



House of Lords  
House of Commons  
Joint Committee on  
Human Rights

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# The Treatment of Asylum Seekers

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**Tenth Report of Session 2006–07**

*Volume I – Report and formal minutes*





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## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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### Current Staff

The current staff of the Committee are: Nick Walker (Commons Clerk), Bill Sinton (Lords Clerk), Murray Hunt (Legal Adviser), Judy Wilson (Inquiry Manager), Angela Patrick and Joanne Sawyer (Committee Specialists), Jackie Recardo (Committee Assistant), Suzanne Moezzi (Committee Secretary) and James Clarke (Senior Office Clerk).

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## Summary

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In this Report, the Committee considers human rights issues raised by the treatment of asylum seekers, from the time when they first claim asylum in the UK, through to either the granting of asylum, or, for asylum seekers whose claims are refused, their departure from the UK. The numbers claiming asylum in the UK increased rapidly during the late 1990s, and even though the numbers have reduced significantly every year since 2002, the issue of asylum remains high on the political and public agenda. The Government is required to “secure to everyone within their jurisdiction” the rights contained within the European Convention on Human Rights. This includes asylum seekers and refused asylum seekers.

In Chapter 2 the Committee explains the relevant principal human rights standards and obligations which apply to the UK under the European Convention of Human Rights and other international instruments to which the UK is a party.

Many asylum seekers and refused asylum seekers are vulnerable individuals who are reliant on protection and support from others. The majority usually have no right to work and are dependent on the state for access to housing, health care, food and other necessities. In Chapter 3 the Committee reviews the system and quality of support available to them. In the Committee’s view, the current system is overly complex, poorly administered, offers inadequate information and advice to ensure that people receive the support to which they are entitled and in some cases denies any support at all to those who are destitute (paragraphs 84, 87, 92, 97, 99, 110 and 121).

In the light of the evidence presented, the Committee concludes that by refusing permission for asylum seekers to work and operating a system of support which results in widespread destitution, the Government’s treatment of asylum seekers in a number of cases reaches the Article 3 ECHR threshold of inhuman and degrading treatment (paragraph 120).

In Chapter 4 the Committee considers the provision of healthcare to asylum seekers and refused asylum seekers, in particular the impact of the overseas visitors’ charging regulations for secondary healthcare which were introduced in 2004, and proposals to extend this charging scheme to primary care. The Committee finds that no evidence has been provided to justify the charging policy, nor has any race equality impact assessment of the policy been made (paragraphs 163 and 166). Under the ECHR, discrimination in the enjoyment of Convention rights on grounds of nationality requires particularly weighty justification. The restrictions on access to free healthcare for refused asylum seekers who are unable to leave the UK are examples of nationality discrimination which require justification. The Committee recommends that free primary and secondary healthcare be provided for all those who have made a claim for asylum or under the ECHR whilst they are in the UK, in order to comply with the laws of common humanity and the UK’s international human rights obligations, and to protect the health of the nation (paragraph 170) .

In Chapter 5, the Committee reiterates the view which it has expressed in previous Reports, that the Government’s reservation to the UN Convention on the Rights of the Child (CRC) is unfounded. It does not accept that that the CRC undermines effective immigration controls, and recommends that the reservation be withdrawn and that the Government consider how section 11 of the Children Act, which imposes a duty on public bodies to have regard to the need to safeguard and promote the welfare of children in discharging their

normal functions, could be extended to include authorities providing support for asylum seekers, the Immigration Service and Immigration Removal Centres (IRCs) (paragraphs 180 to 182). Also in this Chapter, the Committee considers arrangements for the care of separated asylum seeking children and makes a number of recommendations about how this care should be improved in order to meet international human rights standards (paragraphs 190, 191, 193, 196, 203 and 204).

Over recent years there has been a significant increase in the use of detention of asylum seekers. Two main policy developments account for this increase: the introduction of 'fast track' asylum processes and an increased emphasis on removal. In Chapter 6, the Committee recommends that all IRC staff, including those of private contractors, be given training in refugee and human rights. It expresses concerns about the use of fast track detention, and about detention of vulnerable people such as victims of torture, pregnant women and those with serious mental and physical health problems. The Committee considers in detail the detention of children and finds that the current process of detention does not consider the welfare of the child. It concludes that the detention of children for the purpose of immigration control is incompatible with children's right to liberty and is in breach of the UK's international human rights obligations. The Committee states that children should not be detained and alternatives should be developed for ensuring compliance with immigration control where this is considered necessary (paragraph 259). The Committee also makes recommendations about access to bail, aspects of the treatment of detainees and methods of removal (paragraphs 291, 305, 310, 328, 329 and 330).

In Chapter 7, the Committee considers the treatment of asylum seekers by the media and reviews the evidence it received of negative media coverage of asylum. It expresses concerns about the impact of this hostile reporting, the potential it has for influencing the decision making of officials and Government policy, and the possibility of a link between such reporting by the media and physical attacks on asylum seekers. The Committee recommends that the Press Complaints Commission should provide practical guidance on how the profession of journalism should comply with its duties and responsibilities in reporting matters of legitimate public interest and concern, without such guidance unduly restricting freedom of speech or freedom of the press any more than it does in the USA (paragraph 366).

A full list of the Committee's principal conclusions and recommendations is set out in Chapter 8.

# 1 Introduction

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## The context of our inquiry

1. The majority of asylum seekers and refugees worldwide come from countries affected by conflict, violence and human rights abuses. Most stay in their region of origin and only a very small proportion of those who leave come to the UK. The numbers worldwide have been falling and the largest reduction in asylum seekers over recent years is associated with those countries that, for the most part, saw reductions in armed conflict, increasing stability, or changes in government that reduced domestic human rights violations. The number of applications for asylum in the UK rose from 32,505 in 1997 to 84,130 in 2002, but has since reduced each year, with 25,715 applications in 2005.<sup>1</sup>

2. Nonetheless, the issue of asylum has rarely been higher on the political and public agenda. There are many reasons for this, but also some inherent contradictions. On the one hand there is anxiety about rapid changes in our communities, about actual and perceived conflicts of interest over resources, and about the failure of the asylum system in particular (and the Home Office in general) to deliver effective systems of management and delivery. Yet at the same time, the UK is experiencing economic growth, the majority of people in our society are financially better off and many are benefiting – directly and indirectly – from the processes of globalization which inevitably result in increased international migration as they open up new horizons for work, travel and family life.

3. The Government's approach to asylum has, in large part, been based on the assumption that many of those who arrive in the UK and claim asylum are not genuinely in need of protection but rather are economic migrants seeking a better life for themselves and their families.<sup>2</sup> This has been reflected in the development of policies which aim to deter and prevent would-be asylum seekers from coming to the UK, for example, through a significant reduction in the welfare and health benefits to which asylum seekers, especially those whose applications have been refused, are eligible to access. These are policies on which we and our predecessor Committee have frequently commented in the course of our legislative scrutiny work, often expressing concerns about the risk of destitution, the impact on the children of asylum seekers and asylum seekers being treated less favourably than others without objective justification.<sup>3</sup>

4. In this context, and given the rapid succession of policy changes that have been introduced over the last few years, we considered it to be particularly timely to conduct an inquiry into the treatment of asylum seekers in the UK. The focus of our inquiry was entirely on the treatment of asylum seekers. We have made no comment on who is, is not, should be or should not be an asylum seeker.

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<sup>1</sup> Home Office Statistical Bulletin, *Asylum Statistics in the UK 2005*, August 2006.

<sup>2</sup> Home Office 5 year strategy for asylum and immigration, *Controlling our Borders: Making Migration Work for Britain*, 2004, paras 26 and 27.

<sup>3</sup> For example, Twenty-sixth Report of Session 2005-06, *Human Trafficking*, HL Paper 247/HC 1626, Fifth Report of Session 2003-04, *Asylum and Immigration (Treatment of Claimants, etc.) Bill*, HL Paper 35/HC 304, Fourteenth Report of Session 2003-04, *Asylum and Immigration (Treatment of Claimants, etc.) Bill: New Clauses*, HL Paper 130/HC 828 and Twenty-third of Session of Session 2001-02, *Nationality, Immigration and Asylum Bill: Further Report*, HL Paper 176/HC 1255.

5. We make one preliminary observation about an important issue which has arisen in relation to various aspects of this inquiry. In paragraph 97 we conclude that there is no evidence that the pilot of section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 has encouraged more refused asylum-seeking families to leave the UK. In paragraph 110 we conclude that there is no evidence that the voucher system encourages refused asylum seekers to leave the UK. In paragraph 129 we regret the absence of evidence demonstrating the extent of what the Government describes as “health tourism” in the UK. In paragraphs 161 to 171, where we discuss charging for healthcare, we again draw attention to the lack of evidence underpinning Government policy. Finally, in his evidence the Home Office Minister Mr Liam Byrne MP stated that giving more asylum seekers the right to work would lead to a surge in abusive asylum claims,<sup>4</sup> although we received no evidence from the Government to support this assertion. **We recommend that in the development of asylum policy the Government should proceed on the basis of evidence, rather than assertion, which evidence should wherever possible be published.**

### Terms of reference

6. We have considered human rights issues raised by the treatment of asylum seekers from the time they first make a claim for asylum until they are either granted asylum and integrated into the community, or until they are removed from the UK.

7. Our terms of reference called for evidence in particular on:

- access to accommodation and financial support;
- the provision of healthcare;
- the treatment of children;
- the use and conditions of detention and methods of removal;
- treatment by the media.

8. Since 1999, the Government has introduced a number of new measures to restrict the access of asylum seekers to support and healthcare. At the same time, there has been an increase in the use of detention and a significant amount of hostile media coverage of asylum seeker issues. We have commented adversely on a number of these measures in our previous legislative scrutiny Reports.

9. The human rights issues raised in asylum procedures and the determination of claims were outside the scope of our inquiry, except insofar as they directly affect the treatment of asylum seekers.

10. Many asylum seekers and refused asylum seekers are vulnerable individuals who are reliant on protection and support from others. When a person arrives in the UK and claims asylum, the Home Office considers whether they should be granted ‘temporary admission’ or detained until a decision is made on their claim. The majority are granted temporary admission, and although lawfully resident, they usually have no right to work and are dependent on the state for access to housing, health care, food and other

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<sup>4</sup> Q 477

necessities. Whilst resident in the UK, they, and their children if they have any, are entitled to the full protection of the European Convention on Human Rights (ECHR) and other international human rights instruments to which the UK is a party, including the Refugee Convention.

11. All asylum seekers – including those whose claims have been refused and the Home Office intends to remove from the UK – are still ‘within the jurisdiction’ and therefore beneficiaries of the rights set out in the panoply of international human rights treaties that the UK has adopted. They have simply asserted a fundamental right in seeking asylum. Regardless of their reasons for coming to the UK, asylum seekers must be treated with humanity before and after their applications have been decided. All are owed the human rights obligations successive Governments have assumed.

12. The treatment of asylum seekers is important for the men, women and children seeking asylum in the UK. But it is also important for those of us who are not asylum seekers. This is because the UK’s approach to migration – and its treatment of asylum seekers in particular – says something about the society we live in and the kind of country we want to be. The human rights principles and values of democratic societies must guide the country’s behaviour towards asylum seekers and its relationships with other countries from which asylum seekers originate.

13. In focusing on asylum as ‘a problem’ (and on the legal, technical and policy solutions for improving the asylum system, reducing the number of applications and removing those at the end of the process) it is essential that the Government, and those responsible for providing services and support to the most vulnerable in our society, do not lose sight of the fact that asylum seekers, regardless of their immigration status, are human beings, with fundamental and basic human rights, needs and aspirations. Asylum seekers are hugely diverse in their backgrounds and experiences and include children, young single parents, young single men and women, middle-aged couples with children, and older men and women whose families have been left behind. We wanted our inquiry to examine the treatment and experiences of asylum seekers living in a wide range of different circumstances and to capture the human experience of being an asylum seeker in the UK.

## **Evidence and visits**

14. We received written evidence from many organisations and individuals. All of this information was used to inform our inquiry. It is not possible for us to refer individually to every submission but we are grateful to all of those who assisted us in this way. With the exception of a small amount of evidence which we were asked to keep confidential, or to anonymise, this evidence is published in full in a separate volume to this Report. The transcripts of the oral evidence sessions are also published in a separate volume.

15. In January 2007 we visited Yarl’s Wood immigration removal centre where we met and talked to staff and to families and individuals being detained there. We are grateful to the staff from the Immigration Nationality Directorate and from GSL, the contractor responsible for managing operations at the centre, for making the arrangements for our visit and for helping to make it such a productive day.

## Structure of this report

16. In Chapter 2 we review the human rights principles relevant to the treatment of asylum seekers. In Chapter 3 we consider the provision of financial support and accommodation for asylum seekers and refused asylum seekers who cannot leave the UK. We have previously expressed our particular concerns about the operation of section 55 of the Nationality, Immigration and Asylum Act 2002 which provides for the withdrawal of all welfare benefits from asylum seekers (with the exception of children) who have failed to claim asylum as soon as reasonably practicable after arrival in the UK;<sup>5</sup> and about section 9 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 which provides that refused asylum seekers with families will be ineligible for support following a certification by the Secretary of State that they have failed to leave the UK voluntarily.<sup>6</sup> In this inquiry, we review these concerns in the light of evidence about the operation of these provisions in practice.

