti Bolognese (H) Vegetable Nuggets V *** Chipped Potatoes Baked Beans *** Egg Mayo Sandwich V(H) Chicken Sandwich ▼ Chicken Salad ▼ Tuna Salad ▼V(H) *** Fresh Fruit or Mousse	Country Vegetable Soup *** Vegetable Pasta Bake ▼V *** Spaghetti Bolognese (H) Vegetable Nuggets V *** Chipped Potatoes Baked Beans *** Egg Mayo Sandwich V(H) Chicken Sandwich ▼ Chicken Salad ▼ Tuna Salad ▼V(H) *** Fresh Fruit or Mousse	Country Vegetable Soup *** Vegetable Pasta Bake ▼V *** Spaghetti Bolognese (H) Vegetable Nuggets V *** Chipped Potatoes Baked Beans *** Egg Mayo Sandwich V(H) Chicken Sandwich ▼ Chicken Salad ▼ Tuna Salad ▼V(H) *** Fresh Fruit or Mousse	Country Vegetable Soup *** Vegetable Pasta Bake ▼V *** Spaghetti Bolognese (H) Vegetable Nuggets V *** Chipped Potatoes Baked Beans *** Egg Mayo Sandwich V(H) Chicken Sandwich ▼ Chicken Salad ▼ Tuna Salad ▼V(H) *** Fresh Fruit or Mousse	Asparagus Soup *** Egg Curry ▼V(H) *** Turkey Escalope (H) Mixed Bean Casserole V *** Sauté Potatoes Mexican Sweetcorn *** Tuna & Cucumber Sandwich ▼V(H) Ham Sandwich ▼ Egg Salad V(H) Cheese Salad V (H) *** Fresh Fruit or Choc Ice
DINNER		DINNER		DINNER		DINNER		DINNER		DINNER		DINNER	
French Onion Soup *** Grilled Chicken Goujons ▼ *** Lamb Casserole Roast Chicken (H) Lemon Pepper Fish (H) Country Veg Grill ▼V *** Mexican Rice New Potatoes Sliced Lemon Carrots *** Bread & Butter Pudding or Fresh Fruit	Tomato Soup *** Savoury Mince *** Plaice in Breadcrumbs(H) Chicken in Black Bean Sauce (H) Lamb Madras (H) Vegetable Stir fry ▼V *** Chilli Rice Penne Pasta Green Beans *** Jam Roly-Poly or Fresh Fruit	Vegetable Soup *** Vegetable Goujons (H)V *** Szechuan Steamed Fish (H) ▼ Tandori Chicken (H) Portuguese Pork Vegetable Grills ▼V *** Lemon / Tarragon Rice Baby Potatoes Cauliflower Florets *** Semolina or Fresh Fruit	Minestrone Soup *** Cheese & Tomato Quiche(H)V *** Coconut Fish Curry (H) ▼ Jerk Chicken (H) ▼ Beef Bolognese (H) Vegetable Curry ▼V *** Mushroom Rice Chipped Potatoes Chinese Stir Fried Vegetables *** Apple Slab Cake or Fresh Fruit	Chicken Soup *** Shepherds Pie *** Mexican Fish (H) ▼ Chicken a La King (H) Beef Madras (H) Nasi Goreng ▼V *** Egg Fried Rice Minted Baby Potatoes Green Beans Nicoise *** Bakewell Tart & Custard or Fresh Fruit	Chicken Soup *** Shepherds Pie *** Mexican Fish (H) ▼ Chicken a La King (H) Beef Madras (H) Nasi Goreng ▼V *** Egg Fried Rice Minted Baby Potatoes Green Beans Nicoise *** Bakewell Tart & Custard or Fresh Fruit	Chicken Soup *** Shepherds Pie *** Mexican Fish (H) ▼ Chicken a La King (H) Beef Madras (H) Nasi Goreng ▼V *** Egg Fried Rice Minted Baby Potatoes Green Beans Nicoise *** Bakewell Tart & Custard or Fresh Fruit	Chicken Soup *** Shepherds Pie *** Mexican Fish (H) ▼ Chicken a La King (H) Beef Madras (H) Nasi Goreng ▼V *** Egg Fried Rice Minted Baby Potatoes Green Beans Nicoise *** Bakewell Tart & Custard or Fresh Fruit	Mushroom Soup *** Steamed Fish With Crunchy Vegetables ▼(H) *** Fish in Ginger(H) Caribbean Chicken (H) Vegetable Sausage Lyonnaise V Tuna Pasta Bake ▼ *** Savoury Rice Croquette Potatoes Cauliflower Cheese *** Rice Pudding or Fresh Fruit	Mushroom Soup *** Steamed Fish With Crunchy Vegetables ▼(H) *** Fish in Ginger(H) Caribbean Chicken (H) Vegetable Sausage Lyonnaise V Tuna Pasta Bake ▼ *** Savoury Rice Croquette Potatoes Cauliflower Cheese *** Rice Pudding or Fresh Fruit	Mushroom Soup *** Steamed Fish With Crunchy Vegetables ▼(H) *** Fish in Ginger(H) Caribbean Chicken (H) Vegetable Sausage Lyonnaise V Tuna Pasta Bake ▼ *** Savoury Rice Croquette Potatoes Cauliflower Cheese *** Rice Pudding or Fresh Fruit	Mushroom Soup *** Steamed Fish With Crunchy Vegetables ▼(H) *** Fish in Ginger(H) Caribbean Chicken (H) Vegetable Sausage Lyonnaise V Tuna Pasta Bake ▼ *** Savoury Rice Croquette Potatoes Cauliflower Cheese *** Rice Pudding or Fresh Fruit	Leek Soup *** Roast Chicken ▼(H) *** Fish Cakes & Spicy Tomato Sauce(H) Roast Chicken (H) Beef Taco (H) Vegetable Pasta Bake ▼ V *** Coconut Rice Savoury Potatoes Italian Vegetables *** Chocolate Sponge or Fresh Fruit	

V = VEGETARIAN (H) = HALAL ▼ = HEALTHY OPTION
 ITEMS IN RED ARE AVAILABLE FOR CHILDREN (TOGETHER WITH FULL MENU OPTIONS)

YARL'S WOOD IDC MENU WEEK TWO

PROPOSED APRIL 2007

MONDAY		TUESDAY		WEDNESDAY		THURSDAY		FRIDAY		SATURDAY		SUNDAY		
BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST		
Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	
LUNCH		LUNCH		LUNCH		LUNCH		LUNCH		LUNCH		LUNCH		
French Onion Soup *** Homemade Pizza *** Cheese & Tomato Pizza V Southern Fried Chicken (H) *** Croquette Potatoes Green Beans *** Cheese Sandwich V(H) Egg Mayo Sandwich V(H) Chicken Salad V Mackerel Salad V V(H) *** Fresh Fruit or Lemon Muffin	Vegetable Soup *** Macaroni Cheese V (H) *** Gobi Aloo V Fish Burger in a Bun (H) *** Chips Peas *** Corned Beef Sandwich Tuna Mayo Sandwich V (H) Cheese Salad V (H) Turkey Salad *** Fresh Fruit or Sultana Scone	Tomato Soup *** Vegetable Filled Jacket Potatoes V *** Meat Pasties Cauliflower Cheese V *** Lattice Potatoes Mixed Vegetables *** Chicken Sandwich V Egg & Cress Sandwich V(H) Tuna Salad V V(H) Roast Beef Salad (H) *** Fresh Fruit or Strawberry Mousse	Minestrone Soup *** Vegetable Curry V *** Country Veg Grill V Meatballs & Pasta *** Mashed Potatoes Peas & Carrots *** Tuna Mayo Sandwich V V(H) Ham & Pickle Sandwich Cheese Salad V(H) Egg Salad V(H) *** Fresh Fruit or Choc Ice	Chicken Soup *** Cottage Pie *** Chicken Chow Mein (H) Vegetable Samosas V *** Chips Baked Beans *** Cheese & Onion Sandwich V(H) Chicken Salad Sandwich Mackerel Salad V V (H) Ham Salad *** Fresh Fruit or Yogurt	Chicken Soup *** Fish Goujons V(H) *** Spring Rolls V Chicken Burger *** Savoury Wedges Mexican Corn *** Tuna & Onion Sandwich V(H) Egg Mayo Sandwich(H) V Turkey Salad Cheese Salad V(H) *** Fresh Fruit or Sponge Cake	Mushroom Soup *** Sausage Casserole *** Vegetable Stir Fry V Spaghetti Bolognese *** Lyonnaise Potatoes Mixed Vegetables *** Chicken Mayo Sandwich Ham Sandwich V Chicken Tikka Salad (H) Tuna Salad V V(H) *** Fresh Fruit or Choc Ice	Mushroom Soup *** Sausage Casserole *** Vegetable Stir Fry V Spaghetti Bolognese *** Lyonnaise Potatoes Mixed Vegetables *** Chicken Mayo Sandwich Ham Sandwich V Chicken Tikka Salad (H) Tuna Salad V V(H) *** Fresh Fruit or Choc Ice	Mushroom Soup *** Sausage Casserole *** Vegetable Stir Fry V Spaghetti Bolognese *** Lyonnaise Potatoes Mixed Vegetables *** Chicken Mayo Sandwich Ham Sandwich V Chicken Tikka Salad (H) Tuna Salad V V(H) *** Fresh Fruit or Choc Ice	Mushroom Soup *** Sausage Casserole *** Vegetable Stir Fry V Spaghetti Bolognese *** Lyonnaise Potatoes Mixed Vegetables *** Chicken Mayo Sandwich Ham Sandwich V Chicken Tikka Salad (H) Tuna Salad V V(H) *** Fresh Fruit or Choc Ice	Mushroom Soup *** Sausage Casserole *** Vegetable Stir Fry V Spaghetti Bolognese *** Lyonnaise Potatoes Mixed Vegetables *** Chicken Mayo Sandwich Ham Sandwich V Chicken Tikka Salad (H) Tuna Salad V V(H) *** Fresh Fruit or Choc Ice	Mushroom Soup *** Sausage Casserole *** Vegetable Stir Fry V Spaghetti Bolognese *** Lyonnaise Potatoes Mixed Vegetables *** Chicken Mayo Sandwich Ham Sandwich V Chicken Tikka Salad (H) Tuna Salad V V(H) *** Fresh Fruit or Choc Ice	Mushroom Soup *** Sausage Casserole *** Vegetable Stir Fry V Spaghetti Bolognese *** Lyonnaise Potatoes Mixed Vegetables *** Chicken Mayo Sandwich Ham Sandwich V Chicken Tikka Salad (H) Tuna Salad V V(H) *** Fresh Fruit or Choc Ice	Mushroom Soup *** Sausage Casserole *** Vegetable Stir Fry V Spaghetti Bolognese *** Lyonnaise Potatoes Mixed Vegetables *** Chicken Mayo Sandwich Ham Sandwich V Chicken Tikka Salad (H) Tuna Salad V V(H) *** Fresh Fruit or Choc Ice	
DINNER		DINNER		DINNER		DINNER		DINNER		DINNER		DINNER		
Asparagus Soup *** Fisherman's Pie *** Sweet & Sour Fish Maryland Chicken (H) Beef & Mushroom Cauliflower Grill V *** Vegetable Rice Savoury Wedges Mixed Vegetables *** Fruit Trifle or Fresh Fruit	Minestrone Soup *** Grilled Chicken *** Peppered Mackerel Kung Po Chicken (H) Lamb Stew (H) Mixed Bean Chilli V *** Pilau Rice Mashed Potatoes Broccoli Mix *** Milk Pudding or Fresh Fruit	Spring Vegetable Soup *** Homemade Fish Fingers *** Breaded Fish Black Bean Chicken Leg (H) Minced Beef & Vegetables Vegetable Quiche V *** Tandoori Rice New Potatoes Cauliflower *** Treadle Roly-Poly or Fresh Fruit	Tomato Soup *** Chicken Pasta *** Poached Salmon Chicken Korma (H) Beef Pie (H) Indian Savouries V *** Savoury Rice Sauté Potatoes Chinese Vegetables *** Apple Crumble & Custard or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	Chicken Soup *** Cauliflower Grills *** Breaded Plaice Chicken, Broccoli & Cashew Nut Stir-fry (H) Chilli Con Carne (H) Vegetable Nuggets V *** Fried Rice Chipped Potatoes Peas & Carrots *** Apple Slab Cake or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	
DINNER		DINNER		DINNER		DINNER		DINNER		DINNER		DINNER		
Mediterranean Soup *** Roast Turkey *** Roast Turkey Seafood Pasta Vegetable Cottage Pie V Cajun Chicken (H) *** Rice & Sweetcorn Roast Potatoes Mixed Vegetables *** Chocolate Sponge & Sauce or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit	French Onion Soup *** Vegetable Quiche V *** Seafood Stir-fry Kentucky Chicken (H) Szechuan Pork Country Vegetable Pie V *** Mushroom Rice Herby Potatoes Mixed Vegetables *** Rice Pudding or Fresh Fruit