17. We have also previously expressed concerns about section 10 of the Asylum and Immigration (Treatment of Claimants) Act 2004 which allows the Secretary of State to make provision of section 4 “hard case” support dependent on participation in community activities;<sup>7</sup> we have not given this matter any further consideration because the Home Office told us that the performance of community activities has not been made a condition of support to date.<sup>8</sup> However we remain of the view that there is a significant risk that making the provision of accommodation to refused asylum seekers conditional on their performance of community work would be in breach of the prohibition of forced labour or compulsory labour in Article 4(2) ECHR, and that any refusal to provide accommodation on the grounds that a refused asylum seeker would not perform community work would be in breach of Article 3 ECHR.

18. In Chapter 4 we consider the provision of healthcare, particularly within the context of regulations introduced in April 2004 to make people not lawfully resident in the UK liable for NHS hospital charges, and proposals from the Department of Health to exclude overseas visitors from eligibility for free NHS primary healthcare. In Chapter 5 we discuss the particular human rights problems faced by asylum seeking children. We have criticised on several occasions the reservation entered by the Government to Article 22 of the UN Convention on the Rights of the Child,<sup>9</sup> and in this inquiry we review the impact of this reservation on asylum seeking children, together with other matters affecting children such as age assessment procedures for age-disputed asylum seekers.

19. The treatment of asylum seekers in detention engages the State’s positive obligations to protect a range of Convention rights, including the right to liberty and to freedom from unjustified discriminatory treatment. Chapter 6 deals with the use of detention and the methods of removal of refused asylum seekers. In Chapter 7, we consider the treatment of asylum seekers by the media and consider whether the State is fulfilling its positive obligations to protect asylum seekers from unjustified interference with their right to

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<sup>5</sup> Twenty-third Report of Session 2001-02, *op. cit.*

<sup>6</sup> Fifth Report of Session 2003-04, *op. cit.*

<sup>7</sup> Fourteenth Report of Session 2003-04, *op. cit.*

<sup>8</sup> Appendix 69.

<sup>9</sup> Most recently, see Twenty-sixth Report of Session 2005-06, *op. cit.*

respect for their dignity, private life, and physical integrity and to secure their enjoyment of Convention rights without discrimination, consistently with the right to freedom of expression.

### **Specialist advisers**

20. We record our particular thanks to our three specialist advisers in the inquiry, Dr Heaven Crawley of Swansea University, Professor Geoff Gilbert of Essex University and Sue Willman.

## 2 Human Rights Principles

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21. The treatment of asylum seekers and refused asylum seekers is not simply an immigration issue, but also a human rights issue. In this report, we examine the treatment of asylum seekers and refused asylum seekers in the light of the UK's human rights obligations of the various institutions with which asylum seekers come into contact. Under the Human Rights Act 1998 (HRA), the Home Office, Department of Health and local authorities are public authorities with obligations to comply with rights under the European Convention on Human Rights 1950 (ECHR).<sup>10</sup> Private contractors operating immigration removal centres or carrying out removals of refused asylum seekers are also almost certain to be considered to be public authorities when exercising powers of detention and removal delegated to them by the state, and are therefore also required to comply with Convention rights. There is a strong case for considering the Press Complaints Commission to be a public authority.<sup>11</sup>

22. International law recognises the right of states to control entry to their territories. However, the UK is also bound in international and national law by human rights standards, particularly the ECHR. We note at the outset that the Government is required to “secure to everyone within their jurisdiction” the rights contained within the European Convention on Human Rights. This includes asylum seekers and refused asylum seekers. Further, in the enjoyment of any Convention right, the state is prohibited from discriminating without objective and reasonable justification.<sup>12</sup> “Very weighty reasons” are required to justify discrimination on the ground of nationality.<sup>13</sup> The state also has obligations to comply with international standards set out in UN treaties. These obligations should be considered in conjunction with the existing common law human rights standards, which are set out below.

23. The purpose of this Chapter is to identify existing human rights norms and principles applicable to the treatment of asylum seekers, and to articulate the human rights obligations which are thereby imposed upon the UK. It starts by setting out general principles at common law which are relevant to this inquiry. It then continues briefly to consider the Refugee Convention 1951 and analyse the applicable human rights norms and obligations imposed upon states. All of the instruments mentioned in this Chapter, except for soft law instruments, are ratified by the UK, unless otherwise stated.

### Common law principles relevant to the inquiry

24. Before setting out the applicable human rights provisions, we draw attention to the common law principles of (1) humanity; (2) access to a court and legal services; and (3) equal treatment.

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<sup>10</sup> Human Rights Act 1998 Section 6.

<sup>11</sup> Relying on the Press Complaints Commission's acceptance that it was arguably a public authority in the case of *R (Ford) v The Press Complaints Commission* [2001] EWHC Admin 683, para. 11, and the Government's statement during the debates on the Human Rights Act that it considered that the PCC undertook public functions (Hansard HC Debs, 6th ser., col. 414).

<sup>12</sup> Article 14 ECHR, *Belgian Linguistics Case (No. 2)* (1968) 1 EHRR 252 at 284, para. 14.

<sup>13</sup> *Gaygusuz v Austria* App. No. 39/1995/545/631, 31 August 1996, para. 42, *Legislative Scrutiny: First Progress Report*, Second Report of Session 2006-07, HL Paper 34, HC 263, paras. 6.20-6.31.



25. First, under the common law, the state is required to treat people humanely. More than 200 years ago, the UK courts stated –

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 us to afford them relief, to save them from starving.<sup>14</sup>

26. This principle has been applied in cases such as *R v Secretary of State for the Home Department, ex parte Joint Council for the Welfare of Immigrants*<sup>15</sup> which concerned the denial of social security benefits to asylum seekers who did not claim asylum on arrival in the UK and those whose claims had been rejected by the Secretary of State and were pending appeal.

27. Secondly, the UK courts have recognised a constitutional right of access to the courts (including tribunals and other adjudicative mechanisms) at common law.<sup>16</sup> This includes the right of an individual to unimpeded access to a solicitor to seek legal advice and assistance.<sup>17</sup>

28. Thirdly, the courts recognise a common law principle of equality. This principle has been described as –

...one of the building blocks of democracy and necessarily permeates any democratic Constitution.... Treating like cases alike and unlike cases differently is a general axiom of rational behaviour<sup>18</sup>

And –

Every person within the jurisdiction enjoys the equal protection of our laws. There is no distinction between British nationals and others. He who is subject to English law is entitled to its protection. This principle has been in the law at least since Lord Mansfield freed “the black” in *Somerset’s case* (1772) 20 State Tr 1 at 20.<sup>19</sup>

The corollary of the principle of equality is the requirement not to discriminate either directly or indirectly without objective and reasonable justification.

## Refugee Convention

29. The 1951 United Nations Convention relating to the Status of Refugees (the Refugee Convention) is the key legal document in defining who is a refugee, their rights and the legal obligations of states. The 1967 Protocol removed geographical and temporal

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<sup>14</sup> *R v Eastbourne (Inhabitants)* (1803) 4 East 103, 102 ER 769 at 770.

<sup>15</sup> [1996] 4 All ER 385.

<sup>16</sup> *R v Secretary of State for the Home Department ex parte Saleem* [2001] 1 WLR 443 per Baroness Hale at 458 – “in this day and age a right of access to a tribunal or other adjudicative mechanism established by the state is just as important and fundamental as a right of access to the ordinary courts”.

<sup>17</sup> *Raymond v Honey* [1983] 1 AC 1, HL; *R v Secretary of State for the Home Department, ex parte Anderson* [1984] QB 778, Div Ct; *R v Secretary of State for the Home Department, ex parte Leech* [1994] QB 198; *R v Lord Chancellor, ex parte Witham* [198] QB 575, Div Ct.

<sup>18</sup> *Matadeen v Pointu* [1998] 3 LRC 542 at 552; [1999] 1 AC 98 at 109.

<sup>19</sup> *Khawaja v Secretary of State for the Home Department* [1983] 1 All ER 765 at 782; [1984] AC 74 at 111-112.

restrictions from the Convention. Together, these instruments apply to refugees and to those seeking asylum whose claims have not been determined. They do not apply to those who have been refused asylum. State signatories to the Refugee Convention are prohibited from imposing penalties on asylum seekers who are present in the state without prior authorisation, so long as they present themselves to the authorities “without delay”.<sup>20</sup> Specific provisions of the Refugee Convention which are relevant to this inquiry are referred to as appropriate in the rest of this Chapter.

## Key human rights obligations

### *Positive and negative obligations*

30. There are two types of human rights obligations owed by states: positive and negative. A positive obligation requires states to undertake specific preventive or protective actions to secure ECHR rights (including the prevention of ill-treatment administered by private individuals or bodies), whereas they must refrain from taking certain actions under a negative obligation. Some examples of positive obligations include investigating deaths in custody, protecting vulnerable persons from ill-treatment, and securing respect for private life. Positive obligations can require the state to take steps to protect individuals from the actions of third parties (such as the press).

### *Prohibition of discrimination*

31. Although states may, in certain circumstances, treat nationals and non-nationals differently, their right to do so is subject to states’ obligations under international human rights law.<sup>21</sup> The ECHR protects against unjustified discrimination in the way that other Convention rights are enjoyed. Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR) contains a similar provision. Article 14 ECHR provides –

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.

This is an overarching principle which applies to all ECHR rights. It encompasses both direct<sup>22</sup> and indirect discrimination.<sup>23</sup>

32. Unlike the ECHR, the International Covenant on Civil and Political Rights (1966) (ICCPR) provides a *freestanding* equality guarantee –

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<sup>20</sup> Article 31 Refugee Convention.

<sup>21</sup> Oppenheim’s International Law (9th edn, 1992), vol. 2, pp. 909-910, para. 404; United Nations General Assembly Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, 13 December 1985 (GA Res. 40/144) - states might establish differences between nationals and non-nationals but laws and regulations should not be incompatible with the international legal obligations of the state, including those in the field of human rights (Article 2).

<sup>22</sup> *Belgian Linguistics Case* (1968) 1 EHRR 252.

<sup>23</sup> *Thlimmenos v Greece* App. No. 34369/97, 6 April 2000, para. 44; *R (S and Marper) v Chief Constable of South Yorkshire* [2002] EWCA Civ 1275, para. 89; *Zeman v Austria* App. No. 23960/02, 29 June 2006, para. 32.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### ***Discrimination on the grounds of nationality***

33. Both the ECHR and ICCPR expressly prohibit unjustified discrimination on the grounds of nationality. General Comment No. 15 to the ICCPR (adopted by the supervisory body for the ICCPR, the UN Human Rights Committee (UNHRC), in 1986) amplifies this principle:

Each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant [Article 2] ... This guarantee applies to aliens and citizens alike<sup>24</sup>

And -

aliens are entitled to equal protection by the law<sup>25</sup>

This prohibition on nationality discrimination has been applied by the UK courts and the European Court of Human Rights.<sup>26</sup> In *A v Secretary of State for the Home Department*, which involved a challenge by foreign nationals to their indefinite detention under the Anti-Terrorism Crime and Security Act 2001, the House of Lords held that the men had been treated differently because of their nationality or immigration status and that this difference in treatment could not be justified.<sup>27</sup> The Court based its judgment squarely on the principle of equality -

A state is not permitted to discriminate against an unpopular minority for the good of the majority<sup>28</sup>

And -

Democracy values each person equally. In most respects, this means that the will of the majority must prevail. But valuing each person equally also means that the will of the majority cannot prevail if it is inconsistent with the equal rights of minorities.<sup>29</sup>

Particularly severe discrimination can constitute inhuman and degrading treatment and therefore breach Article 3 ECHR.<sup>30</sup>

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<sup>24</sup> para. 2

<sup>25</sup> para. 7

<sup>26</sup> *Gaygusuz v Austria* App. No. 39/1995/545/631, 31 August 1996.

<sup>27</sup> [2005] UKHL 71; [2005] 2 AC 68.

<sup>28</sup> Lord Hope, para. 136.

<sup>29</sup> Baroness Hale, para. 237.

<sup>30</sup> *East African Asians v United Kingdom* (1973) 3 EHRR 76; *Nachova v Bulgaria* App. Nos. 43577/98 and 43579/98, 6 July 2005.

### *Physical or mental suffering generally*

34. Article 3 ECHR prohibits torture and inhuman or degrading treatment or punishment. It provides -

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Insofar as is relevant, Article 3 is mirrored by Article 7 ICCPR.

35. The prohibition against torture and inhuman or degrading treatment or punishment is absolute and cannot be opted out of in any circumstances. Along with Article 2 ECHR, the right to life, it is the most important of the Convention rights, reflecting the fundamental values of a decent society and respecting the dignity of each individual human being, no matter how unpopular or unworthy the individual is.

36. Treatment must attain a “minimum level of severity” to fall within Article 3 ECHR. The assessment of the minimum is relative and depends on all the circumstances of the case such as the nature and context of the treatment or punishment that is in issue. Where treatment, or the absence of treatment, leads to an individual’s death, it would fall within the protection of the right to life.<sup>31</sup>

37. The European Court of Human Rights has defined inhuman and degrading treatment as -

“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 a 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.<sup>32</sup>

38. A number of other Convention rights are also important in protecting against ill-treatment. Article 8 ECHR protects against physical or mental treatment or neglect which may not attain the level of severity which would be contrary to Article 3. It provides –

- a) Everyone has the right to respect for his private and family life, his home and his correspondence.
- b) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ....

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<sup>31</sup> Article 2 ECHR, Article 6 ICCPR.

<sup>32</sup> *Pretty v United Kingdom* App. No. 2346/02, 29 April 2002, para. 52.

The right to respect for private life has been interpreted by the European Court of Human Rights as including a right to physical and psychological integrity.<sup>33</sup>

### **Financial support, accommodation and employment**

39. Articles 3 and 8 ECHR and their equivalents are relevant to the provision of financial support, accommodation and employment to asylum seekers. Destitution causing sufficiently severe suffering or particularly poor living conditions<sup>34</sup> may breach Article 3, or if the suffering is less severe, Article 8.

40. In *R (Limbuela and others) v Secretary of State for the Home Department*<sup>35</sup> three asylum seekers challenged the Home Secretary's refusal to provide them with support as they had not claimed asylum "as soon as was reasonably practicable". The test to be applied in deciding whether an individual has claimed promptly was whether the asylum seeker could reasonably have been expected to have claimed asylum earlier than he or she had.<sup>36</sup> The House of Lords in *Limbuela* reiterated the requirements for Article 3, and held that it –

would accept that in a context such as this, not involving the deliberate infliction of pain or suffering, the threshold is a high one. A general public duty to house the homeless or provide for the destitute cannot be spelled out of art 3. But I have no doubt that the threshold may be crossed if a late applicant with no means and no alternative sources of support, unable to support himself is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life.<sup>37</sup>

41. The Home Secretary's duty to provide support to avoid a breach of ECHR rights was held by the House of Lords to arise when –

It appears on a fair and objective assessment of all relevant facts and circumstances that an individual applicant faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life. Many factors may affect that judgment, including age, gender, mental and physical health and condition, any facilities or sources of support available to the applicant, the weather and time of year and the period for which the applicant has already suffered or is likely to continue to suffer privation.<sup>38</sup>

42. The Court also noted that the Home Secretary could not "wait and see" whether the individual's situation breached the Convention, but was required to act -

As soon as the asylum seeker makes it clear that there is an imminent prospect that a breach of the article will occur because the conditions which he or she is having to endure are on the verge of reaching the necessary degree of severity.<sup>39</sup>

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<sup>33</sup> *X & Y v Netherlands* (1985) 8 EHRR 235.

<sup>34</sup> *Moldovan v Romania* App. Nos. 41138/98 and 64320/0, 12 July 2005, para. 110.

<sup>35</sup> [2005] UKHL 66; [2006] 1 AC 396.

<sup>36</sup> *R (Q and others) v Secretary of State for the Home Department* [2003] 2 All ER 905.

<sup>37</sup> *Limbuela*, *Op. Cit.*, Para. 7.

<sup>38</sup> *Limbuela*, *Op. Cit.*, Para. 8.

<sup>39</sup> Para. 62.

43. Summarising the Home Secretary's decision to deny support to asylum seekers who, it was alleged, had not made their claims as soon as was reasonably practicable, Lord Brown of Eaton-Under-Heywood in the House of Lords stated -

It seems to me one thing to say ... that within the contracting states there are unfortunately many homeless people and whether to provide funds for them is a political, not judicial, issue; quite another for a comparatively rich (not to say northerly) country like the United Kingdom to single out a particular group to be left utterly destitute on the streets as a matter of policy.<sup>40</sup>

44. Article 8 ECHR requires the state to respect an individual's home, but does not require the state to provide an individual with a home. However, the state may have positive duties to accommodate if the failure to do so would cause severe suffering, particularly to vulnerable individuals. Article 21 of the Refugee Convention refers to housing and requires that states -

Accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

45. Article 11 ICESCR recognises the right of everyone to an adequate standard of living for himself and his family, including adequate clothing, housing and food. The right to be free from hunger is specifically protected.

46. Article 1 of Protocol 1 ECHR concerns the protection of property and provides -

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law ...

47. This Article has been interpreted by the European Court of Human Rights to include social security benefits (both contributory and non-contributory) within the concept of a "possession".<sup>41</sup> Also relevant are Articles 17 (wage-earning employment), 23 (public relief) and 24 (labour legislation and social security) of the Refugee Convention.

## **Healthcare**

48. Articles 2, 3 and 8 ECHR are also applicable to the provision of healthcare. In addition, "the enjoyment of the highest attainable standard of physical and mental health" is specifically protected by Article 12 ICESCR. An issue may arise under Article 2 where the state puts an individual's life at risk through the denial of healthcare which is available to the general population.<sup>42</sup> Further, the state has a positive duty to take steps to safeguard the lives of those within the jurisdiction.<sup>43</sup>

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<sup>40</sup> Para. 99.

<sup>41</sup> *Stec v United Kingdom* (App. No. 65731/01 and 65900/01), 6 July 2005 (Adm.), para. 53.

<sup>42</sup> *Cyprus v Turkey* [2002] 35 EHRR 30, para.219.

<sup>43</sup> *L.C.B. v United Kingdom* [1999] 27 EHRR 212, para. 36.

49. Applying Article 3 and judgments of the European Court of Human Rights<sup>44</sup> to a Ugandan asylum seeking woman suffering from advanced HIV/AIDS (*N (FC) v Secretary of State for the Home Department*), the House of Lords found that Article 3 did not impose an obligation on the state to provide medical care. This was so even where, in the absence of medical treatment, the life of the woman would be significantly shortened. Apart from exceptional circumstances, such as where the fatal illness had reached a critical stage, foreign nationals who were subject to expulsion could not claim any entitlement to remain in the territory of a state in order to continue to benefit from medical, social or other forms of assistance provided by the expelling state. This was so even if, during the determination of her asylum claim, the individual received medical treatment which resulted in an improvement in her medical condition, such as receiving anti-retroviral treatment.<sup>45</sup>

### Family life

50. The UK is under an obligation, in both international and national law,<sup>46</sup> to respect the rights to family life of people in *de facto* family relationships to the mutual enjoyment of each other's company. Interference by the state in family life is not permitted where to do so leads to it being virtually impossible to lead a meaningful family life,<sup>47</sup> but may be justified under Article 8(2) ECHR in the circumstances of an individual case.

### Liberty of the person

51. The right to liberty and security of the person is guaranteed by Article 5(1) ECHR which sets out the only circumstances in which an individual may be deprived of his liberty. This is mirrored by Article 9 ICCPR. The right to liberty and security of the person applies to both nationals and non-nationals.<sup>48</sup> The right to liberty has been described by Lord Hope of Craighead as “a fundamental right which belongs to everyone who happens to be in this country, irrespective of his or her nationality or citizenship”.<sup>49</sup> Article 5(1)(f) ECHR provides that an individual may be deprived of his liberty subject to a procedure prescribed by law in the case of –

The lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

52. The European Court of Human Rights has interpreted the meaning of detention “with a view to deportation” stating –

Article 5(1)(f) does not demand that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary... All

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<sup>44</sup> *D v UK* (1997) 24 EHRR 425 in which the ECtHR held that in the “very exceptional circumstances” of that case, it would be a breach of Article 3 ECHR to return D, an individual in the final stages of AIDS with no prospect of medical care or family support, to St Kitts.

<sup>45</sup> *N (FC) v Secretary of State for the Home Department* [2005] UKHL 31.

<sup>46</sup> Article 8 ECHR and Article 17 ICCPR.

<sup>47</sup> *R (Bernard) v Enfield London Borough Council* [2002] EWHC 2282 (Admin).

<sup>48</sup> General Comment 15 of the UNHRC - “aliens have the full right to liberty and security of the person” (para. 7).

<sup>49</sup> *A v Secretary of State for the Home Department* [2005] 3 All ER 169 at para. 106.

that is required under this provision is that “action is being taken with a view to deportation”.<sup>50</sup>

53. However the Court has pointed out that the individual must be protected from arbitrary detention –

Any such deprivation of liberty was justified under Article 5(1)(f) only for as long as deportation proceedings were in progress. If the proceedings were not prosecuted with due diligence, the detention would cease to be permissible under the provision.<sup>51</sup>

This approach accords with the UK courts’ decision in *R v Governor of Durham Prison ex parte Singh*<sup>52</sup> and *Tan Te Lam v Superintendent of Tai A Chan Detention Centre*<sup>53</sup> that detention was permissible only for such time as was necessary for the process of deportation to be carried out. There is therefore no warrant for the long-term or indefinite detention of non-UK nationals whom the state wished to remove.

54. Recognizing that detention is a major interference with personal liberty, the European Court has noted the difference between detaining those seeking asylum and others –

Where individuals are lawfully at large in a country, the authorities may only detain if ... a “reasonable balance” is struck between the requirements of society and the individual’s freedom. The position regarding potential immigrants, whether they are applying for asylum or not, is different to the extent that, until their application for immigration clearance and/or asylum has been dealt with, they are not “authorized” to be on the territory. Subject, as always, to the rule against arbitrariness, the Court accepts that the State has a broader discretion to decide whether to detain potential immigrants than is the case for other interferences with the right to liberty... All that is required is that the detention should be a genuine part of the process to determine whether the individual should be granted immigration clearance and/or asylum, and that it should not otherwise be arbitrary, for example on account of its length.<sup>54</sup>

55. An individual who has been detained has the right to take legal proceedings to determine quickly whether or not he is lawfully detained.<sup>55</sup> The importance of treating those detained with humanity is recognized by Article 10 ICCPR.<sup>56</sup>

### ***Right to a fair trial and to a fair hearing***

56. In addition to the common law principle of access to the courts and to legal advice, the right to a fair trial and to a fair hearing is protected by human rights instruments. Article 6 ECHR provides –

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<sup>50</sup> *Chahal v United Kingdom* (1997) 23 EHRR 413, para. 33.

<sup>51</sup> *Chahal v United Kingdom* (1997) 23 EHRR 413, para. 113.

<sup>52</sup> [1984] 1 All ER 983; [1984] IWLR 704.

<sup>53</sup> [1996] 4 All ER 256; [1997] AC 97.

<sup>54</sup> *Saadi v United Kingdom* App. No. 13229/03, 11 July 2006, para. 44.

<sup>55</sup> Article 5(4) ECHR and Article 9(4) ICCPR.

<sup>56</sup> “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human being.”



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.

57. Article 6 has been interpreted to include an implied right of access to the courts,<sup>57</sup> although this right is not absolute and may be limited by the state.<sup>58</sup> Whilst Article 6 does not apply to the state's decisions on whether or not to grant asylum,<sup>59</sup> it does apply to any other decisions relating to asylum seekers such as their detention, mistreatment, removal of support<sup>60</sup> or removal of their children. Further, the courts have decided that where the state establishes the right to appeal, it must ensure that people can enjoy the fundamental guarantees of that right and that, in the way that it regulates the right, it does not restrict it so that "the very essence of the right is impaired".<sup>61</sup> Access to the courts is also protected by Article 16 of the Refugee Convention and Article 14 ICCPR.

### **Freedom of expression**

58. Article 10 ECHR and Article 19 ICCPR set out a qualified right to freedom of expression.<sup>62</sup> The right includes the right "to receive and impart information and ideas" and comes with concomitant duties and responsibilities. Article 10 ECHR is unique amongst ECHR rights in expressly stating (in paragraph 2) that "the exercise of these freedoms ... carries with it duties and responsibilities". Free speech can only be restricted in the circumstances set out in the Article, namely –

... as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...

59. The right to free speech is balanced against other rights, most significantly, Articles 2 (right to life), 3 (prohibition of ill-treatment) and 8 (respect for private and family life).

60. Article 20 ICCPR prohibits hate speech –

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law.<sup>63</sup>

61. Article 4 CERD requires states to:

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<sup>57</sup> *Golder v United Kingdom* (1979-80) 1 EHRR 524 – a prisoner's unimpeded right of access to a solicitor for the purpose of receiving advice and assistance in connection with the possible institution of civil proceedings in the courts form an inseparable part of the right of access to the courts themselves.

<sup>58</sup> *Golder v United Kingdom* (1979-80) 1 EHRR 524.

<sup>59</sup> *Maaouia v France* (2001) 33 EHRR 42.

<sup>60</sup> *R (Husain) v Asylum Support Adjudicators and Secretary of State for the Home Department* [2001] EWHC 852 (Admin).

<sup>61</sup> See e.g. *Saleem v Secretary of State for the Home Department* [2001] 1 WLR 443 Baroness Hale at 458.

<sup>62</sup> This accords with the position at common law - *Derbyshire County Council v Times Newspapers Ltd* [1993] 1 All ER 1011 at 1021.