V = VEGETARIAN (H) = HALAL V = HEALTHY OPTION

ITEMS IN RED ARE AVAILABLE FOR CHILDREN (TOGETHER WITH FULL MENU OPTIONS)

YARL'S WOOD IDC MENU WEEK THREE			PROPOSED APRIL 2007			
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
BREAKFAST Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	BREAKFAST Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	BREAKFAST Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	BREAKFAST Cereals Toast/Preserves Boiled Egg *** Tea, Coffee, Juice	BREAKFAST Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	BREAKFAST Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	BREAKFAST Cereals Toast/Preserves Fried Egg Grilled Bacon Tomatoes *** Tea, Coffee, Juice
LUNCH Noodle Soup *** Savoury Mince *** Lasagne (H) Breaded Fish *** Chipped Potatoes Peas *** Egg Mayo Sandwich V(H) Tuna & Cucumber Sandwich V V (H) Ham Sandwich V Chicken Salad V Cheese Salad V (H) *** Fresh Fruit or Yogurt	LUNCH Leek & Potato Soup *** Vegetable Grill V V *** Beef Stir-fry Vegetable Grill in a Bun V V *** Sauté Potatoes Sweetcorn *** Cheese Salad Sandwich V(H) Ham & Tomato Sandwich V Chicken Salad V Tuna Salad V V (H) *** Fresh Fruit or Doughnut	LUNCH Vegetable Soup *** Sausage Casserole *** Chilli Con Carne Macaroni Cheese V *** Chips Mixed Vegetables *** Chicken Sandwich V Egg Mayo Sandwich V (H) Corned Beef Salad Cheese Salad V (H) *** Fresh Fruit or Ice Cream	LUNCH Minestrone Soup *** Grilled Chicken V *** Beef Grill Steak & Mushroom Sauce Vegetable Chow Mein V V *** Savoury Potato Wedges Peas & Carrots *** Cheese & Tomato Sandwich V (H) Corned Beef Sandwich Mackerel Salad V V (H) Beef Salad (H) *** Fresh Fruit or Yogurt	LUNCH French Onion Soup *** Vegetable Pasta V *** Breaded Scampi Vegetable & Fruit Curry V V *** Chips Baked Beans *** Ham Salad Sandwich V Egg & Cress Sandwich V V Chicken Salad V Tuna Salad V (H) V *** Fresh Fruit or Raspberry Mousse	LUNCH Chicken Soup *** Egg Curry V *** Chicken Tikka Samosa V *** Chips Mexican Corn *** Egg Mayo Sandwich V(H) Chicken Salad Sandwich V Cheese Salad V(H) Turkey Salad V *** Fresh Fruit or Sponge Cake	LUNCH Tomato Soup *** Vegetable Quiche V *** BBQ Ribs V Vegetable Pasta Bake *** Sauté Potatoes Peppers & Sweetcorn *** Tuna & Cucumber Sandwich (H) V V Ham Sandwich V Roast Beef Salad (H) Cheese Salad V(H) *** Fresh Fruit or Choc Ice
DINNER French Onion Soup *** Steamed Fish V(H) *** Fish Medley V Seasoned Chicken Leg (H) Spiced Beef with Peppers Gobi Aloo V V *** Mexican Rice New Potatoes Buttered Greens *** Semolina or Fresh Fruit	DINNER Tomato Soup *** Chicken Filled Jacket Potatoes V *** Battered Fish Chicken Stroganoff (H) Lamb Curry (H) Vegetable Cottage Pie V *** Spicy Rice Sauté Potatoes Parsley Carrots *** Lemon Sponge or Fresh Fruit	DINNER Chicken Soup *** Grilled Fish in Tomato Sauce V(H) *** Grilled Fish V Chinese Chicken Lasagne (H) Vegetable Frittata V *** Lemon Rice Savoury Wedges Peas *** Ice-cream or Fresh Fruit	DINNER Leek & Potato Soup *** Shepherds Pie *** Sweet 'n' Sour Fish V Italian Chicken (H) Oriental Pork with Cashew Nuts V Vegetable Goujons V *** Mushroom Rice Croquette Potatoes Mixed Vegetables *** Fruit Salad or Fresh Fruit	DINNER Mushroom Soup *** Homemade Pizza(H) *** Shrimp Fried Rice BBQ Chicken (H) V Beef Stew (H) Macaroni Cheese Pie V *** Savoury Rice Mashed Potatoes Peas & Corn *** Macaroni Pudding or Fresh Fruit	DINNER Country Vegetable Soup *** Vegetable Slice V(H) *** Fish Goujons Chicken Curry (H) Lancashire Hotpot Vegetable Slice V V *** Egg Fried Rice Minted Potatoes Green Beans *** Strawberry Cheesecake or Fresh Fruit	DINNER Noodle Soup *** Roast Honey Chicken (H) *** Roast Honey Chicken (H) Seafood Lasagne Vegetable Curry V V Braised Beef (H) *** Boiled Rice Roast Potatoes Mixed Vegetables *** Spotted Dick & Custard or Fresh Fruit

V = VEGETARIAN (H) = HALAL V = HEALTHY OPTION

ITEMS IN RED ARE AVAILABLE FOR CHILDREN (TOGETHER WITH FULL MENU OPTIONS)

PROPOSED APRIL 2007

YARL'S WOOD IDC MENU WEEK FOUR

MONDAY		TUESDAY		WEDNESDAY		THURSDAY		FRIDAY		SATURDAY		SUNDAY	
BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST		BREAKFAST	
Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice	Cereals Toast/Preserves Boiled Egg *** Porridge *** Tea, Coffee, Juice
LUNCH		LUNCH		LUNCH		LUNCH		LUNCH		LUNCH		LUNCH	
Asparagus Soup *** Ham & Mushroom Spaghetti *** Chicken Biryani (H) Fish Cakes *** Croquette Potatoes Mixed Vegetables *** Cheese Sandwich V(H) Egg Mayo Sandwich V(H) Chicken Salad V Mackerel Salad V(H) *** Fresh Fruit or Lemon Muffin	Minestrone Soup *** Homemade Fish Cakes V(H) *** Doner Kebab Vegetable Quiche Lorraine V(H) *** Chips Peas & Corn *** Corned Beef Sandwich Tuna Sandwich V(H) Chicken Salad V Turkey Salad V *** Fresh Fruit or Sultana Scone	Spring Vegetable Soup *** Country Vegetable Bake V(H) *** Scotch Pie Pasta Bake (H) *** New Potatoes Baked Beans *** Chicken Sandwich Egg Sandwich V(H) Tuna Salad V(H) Roast Beef Salad (H) *** Fresh Fruit or Strawberry Mousse	Tomato Soup *** Cottage Pie (H) *** Curried Chicken (H) Vegetable Pasty V *** Mashed Potatoes Peas & Carrots *** Egg & Cress Sandwich V(H) Beef Salad Sandwich(H) Chicken Salad V Mackerel Salad V(H) *** Fresh Fruit or Choc Ice	Chicken Soup *** Vegetable Grill (H)V *** Battered Fish (H) Sweet 'n' Sour Vegetables V(H) *** Chips Peas *** Ham & Tomato Sandwich V Cheese & Pickle Sandwich V(H) Egg Salad V(H) Roast Turkey Salad V *** Fresh Fruit or Yogurt	French Onion Soup *** Grilled Chicken Strips V *** Chinese Rib Tuna & Pasta Bake V(H) *** Chips Mexican Corn *** Tuna Salad Sandwich V(H) Egg & Cress Sandwich Cheese Salad V(H) Ham Salad V *** Fresh Fruit or Sponge Cake	French Onion Soup *** Grilled Chicken Strips V *** Chinese Rib Tuna & Pasta Bake V(H) *** Chips Mexican Corn *** Tuna Salad Sandwich V(H) Egg & Cress Sandwich Cheese Salad V(H) Ham Salad V *** Fresh Fruit or Sponge Cake	French Onion Soup *** Grilled Chicken Strips V *** Chinese Rib Tuna & Pasta Bake V(H) *** Chips Mexican Corn *** Tuna Salad Sandwich V(H) Egg & Cress Sandwich Cheese Salad V(H) Ham Salad V *** Fresh Fruit or Sponge Cake	French Onion Soup *** Grilled Chicken Strips V *** Chinese Rib Tuna & Pasta Bake V(H) *** Chips Mexican Corn *** Tuna Salad Sandwich V(H) Egg & Cress Sandwich Cheese Salad V(H) Ham Salad V *** Fresh Fruit or Sponge Cake	French Onion Soup *** Grilled Chicken Strips V *** Chinese Rib Tuna & Pasta Bake V(H) *** Chips Mexican Corn *** Tuna Salad Sandwich V(H) Egg & Cress Sandwich Cheese Salad V(H) Ham Salad V *** Fresh Fruit or Sponge Cake	French Onion Soup *** Grilled Chicken Strips V *** Chinese Rib Tuna & Pasta Bake V(H) *** Chips Mexican Corn *** Tuna Salad Sandwich V(H) Egg & Cress Sandwich Cheese Salad V(H) Ham Salad V *** Fresh Fruit or Sponge Cake	French Onion Soup *** Grilled Chicken Strips V *** Chinese Rib Tuna & Pasta Bake V(H) *** Chips Mexican Corn *** Tuna Salad Sandwich V(H) Egg & Cress Sandwich Cheese Salad V(H) Ham Salad V *** Fresh Fruit or Sponge Cake	French Onion Soup *** Grilled Chicken Strips V *** Chinese Rib Tuna & Pasta Bake V(H) *** Chips Mexican Corn *** Tuna Salad Sandwich V(H) Egg & Cress Sandwich Cheese Salad V(H) Ham Salad V *** Fresh Fruit or Sponge Cake	French Onion Soup *** Grilled Chicken Strips V *** Chinese Rib Tuna & Pasta Bake V(H) *** Chips Mexican Corn *** Tuna Salad Sandwich V(H) Egg & Cress Sandwich Cheese Salad V(H) Ham Salad V *** Fresh Fruit or Sponge Cake
DINNER		DINNER		DINNER		DINNER		DINNER		DINNER		DINNER	
Mediterranean Soup *** Crunchy Vegetable Stir-fry V *** Breaded Plaice Hot 'n' Kickin' Chicken (H) Beef Balti Mixed Bean Casserole V *** Coconut Rice Savoury Wedges Country Vegetables *** Sultana Sponge or Fresh Fruit	Chicken Soup *** Marinated Chicken V *** Seafood Biryani V Chicken in Oyster Sauce (H) Minted Lamb Vegetable Slice V *** Tandoori Rice Creamed Potatoes Broccoli *** Chocolate Slab Cake or Fresh Fruit	French Onion Soup *** Homemade Pizza (H) *** Fish Mornay Cajun Chicken (H) Shepherds Pie Singapore Fried Noodles V *** Garlic & Herb Rice Sauté Potatoes Peas *** Fruit Trifle or Fresh Fruit	Asparagus Soup *** Fish Goujons V(H) *** Battered Fish Szechuan Chicken (H) Lamb Stew (H) Vegetable Jambalaya V *** Savoury Rice Lattice Potatoes Buttered Carrots *** Creamy Rice Pudding or Fresh Fruit	Minestrone Soup *** Chicken Pasta Bake *** Seafood Pie Salt & Pepper Chicken (H) Beef Vindaloo Cheese & Onion Flan V *** Pepper Rice Boiled Potatoes Mixed Vegetables *** Fruit Crumble & Custard or Fresh Fruit	Tomato Soup *** Steamed Fish & Crunchy Vegetables V(H) *** Grilled Salmon V Chicken & Vegetable Casserole Keema & Peas (H) Pasta & Ratatouille Bake V *** Fried Rice Savoury Wedges Peas *** Jam Sponge or Fresh Fruit	Tomato Soup *** Steamed Fish & Crunchy Vegetables V(H) *** Grilled Salmon V Chicken & Vegetable Casserole Keema & Peas (H) Pasta & Ratatouille Bake V *** Fried Rice Savoury Wedges Peas *** Jam Sponge or Fresh Fruit	Tomato Soup *** Steamed Fish & Crunchy Vegetables V(H) *** Grilled Salmon V Chicken & Vegetable Casserole Keema & Peas (H) Pasta & Ratatouille Bake V *** Fried Rice Savoury Wedges Peas *** Jam Sponge or Fresh Fruit	Tomato Soup *** Steamed Fish & Crunchy Vegetables V(H) *** Grilled Salmon V Chicken & Vegetable Casserole Keema & Peas (H) Pasta & Ratatouille Bake V *** Fried Rice Savoury Wedges Peas *** Jam Sponge or Fresh Fruit	Tomato Soup *** Steamed Fish & Crunchy Vegetables V(H) *** Grilled Salmon V Chicken & Vegetable Casserole Keema & Peas (H) Pasta & Ratatouille Bake V *** Fried Rice Savoury Wedges Peas *** Jam Sponge or Fresh Fruit	Tomato Soup *** Steamed Fish & Crunchy Vegetables V(H) *** Grilled Salmon V Chicken & Vegetable Casserole Keema & Peas (H) Pasta & Ratatouille Bake V *** Fried Rice Savoury Wedges Peas *** Jam Sponge or Fresh Fruit	Tomato Soup *** Steamed Fish & Crunchy Vegetables V(H) *** Grilled Salmon V Chicken & Vegetable Casserole Keema & Peas (H) Pasta & Ratatouille Bake V *** Fried Rice Savoury Wedges Peas *** Jam Sponge or Fresh Fruit	Spring Vegetable Soup *** Roast Chicken (H) *** Roast Chicken (H) Curried Chicken & Lentils V(H) Country Vegetable Grills V *** Breaded Scampi *** Paprika Rice Roast Potatoes Buttered Cabbage *** Apple Pie & Custard or Fresh Fruit	Spring Vegetable Soup *** Roast Chicken (H) *** Roast Chicken (H) Curried Chicken & Lentils V(H) Country Vegetable Grills V *** Breaded Scampi *** Paprika Rice Roast Potatoes Buttered Cabbage *** Apple Pie & Custard or Fresh Fruit

V = VEGETARIAN (H) = HALAL V = HEALTHY OPTION

ITEMS IN RED ARE AVAILABLE FOR CHILDREN (TOGETHER WITH FULL MENU OPTIONS)

OVERVIEW OF INCIDENTS FOR THE MONTH OF NOVEMBER 2006—YARL'S WOOD

<i>No</i>	<i>Date</i>	<i>Incident/ Sash/SIR No</i>	<i>Detainee(s) Name</i>	<i>Category of Incident*</i>	<i>Gender</i>	<i>Age/ DOB</i>	<i>Nationality</i>	<i>Reason for Incident</i>	<i>Location</i>	<i>Type of Incident</i>
9	10/11/2006		Detainee S		F		NGA	As a result of the above incident C&R techniques and handcuffs were required to relocate the detainee from the unit to Det Rep.	Crane	Rule 41
10	10/11/2006		Detainee T		F		UGA	Due to non-compliance and disruptive behaviour and refusing to leave her room for Det Rep the detainee was relocated to Kingfisher for a period of de-escalation.	Bunting	Rule 40
17	16/11/2006		Detainee U		F		JAM	Following a series of incidents involving the bad behaviour of the detainee's son O'mark, the last being the stabbing of another child with a pen. The family were moved to Bunting RFA to safeguard the other Crane residents.	Bunting	Rule 40
18	16/11/2006		Detainee U		F		JAM	The detainee refused to comply with requests to walk to RFA and stripped off and grabbed her daughter by the throat and threatened to harm her. C & R and handcuffs were used to effect the release of the child and move the mother and the children safely to RFA.	Bunting	Rule 41
22	19/11/2006		Detainee V		F		SLE	As a result of verbal and physical abuse to both detainees and DCO's the detainee was relocated to Kingfisher for a period of de-escalation.	Avocet	Rule 42
23	19/11/2006		Detainee V		F		SLE	As a result of the above incident C & R techniques were required to relocate the detainee from Avocet to Kingfisher Unit.	Avocet	Rule 41
25	20/11/2006		Detainee V		F		SLE	After a period of time in TC the detainee has been relocated to RFA.	Kingfisher	Rule 40
26	20/11/2006		Detainee V		F		SLE	The detainee was verbally and physically aggressive towards DCO's and as a result was relocated into TC.	Kingfisher	Rule 42
29	21/11/2006		Detainee V		F		SLE	Following a period of compliant behaviour the detainee was moved to RFA for a further period of observation.	Kingfisher	Rule 40

OVERVIEW OF INCIDENTS FOR THE MONTH OF DECEMBER 2006—YARL'S WOOD

<i>No</i>	<i>Date</i>	<i>Incident/ Sash/SIR No</i>	<i>Detainee(s) Name</i>	<i>Category of Incident*</i>	<i>Gender</i>	<i>Age/ DOB</i>	<i>Nationality</i>	<i>Reason for Incident</i>	<i>Location</i>	<i>Type of Incident</i>
13	12/12/2006		Detainee A		F		TUR	During officers attempts to prevent the detainee self harming, C & R techniques were used to restrain the detainee and manage a self relocation to Kingfisher unit.	Bunting	Rule 41
14	12/12/2006		Detainee A		F		TUR	Following the incident above the detainee was relocated into TC for a period of observation.	Kingfisher	Rule 42
15	13/12/2006		Detainee A		F		TUR	After a period of compliant behaviour the detainee was relocated into RFA for a further period of observation.	Kingfisher	Rule 40
24	23/12/2006		Detainee B		F		NGA	Following an aggressive outburst with another detainee and an assault on an officer who tried to defuse the situation the detainee was placed into RFA for a period of de-escalation.	Avocet	Rule 40
27	24/12/2006		Detainee C		F		SLE	As a result of the above incident the detainee was moved from the dining room to Kingfisher unit using C&R techniques.	Bunting	Rule 41
28	24/12/2006		Detainee C		F		SLE	As a result of the above incident the detainee was relocated to Kingfisher unit TC. Further extension authorised for the detainee to remain in TC due to her continued aggressive behaviour.	Kingfisher	Rule 42
29	26/12/2006		Detainee C		F		SLE	Following a period in TC the detainee was moved to RFA for a further period of observation and mental health assessment (tx to Orchard Hse on 04/01)	Kingfisher	Rule 40