<sup>63</sup> The UK Government has made a reservation to Article 20 ICCPR in the following terms "The Government of the United Kingdom interpret Article 20 consistently with the rights conferred by Articles 19 and 21 of the Covenant and having legislated in matters of practical concern in the interests of public order reserve the right not to introduce any further legislation..."

not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

In 2003, the Committee overseeing the International Convention on the Elimination of Racial Discrimination (CERD) expressed concern about the ineffectiveness of the Press Complaints Commission in dealing with increasing prejudice against asylum seekers in certain sections of the media.<sup>64</sup>

### **Vulnerable groups**

62. Some groups of asylum seekers, because of their special needs, are especially vulnerable. The United Nations has noted the effect of detention, which it considers should take place only in exceptional circumstances, on vulnerable groups. It recommends that children should not be placed in detention, and particular attention should also be paid to vulnerable persons (victims of torture, trauma, unaccompanied elderly, persons needing medical care), women and stateless persons.<sup>65</sup>

63. European Union Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers<sup>66</sup> provides that “reception of groups with special needs should be specifically designed to meet [their] needs”.<sup>67</sup> Article 17 provides that –

Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care.

### **Children**

64. Child asylum seekers possess the same human rights as all other asylum seekers. In addition, they are afforded special protection because of their vulnerability by the Convention on the Rights of the Child (1989) (CRC) and the Children Act 1989, which partly brings the CRC into UK law. Special note is also taken of the particularly vulnerable situation of unaccompanied and separated children.<sup>68</sup> Article 37 CRC is particularly relevant –

States parties shall ensure that –

<sup>64</sup> Conclusions and recommendations of the Committee on the Elimination of Racial Discrimination, United Kingdom of Great Britain and Northern Ireland, U.N. Doc. CERD/C/63/CO/11 (2003), para. 13; *The Convention on the Elimination of Racial Discrimination*, Fourteenth Report of Session 2004-05, paras 59-62.

<sup>65</sup> United Nations High Commissioner for Refugees, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, February 1999.

<sup>66</sup> OJ (L) 31/18 (2003). Henceforth “EU Reception Directive”.

<sup>67</sup> Ninth paragraph of the Preamble.

<sup>68</sup> United Nations Committee on the Rights of the Child General Comment No. 6 (2005), Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, 1 September 2005.

- a) no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment ...
- 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.
- 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 ...
- 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 or a court ...

65. The UK has reserved the right to apply legislation which relates to "entry into, stay in and departure from" the UK as it deems necessary. However, a similar reservation to a different human rights treaty was found to be contrary to the object and purpose of the treaty itself.<sup>69</sup> Our predecessor Committee previously expressed concern about the effects of immigration and asylum policy, particularly detention, on children, and criticised the UK's reservation to the CRC.<sup>70</sup>

### **Pregnant women**

66. In addition to its duty not to discriminate against foreign nationals, the state has particular responsibilities towards women. These responsibilities apply equally to nationals and non-nationals. The state is required to refrain from engaging in any act or practice of discrimination against women<sup>71</sup> and has particular health responsibilities to women, especially relating to pregnancy and post-natal care –

... states parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.<sup>72</sup>

The particular vulnerability of young destitute asylum seeking women has been noted by the House of Lords.<sup>73</sup>

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<sup>69</sup> *Rawle Kennedy (represented by the London law firm Simons Muirhead & Burton) v. Trinidad and Tobago*, Communication No. 845, U.N. Doc. CCPR/C/67/D/845/1999 (31 December 1999) at paragraph 6.7. The UN Human Rights Committee stated: "The Committee cannot accept a reservation which singles out a certain group of individuals for lesser procedural protection than that which is enjoyed by the rest of the population. In the view of the Committee, this constitutes a discrimination which runs counter to some of the basic principles embodied in the Covenant and its Protocols..."

<sup>70</sup> Seventeenth Report of Session 2001-02, *Nationality, Immigration and Asylum Bill*, HL Paper 132/HC 961, Ninth Report of Session 2002-03, *The Case for a Children's Commissioner for England*, HL Paper 96/HC 666, Nineteenth Report of Session 2003-04, *Children Bill*, HL Paper 161/HC 537.

<sup>71</sup> Article 2(d), United Nations Convention on the Elimination of Discrimination Against Women (CEDAW) (1979).

<sup>72</sup> Article 12(2) CEDAW.

<sup>73</sup> *Limbuela, op. cit.*, para. 78.

### 3 Access to Financial Support and Accommodation

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67. In this chapter we review the entitlement and the quality of provision of support for asylum seekers and refused asylum seekers, and we consider evidence that Government actions have resulted in a high level of destitution among asylum seekers, both as a deliberate policy aim and because of administrative inefficiency.

#### Entitlement to support for asylum seekers and refused asylum seekers

68. In the following paragraphs we explain the complex statutory regime governing support to asylum seekers. This regime is also summarised in an Annex to this Report.

69. The legal basis for providing support to asylum seekers is Part 6 of the Immigration and Asylum Act 1999 (“the 1999 Act”). This has been amended by 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”). An asylum seeker is entitled to “adequate, no-choice accommodation” and basic subsistence while their asylum claim is being processed (and for families, until they leave the UK). The National Asylum Support Service (NASS) was established in 2000 as part of the Immigration Nationality Directorate (IND) to administer asylum support. In 2006 IND announced that NASS no longer existed as a directorate. Because witnesses have referred to NASS and for ease of reference we have used the term NASS to refer to the part of IND which administers support for asylum seekers and former asylum seekers.

70. Asylum seekers and their dependants often arrive in the UK without money or anywhere to stay. To qualify for emergency support they must normally apply for asylum at the port of entry or in person at an Asylum Screening Unit (ASU). Emergency “initial accommodation” for newly arrived asylum seekers is provided as an interim measure under section 98 of the 1999 Act. It is usually in the form of full board in hostels, hotels or induction centres and is provided, to those who appear destitute, whilst the Secretary of State determines whether they qualify for the longer term support under Section 95 of the 1999 Act (“section 95 support”). Applicants must normally claim asylum in person, and have their claim processed at the Asylum Screening Unit (ASU) before any claim for support is considered. An asylum seeker who is pregnant, has a child or has care needs may attend the office of a voluntary organisation known as the One Stop Service to be admitted to emergency accommodation overnight or over a weekend until they are able to present themselves to the ASU. The support arrangements for unaccompanied asylum seeking children (UASCs) are different.

71. Section 95 support is provided to asylum seekers aged over 18 and their dependants when their asylum claims have not yet been finally determined and they would otherwise be destitute or likely to become destitute. “Destitute” means that they do not have adequate accommodation or support for themselves and their dependants for the next 14 days. The 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. It is provided in the form of “no-choice” accommodation in a dispersal area and cash subsistence is set at 70% of the income support level for adults and 100% for children. Section 95 support is provided subject to various terms and conditions, and may be suspended or discontinued in various circumstances if an asylum seeker fails to comply with the conditions of their support (for example if they allow a destitute asylum seeker to share their accommodation). Any decision to refuse or withdraw section 95 support before it would otherwise have come to an end attracts a right of appeal to the Asylum Support Adjudicators (ASA).

72. A refused asylum seeker who is destitute and unable to leave the UK due to circumstances beyond their control can claim support under section 4 of the 1999 Act (“section 4 support”) if he or she meets one or more of the conditions set out in the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005, that is if he or she:

- is taking all reasonable steps to leave the UK (this usually means signing up with the International Organisation of Migration (IOM) to arrange a voluntary return home);
- is unable to leave the UK due to a physical impediment to travel or other medical reason (such as late stages of pregnancy);
- is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return;
- has been granted permission to apply for judicial review of the asylum decision;

In addition, section 4 support may be provided if it is necessary in order to avoid a breach of a person’s Convention rights (this usually means they have made a fresh claim for asylum based on new evidence).

73. Section 4 support is normally provided in the form of shared self-catering accommodation and £35 per person per week in vouchers to meet food and essential living needs, or as full-board accommodation. The continued provision of support is dependent on review to establish that the eligibility criteria still apply and upon the person 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.

74. Section 10 of the 2004 Act added a regulation-making power to section 4 in order to specify the criteria to be used in determining whether or not to continue providing section 4 support. The regulations give the Secretary of State the power to require section 4 claimants to carry out activities on behalf of the community as a condition of continued support.<sup>74</sup> In its consideration of the Asylum and Immigration (Treatment of Claimants, etc) Bill, our predecessor Committee was of the view that section 10 would amount to a breach of the prohibition on forced labour as well as unmitigated discrimination on grounds of nationality, and called on the Government to repeal it.<sup>75</sup> We agree with that conclusion but we do not deal with the issue in this Report because the Home Office told

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<sup>74</sup> Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 SI no 930.

<sup>75</sup> Fourteenth Report of Session 2003-04, *op. cit.*

us that “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”.<sup>76</sup>

75. Under section 21 of the National Assistance Act 1948 (“the 1948 Act”), local authorities have a duty to provide residential accommodation and associated support (“section 21 support”) to an adult asylum seeker who is in need of care and attention due to old age, ill health, disability or other special reason. Section 54 and Schedule 3 of the 2002 Act restrict this duty by preventing local authorities from supporting those who are “unlawfully in the UK” unless services are needed to avoid a breach of Convention rights. The Administrative Court has recently decided that a refused asylum seeker is lawfully in the UK if he claimed asylum “on arrival” and has temporary admission.<sup>77</sup> Otherwise a refused asylum seeker with care needs is only entitled to section 21 support if it is necessary to avoid a breach of his human rights (for example if he has a new asylum or human rights claim). 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 a person may be in need of services. The local authority then decides if that person’s need requires any such service.

76. Local authorities have a duty of care under the Children Act 1989 to provide suitable housing and support for unaccompanied asylum seeking children (UASC). The Home Office does not support UASC directly but currently funds local authorities to provide appropriate support and care under provisions in the 1989 Act. 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.

## Permission to work

77. If an asylum seeker has waited a year for an initial decision, he or she may apply for permission to work. However, whilst the majority of asylum claims are now determined promptly, appeals may be outstanding for 12 months, but delayed appeals attract no corresponding right to apply for permission to work.<sup>78</sup> The Home Office expects to take up to five years to clear the backlog of ‘legacy’ asylum cases<sup>79</sup> (those cases where asylum has been refused but removal not yet effected) and we have heard evidence that there is a significant number of refused asylum seekers who are unable to return to their country of origin in the medium or long term (for example Palestinians with no travel documents).<sup>80</sup> Refused asylum seekers may not apply for permission to work, even if they are unable to return to their country of origin.

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<sup>76</sup> Appendix 69.

<sup>77</sup> *R (AW) v LB Croydon and R (A,D and Y) v LB Hackney* [2006] EWHC 2950 heard in Court of Appeal on 6 March, judgment reserved.

<sup>78</sup> Appendix 69.

<sup>79</sup> Q471.

<sup>80</sup> Appendix 12.

## Administrative barriers to receiving support

### *Obstacles to claiming asylum in person*

We had a man arrive on the Friday before Bank Holiday 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 occupied 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. *Inter-Agency Partnership*

78. An asylum seeker who does not claim asylum at port of entry must lodge a claim at an Asylum Screening Unit (ASU) within three days of arriving in the UK, if they are to be eligible for support. There are only two ASUs in the UK, one in Liverpool and one in Croydon, both of which are open from 9am to 1pm on normal working days. Witnesses, including the Inter-Agency Partnership (IAP),<sup>81</sup> argue that the limited geographical presence and opening hours make it difficult for those attempting to lodge a claim.<sup>82</sup> Newly arrived asylum seekers often have no means of support until they can get to an ASU, and are reliant on charitable donations to fund their journey (including overnight accommodation and meals).

79. Refugee Action explained that although Home Office best practice advice is that Immigration Officers should make every effort to attend to people who present themselves at a police station to claim asylum, the reality is that they are usually only able to do so for the most vulnerable applicants (who may then receive emergency section 98 support) and that others must wait until they have attended an ASU.<sup>83</sup> Refugee Action added that local police stations rarely allow people to wait there, so those who are not attended to by an Immigration Officer are routinely turned onto the streets, for the lack of anywhere else to go, with no means or knowledge to travel to the ASU:

“Refugee Action is not able to accommodate people until they have claimed asylum ... This leaves many adults abandoned in the towns and cities where their agent has left them, with no means 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 this 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.”<sup>84</sup>

80. Refugee Action stated that the difficulties encountered in trying to reach an ASU “increases the likelihood of clients disappearing without engaging in the asylum process, as they simply may not make it to an ASU” and recommended that the facility to provide one

<sup>81</sup> An umbrella group consisting 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.

<sup>82</sup> Appendix 67.

<sup>83</sup> *ibid.*

<sup>84</sup> *ibid.*

night's emergency accommodation and subsequent travel to an ASU which is available to vulnerable groups should be extended to all single asylum applicants.<sup>85</sup>

**81. People who are attempting to claim asylum and support encounter significant practical difficulties because of the limited accessibility of Asylum Screening Units. These difficulties may discourage people from engaging in the asylum process and cause severe hardship for claimants with no resources. We recommend that the Government improves facilities for claiming asylum and provides locations for claiming asylum and support throughout the UK.**

### **IND delays and errors in processing applications**

82. We heard evidence of delays in the processing of applications for support which have left people who have a valid entitlement to support with no money or housing. Citizens Advice point out that given the dependency of asylum seekers on support, the impact of casework errors and any delay in their resolution are severe and that whilst some are helped by other asylum seeking friends "it is clearly unacceptable that vulnerable individuals should have to rely on other, equally vulnerable individuals, to the obvious hardship of all concerned".<sup>86</sup> They gave details of a case where, despite the intervention of the local Citizen's Advice Bureau, a single woman was without any support for 8 weeks.<sup>87</sup> The British Red Cross Society reported a case where a mother was without support for over a fortnight.<sup>88</sup>

83. We have heard many examples of such delays and errors. IAP reported that "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 Office".<sup>89</sup> IAP told us that support to asylum seekers was sometimes erroneously terminated by IND (the Refugee Council in Leeds reported that it saw three to four terminations in error every week) and that "the time taken to rectify this mistake can be prolonged, causing significant hardship to asylum seekers who have no other means of support". For example:

"One Afghani client recently waited 5 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 15th August, he has only now received Emergency money from NASS in the post today."<sup>90</sup>

**84. We have heard countless examples of Home Office inefficiencies in processing support claims, with severe consequences for desperate, vulnerable people who have no other means to support themselves. There is an urgent need to improve the operational performance of the Home Office where decisions are being made about support for**

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<sup>85</sup> *ibid.*

<sup>86</sup> Appendix 35.