OVERVIEW OF INCIDENTS FOR THE MONTH OF JANUARY 2006—YARL'S WOOD

<i>No</i>	<i>Date</i>	<i>Incident/ Sash/SIR No</i>	<i>Detainee(s) Name</i>	<i>Category of Incident*</i>	<i>Gender</i>	<i>Age/ DOB</i>	<i>Nationality</i>	<i>Reason for Incident</i>	<i>Location</i>	<i>Type of Incident</i>
1	02/01/2007		Detainee D		F		NGA	Following a dirty protest and aggressive behaviour while in transit, involving her two children, who were later placed with SS for their safety. The detainee spent a short time at Colnbrook and was tx to YW and placed directly into TC for a period of monitoring and de-escalation.	Kingfisher	Rule 42
2	03/01/2007		Detainee D		F		NGA	After a period in TC, the detainee was relocated to RFA for a further period of observation.	Kingfisher	Rule 40
3	03/01/2007		Detainee E		F		SOM	Paperwork received detailing an incident in which the detainee was guided/ushered back onto the unit after refusing to leave the lock despite being asked/told to several times. No C&R techniques used.	Avocet	Rule 41
5	03/01/2007		Detainee F		F		UGA	Following an argument in the servery with a member of the Aramark staff in which the detainee threw her dinner plate and then continued to be verbally aggressive she was re-located to RFA.	Dove	Rule 40
12	08/01/2007		Detainee G		F		NGA	After getting into the G4S van the detainee wrapped the seatbelt around her neck and started to throttle herself. When Escort staff tried to remove the belt she tried to assault and bite them. As a result she was removed from the van and placed in RFA.	Kingfisher	Rule 40
15	10/01/2007		Detainee H		M		PAK	As a result of this detainee being relocated to Bunting RFA he became non compliant and aggressive and as a result was relocated to Kingfisher TC.	Bunting RFA	Rule 42
17	10/01/2007		Detainee H		M		PAK	After discussion it was agreed the family would be relocated to Bunting RFA for the safety of the family and the unit. The family had made threats of suicide in view of their RD's set for 11/01/07.	Crane	Rule 40
19	10/01/2007		Detainee H		M		PAK	As a result of the above detailed incident C&R techniques were used and handcuffs applied to relocate the detainee from Bunting RFA to Kingfisher.	Bunting RFA	Rule 41
20	10/01/2007		Detainee H		M		PAK	As a result of the above detailed incident the detainee was relocated to Kingfisher unit, TC.	Kingfisher	Rule 42
21	10/01/2007		Detainee H		M		PAK	After a period in TC, the detainee has been compliant and has been advised the family's RD's for today have been cancelled due to operational reasons. He has agreed to eat and take his medication and has requested to be reunited with his family.	Kingfisher	Rule 40

<i>No</i>	<i>Date</i>	<i>Incident/ Sash/SIR No</i>	<i>Detainee(s) Name</i>	<i>Category of Incident*</i>	<i>Gender</i>	<i>Age/ DOB</i>	<i>Nationality</i>	<i>Reason for Incident</i>	<i>Location</i>	<i>Type of Incident</i>
25	13/01/2007		Detainee J		F		UGA	The detainee became non compliant with requests to move to Dove unit, she striped and refused to move. Officers used C&R techniques to relocate her to TC for a period of de-escalation.	Kingfisher	Rule 42
25	13/01/2007		Detainee J		F		UGA	Control & Restraint was used to safely relocate the detainee to Kingfisher.	Kingfisher	Rule 41
27	14/01/2007		Detainee J		F		UGA	The detainee was moved to RFA for a further period of monitoring and de-escalation.	Kingfisher	Rule 40
	15/01/2007		Detainee J		F		UGA	Has threatened to kill herself if not returned to Bunting and has said she is prepared to strip off and/or lash out if she does not get what she wants. In view of this behaviour, a further period of 24 hours in RFA approved.	Kingfisher	Rule 40
28	16/01/2007		Detainee K		M		KOS	The family were located to Bunting RFA on arrival in the centre due to information supplied detailing the violent behaviour of the two eldest children (aged 17 and 15). The family were also very hostile and aggressive when detained.	Bunting RFA	Rule 40
32	22/01/2007		Detainee L		M		PAK	Force was used to move this detainee from his room to reception. Handcuffs were required and for part of the journey he was carried.	Crane	Rule 41
34	22/01/2007		Detainee M		F		PAK	Force was used to move this detainee from her room to reception. Handcuffs were required for part of the journey and were removed when she became compliant.	Crane	Rule 41
36	22/01/2007		Detainee N		F		PAK	PCC techniques required to move this girl from her room to reception.	Crane	Rule 41
38	22/01/2007		Detainee O		M		PAK	PCC techniques require to move this boy from his room to reception.	Crane	Rule 41
40	22/01/2007		Detainee P		F		PAK	This girl was carried from her room and for part of the journey to reception.	Crane	Rule 41
46	28/01/2007		Detainee Q		F		DZA	Punched another detainee in the face when leaving the dining room. Walked to RFA. Returned to normal association on 29/01/07.	Avocet	Rule 40
50	31/01/2007		Detainee R		F		JAM	On arrival at YW the detainee was very aggressive, racially abusive, and threatened staff, she was moved to RFA to facilitate a period of de-escalation and monitoring.	Kingfisher	Rule 40
51	31/01/2007		Detainee R		F		JAM	Shortly after arriving in RFA the detainee began to break up the room, pulling the towel rail off the wall and attempting to flood the area. She was moved to TC to prevent further damage to either herself or the room.	Kingfisher	Rule 42

*Categorisation of Incidents

- Use of Control and Restraint (UCR)
 - SASH/Self Harm (SASH)
 - Cause for Concern (CC)
 - Detainees held on Rule (DHR)
 - Use of Detainee Departure Unit (DDU)
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87. Memorandum by the GMB London Region

I have been forwarded a copy of your letter to Iain McNicol GMB Political Officer in regard to your Committee's recent visit to Yarl's Wood Immigration Removal Centre and any comments the GMB may have. I understand Ed Blissett GMB London Regional Secretary has responded and after discussing this with him would like to add my views as the GMB Regional Officer with responsibility for GMB members employed at Yarl's Wood.

I have been the GMB Regional Officer for Yarl's Wood since it opened and have dealt with the current employer GSL on all issues regarding our members' employment at Yarl's Wood. I also have GMB responsibility for Oakington Reception Centre operated by GSL. Quite clearly, both myself and GMB members at Yarl's Wood were quite shocked to be advised at a recent meeting with the new provider Serco hosted by GSL, that upon their takeover from GSL they will review manning levels across the Centre with the possibility of redundancies. Apart from our members' concerns with the possibility of losing their employment, it also raises concerns about health and safety issues, not only for DCO's and employees but of detainees as well.

Your Committee may well be aware of the major incident at Yarl's Wood in February 2002, prior to which our elected GMB Representatives had raised issues with manning levels and health and safety implications, whether or not manning levels at that time in any way contributed to the incident was a matter for the Home Office's investigations following the incident and their conclusions.

I would suggest that any reductions in manning levels could well effect our members' ability to maintain the current standards of treatment of detainees and their safety, and the ability of our members not only to carry out their security duties but the important issue of having sufficient time to respond to detainees' welfare matters and the current good practice of meaningful dialogue and concern.

I hope your Committee find these views on behalf of the GMB London Region helpful in their inquiry and if I can be of any further assistance please do not hesitate to contact me.

Paul Campbell
Organiser

88. Memorandum by Alistair Burt MP

Thank you for your letter of 29 January. I appreciate the chance to offer a few comments to the Committee in relation to its Inquiry, and I trust this e-mail is within the time scale you require. I will submit it in written form tomorrow.

I have been the MP for North East Bedfordshire since June 2001. The Yarl's Wood centre is within my constituency, and in my time as MP it has been built, burnt down, lain idle and re-opened with new criteria for the selection of detainees to be housed there. I have had regular contact with the Centre management, Ministers at the Home Office, the IND, detainees themselves and local and national groups representing them.

Your committee will have had access to reports on the Centre from HM Chief Inspector for Prisons, and great deal of paperwork. I have no wish to add to this, so will not quote extensively from publications you already have, but hope these personal reflections will be of assistance in terms of the priority of concerns of an MP who deals with at least one Yarl's Wood related case or issue every week of the year.

KEY HEADINGS

General Care of detainees at Yarl's Wood

Following the fire of 2002, the centre was re-opened initially for women detainees only, then subsequently for a small number of families. My own observation, and that of Befrienders and others, is that GSL made real and genuine attempts to improve the nature of the regime from its poor start in late 2001. I have had few complaints from detainees about the nature of the regime.

There is a preponderance of male officers for the women detainees, a hangover from the centre's original intentions, and I hope this is rectified with the new operators. But I have had very few expressions of concern about any general inappropriate behaviour, though of course isolated incidents have occurred.

The availability of CCTV is most important as a protection for detainees and officers. In one incident a false allegation of assault was made, and communicated outside the centre to various detainee support groups, causing much agitation and upset. CCTV proved the allegations to be false and helped defuse an unpleasant situation. It also enables visitors to observe activities whilst being unobserved themselves.

In general I think GSL and their manager from the re-opening until this summer, Ray Reveley, did their best in very difficult conditions.

IND

By contrast I have had serious reservations about the behaviour and performance of the IND at all levels. Most of the cases of concern which come to my attention concern their activities, and the way in which they are dealt with.

I spoke on the worst aspects of these matters in the House on the 5th July 2005 Cols 225–230. I simply attach my closing remarks, which summarises my concerns about which I felt very strongly.

The reason that I have spoken out in such a way today is that when a woman from a far country, with a black skin, is shunted around the detention estate, having committed no crime, in a situation in which the system does not believe that it owes an explanation to her, to citizens or to representatives, all our civil liberties are at risk. These women have been assaulted by the state's escort service, prevented from completing a degree, prevented from seeing an investigation completed into an allegation of assault, picked on perhaps for talking to an Opposition MP, and removed at night for no reason at all. Return those ladies to Zimbabwe? Some of them probably think that they have never left.

The circumstances which forced me to speak out in such a fashion are set out in my speech, but essentially I found the IND casual to the point of negligent in how it handled its information, uncaring of the needs of detainees as they moved them around the detention establishment without notice or explanation and lacking in interest over allegations of assault at the hands of contracted escorts, who took out their anger at detainees refusal to board aircraft in a physical manner.

If that was then, what is the situation now?

I deeply deplore the seizure of families with children early in the morning. I am sure you will have seen evidence of the distress caused when families which have been present in the UK for many years are suddenly detained, transferred to a detention centre and told of the short time they have before being removed. I find it difficult to believe that detention is the appropriate action in these cases, but seizing a family notches up a bigger number of detainees for the purposes of hitting a target than a single detainee.

I am not being cynical. Any reading of Mr Stephen Shaw's report (The Prisons and Probation Ombudsman, October 2004) on the fire at Yarl's Wood, which describes how the centre came to be built, the appalling failure of the decision making process, and the importance of targets to Ministers and senior officials alike cannot fail to deliver a sense that requires a healthy scepticism of the asylum and detention process, and anyone who might come before your committee from a Government position to comment upon it. I draw your attention to the remarks he makes about those who queried or criticised policy being considered "trouble makers" and "not one of us" simply to ask your committee to be absolutely sure of the veracity of the evidence they hear from these sources.

Children

I do not support the holding of children in detention. Fortunately we have only had one Manuel Bravo, but that other parents might fear for their children in such circumstances is highly likely. I worry about the taking away of settled children from their schools and surroundings, and the process by which they are arrested and detained.

Their treatment at Yarl's Wood has however always seemed kind and appropriate from those looking after them, though in inappropriate circumstances.

Mistakes can be made in terms of unaccompanied children. In September 2006 I intervened to stop the removal of unaccompanied Romanian minors. During the time it took to deal with the Ministers office and the IND, it appeared that Private Office representations to stop removal were ignored, and a child, having been separated from its sibling, had to spend a night in the back of a transit van outside Heathrow before being returned to the appropriate social services. Minister Liam Byrne has used the occurrence to issue new guidelines, for which I am grateful and he acted promptly and properly throughout, but common sense and decency seemed absent during the events. I feel there is evidence that the harshness of the policy can sometimes make the carrying out of difficult decisions rather brutal.

Health Care

Yarl's Wood slipped up badly in the case of Sophie Odogo. This woman was on hunger strike with others in mid 2005, but her mental collapse, visible to friends and outside visitors was not picked up by the medical authority on site. After much deterioration she required urgent and prolonged treatment at the Maudsley Hospital. The case is detailed in a report by Anne Owers which criticises the Health Care available at Yarl's Wood, and I agree with her recommendations. There appeared to be a tendency to treat complaints lightly, and inexperience to detect serious from minor concerns. That the detainees might be over anxious is highly likely in the circumstances, and I trust the new medical contractors will be more experienced.

Two points your committee might note. One is that I believe that the medical service at the Centre is contracted not independently, to the NHS or local authority, but to the main centre operator. This might lead to conflict of interest.

The second is that there is no easy mechanism to resolve a conflict of medical opinion between a detainee's medical representative, and the centre. Detainees may be represented by highly committed outside medical practitioners, who may appear hostile to the authorities. I have proposed, and I believe Ms Owers supported, the creation of a list of medical practitioners, acceptable to the detention authorities and to detainee and asylum interest groups to intervene in the event of a dispute. I hope this idea might move forward, as these conflicts can be very damaging and distressing all round.

Long term detention

Yarl's Wood should only be used for short periods of detention before removal. However a number of women there have been held for over nine months and in some extreme cases over a year.

I appreciate that sometimes detainees themselves have been the cause of a prolonged stay, when they have refused removal directions, or when they are in the process of further appeals in their cases. Sometimes they are the victims of their own country's refusal to accept them back, Jamaica being a prime example.

But whatever the cause the long term impact of indefinite detention is poor, and must affect mental health, let alone raise human rights concerns. I would contend also that in some cases the Home Office simply does not quite know what to do with its long term cases and I believe evidence from Miss Owers suggests there could be an improvement of casework rigour.

I would contend that there ought to be some acceptable cut off period beyond which there should be a strong legal presumption that it is inappropriate to continue to detain, and that whatever needs to be addressed in a case should be dealt with whilst another form of supervision or reporting regime is imposed.

I hope these comments are helpful to the committee, and I appreciate greatly the Committees deliberations. I believe my constituents support the country's asylum and immigration policy, but they ask it to be fair, just and humane in dealing with the difficult decisions which it requires. I am not convinced that in every situation we live up to this and I trust the Committee will assist in ensuring that wherever possible problems are identified and corrected so that we can continue to be confident of our standards.

Alistair Burt MP

89. Letter from the Rt Hon Rosie Winterton MP, Minister of State for Health Services, Department of Health

INQUIRY: THE TREATMENT OF ASYLUM SEEKERS EVIDENCE SESSION ON MONDAY 5 FEBRUARY 2007

Thank you for your letter of 8 February which accompanied a copy of the transcript of my evidence to the Joint Committee on Human Rights on 5 February.

I have a small number of minor corrections to make to my evidence where I inadvertently used a wrong word or can now offer a more accurate number. Those corrections have been made in track changes in the copy of the transcript and are also listed at the end of this letter.⁵⁹⁹

In addition, when answering the Baroness Stern's question (Q430) about the renewal of detention, I began by saying that:

“In terms of reviewing detention, we have issued some draft regulations on that. We would expect the responsible medical officer to be consulting two other people. I am prepared to look at whether we should specify that one of them should be a doctor.”

In doing so, I inadvertently used some inaccurate terminology and missed out one step in what I intended to say. Rather than saying that it is the “responsible medical officer” (RMO) who is to be expected to consult

⁵⁹⁹ Ev not printed.

two other people before renewing detention, I should have said “responsible clinician”. Responsible clinicians are to replace RMOs as the professionals in overall charge of the care of a patient detained under the Mental Health Act. Unlike RMOs, they will not necessarily be doctors.

Furthermore, when referring to draft regulations in relation to reviewing detention, I meant to say that we have issued draft directions (not regulations) which are about the qualifications and competencies which professionals will have to meet in order to be “approved clinicians” who may then be appointed to act as responsible clinicians and so exercise the function of renewing detention. I realise that I rather conflated these points and therefore inadvertently suggested we had issued draft secondary legislation about the process of renewal itself, which is not the case. I apologise for these errors.

I am also enclosing with this letter the guidance document *Implementing the Overseas Visitors Hospital Charging Regulations* which was issued to the NHS in 2004.⁶⁰⁰ This guidance explicitly states that treatment which, in a clinical opinion, is considered to be immediately necessary must not be withheld or delayed while a patient’s chargeable status is being determined. This means that even those patients who are not exempt from charges under the *NHS (Charges to Overseas Visitors) Regulations 1989*, as amended, must always receive immediately necessary or urgent treatment even if they cannot pay. Whilst, under these Regulations, a charge cannot be waived, trusts have the discretion to write off any debts when it would not be reasonable to pursue them, for instance because a person has no money. I believe that because immediately necessary/urgent treatment must always be provided, we meet our international obligations under Articles 2 and 3 of the European Convention of Human Rights and Article 12(1) of the International Covenant on Economic, Social and Cultural Rights.

Despite the guidance being clear and long-standing, we acknowledged that there has been some confusion in the NHS in relation to pregnant overseas visitors. That is why we issued the two notices to Overseas Visitors Managers I mentioned during my hearing reminding them that maternity services should always be considered to be immediately necessary and given regardless of whether or not the patient may be chargeable or able to pay. We have also stressed the importance of not giving pregnant women the impression that future maternity appointments will be withheld if they do not pay. I also attach those notices.⁶⁰¹

A copy of the Consultation document *Proposals to Exclude Overseas Visitors from Eligibility to Free NHS Primary Medical Services* and a summary of responses to that consultation are also attached.*

Rosie Winterton

90. Memorandum from the Equality and Diversity Forum

Further to our telephone conversation and in the light of current work being carried out by the JCHR on Asylum Seekers, I thought the JCHR might be interested to know that the Equality and Diversity Forum (members list below) has met with and written to the Press Complaints Commission on a similar issue.

We are deeply concerned about reporting which could, through inaccuracy or inflammatory language, increase community tensions and in our letter we requested the PCC consider amending its Code of Practice to address this. The specific examples we used were Gypsies, Muslims or Refugees and Asylum Seekers however the same issues apply to many other groups.

Our request was rejected by the PCC and we are currently considering other ways of addressing the issues raised—we are following the JCHR inquiry with interest.

I have attached for your information:

- The Forum’s letter sent in September 2005 to the Press Complaints Commission (Annex 1).
- The Forum’s letter sent in February 2006 to Ian Beales, Secretary to the Editors’ Code of Practice Committee following our meeting with him (Annex 2).
- The PCC’s final response in May 2006 (Annex 3).

Eira Kedward
Acting Manager

⁶⁰⁰ Ev not printed.

⁶⁰¹ Ev not printed.

* Ev not printed.

**Letter to Les Hinton, Chair Code of Practice Committee, Press Complaints Commission
from Sarah Spencer, Chair, Equality and Diversity Forum**

COMMUNITY TENSIONS

I am writing to you on behalf of the Equality and Diversity Forum to ask whether you have considered amending the Code of Practice to address reporting which could, through inaccuracy or inflammatory language, increase community tensions.

The Equality and Diversity Forum is the network of national equality organisations which brings together those working on age, disability, gender, race, religion or belief, sexual orientation and broader equality and human rights issues.

In recent months our members⁽¹⁾ have become increasingly concerned that the way in which certain incidents are reported can have the unintentional effect of heightening tensions and making the issue more difficult to resolve. In some cases they are in no doubt that there has been a link between press reporting and an increase in hostility and overt acts of violence against those whom they are seeking to protect from discrimination.

Our members are concerned to protect both freedom of expression and good relations across all sections of the community. As your Code of Practice is designed to find an appropriate balance between freedom of the press, the protection of the individual and the public interest, we are writing to ask whether you have considered the potential to address inflammatory reporting through the Code and, if so, what action you may be proposing to take. It is our view that the existing requirement to avoid inaccurate, misleading or distorted information, and to avoid prejudicial or pejorative reference to an individual's race, colour or religion, has not proved sufficient to prevent the kind of reporting that we have seen, for instance, of Gypsies, Muslims or refugees. Yet we know that the media is a powerful influence on public opinion.⁽²⁾

We would very much welcome a meeting with you to discuss these concerns and hear your views on whether the Code could be amended to ensure that the press remain free to report accurately what is happening, without unnecessarily inflaming community tensions.

If you would like to meet, I would be grateful if your office could contact my colleague, Moira Dustin, Manager of the Equality and Diversity Forum.

Sarah Spencer
Chair, Equality and Diversity Forum

⁽¹⁾ EDF members: Age Concern England, Amicus, British Humanist Association, British Institute of Human Rights, Children's Rights Alliance for England, Churches Together in Britain and Ireland, Commission for Racial Equality, Discrimination Law Association, Disability Rights Commission, Equal Opportunities Commission, Fawcett Society, Forum Against Islamophobia and Racism, Gypsy & Traveller Law Reform Coalition, Help the Aged, Institute for Public Policy Research, JUSTICE, Liberty, Muslim Council of Britain, Policy Research Institute on Ageing and Ethnicity, Press for Change, RADAR, Refugee Council, RNID, Runnymede Trust, Scope, Stonewall, Third Age Employment Network, Trades Union Congress, Women's National Commission

⁽²⁾ A MORI poll commissioned by Stonewall's Citizenship 21 Project in 2001 found that "Almost two thirds of people (64%) name at least one minority group towards whom they feel less positive—representing 25 million adults across England. The most frequently cited groups people feel less positive about are travellers/gypsies (35%), refugees and asylum seekers (34%), people from a different ethnic group (18%) and gay or lesbian people (17%). . . Respondents were also asked what had influenced their attitude to people from other groups. The findings confirm the power of the media, both newspapers and television. Whilst 32% mention parents, 26% say television is a major influence on their attitudes and 23% mention newspapers." (www.mori.com/polls/2001/stonewall-b2.shtml)

September 2005

**Letter to Ian Beales, Secretary to the Editors' Code of Practice Committee from Sarah Spencer,
Chair, Equality and Diversity Forum**

PRESS COMPLAINTS COMMISSION CODE OF PRACTICE

Thank you for meeting with myself and other members of the Equality and Diversity Forum on 18th January to discuss our concern about the possible impact of press reporting on community tensions. As agreed at the meeting, I am writing with a suggested amendment to the Code of Practice to address this concern. Thank you for agreeing to put this to the committee.