<sup>87</sup> *ibid.*

<sup>88</sup> Appendix 29.

<sup>89</sup> Appendix 67.

<sup>90</sup> *ibid.*



asylum seekers. **The institutional failure to address operational inefficiencies and to protect asylum seekers from destitution amounts in many cases to a failure to protect them from inhuman and degrading treatment under Article 3 ECHR.**

### Advice about entitlement to support

85. The regulations setting out asylum seekers' entitlements to support are complicated. Witnesses told us that the advice provided for asylum seekers to explain their entitlement to support or to deal with administrative difficulties was often inadequate. The Law Centre (NI) suggests that there is increasing uncertainty about the future provision of services to asylum seekers within Northern Ireland where there is no local office; there is currently no IND public enquiry office in Northern Ireland, and the existing NASS agent in Northern Ireland will discontinue its services to asylum seekers from the end of March 2007.<sup>91</sup> The 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 of asylum seekers in Northern Ireland.

86. We note that the Home Secretary has announced that NASS no longer exists as a directorate and that support issues for new asylum applicants will instead be dealt with by New Asylum Model (NAM) case workers.<sup>92</sup> Under the NAM system, asylum support functions as well as asylum determination will become the responsibility of a single, dedicated caseowner. In the Home Office announcement of the roll out of the casework approach, it stated that "case owners are responsible for all key aspects of the process – from interview, decision, the appeals process, support issues, documentation and maintaining contact to integration, voluntary return or removal."<sup>93</sup> Citizens Advice commended the recent "steady and substantial improvement in the accessibility, service delivery and overall performance of NASS" but voiced concerns about the seemingly rapid pace of transition to NAM and the "resultant incomplete preparation and prior training of staff".<sup>94</sup> The Minister told us that a NAM caseworker will receive eleven weeks of asylum training,<sup>95</sup> but it is not clear to us whether sufficient training will be provided on asylum support and whether there will be an adequate provision of advice for applicants. The twelve volume Case Owner's workbook which is the current training manual for case workers has only three pages which briefly describe support entitlement.<sup>96</sup> The summary of entitlement to section 4 support in the NAM Case Owner's workbook does not explain that refused asylum seekers may qualify for section 4 support if they have made a fresh asylum claim or applied for judicial review.

**87. We welcome the development of the New Asylum Model (NAM) which has the potential to improve the timeliness of decision making and the quality of support to asylum seekers and refused asylum seekers. However, we are concerned that the Home Office has yet to ensure that NAM caseworkers receive adequate training about asylum**

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<sup>91</sup> Appendix 24.

<sup>92</sup> [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk); *Minutes of National Asylum Support Forum meeting, 27 July 2006.*

<sup>93</sup> [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk) Press release 12 March 2007 *Home Secretary meets people who have "kick-started cultural change in the Home Office".*

<sup>94</sup> Appendix 35.

<sup>95</sup> Q487.

<sup>96</sup> *Case Owners Workbook 6: The Front End of the Asylum Process*, Home Office, 2006.

seekers' entitlement to support. We recommend that the capacity of NAM is closely monitored whilst it is assuming responsibility for support provision. We also recommend that the Home Office reviews arrangements for the provision of advice and information to asylum seekers and their representatives, both during the applicant's asylum claim and during the transition to mainstream support after asylum is granted.

## Support for asylum seekers

### *Section 55 of the Nationality, Immigration and Asylum Act 2002*

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. *Inter-Agency Partnership*

88. Section 55 of the 2002 Act came into effect in January 2003 and provides that asylum support under sections 4, 95 and 98 of the 1999 Act can be denied if the Secretary of State is not satisfied that the asylum claim was made as soon as reasonably practicable after the person's arrival in the UK. Section 55 does not prevent support being provided to those with dependent children or with particular care needs. The Home Office told us that its 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, but that this policy was refined with effect from 17 December 2003. From that date it was accepted that an asylum seeker who arrived within the previous three days and had no opportunity to claim asylum within that time would be treated as having claimed as soon as reasonably practicable.<sup>97</sup>

89. Our predecessor Committee expressed its concerns about the section 55 provisions<sup>98</sup> and concluded that there was a significant risk that they would lead to a violation of the rights to an adequate standard of living,<sup>99</sup> to be free from inhuman and degrading treatment,<sup>100</sup> and to respect for private life.<sup>101</sup> IAP told us that “throughout 2003, 64 per cent of asylum seekers referred for a section 55 decision were denied support. This amounted to 9,415 individual asylum seekers who received no form of government support whatsoever”.<sup>102</sup> By October 2003, section 55 cases amounted to a quarter of all the judicial review cases lodged in the High Court and 800 cases were being processed.<sup>103</sup> Following a series of court cases, the House of Lords was asked to consider the effect of section 55 in the case of *Limbuela*.<sup>104</sup> The court heard evidence that there was insufficient charitable help to meet the needs of a growing number of destitute asylum seekers. In the leading judgment, Lord Bingham said:

<sup>97</sup> Appendix 69.

<sup>98</sup> Twenty-third Report of Session 2001-02, *op. cit.*

<sup>99</sup> ICESCR Article 11.1.

<sup>100</sup> ECHR Article 3.

<sup>101</sup> ECHR Article 8.

<sup>102</sup> Appendix 67.

<sup>103</sup> Statement in Administrative Court Maurice Kay J, 15.10.03.

<sup>104</sup> We discuss the *Limbuela* case in Chapter 2.

“A general public duty to house the homeless or provide for the destitute cannot be spelled out of Article 3. But I have no doubt that the threshold may be crossed if a late applicant with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life ...”

90. It is clear from the judgment that where an asylum seeker has insufficient access to shelter, food or washing facilities, then the Article 3 threshold could be reached. The Home Office stated that since the *Limbuela* judgment, it 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.<sup>105</sup> It added that since a person falls to be refused under section 55 only if 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.

91. Witnesses told us that while support is being provided to homeless applicants, section 55 provisions are being used to refuse cash-only support claims from applicants with accommodation (such as staying with friends).<sup>106</sup> The Minister confirmed to us that section 55 was being used in subsistence-only cases.<sup>107</sup> IAP acknowledges that while the *Limbuela* judgment addressed many of its concerns, it considers that “the continued application of section 55 for subsistence-only claims potentially breaches an applicant’s rights under both ECHR Article 3 and ICESCR Articles 9 and 11”.<sup>108</sup> Home Office published statistics indicated that whilst there has been a considerable reduction in the number of asylum seekers refused support under section 55, there were still 895 people who were refused support under section 55 during 2006.<sup>109</sup>

**92. The continued use of the section 55 provision to deny support in subsistence-only cases leaves many asylum seekers reliant on ad hoc charitable support and with no regular means of providing for their basic daily necessities. We believe that this treatment does not comply with the House of Lords *Limbuela* judgment, and is in clear breach of Article 3 ECHR. We recommend that section 55 be repealed.**

### ***Section 9 of The Asylum and Immigration (Treatment of Claimants etc) Act 2004***

The families we worked with were desperate and terrified. Over a third of the adults had health problems, and eighty per cent had significant mental health needs, ranging from diagnosed psychiatric disorders to people so distressed they wept throughout our 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.

*Refugee Action*

<sup>105</sup> Appendix 69.

<sup>106</sup> e.g. Appendix 67, Appendix 29.

<sup>107</sup> Q478.

<sup>108</sup> Appendix 67.

<sup>109</sup> IND quarterly statistics [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk).

93. A refused asylum seeker with a dependent child is normally entitled to continue receiving section 95 support until the child reaches the age of 18. This was changed by section 9 of the 2004 Act, which provides that support may be withdrawn from these families if they are considered to have failed to take reasonable steps to leave the UK voluntarily. The Home Office has stated that the use of section 9 is intended to act as an incentive for the family to return voluntarily before removal is enforced.<sup>110</sup> Families whose asylum support has been withdrawn are ineligible for assistance from local authorities, although local authorities may use their statutory powers to take children into care. Before section 9 was introduced our predecessor Committee argued that the lack of a sufficiently robust section 9 process might lead to human right violations.<sup>111</sup> The Committee concluded that:

“we accept that the Bill would not make it impossible to give appropriate protection to Convention rights, and we accept that it is not in a child’s best interests to remain for a long period in a country where he or she has no prospect of being allowed to remain permanently. However, we fear that in practice there could be many people (including children) who suffer severe hardship and violations of Convention rights if the interview system is not sufficiently robust to identify reliably those who lack the resources to support themselves.”<sup>112</sup>

94. In January 2005, the Home Office began a pilot implementation of section 9 in three areas (Croydon/East London, Manchester and Leeds/Bradford). The pilot ended in December 2005, although families whose support was withdrawn during the pilot did not have support reinstated when the pilot ended. The Minister told us that although the evaluation of the pilot was now complete, he was unable to say when the evaluation report would be published because he wished first to develop his conclusions for future policy.<sup>113</sup> We heard evidence that in the meantime a number of the families whose support was withdrawn by the original pilot remain in limbo and in some cases destitute. The Immigration Minister told us that he had not been notified of any children having been taken into care as a direct result of the pilot,<sup>114</sup> but this contradicted information provided by Refugee Action, that four children of families involved in the pilot had been taken into care.<sup>115</sup>

95. The Refugee Council was one of the agencies funded by NASS to do outreach work with the families as part of the process of evaluating the section 9 pilot. Together with Refugee Action, it published a report “*Inhumane and Ineffective*” on the result of the pilot in January 2006, stating that of the 116 families involved in the pilot, 32 appeared to have left their accommodation without informing the Home Office or the local authority of their whereabouts.<sup>116</sup> The Refugee Action report estimated that as many as 80% of the

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<sup>110</sup> Appendix 69.

<sup>111</sup> Fifth Report of Session 2003-04, *op. cit.*, paras 44-45.

<sup>112</sup> *ibid.* para 44.

<sup>113</sup> Q489.

<sup>114</sup> Appendix 93.

<sup>115</sup> *Inhumane and Ineffective – Section 9 in practice. A joint Refugee Council and Refugee Action report on the Section 9 pilot.* January 2006, p. 6.

<sup>116</sup> *Inhumane and Ineffective – Section 9 in practice. A joint Refugee Council and Refugee Action report on the Section 9 pilot, op. cit.*

families in the pilot included a parent with a mental health need, such as post-traumatic stress disorder. The North West Consortium (East) sent us a submission describing the experiences of the eleven local authorities in the Manchester area which were involved in the section 9 pilot.<sup>117</sup> Its own conclusion was that “the pilot appears to have failed in achieving its stated aims”. It stated that:

“throughout the pilot Greater Manchester local authorities raised concern with the Home Office and also with the DfES regarding the conflict between section 9 and child care legislation. This presented genuine challenges and difficulties. ... 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.”<sup>118</sup>

96. Other witnesses shared the view that section 9 was incompatible with human rights standards and called for it to be repealed. The Refugee Council believed that section 9 was “extremely damaging for children and families and unnecessary for the purposes of immigration control”.<sup>119</sup> Liberty’s view was that section 9 constituted a severe interference with the right to respect for family life guaranteed by Article 8 ECHR and a violation of the rights protected by the CRC.<sup>120</sup> 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. 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.”<sup>121</sup>

**97. The section 9 pilot has caused considerable hardship and does not appear to have encouraged more refused asylum seeking families to leave the UK. We urge the Government to publish the results of the pilot without further delay. We believe that using both the threats and the actuality of destitution and family separation is incompatible with the principles of common humanity and with international human rights law and that it has no place in a humane society. We recommend that section 9 be repealed at the earliest opportunity.**

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<sup>117</sup> Appendix 48.

<sup>118</sup> *ibid.*

<sup>119</sup> Appendix 31.

<sup>120</sup> Appendix 75.

<sup>121</sup> Appendix 67.

### ***Availability of legal representation for the asylum support appeal process***

98. If the Home Office decides to refuse or withdraw asylum support, claimants have a right of appeal to the Asylum Support Adjudicators, a tribunal based in Croydon. There is no legal aid available for representation at such tribunals, although the prospects of success are higher for represented appellants, and asylum seekers often find it difficult to obtain advice about the appeal process. Individuals have no right to accommodation or support whilst awaiting the appeal hearing and so may be without any support for the week or so before the hearing. Although travel expenses can be claimed, it is difficult for homeless asylum seekers who speak no English to attend a tribunal where they will be unrepresented.