You emphasised when we met that many editors are alert to the importance of avoiding coverage which may inflame community tensions, while ensuring that they do not withhold information which should be in the public domain. We have indeed seen evidence of that in recent weeks. Our concern is that this objective is not reflected in the Code.

The Code, as its preamble makes clear, sets the benchmark for ethical professional standards for the newspaper industry. Yet it omits reference to this one area of good practice that editors themselves acknowledge is important. There are occasions when the language or images used in newspapers are thought to have had a negative effect on community relations, when that impact was not a necessary consequence of the information contained. We would therefore be grateful if the committee could consider an appropriate amendment to provide guidance on this issue while ensuring that newspapers remain free to put into the public domain the information to which the public is entitled.

You mentioned when we met that the criminal law can be used if an article intends or is likely to stir up racial hatred, but we were in agreement that there is necessarily a high legal threshold to be crossed before a prosecution can proceed. It is the gap between the guidance provided by the current Code and the constraints imposed by the criminal law that we are asking you to address.

There are two existing clauses in the Code which could be amended to address this concern. Clause 1 asks the press to avoid inaccurate, misleading or distorted information. We suggest the inclusion of the word “exaggerated” (Oxford dictionary meaning “enlarge beyond limits of truth”) as it is the exaggeration of an incident which can unnecessarily inflame community relations beyond the unavoidable impact of the incident itself.

Secondly, Clause 12 current focuses on prejudicial or pejorative reference to an individual’s race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability. This wording does not recognise that prejudicial or pejorative references about a community—for example Muslims, asylum-seekers or Gypsies—can also be damaging. It may reinforce negative stereotypes including the perception that any member of that group is responsible for the behaviour of some of its members; and can increase hostility to people who identify as part of that community although not mentioned by name in the article concerned.

In seeking to address this omission we acknowledge the importance of the press retaining the freedom to comment negatively on issues relating to ethnic and faith communities and to categories of migrants. We therefore propose use of the additional word “gratuitous” (meaning “unwarranted, without good or assignable reason”) and use of the wording from your guidance on refugees and asylum seekers (2003) in an additional clause in the Code:

- the press must avoid gratuitous prejudicial or pejorative reference to an ethnic or faith community or other section of society, where that reference is likely to generate an atmosphere of fear and hostility not justified by the facts.

We are aware that the committee has considered and rejected an earlier proposal for an amendment relating to community tension. We suggest that in the current climate it may be appropriate to reconsider this issue and to provide greater guidance to journalists than is provided by the current Code.

I welcomed your suggestion when we met that you might advise on our proposal before submitting it and would of course welcome your thoughts. You can reach me through my colleague, Moira Dustin, Manager of the Equality and Diversity Forum.

Sarah Spencer
Chair, Equality and Diversity Forum

February 2006

Annex 3

Letter from Ian Beales, Secretary to the Editors’ Code of Practice Committee to Moira Dustin, Equality and Diversity Forum

The Code Committee gave very careful consideration to the Equality and Diversity Forum’s submission—together with related suggestions from the Commission For Racial Equality. However, the Committee felt unable to adopt the suggestions for the following reasons:

- Accuracy: The Committee felt that there was nothing to be gained by adding “*exaggerated*” information to the sub-clause, as any significant exaggeration would almost certainly amount to a distortion and so was already covered. The same applied to the CRE’s suggestion that the clause cover “*grossly exaggerated*” information.
- Discrimination: There were two problems with this. First, as the suggested clause also covered all *other sections of society*, special mention of ethnic and faith groups would be superfluous, if not discriminatory. Secondly, by embracing other sections of society, the suggested amendment would effectively be allowing complaints from groups, rather than individuals. The CRE’s alternative proposal, including the term *racial, ethnic or religious group* raises the same problems. The Editors’ Code attempts to strike a balance between the rights of the individual and the public’s right to freedom of expression. It does this by providing specific protection for individuals, rather than for

groups or communities. The Committee continues to believe that allowing complaints from groups could seriously inhibit freedom of expression, which in a diverse and plural media should be as broad as possible. We believe it is right that in a free society editors should be left to exercise their judgment and there is ample evidence that they do so. As you know, under the Code UK editors were free to publish the Danish cartoons. The fact that no mainstream UK paper published the drawings, despite having legitimate grounds, demonstrates that editors do take very seriously the responsibilities that go with such a freedom.

Also, as the Forum itself acknowledged, the PCC's existing guidance makes clear that the current Accuracy clause (and in certain cases Clause 6) could apply to cases where fear and hostility is generated, not justified by the facts. This has the advantage that it is not limited to racial, ethnic or religious groups, but is accessible to wider society as a whole.

I'm sorry to disappoint you on this, but thank you for your submission and the spirit in which it was proposed. If I can help further, please let me know.

Ian Beales

Secretary to the Editors' Code of Practice Committee

91. Supplementary memorandum by the Scottish Refugee Policy Forum

These are the additional written comments from the Scottish Refugee Policy Forum for the JCHR they include our comments, policy recommendations and potential questions to ministers when they appear at the committee. This submission also includes testimony on from one of our partner organisations the Kingsway Amnesty Group. This group is made up of Scottish people and their asylum seeker and refugee neighbours from one of the areas in Glasgow where we are living. It is designed to give the committee some information on their motivation in defending us and also their experiences in doing this.

<i>Comment</i>	<i>Recommendation</i>	<i>Possible question to ministers</i>
<p>Treatment of children in the removal process—Children are still being detained for as much as two to three weeks in advance of removals. Our neighbours are often successful in helping us make further legal representations to the authorities which often result in our release. The detention of families is associating claiming asylum with criminality.</p>	<p>We believe that IND detains people without checking properly they have exhausted all legal options including Judicial Review or a fresh claim. We think they should be required to prove that asylum seekers do not have any further legal options especially where children are involved since they suffer long term psychological damage caused by detention. We believe that detention is no place for children.</p> <p>There is a need to explore alternatives to detention, especially in the case of children.</p>	<p>Do ministers believe that it is acceptable to detain families with children when many of them are subsequently released following judicial action?</p> <p>Does this not suggest that these children should not have been detained in the first place?</p> <p>Do ministers accept that the detention of children cannot possibly be in their best interest?</p>
<p>Removing people from the reporting centre—Our members have reported an increase in removals of families from the IND reporting centre. It is our view that this is unnecessary and places families in a state of fear every time they report.</p>	<p>This practice should be stopped immediately.</p>	<p>Is it justified to make the process of reporting for all families much more traumatic by allowing people to be detained at the reporting centre?</p> <p>For those who must report regularly this places them and their children in a state of terror which is affecting their mental health.</p>
<p>Safety of asylum seekers removed—At present there are no measures to monitor the safety of those who are removed to their country. People who have disclosed persecution in their country could be at risk of further repercussions if they are returned.</p>	<p>We believe the safety of those returned should be monitored to ensure no further human rights abuses occur.</p>	<p>Do Ministers feel it is acceptable to remove people when their safety cannot be guaranteed or monitored?</p>

<i>Comment</i>	<i>Recommendation</i>	<i>Possible question to ministers</i>
<p>Ugandan nationals in the asylum system—IND have confirmed to us that a senior case worker has been suspended at IND for failing to declare an interest in the assessment of Ugandan claims. The man is an active supporter of the Ugandan government. IND informed us that they have suspended action on the cases which he personally had involvement in.</p> <p>Reviewing “legacy” cases—IND have confirmed they have taken a decision to review legacy cases in Scotland with a view to checking if a change in status decisions should be granted.</p>	<p>We believe it is possible that this officer’s actions could have a wider impact on the way in which Ugandan cases have been handled by other staff within IND and that action should be taken to suspend action, especially removals, of people from Uganda until this has been thoroughly investigated.</p> <p>Given that some of these reviews will potentially lead to claimants being granted some form of leave to remain or humanitarian protection, we urge that removals are frozen until these reviews are completed.</p>	<p>Do ministers feel that it is acceptable to continue to remove rejected Asylum Seekers to Uganda when there is a real danger that their claims may have been affected by the actions of an official who is known to be an active supporter of the Ugandan government and who is currently under investigation for this?</p> <p>Do ministers recognise a risk that some of those who are being removed at the moment may have been granted permission to stay if their case is reviewed?</p> <p>Is this not a breach of human rights in the sense that an additional layer of due process has been introduced but that families will be removed before they could benefit from this?</p> <p>Do ministers accept that this action could place people at serious risk?</p>
<p>Removal of those with serious health issues—The IND have confirmed to us in a recent meeting they will remove seriously ill rejected asylum seekers from the UK to their home countries if treatment for their illness is available in those countries. They have stated that they are not permitted by policy to consider whether these individuals have the means to gain access to such services.</p>	<p>Asylum seekers in these circumstances should have their cases considered in terms of whether they personally will be able to access medical services which will keep them safe and in some cases alive. If they can prove they cannot, then they should be granted leave to remain on human rights grounds.</p>	<p>Do ministers believe it is acceptable for IND to return people to their home countries when their personal circumstances mean they cannot buy—or otherwise access the care they need?</p> <p>Do ministers accept that ignoring people’s ability to access these services when decisions are made could lead to their death or serious illness?</p> <p>Will ministers consider changing the policy to allow IND to award some form of humanitarian status to be granted in these cases?</p>

92. Letter from Liam Byrne MP, Minister of State, Home Office

I am responding to your letter of 1 February in which you asked for some additional information to assist in your current inquiry into the treatment of asylum seekers. As you know the letter was not received in my office. I am sorry that in the circumstances we were not able to provide you with the requested information in advance of my appearance before the Committee on 21 February.

ISSUES ARISING FROM VISIT TO YARL'S WOOD IMMIGRATION REMOVAL CENTRE BRINGING PEOPLE INTO DETENTION

(i) *Performance Criteria*

Within the Immigration and Nationality Directorate (IND) each Local Enforcement Office has its own targets for removing failed asylum seekers. Immigration Officers are expected to contribute towards meeting these targets but are not set individual targets. The tasking and setting of these targets are based on a strategic assessment that considers factors such as harm reduction. IND always uses detention as a last resort and encourages Failed Asylum Seekers to depart voluntarily. When it is necessary to detain individuals we always try to ensure that the length of time spent in detention is kept to a minimum.

(ii) *Belongings*

Immigration officers are instructed to allow families sufficient time to dress, pack, use bathroom facilities and feed very young children. Chapter 41 of the Operational Enforcement Manual (OEM) contains information on the retrieval of personal effects. I attach a copy of chapter 41 of the OEM for your information.* (This is also available on the IND website at:

<http://www.ind.homeofice.gov.uk/documents/oemsectiond/chapter41>)

(iii) *Detention at interview*

I am afraid that this data is not at present collected but we are looking into the possibility of doing so.

(iv) *Social services welfare*

When planning a family detention visit, where immigration officers are aware of social services involvement with a family, any enforcement action will be undertaken in conjunction with social services.

If social services are not already involved and Immigration officers think they should be, possibly from information obtained during a pastoral visit, officers should take advice from local social services in order to decide on the best way forward.

INDEPENDENT MONITORING BOARDS (IMBs)

You asked whether consideration has been given to renaming the Boards to make it clear that they are not part of the Immigration Service.

IMBs were previously known in Immigration removal centres as Visiting Committees—and in prisons as Boards of Visitors. Both of these former titles were confusing because there are other visitors' organisations to immigration removal centres and prisons that carry out very different functions.

It was therefore considered necessary to change the titles and to focus on their primary role. That role is to carry out independent monitoring of these closed establishments to ensure that the people held there are treated fairly and humanely. We do not believe there is great confusion between their role—or their title—and that of IS and IND. (The latter will of course be changing to BIA in April.) However we recognise that those detained in immigration removal centres are primarily interested in their Immigration status and will often ask IMBs questions relating to that matter. The IMBs are not able to resolve such issues.

COMPLAINTS SYSTEM

You asked for details about the current complaints system and its effectiveness.

* Ev not printed.

The new complaint procedures require that Contractors who have responsibility for the care and welfare of Detainees should take full responsibility for dealing with complaints and be accountable for the actions of their staff. The procedures are based on the following general principles:

- There is compliance with the requirements of Detention Centre Rule 38 and the Detention Services Operating Standard on complaints.
- Detainees should have easy access to a complaint system and complaints should wherever appropriate be dealt with informally, with a full opportunity for explanation and conciliation before formal written procedures are invoked.
- Contractors should take full responsibility for dealing with complaints internally, with recourse to Detention Services, Head of Operations Support Unit (OSU) only in the case of confidential access complaints.
- Complaints alleging serious misconduct of staff will be referred to the OSU.
- Complaints should be dealt with at the lowest level at which a proper response can be provided.
- Staff should take responsibility for their decisions and actions and be prepared to explain them.
- If the complainant is not satisfied with the outcome of a formal written complaint s/he has the right to appeal to the Ombudsman.

A copy of a note issued by Brian Pollett, Head of Detention Services within IND, when the new system was introduced, is attached.⁶⁰² A copy of Detention Service Order 09/2006 is also attached for information.⁶⁰³ The intention is to review the new procedures after they have been in operation for 6 months. The new complaints system is still in its infancy, and any measure of it may be premature. However it is currently being examined by the Home Office Audit and Assurance Unit and their terms of reference are attached.

SOCIAL WORKER INVOLVEMENT

You asked about the costs of funding social workers in removal centres compared to the overall costs of running those centres. The cost to the Authority is £29 per hour for a thirty seven hour week. We currently have two full time equivalent social workers—so the total cost is £111,592 per annum. This compares to the overall cost of the operating contract for Yarl's Wood of £85,340,705 over the 8 year contract period.

RE-DETENTION

Information on persons who have been released from detention and then re-detained is not available.

Information on the number of persons recorded as leaving detention solely under Immigration Act powers by reason has been published on the Home Office's Research Development and Statistics website at: <http://www.homeoffice.gov.uk/rds/immigration.html>.

HEALTHCARE (INCLUDING MENTAL HEALTHCARE)

You asked about the healthcare standards for detention centres—and any measures being taken to improve healthcare provision.

The Standards for detention centres—including that on Healthcare—are very comprehensive. The Healthcare Standard is contained within the consolidated Detention Services Operating Standards—which are attached for ease of reference. (The Standards are also available on the IND website.)

The Operating Standard on Healthcare clearly indicates the access to healthcare that detainees must be allowed. All centres must ensure that all detainees are medically screened within two hours of admission. This screening must also include an assessment for risk of self-harm and suicidal behaviour. In addition, the Operating Standard reinforces the statutory requirements in the Detention Centre Rules to report on those individuals whose health may be harmed by continued detention, those who may have been the victims of torture and those who may have suicidal intentions.

⁶⁰² Ev not printed.

⁶⁰³ Ev not printed.

All immigration removal centres have primary medical facilities and access to local psychiatric professionals. We are confident that the healthcare provisions in place are satisfactory—although we are keen to learn any lessons that would help us to ensure that the standard of care provided is of the required standard. That is why we have an action plan in place to address the shortcomings identified in the report IND commissioned from HMCIP last year on healthcare standards at Yarl's Wood. A copy of the action plan is attached for your information.

We have regular women doctors who attend Yarl's Wood. However if a female detainee attends the health centre on a day that a male doctor is performing the Daily Surgery a female GP would be accessed through the local GP practice as soon as possible. The exact timescale for doing so would depend on the urgency and nature of the problem. In a case where there was no urgency the woman concerned would be allocated the next available appointment for the rotational attending female GPs.

ISSUES ARISING FROM ORAL EVIDENCE SESSION ON 8 JANUARY 2007

The number of young people under 18 in prison for documentation offences (total broken down by age) (Q131)

The number of those under 18 who are detained would appear to be very low—and will often involve age disputes. The Home Office Court Proceedings database has been notified of 10 persons aged 15-17 sentenced for offences under s.2 of the Asylum & Immigration (Treatment of Claimants, etc) Act 2004 during 2005. 8 of them received sentences of immediate custody—with the other 2 receiving community sentences. Similar data for 2006 is not yet available.

We are currently looking at whether we can provide the Committee with any further information on this point from other sources. I will provide any additional information that becomes available when I write to the Committee following up points from the oral hearing last Wednesday if at all possible.

The relative costs of supporting (a) an asylum seeker and (b) a refused asylum seeker (i) in the community and (ii) in detention (Q168)

The average cost of supporting an asylum seeker—including any dependant—in the community is approximately £130⁶⁰⁴ per person per week where both accommodation and subsistence support is being provided. Where subsistence only support is provided the average cost is approximately £40 per person per week. The costs are the same where refused asylum seeking families are supported under section 95 of the Immigration and Asylum Act 1999.

The average cost of supporting a refused asylum seeker under section 4 is approximately £130⁶⁰⁵ per person per week.

The average cost per night per detainee across the detention estate is £116 per night. There is no distinction between the costs applying to asylum seekers and refused asylum seekers.

The cost of detention to the Government per occupied bed and empty bed (Q183)

There is no differential between the cost of a full bed compared to the cost of an empty bed.

The procedures for documenting cases where individuals allege they have experienced torture, and the guidance to officials on how to take that information into account when making a decision whether or not to detain that individual (Q208)

Rule 35 of the Detention Centre Rules 2001 (SI 238) requires the doctor at removal centres to report to the centre manager cases where a detainee may have been the victim of torture. That information should be considered by the caseworker responsible for the case concerned.

I attach the relevant Detention Service Order to fully explain the procedure.

There has, however, been a concern about the way the procedures have been applied. Staff in removal centres have therefore been instructed to ensure that procedures under Rule 35 (Detention Centre Rules) are processed and details logged. A standard reporting form has been introduced and its use will be monitored. Stuart Hyde—an IND Senior Director—will be looking at a selection of cases to see how the system is working, especially in terms of the IND consideration of and response to torture allegation reports. A copy of the reporting form is attached.

5 March 2007

⁶⁰⁴ Rounded to the nearest £5.

⁶⁰⁵ Rounded to the nearest £5.

93. Further letter from Liam Byrne, Minister of State, Home Office

Thank you for giving me the opportunity to give evidence to the Committee on 21 February. I welcome the Committee's interest in the complex issues involved in the treatment of asylum seekers and am very much looking forward to seeing the Committee's report in due course. In the meantime there were a number of points on which I undertook to provide the Committee with more information, or on which it might be helpful for me to provide further clarification.

I should like first to follow up on my letter of 5 March in reply to yours of 1 February. An issue which arose from the oral evidence session on 8 January was the number of young people under 18 in prison for documentation offences (Q131). I said that I would provide additional information as it became available. I can now say that management information currently available indicates that there are two individuals currently serving a custodial sentence for section 2 offences who claim to be under 18. Both are age disputed cases. Figures are from locally collated management information and are therefore subject to change.

New challenges—the right to work? (Q473)

In the course of saying that I thought there was no case for allowing asylum seekers to work, I referred to the review we published in July 2006 "*Fair, effective, transparent and trusted—Rebuilding confidence in our immigration system*". Under this, we are introducing the end-to-end caseworking reform of the asylum process, known as the New Asylum Model. As I said at the hearing, it is geared to the completion—by which we mean the granting or removal—of an increasing proportion of now cam within six months of application, increasing external confidence in the system and further reducing asylum support costs. All new asylum claims are now being dealt with under this process. We aim to complete 90% of new asylum cases within six months by the end of 2011. To achieve this we will ramp up performance so that we complete 35% of new asylum cases within six months by April 2007; 40% by December 2007; 60% by December 2008; and 75% by December 2009.

I should also like to clarify that the World Bank estimate of a billion young people joining the labour market in the developing world in the run up to 2020 that I referred to in my answer is an estimate to 2026. (This is included in our recently published Enforcement Strategy.)

I extended an invitation to Committee members to visit a New Asylum Model office, and I would like to repeat that now. I am very proud of what IND has achieved in moving to the new regional structure, and we would be pleased to demonstrate how this works in practice. If you would like to take up this offer please contact Matthew Coats' office to make the necessary arrangements. The contact number is 020 8760 8373.

Travel costs for section 55 interviews (Q478)

I said at the hearing that we would shortly be introducing arrangements to pay travel costs to those asylum seekers invited to Croydon to be interviewed in relation to a decision to refuse support under section 55. I am pleased to say that these arrangements came into effect on Monday 26 February. Applicants will be notified of the availability of a ticket when they are given the data of their interview. As I said at the hearing, the need for these travel costs will diminish as asylum casework becomes fully regionalised.

Local authority support for asylum seekers with care needs (Q484)

Baroness Stern said that the Committee had heard that some asylum seekers with care needs had encountered difficulties in getting appropriate accommodation and support from local authorities, especially in Scotland.

In my response I referred to the Westminster cage, which helped significantly in laying down the parameters within which local authorities are required to provide support where there are care needs which have not arisen solely because of destitution. I said too that IND could certainly improve its working relationships with local authorities. However I should have added, in view of Lady Stern's specific reference to Scotland, that the situation is not currently quite the same there. In Glasgow the City Council has so far chosen not to accept that the Westminster judgment should be followed in the context of similar Scottish legislation. Glasgow takes the position that the care needs required for the legislation to bite must be so severe that the client requires 24 hour supervision. This means that the burden of support in these cases falls on IND, which of course we accept.