99. **The absence of provision for representation before the Asylum Support Adjudicators may lead to a breach of an asylum seeker's right to a fair hearing, particularly where an appellant speaks no English, has recently arrived in the UK, lives far from Croydon and/or has physical or mental health needs. Where an appeal fails, and as a result of the unavailability of legal representation an asylum seeker is left destitute, the result may also be a violation of Article 3 ECHR. We recommend that the Government should make legal aid funding available for representation before the Asylum Support Adjudicators. Where needed, assistance with accommodation as well as travel costs involved in attending an appeal should also be provided. We heard evidence that suggested in some cases this assistance was not being given.<sup>122</sup> In our view it is a priority that appellants receive accommodation and subsistence for the hearing.**

### ***Immigration advice and representation***

100. A related problem which was emphasised by a number of witnesses was the inadequate provision of immigration advice about the asylum claim and the quality of Home Office decision making about the asylum claim<sup>123</sup>. Refugee Action was 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”.<sup>124</sup> It pointed out that since April 2004 there had been a maximum legal aid entitlement of five hours for the time allowed to prepare an initial application to the Home Office, and that any further funding was merit-tested by the Legal Services Commission. It reported that in every region in which it worked, specialist immigration solicitors had been forced to reduce capacity or close as a direct result of the cuts, and stated that it was “concerned that applicants who could have been granted refugee status are being refused and are unable to appeal” and that “many (applicants) complained about poor standards of interpretation (at the initial application stage) which they believed had damaged their case and prevented them from receiving a fair hearing”.<sup>125</sup> As part of a wider research study, Refugee Action commissioned two experienced immigration lawyers to assess the merits of respondents' cases: the lawyers identified up to 70 per cent of cases they believed would merit further examination by a specialist immigration lawyer.

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<sup>122</sup> Q 60

<sup>123</sup> Appendix 59, Appendix 71.

<sup>124</sup> Appendix 12.

<sup>125</sup> *ibid.*

**101. We are concerned that the shortage of competent immigration advice and representation may indirectly result in destitution.**

### *Inadequate housing*

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. *Scottish Refugee Policy Forum*

102. In general the level of section 95 financial support appears to be adequate, but there is evidence that the quality of section 95 accommodation is unsatisfactory and falls short of the Article 8 ECHR right to respect for home, family and private life. The Scottish Refugee Policy Forum described a very poor level of accommodation in Scotland, where asylum seekers were housed in tower blocks awaiting demolition and essential repairs were not carried out.<sup>126</sup> The Home Office told us that it took care to ensure that any decision to allocate a person with accommodation in a particular area was reasonable and that if an applicant required a specific support network (such as specialist medical treatment) in a particular area it might decide not to disperse him from that area.<sup>127</sup> It added that section 95 accommodation had to meet “a strict specification” from the IND to ensure that it was appropriate and that it was subject to monitoring to ensure the standards are maintained. It stated that where problems were identified they were addressed promptly.<sup>128</sup> However, research commissioned by the Home Office suggested that some asylum seekers were being dispersed to areas where they would be subject to hostility and prejudice.<sup>129</sup>

103. The Scottish Refugee Policy Forum told us that asylum seekers were subjected to frequent moves which interrupted their children’s education and public examinations and made it more difficult for them to integrate into the community.<sup>130</sup> Such moves conflict with the UK’s obligations under the EU Reception Directive, Article 14(4) of which provides that member states shall ensure that “transfers of applicants from one housing facility to another shall only take place where necessary”. The Scottish Refugee Policy Forum also described unannounced inspections of accommodation, which intruded into the Article 8 right to respect for privacy of asylum seekers, and could damage the psychological welfare of their children.

**104. We consider that in some cases the quality and terms of accommodation provision under section 95 of the 1999 Act interferes with the rights of asylum seekers and their children to respect for family and home life under Article 8 ECHR, and the right to adequate housing under Article 11 ICESCR.**

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<sup>126</sup> Appendix 71.

<sup>127</sup> Appendix 69.

<sup>128</sup> *ibid.*

<sup>129</sup> The Independent, 16 March 2007, *Dispersal policy put asylum seekers at risk.*

<sup>130</sup> Appendix 71.

## Support for refused asylum seekers (section 4 support)

### *Errors and delays in processing section 4 support*

105. IAP agencies reported that one of the main causes of destitution amongst their clients was the delay experienced in accessing section 4 support.<sup>131</sup> The Home Office told us that according to the most recent statistics, “50 per cent of cases where the applicant was street homeless or had a medical condition were considered within five days, and of the less urgent cases, the majority within 21 days of receipt”.<sup>132</sup> This suggests that 50 per cent of street homeless applicants wait more than five days for a decision about whether or not they will be fed and accommodated, and may encounter further delays before accommodation is allocated. IAP told us that when an applicant’s asylum claim was refused, he or she could be evicted from section 95 accommodation, even if it were clear that there would be automatic entitlement to section 4 support (for example because of pregnancy). Having been evicted, the individual would then have to apply for section 4 accommodation and face being moved to housing in another part of the UK. Citizens Advice suggested that “during 2005, inordinate delay and error in processing of applications and the delivery of section 4 support became commonplace”.<sup>133</sup> The Scottish Refugee Policy Forum stated that “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”.<sup>134</sup> We have also received evidence of an unacceptably high error rate in the processing of applications for support.<sup>135</sup> A report by the Asylum Support Appeals Project recorded an error rate of 80 per cent in decisions on eligibility for section 4 accommodation during 2006.<sup>136</sup>

### *Section 4 vouchers*

A Chinese lady came to our office seeking help. Since the birth of her new born baby one week ago she had carried him 3 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. *Inter-Agency Partnership*

106. Refused asylum seekers on section 4 support receive no cash. Instead they receive supermarket or luncheon vouchers to the value of £35 a week (the income support level for a single able-bodied adult over 25 is £57.45).<sup>137</sup> There is no entitlement to the maternity payment or the extra weekly “milk” tokens payment for pregnant and nursing mothers which is provided for those receiving section 95 support. The vouchers can be exchanged for food and toiletries but not for many other essentials. Witnesses told us that people dependent on section 4 vouchers were unable to obtain items such as winter clothing;

<sup>131</sup> Appendix 67.

<sup>132</sup> Appendix 93.

<sup>133</sup> Appendix 35.

<sup>134</sup> Appendix 71.

<sup>135</sup> *ibid.*

<sup>136</sup> Appendix 43.

<sup>137</sup> as at March 2007.



necessities for babies (such as clothing); travel (such as to and from the supermarket and medical appointments, especially for those with limited mobility and for pregnant and nursing mothers); and phone calls to stay in touch with family members and legal representatives.<sup>138</sup> IAP provided many examples of the shortcomings of the voucher system, for example:

“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.”<sup>139</sup>

107. The Home Office stated that section 4 support was intended as “a limited and temporary form of support” for people who were expected to leave the UK as soon as they were able to do so.<sup>140</sup> However, witnesses have said that in practice, many people were now surviving on this temporary benefit for far longer than was originally envisaged. For example, Citizens Advice estimated that the average length of time on section 4 support was nine months.<sup>141</sup> Reliance on section 4 support for the medium to long term, where the asylum seeker is unable to return home through no fault of their own, results in a number of potential human rights violations, particularly where the household includes a child. IAP told us that its agencies had “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”.<sup>142</sup>

108. At present, the Government may only provide accommodation and related facilities such as food under section 4.<sup>143</sup> There is currently no power to provide items such as clothing or travel, even for pregnant and nursing mothers and their children. Draft regulations, circulated in May 2006,<sup>144</sup> would have given the Home Office power to provide for some additional items in kind, in fairly limited circumstances, but these regulations have not been introduced. The Home Office told us that it would be publishing a consultation on improvements it could make to the system of vouchers over the next few months, but indicated that there was no intention to replace or supplement vouchers with cash.<sup>145</sup>

109. When we asked the Minister whether shopping with vouchers in a supermarket was conducive to human dignity he could only offer the personal observation: “Actually in my constituency people do not really pay that much attention to that kind of thing”.<sup>146</sup> Citizens Advice described the voucher system as inhumane and “incredibly inefficient”, and recommended that it should be replaced with a cash benefit:

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<sup>138</sup> E.g Appendix 29, Appendix 49.

<sup>139</sup> Appendix 67.

<sup>140</sup> Appendix 69.

<sup>141</sup> Q53.

<sup>142</sup> Appendix 67.

<sup>143</sup> The High Court confirmed in December 2006 that section 4 only empowered the Home Office to provide accommodation and related facilities such as food. *R (AW) (Kenya) v Secretary of State for the Home Department* [2006] EWHC 3147 (Admin).

<sup>144</sup> Draft Immigration and Asylum (Accommodation) Regulations 2006.

<sup>145</sup> Q479.

<sup>146</sup> Q482.

“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.”<sup>147</sup>

Sheffield City Council agreed that the provision of vouchers was stigmatising for refused asylum seekers, and urged that instead they should be allowed to work, or failing that to receive cash at 100 per cent of income support levels:

“On scrapping the voucher system for asylum seekers in 2002 the then Home Secretary, Rt. Hon. David Blunkett MP believed that the voucher system was slow, vulnerable to fraud and unfair, and it is ... [a matter of concern] 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.”<sup>148</sup>

**110. We consider the section 4 voucher scheme to be inhumane and inefficient. It stigmatises refused asylum seekers and does not adequately provide for basic living needs. There is no evidence that the voucher system encourages refused asylum seekers to leave the UK. We believe that the section 4 voucher scheme discriminates on the grounds of nationality, and could constitute a breach of Article 14 in conjunction with Articles 3 and 8 ECHR and of Articles 3 and 8 themselves. There are particular responsibilities towards women, especially relating to pregnancy and post natal treatment. In many cases these responsibilities are not being met and there is an immediate need to provide financial support for essential items not covered by the vouchers, including clothing, baby items, telephone costs and travel. We recommend that the Government extends section 95 support to section 4 applicants and abandons the voucher system.**

### *Housing for refused asylum seekers*

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. *Yorkshire & Humberside Consortium for Asylum Seekers and Refugees*

111. Witnesses described very poor conditions in section 4 accommodation, which usually consisted of a shared bedroom and shared kitchen and bathroom facilities in a shared private rented house. They described examples where some of the accommodation was in very poor condition without proper heating, with ceilings falling down and no locks on

<sup>147</sup> Q63.

<sup>148</sup> Appendix 61.

bedroom doors in shared accommodation.<sup>149</sup> 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 ECHR Article 3 and Article 11 of the ICESCR.”<sup>150</sup> It provided some examples of the problems encountered with section 4 accommodation:

“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 4 months. There are rats in the bedrooms. The children have developed allergies and are frequently ill with colds, coughing and vomiting.”<sup>151</sup>

**112. Inadequate housing could give rise to a breach of a family’s right to respect for family and home life under Article 8 ECHR, especially where a child is living there. We welcome the Home Office’s assurance that it intends to standardise the accommodation contracts to make all section 4 accommodation of the same standard as section 95 accommodation by the end of 2007. We recommend that the Home Office puts in place measures to ensure that where accommodation is of an inadequate standard, urgent repairs are carried out or alternative accommodation is provided.**

## Support from local authorities for asylum seekers with care needs

Many authorities take an ad hoc approach and do not routinely carry out care assessments as required by law. *Inter-Agency Partnership*

113. We received evidence from local authorities and other witnesses that there are often disputes between IND and social services about who is responsible for accommodating asylum seekers with care needs.<sup>152</sup> The lack of clear guidance or Government funding has been an issue in a series of court cases, most of which have resulted in the local authority having to provide accommodation under s21 National Assistance Act 1948.<sup>153</sup> There is a particular problem in Scotland because English case law does not have the same binding effect. The Scottish Refugee Policy Forum told us:

“We believe that we do not get the access we need to adapted 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.”<sup>154</sup>

114. Section 21 assistance is usually provided in kind or in vouchers, leading to the potential human rights breaches described above in relation to section 4 support. By virtue

<sup>149</sup> E.g. Appendix 67, Appendix 71.

<sup>150</sup> Appendix 67.

<sup>151</sup> *ibid.*

<sup>152</sup> Appendix 59, Appendix 71.

<sup>153</sup> Appendix 39.

<sup>154</sup> Appendix 71.

of Article 17 of the EU Reception Directive, member states are required to take into account the specific situation of vulnerable persons such as disabled people when implementing the general provisions on reception conditions. In addition at paragraph 9 of the preamble, the Directive states “reception of groups with special needs should be specifically designed to meet those needs.”