Transition from section 95 to section 4 support (Q486)

You were concerned about apparent gaps in the provision of support for those who are no longer eligible for section 95 support but who may be eligible for section 4 support. For those who meet the eligibility requirements, people on section 95 support are given 21 days' notice that that support will end. This gives applicants sufficient time to seek advice, lodge their application for section 4 support and have it dealt with, assuming all necessary information has been provided.

I undertook to send you further information on the number of cases which are handled within the aspirational time windows, and on quality control measures. Our most recent statistics indicate that more than 30% of the Priority A cases (street homeless, or with a medical condition) are decided within two days of the date of application. A further 20% are decided between two and five days. Of the less urgent cases, the large majority are dealt with within 21 days of receipt.

As I said to the Committee, I accept that there is room for improvement, and agreement has recently been reached to effectively double the size of the caseworking team. This will allow for further improvements in our turn-around time for cases. It will also enable us to carry out in a shorter timescale reviews ensuring that support is provided only to those who still qualify for it.

With the increased resources, IND will be implementing a more systematic quality control programme. This will comprise regular reviews of decisions, with feed back or additional training provided to caseworkers where necessary. We also intend to overhaul our caseworking processes to ensure that the work is handled in the most efficient way.

Processes have been developed for Case Owners working under the new regional New Asylum Model structure to consider section 4 applications. This includes early identification of section 4 support cases and ensuring consistency of decision making. The asylum training programme, which includes section 4, has been developed and implemented for asylum staff and is now nearing completion. In the near future, Asylum Case Owners will deal with all section 4 applications which arise from new asylum cases. The remaining cases will be completed by the current dedicated section 4 team.

Section 9 pilot (Q488)

You asked me to let you know what had happened to certain families who were involved in the section 9 pilot, referring to the evidence provided by the Inter Agency Partnership (IAP). Amongst other things, the IAP said children had been taken into care.

As I said at the hearing, we will publish the section 9 pilot evaluation shortly. However, I can confirm now that we have not been notified of any children having been taken into care as a direct result of the section 9 pilot.

Further work is being carried out in conjunction with regional offices to update IND's information on families from whom support was withdrawn or who may be supported by local authorities.

Age disputed cases (Q515)

In discussions about the methodology for age testing I indicated the importance of reaching a consensus of opinion. I am certainly hoping we will get a degree of consensus, but clearly we will need to take a view even if no consensus can be achieved.

Consultation document on future policy for unaccompanied asylum seeking children (Q527)

I referred to the forthcoming consultation document on future policy for unaccompanied asylum seeking children. I am happy to say that it was published on 1 March.

Detention criteria (Q531)

The Committee asked about factors which are taken into account when deciding to detain someone. Matthew cited a couple of the key reasons but I thought you might find it useful to refer to the full list. This is included in chapter 38 of the Operational Enforcement Manual. A copy of the relevant chapter is attached. It may also be found on the IND website at: <http://www.ind.homeoffice.gov.uk/documents/oemsectiond/chapter38>

Yarl's Wood (Q540)

You asked me about the changing of contracts to run Yarl's Wood, and referred to a letter you had received from the Home Office. I take it that this is the letter of 12 February from David Robinson. I told you I would check whether there was anything else I could say without breaching contract confidentiality. Having taken advice I am afraid that I cannot expand on the information you have already been given.

I would, though, just like to repeat here what I said at the hearing about my wish to visit the Centre as soon as it can be arranged. In the first instance I have asked Jeremy Oppenheim, IND Children's Champion, to make a visit and then to report back to me on issues which need addressing. I will follow up Jeremy's visit as soon as possible thereafter.

On the detention of children, I confirm the undertaking I made at the hearing that I will explore alternatives to this practice.

Family removals review (Q546)

I can confirm that the review is almost ready for publication. I can reassure the Committee that the review will recommend the provision of specific guidance about breast feeding mothers and parents of young children, to include stating that separation should occur only for the most exceptional and compelling reasons to safeguard the welfare of the child.

Home Office representation at immigration hearings (Q556)

I said I would get back to you about Home Office representation at appeal hearings, on which I quoted a figure of 98%. Having used the uncorrected transcript to refresh my memory of the context in which this arose, I can see that I might inadvertently have misled the Committee. The figure of 98% refers to the average Home Office representation rate at asylum and Immigration appeal hearings before an Immigration Judge or legal panel, in the financial year from April 2005 to end March 2006. In Taylor House, where I understand Lady Lester sits, the average was 97% over the same period. However, these figures do not include ban hearings, which I now see the Committee may have been asking about. We do not have the figures the Committee sought, but we are looking to monitor the representation rate for those cases in the future.

Quality framework for assessing Home Office Presenting Officer performance (Q557)

I said I would find out whether this framework could be implemented earlier than this autumn. It is just one of the measures which will be introduced on a regional basis with the roll out of the New Asylum Model, under the management of the New Regional Directors. We are at present recruiting the remaining Regional Directors and they will be in post as soon as can be managed. From this, I am sure you will understand that I am not able to give an undertaking on the date from which the quality framework will be used, but I accept that the sooner it is in place the better for our customers and the integrity of the delivery of our services.

March 2007

94. Supplementary memorandum from the Scottish Refugee Council

ABOUT SCOTTISH REFUGEE COUNCIL

Scottish Refugee Council provides help and advice to those who have fled human rights abuses or other persecution in their homeland and now seek refuge in Scotland. We are a membership organisation that works independently and in partnership with others to provide support to refugees from arrival to settlement and integration into Scottish society. We campaign to ensure that the UK Government meets its international, legal and humanitarian obligations and to raise awareness of refugee issues. We are also an active member of the European Council on Refugees and Exiles (ECRE), a network of over 80 refugee-assisting organisations across Europe.

1. Introduction

1.1 Further to our written evidence to the Committee in September 2006⁶⁰⁶ and the oral evidence that our Chief Executive Sally Daghlian gave on 4 December 2007,⁶⁰⁷ we would be grateful if the Committee could examine this additional short written submission in response to the oral evidence given by Liam Byrne MP, Minister of State for Immigration, Citizenship and Nationality on 21 February 2007.⁶⁰⁸

1.2 This response gives our perspective on the ‘self check-in’ initiative raised by the Minister in his evidence as a viable alternative to the detention of children and enforced removal. It is based on our casework experience dealing with the asylum seekers who were targeted to take part.

2. “Voluntary check-in arrangements”

2.1 In response to a question put by Lord Lester on the detention of asylum-seeking children, the Minister stated that:

2.2 I will commit to this Committee that I will explore alternatives to the detention of children in the immigration detention centres which we have available. My own preference would be that when we organise voluntary check-in of families and children, people turn up. We recently organised—in Scotland, in fact—voluntary check-in arrangements for 141 individuals. One of them turned up. Where we have a situation where individuals like that are so determined to evade the instructions that they have been given by the

⁶⁰⁶ http://www.scottishrefugeecouncil.org.uk/pub/Human_Rights_Inquiry

⁶⁰⁷ <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/uc60-ii/uc6002.htm>

⁶⁰⁸ <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/uc60-vi/uc6002.htm>

immigration service, in accordance with laws passed by this House, these Houses, that sometimes we will have to detain people in order to remove them. It costs a great deal of money to the British taxpayer; it would be nice if we did not have to do it, it would be nice if people did indeed check in.⁶⁰⁹

2.3 We welcome the fact that the Minister commits to exploring alternatives to detaining asylum-seeking children. We have raised our concerns around this inhumane and non-evidence based practice directly with the Home Office, most recently through our campaign, No Place for a Child with Save the Children, Bail for Immigration Detainees, the British and Welsh Refugee Councils⁶¹⁰ and we have proposed alternative models based on a dedicated casework approach.⁶¹¹

2.4 We would wholeheartedly agree with the Minister that it would be “*nice if people* [refused asylum seekers] *did indeed check-in*” in the sense that their return is truly voluntary, safe, dignified and sustainable. However, we would contend that the self check-in initiative he discusses in no way sought a dignified or sustainable return, nor did it allay the fears of those who were involved about returning to their country of origin. Nor in actual fact did it target fully-refused claimants, but also included those who had outstanding fresh representations.

2.5 In autumn 2006, a number of fully-refused families in Glasgow were sent “self check-in notices” asking them to report to an airport on a specified date and time in order to board flights which would return them to their countries of origin. The people who failed to turn up for the specified flights were then scheduled to have their NASS support discontinued. No agency dealing with asylum seekers in Glasgow was informed of this initiative when it started and Scottish Refugee Council only became aware of its implementation when we began to see clients presenting at our offices many of whom only appearing when their support was cut following failure to report to their specified “self check-in” date.

2.6 There was great confusion within the community around the implications of these notices particularly as many of the families concerned had lodged fresh representations with IND and so believed their claims to be ongoing. Scottish Refugee Council subsequently liaised with the IND Scottish Asylum Support team to ensure that consistent and correct advice was available to those affected by the initiative. Our senior caseworkers also met with key legal representatives, advice agencies and community organisations to discuss individual cases and maintain a co-ordinated local response. This approach ensured that stakeholders were not prone to misunderstandings or to providing illegal or mistaken advice regarding issues such as reporting requirements.

2.7 In terms of client profile, the “141 individuals” mentioned by the Minister included families with young children and a significantly high proportion of single mothers.

2.8 The feedback from our casework was that:

- Clients were all extremely distressed and fearful;
- Many went without support for several weeks because they were too afraid to report to the Scottish Enforcement Unit (SEU) as they worried they would be detained on site;
- One client was detained when she reported at SEU in order to get support and was kept there, with her young children, for several hours without access to food before being taken to detention;
- Many of the clients who came to us were awaiting a decision on outstanding fresh representations and so should not have been included in this initiative;
- Scottish Refugee Council caseworkers were unable to effectively assist and advise those affected as they were not informed by IND about this pilot prior to its implementation; and
- Within communities, there was a great deal of misinformation and panic due precisely to the fact that no-one had been consulted or even told about this prior to the notices going out.

2.9 On the whole and notwithstanding the grave concerns of including people in this initiative who had made or believed they had made fresh representations, we argue that this initiative was the disaster that the Minister describes it as being not because “*individuals . . . are so determined to evade the instructions that they have been given by the immigration service*”, but because of two failures on IND’s part. Firstly, a failure of IND to engage effectively and constructively with key stakeholders to whom asylum seekers turn to for advice. And secondly, and most importantly, the failure of IND to engage meaningfully with individuals who remain fearful of return to their country of origin. Making frightened people even more frightened is simply not an effective (or humane) policy to ensure that individuals and families who have exhausted their claim for asylum return to their country of origin.

Gary Christie
Policy Officer

15 March 2007

⁶⁰⁹ Q 526.

⁶¹⁰ See: <http://www.noplaceforachild.org/>

⁶¹¹ For example, see: <http://www.noplaceforachild.org/report.pdf> and <http://www.scottishrefugeecouncil.org.uk/pub/family—removal>