115. Mr Liam Byrne MP, Minister of State for Immigration, Citizenship and Nationality, advised us that Glasgow City Council did not accept that the *Westminster*<sup>155</sup> judgment applied in Scotland and that IND was therefore accepting responsibility for asylum seekers with care needs in Scotland.<sup>156</sup> **We are concerned that this may result in discriminatory treatment for asylum seekers with care needs in Scotland, in breach of Articles 8 and 14 ECHR. There is no clear guidance reflecting recent court decisions regarding local authority responsibilities towards asylum seekers with care needs. We recommend that the Government issue new guidance setting out when local authorities have a duty to provide community care help to asylum seekers and refused asylum seekers and that it implements procedures to ensure that local authorities comply with this duty.**

## Destitution

Mary had been homeless for two years. She had one friend who would give her food and shelter a couple of nights a week in exchange for child care. The rest of the week Mary had to sleep rough. She was so scared of being attacked on the streets she used to sit at crowded bus stops throughout the night so she wouldn't be alone. Mary couldn't go back to her country because she had serious mental health problems which meant she was suicide risk and couldn't fly. Three months passed between her making her initial application for support and winning her appeal. ... She was entitled to support from day one. *ASAP report, Failing the Failed*

116. Although there are no official statistics to indicate how many asylum seekers are destitute or street homeless, a number of empirical surveys have been carried out.<sup>157</sup> Refugee Action is increasingly concerned about the growing numbers of asylum seekers who are destitute and states that its caseworkers are encountering high levels of despair and desperation among their clients.<sup>158</sup> It carried out research between January and July 2006 by interviewing 125 destitute asylum seekers around the UK. One in three of their respondents were women, several of whom were pregnant or had children in the UK.<sup>159</sup> The research estimates that the destitution figure is as high as 20,000 households. On average those people interviewed had spent twenty-one months being destitute and 60 per cent of respondents had slept on the street on at least one occasion.

<sup>155</sup> *R (Westminster) v NASS* [2002] UKHL 38, 1 WLR 2956, 5 CCLR. Asylum seekers are not normally entitled to Social Services accommodation if their need for care and attention has arisen solely because they are destitute. However, in this case, where an asylum seeker disabled by cancer needed wheelchair accessible accommodation near a hospital, the House of Lords found that Social Services was responsible for the support of asylum seekers who were infirm and destitute.

<sup>156</sup> Appendix 93.

<sup>157</sup> Appendix 63.

<sup>158</sup> Appendix 12.

<sup>159</sup> *The Destitution Trap: Research into destitution among refused asylum seekers in the UK*, Refugee Action, October 2006.

117. The British Red Cross Society has supplied destitute asylum seekers in the UK with food parcels and vouchers for essential items such as toiletries, and voiced its concern for the welfare of asylum seekers who have become destitute either because of bureaucratic delays or because their support has been withdrawn.<sup>160</sup> Between January and June 2006, nearly 3500 approached them in need of emergency relief from destitution. In nearly half of these cases, destitution was due to administrative delays.

118. During a recent one month “snapshot survey”, the Scottish Refugee Council identified 154 destitute asylum seekers and refugees in Glasgow alone, including 24 children.<sup>161</sup> Liberty stated that “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 ECHR Article 3”.<sup>162</sup> ILPA agree, stating that “Enforced destitution has become an immigration control policy. It is the stick to inculcate timely asylum applications ... and to force failed asylum seekers to return to their homes”.<sup>163</sup> We also heard about the effect of destitution on physical and mental health:

“If it wasn’t for my mother, I would have committed suicide. It’s the only thing left to do.”<sup>164</sup>

119. Citizens Advice drew attention to the wider impact of such policy: “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.”<sup>165</sup> Refugee Action agreed, stating that it had become “increasingly concerned about the growing numbers of asylum seekers who are becoming destitute”.<sup>166</sup>

**120. We consider that by refusing permission for most asylum seekers to work and operating a system of support which results in widespread destitution, the treatment of asylum seekers in a number of cases reaches the Article 3 ECHR threshold of inhuman and degrading treatment. This applies at all stages of the asylum claim process: when an individual is attempting to claim asylum, during the period of consideration of their claim and during the period after their claim is refused if they are unable to return to their country of origin. Many witnesses have told us that they are convinced that destitution is a deliberate tool in the operation of immigration policy. We have been persuaded by the evidence that the Government has indeed been practising a deliberate policy of destitution of this highly vulnerable group. We believe that the deliberate use of inhumane treatment is unacceptable. We have seen instances in all cases where the Government’s treatment of asylum seekers and refused asylum seekers falls below the requirements of the common law of humanity and of international human rights law.**

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<sup>160</sup> Appendix 29.

<sup>161</sup> Appendix 59.

<sup>162</sup> Appendix 75.

<sup>163</sup> Appendix 70.

<sup>164</sup> Appendix 12.

<sup>165</sup> Appendix 35.

<sup>166</sup> Appendix 12.

121. The policy of enforced destitution must cease. The system of asylum seeker support is a confusing mess. We have seen no justification for providing varying standards of support and recommend the introduction of a coherent, unified, simplified and accessible system of support for asylum seekers, from arrival until voluntary departure or compulsory removal from the UK.

122. We recommend that the Immigration Rules be amended so that asylum seekers may apply for permission to work when their asylum appeal is outstanding for 12 months or more and the delay is due to factors outside their control. We recommend that where there is evidence that an asylum seeker will not be able to leave the UK for 12 months or more, he or she should be granted limited leave for a 12 month period with permission to work attached.

## 4 Provision of healthcare

H is a Rwandan and when he came to the Refugee Council was living on the street and destitute. He has bowel cancer and a colostomy bag from a previous operation. Not only has the [hospital] Trust refused to provide care without advance payment, his local GP was refusing to register him. *Refugee Council*

123. The legislation concerning provision of healthcare for asylum seekers and refused asylum seekers in England is a matter for the Department of Health. Health matters are devolved in Scotland, Wales and Northern Ireland but the rules are similar to those in England.

### Secondary (hospital) treatment

#### *Entitlement to secondary (hospital) treatment*

124. Section 1 of the National Health Service Act (1977) requires the Government to provide a comprehensive health service so as to secure an improvement in the prevention, diagnosis and treatment of illness. There is a presumption that such services will be free but there is a power to make charges to those who are not ordinarily resident in the UK (section 121 of the 1977 Act). In 1989, the then Government introduced regulations requiring NHS Trusts to charge “overseas visitors” for secondary care (hospital treatment), subject to various exemptions.<sup>167</sup> Asylum seekers and refused asylum seekers who had been in the UK for 12 months were unaffected at that time.

125. However, in April 2004, the regulations were amended so that many more overseas visitors, including refused asylum seekers, became liable for hospital charges.<sup>168</sup> The current system is that 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, but refused asylum seekers lose their entitlement to free routine NHS treatment. This is the case even for refused asylum seekers who are in receipt of section 4 support because they are unable to leave the UK; and for individuals who have made a claim to stay in the UK to avoid a breach of their rights under Article 3 or 8 ECHR, which the Home Office has not yet considered. NHS Trusts must identify those who are chargeable under the regulations, levy the charge and take reasonable steps to recover it from the patient.

126. There are no charges for certain types of treatment, including treatment in an Accident and Emergency Department (or walk-in centre providing emergency treatment), treatment for sexually transmitted diseases and treatment for certain infectious diseases (including tuberculosis but not HIV/AIDS, except for the initial diagnosis). Where treatment is immediately necessary, the patient is entitled to treatment even if he is not able

<sup>167</sup> NHS Charges to Overseas Regulations 1989.

<sup>168</sup> The NHS (Charges to Overseas Visitors) Regulations 1989, as amended (“the 2004 charging regulations”). See Department of Health guidance *Implementing the Overseas Hospital Charging Regulations: Guidance for NHS Trust Hospitals in England*.

to pay in advance. There is no charge where the patient has already started the course of treatment before being refused asylum.

127. The Department of Health told us that “comprehensive guidance on how to implement the Charging Regulations was revised and issued to the NHS... 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”.<sup>169</sup> It added that it had 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 exclusive to section 4 of the 1999 Act.”<sup>170</sup>

128. However, the Minister was unable to tell us how many asylum seekers had been charged, how many had actually paid, how much had been recovered in cash terms, or how many hospitals had effective cost recovery systems.<sup>171</sup> If there is to be a charging regime, then it should be monitored for its effectiveness. We doubt that the amounts recovered justify the bureaucracy involved in running a charging system efficaciously. Witnesses, including the Health Minister, confirmed that no research had been carried out on the existence or extent of “health tourism” before the Charging Regulations were introduced.<sup>172</sup>

**129. We note that the Government has not produced any evidence to demonstrate the extent of what it describes as “health tourism” in the UK.**

### ***Effect of restrictions on access to free hospital treatment***

130. We heard evidence that patients with serious and life-threatening conditions, pregnant women and people with HIV/AIDS had been refused hospital treatment. In other cases hospitals had wrongly tried to charge asylum seekers who were entitled to free treatment or, equally wrongly, had insisted on an advance payment from refused asylum seekers dependent on section 4 vouchers and with no means to pay for treatment.

131. Medecins du Monde UK (MDM) has collected evidence about the impact of the regulations from its advocacy and healthcare project in East London (Project: London) which was launched in January 2006.<sup>173</sup> It told us that it had come across several cases where refused asylum seekers had been denied treatment because they could not pay the charges:

“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

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<sup>169</sup> Appendix 69.

<sup>170</sup> *ibid.*

<sup>171</sup> Q 394.

<sup>172</sup> Appendix 10, Appendix 18.

<sup>173</sup> Appendix 46.



condition may be deteriorating. Nearly 10 months have passed since cancer was diagnosed and he still has not received any treatment for his condition.”<sup>174</sup>

132. In June 2006, the Refugee Council published a report setting out the health problems experienced by asylum seekers and refugees and the impact of the charging regulations:

“In addition to experiencing similar health problems as the rest of the UK population, refugees and asylum seekers also suffer from a range of physical and mental health problems as a consequence of experiences in their country of origin, sometimes made worse by poor access to healthcare and the dangerous and stressful journey to the UK... As many as 20 per cent of asylum seekers and refugees have severe physical health problems that make their day to day life difficult ... Between five and 30 per cent of asylum seekers have been tortured.”<sup>175</sup>

133. The decision as to whether treatment is “immediately necessary” is a clinical one; doctors are asked to decide whether or not treatment should be provided. The Health Minister, Rt Hon Rosie Winterton MP, told us that the Department of Health was very clear that “it is a clinical decision as to what treatment is necessary to save lives. We do not set out in the 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.”<sup>176</sup> Doctors for Human Rights pointed out the difficulties for doctors in being required to make such judgements and in implementing what it describes as “inhumane” regulations, stating “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 us most.”<sup>177</sup>

**134. We have heard that the 2004 Charging Regulations have caused confusion about entitlement, that interpretation of them appears to be inconsistent and that in some cases people who are entitled to free treatment have been charged in error. The threat of incurring high charges has resulted in some people with life-threatening illnesses or disturbing mental health conditions being denied, or failing to seek, treatment. We have heard of many extremely shocking examples.**

### **Maternity care**

E, a young woman from China was turned away several times by her local NHS Trust who told her that unless she could pay them several thousand pounds upfront, they would not support her through the birth of her baby. She gave birth at home with no medical care and then both she and her baby had to be admitted to hospital with serious health problems related to the traumatic birth. Once discharged, the hospital continued to send E bills, which frightened her so much she fled her home. The whereabouts of her and her child are not known. *Doctors for Human Rights*

<sup>174</sup> *ibid.*

<sup>175</sup> *First do no harm: denying healthcare to people whose asylum claims have failed*, Kelley and Stevenson, Oxfam and Refugee Council, June 2006.

<sup>176</sup> Q 394.

<sup>177</sup> Appendix 23.

135. In its 2006 report, the Refugee Council referred to evidence that maternal deaths are significantly higher among refugees and asylum seekers than the population at large: “Contributory factors include previous lack of access to antenatal care, poor nutrition and highly traumatic instances of pregnancy caused by rape.”<sup>178</sup> Medact (a UK health based charity) cited evidence about the serious risks to maternal and infant health where a woman does not receive antenatal care:

“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. ... Late booking or poor attendance for maternity care were identified as key risk factors in the latest report on maternal deaths, 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.”<sup>179</sup>

### ***Misapplication of maternity rules by hospitals***

136. The Department of Health guidance states that maternity care is “immediately necessary treatment” and so should be provided to refused asylum seekers without having to be paid for in advance:

“Maternity services are not exempt from charges. However 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. The patient remains liable for charges and the debt should be pursued in the normal way.”<sup>180</sup>

The Minister told us that the Department of Health had provided two reminder notices to hospital Overseas Visitors Managers to remind them that hospital maternity services should always be considered immediately necessary treatment because of the potential risks to mother and baby, but that charges should still be applied afterwards. The notice dated January 2006 stated:

“..the DoH continues to receive regular reports that this guidance is not always being followed. We have been told of cases where women who are exempt from charges (eg because they are asylum seekers) have been asked to pay; where women have been refused proper care because they cannot pay in advance; and where payment has been pursued in such a way that women feel intimidated and unable to continue to receive necessary maternity care, placing themselves and their baby at increased risk”.

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<sup>178</sup> *ibid.*

<sup>179</sup> Appendix 21.

<sup>180</sup> Appendix 89.

137. A number of witnesses gave evidence that even 12 months after the Department of Health reminder notice, these problems persisted. The Refugee Council found that 17 of the 37 cases it examined in its research concerned maternity care.<sup>181</sup> It told us that in eight of these cases, payment was demanded of the woman in advance and treatment was refused if payment conditions were not met. The Refugee Council stated that despite the guidance, the practice of requiring payment in advance of maternity treatment had continued:

“For example, C came to us in June 2006, unaware of her immigration status, seven months pregnant, destitute and homeless. She had been charged £2500 upfront for the costs of her maternity care. Through our advocacy, we were able to ensure that she was provided with accommodation and support under section 4, and to force the NHS to provide her with maternity care in line with the regulations.”<sup>182</sup>

138. MDM told us that they “and other organisations have come across women who are being asked to pay 100 per cent deposit for an antenatal package before they can have any care at all.”<sup>183</sup> MDM expressed its concern about the difficulties encountered by pregnant women trying to access antenatal care, stating that its 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”, and giving examples of cases it had encountered, for example:

“Mrs P is 25 and comes from Lebanon. She was refused asylum status and was living in temporary accommodation with her husband. She was asked to pay a bill of £2,300 (a set price maternity package for the antenatal care she had already received) and told that interest would be added if she didn’t pay within 5 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... Since then the Overseas Payment Officer keeps calling Mr and Mrs P and asking them to pay the bill before the birth.”<sup>184</sup>

139. There are particular concerns about the implications of this practice in the context of HIV/AIDS. Early intervention can reduce the risk of transmission of HIV from mother to baby from one in three or four to one in a hundred<sup>185</sup>. The National Aids Trust (NAT) stated that “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.”<sup>186</sup>

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<sup>181</sup> *First do no harm: denying healthcare to people whose asylum claims have failed*, Kelley and Stevenson, Oxfam and Refugee Council, June 2006.

<sup>182</sup> Witness statement of Nancy Kelley, Refugee Council in the case of R (AH) v Secretary of State for Health (West Middlesex University Hospital NHS Trust (Interested Party) CO 8095/2006).

<sup>183</sup> Q75.

<sup>184</sup> Appendix 46.

<sup>185</sup> Appendix 65.

<sup>186</sup> Appendix 50.

### ***Deterrent effect of the rules***

140. In the experience of MDM,<sup>187</sup> many pregnant women are very frightened following their discussions with hospital Overseas Payment Officers to the extent that some are deterred from seeking any further care. Many are unaware that they could access emergency care in an A&E Department free of charge. MDM states that it has “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 women will be charged and needs to pay the maternity package 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”.<sup>188</sup> MDM suggested that the “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.”<sup>189</sup>

141. Medact highlighted the deterrent effect of charging for care: “Trusts are required to issue invoices in all cases... 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.”<sup>190</sup> It added that “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”, and further stated:<sup>191</sup>

“Some failed asylum seeker women and their advocates have experienced harassment from Overseas Visitor Managers and hospital finance departments when they are unable to pay for care. This consists of rude, and in some cases, abusive treatment in meetings with Overseas Visitor Managers; 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. For some women this has resulted in loss of access to primary health care services.”<sup>192</sup>

142. The Health Minister told us that she could “understand that people might think there is a bit of confusion” about entitlement to maternity care.<sup>193</sup> It is clear to us that there is considerable confusion. Pregnant women are denied, or fail to access, essential care as a result. The evidence shows that issuing additional guidance has not removed the confusion.

**143. The arrangements for levying charges on pregnant and nursing mothers lead in many cases to the denial of antenatal care to vulnerable women. This is inconsistent with the principles of common humanity and with the UK’s obligations under ECHR Articles 2, 3 and 8 ECHR. We recommend that the Government suspend all charges for**

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<sup>187</sup> Appendix 46.

<sup>188</sup> *ibid.*

<sup>189</sup> *ibid.*

<sup>190</sup> Appendix 21.

<sup>191</sup> *ibid.*

<sup>192</sup> *ibid.*

<sup>193</sup> Q382

**antenatal, maternity and peri-natal care. We recommend that all maternity care should be free to those who have claimed asylum, including those whose claim has failed, until voluntary departure or removal from the UK.**

### **Treatment for HIV/AIDS**

144. Another specific area of concern mentioned by several witnesses was access to treatment for HIV/AIDS. Under the 2004 Regulations, the HIV test and related counselling is provided free, but HIV treatment is chargeable for refused asylum seekers. Treatment for other sexually transmitted diseases and for specified infectious illnesses is free. The Terrence Higgins Trust described cases where patients have been refused HIV treatment despite having TB (which is exempt from charging) and being too ill to travel home.<sup>194</sup> Such patients may then be admitted as a more expensive emergency, charged for treatment inappropriately and subsequently stop receiving treatment because they cannot pay the bills. The National AIDS Trust told us that “HIV diagnosis often occurs many months after arrival and linked to opportunistic infection”.<sup>195</sup> The African HIV Policy Network said that Africans living in the UK tended to present later for HIV/AIDS testing and that the charging regulations deterred people from taking up testing services, with evident repercussions for the spread of the disease and consequent long term social and economic costs.<sup>196</sup> It added that “there is no cure for AIDS, but provided HIV is diagnosed early enough, new treatments can prolong life for many.”<sup>197</sup>

145. NAT stated that “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, or on other occasions it is because someone’s eligibility is not easy to ascertain. 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...No attempt is made to discuss the possibility of debt write-off. Instead people receive the bill followed by a threatening letter from a debt-recovery agency.” NAT provided case study examples:

“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.”<sup>198</sup>

146. NAT said that HIV requires highly complex and specialist treatment.<sup>199</sup> Medact agreed:

“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

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<sup>194</sup> Appendix 18.

<sup>195</sup> Appendix 50.

<sup>196</sup> Appendix 42.

<sup>197</sup> *ibid.*

<sup>198</sup> Appendix 50.

<sup>199</sup> Q72

about infection and infectious diseases people need to be completing the course of treatment otherwise that leads to resistance of the infections.”<sup>200</sup>

### **Cost-benefit**

147. The Terrence Higgins Trust<sup>201</sup> and the African HIV Policy Network<sup>202</sup> explained that the effect of charging was that people got more ill until they were treatable as an emergency and had a far higher viral load than if they had received earlier treatment. NAT’s view is that “there is no evidence base for the introduction of these charges, and no cost benefit to the NHS (indeed possibly a cost disbenefit).”<sup>203</sup> It told us that::

“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 A&E 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.”<sup>204</sup>

### **Public health**

148. Department of Health policies also have clear implications for public health. Witnesses told us that the policies were inconsistent with advice provided by DfID. Medact pointed out that “DfID is very actively campaigning for universal global access to anti-retroviral treatment and yet here in the UK a section who are extremely vulnerable are being denied treatment.”<sup>205</sup> NAT agreed, adding that “the World Health Organisation in Europe who have responsibility for monitoring universal access to treatment ... have made it quite clear that according to the WHO rules the UK has not complied with universal access to HIV treatment.”<sup>206</sup> In NAT’s view it was “both possible and likely” that third parties were being infected with infectious diseases as a result of the Department of Health’s policy on restricting access to free secondary healthcare for people with HIV.<sup>207</sup>

149. Government policy recognises the importance of HIV diagnosis and treatment. The Prime Minister launched “Taking Action- the UK’s strategy for tackling HIV and AIDS in the Developing World” for the Department for International Development. The UK supports the millennium development goal of halting the spread of HIV and AIDS, malaria and other major diseases by 2015 and is one of the key backers of a new Global Fund to Fight HIV and AIDS, Tuberculosis and Malaria that was set up in 2002. The UK has pledged to provide £1.5 billion for HIV and AIDS work between 2005 and 2008. One of the targets is to slow the progress of HIV and AIDS by 2015. The UK Government has undertaken to ensure that all relevant departments implement this strategy.

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<sup>200</sup> Q72.

<sup>201</sup> Appendix 18.

<sup>202</sup> Appendix 42.

<sup>203</sup> Appendix 50.

<sup>204</sup> Q93.

<sup>205</sup> Q76.

<sup>206</sup> *ibid.*

<sup>207</sup> Q88.

150. When we asked the Minister why HIV was not included in the list of infectious diseases for which treatment is free, she explained that other infections were airborne and with HIV, the patient could take precautions.<sup>208</sup> However, the evidence presented to us indicated that the Charging Regulations have a deterrent effect; people with HIV may not present for diagnosis, and so be unaware of their HIV status.<sup>209</sup> Charges for antenatal care can also mean that pregnant women do not become aware of their HIV status.

151. We have already noted the case of N,<sup>210</sup> which has implications for people who are receiving health treatment in the UK which is not freely available in their home country. N has petitioned the European Court of Human Rights. We also note the case of D<sup>211</sup> in which the European Court of Human Rights held that in the “very exceptional circumstances” of that case, it would be a breach of Article 3 ECHR to return D, an individual in the terminal stages of AIDS with no prospect of medical care or family support, to St Kitts.

**152. We accept that there is no universal worldwide access to free medical treatment, but recommend that on the basis of common humanity, and in support of its wider international goal of halting the spread of HIV/AIDS, the Government should provide free HIV/AIDS treatment for refused asylum seekers for as long as they remain in the UK. Absence of treatment for serious infectious diseases raises wider public health risks. The Government should not deport a person in circumstances where that person is in the final stages of a terminal illness and would not have access to medical care to prevent acute suffering while he is dying.**

### Primary care (GP treatment)

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 identity has not been found yet. *Medecins du Monde*

153. Asylum seekers may apply for registration with a GP. The Department of Health guidance states that the GP must consider such an application on its merits and should decline it only if the GP’s patient list is formally closed to new registrations or if the practice has some other good non-discriminatory reasons for refusing that individual. There is currently no legislation requiring GPs to charge refused asylum seekers, but Department of Health guidance for England and Wales discourages GPs from registering refused asylum seekers as patients.<sup>212</sup> Practices do retain the discretion to register refused asylum seekers, or to continue an existing registration.

154. The Department of Health has undertaken a public consultation of proposals to change the rules of entitlement of overseas visitors to NHS primary care services, and told us that “at present, Ministers are still considering the results of the public consultation and

<sup>208</sup> Q379.

<sup>209</sup> E.g. Appendix 42.

<sup>210</sup> *N v Secretary of State for the Home Department* [2005] UKHL 31.

<sup>211</sup> *D v UK* (1997) 24EHRR 425.

<sup>212</sup> Health Service Circular (HSC) 1990/018 and Welsh Health Circular (WHC) 1990/032.

the issues which that raised before announcing the way forward.”<sup>213</sup> The Health Minister told us that the consultation was necessary because “the rules about entitlement to primary care are best described as a muddle.”<sup>214</sup> The consultation concluded on 13 August 2004 but to date its conclusions have not been published. The Department of Health provided us with a summary analysis of consultation responses which showed strong support for clearer rules on eligibility, clearer definition of what constitutes immediately necessary treatment and support for disease specific exemptions from charging.<sup>215</sup>

### **Access to GP treatment**

155. MDM told us that “most of the service users who come to see us at Project: London experience difficulties in registering with a GP... The main reason ... is the burden of documentation required to prove address and/or identity... 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... We also noticed that some GP practices are also unwilling to register asylum seekers and/or homeless as they require more time than normal.”<sup>216</sup> MDM told us that they had received cases “where the excuses have changed” and GP practices have provided several different reasons for refusing to register an individual.<sup>217</sup> MDM provided examples of individuals who had encountered difficulties in trying to access primary care:

“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 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.”

156. Medact stated that “often we will register someone who has been rejected by several other practices. The clarity of the guidance ... leaves something to be desired. The actual wording from the Department of Health appears to be directly contradictory.”<sup>218</sup> Other witnesses such as the British Red Cross confirmed that asylum seekers had difficulties in registering with GPs and that eligibility mistakes were made by receptionists.<sup>219</sup> It believes that the proposed restrictions on primary care may exacerbate these problems, even for asylum seekers who are entitled to treatment, and explained that:

“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

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<sup>213</sup> Appendix 69.

<sup>214</sup> Q398.

<sup>215</sup> Appendix 89.

<sup>216</sup> Appendix 46.

<sup>217</sup> Q91.

<sup>218</sup> Appendix 76.

<sup>219</sup> Appendix 29.



care. Reception staff in GP surgeries have no way of knowing what stage of the process asylum seekers are at and have refused care on this basis.”<sup>220</sup>

The Refugee Council agreed, saying that “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.”<sup>221</sup>

157. Restricting access to GP care will inevitably add to the burden of A&E departments. NAT stated that “the more you create barriers for people to access a GP the more they are simply going to present, if they 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 and Emergency times are going to be undermined by that being ... the place of last resort to which people go, often with conditions and issues that really are not appropriate for Accident and Emergency settings.”<sup>222</sup> The Minister agreed that “there is evidence that people who are not registered (with a GP) do tend to go to A&E more.”<sup>223</sup> Research in the use of Accident and Emergency Services by international migrants concluded:

“Recently arrived migrants are a diverse and substantial group, of whom migrants from refugee-generating countries and asylum seekers comprise only a minority group. Service reorganisation to ensure improved access to community-based GPs and delivery of more appropriate care may lessen their impact on acute services.”<sup>224</sup>

**158. We have seen evidence that the current arrangements for access to GPs result in the denial of necessary primary healthcare for many refused asylum seekers and their children. We believe that in many cases this is in breach of the ECHR rights to be free from inhuman or degrading treatment, to respect for private life and to enjoy Convention rights without unjustified discrimination, and also in some cases to the right to life.<sup>225</sup> Moreover, consequent increased reliance on A&E services as a substitute is more expensive, increases A&E pressures and flies in the face of the general NHS policy of moving care away from A&E and hospitals and into primary care, closer to the patient. We recommend that primary healthcare be provided free to those who have claimed asylum, including those whose claim has been refused, pending their voluntary return or removal. We recommend that the guidance to GPs on registering new patients be clarified to remove the existing contradictions.**

**159. We note the BMA research on the vulnerability and ill-health of refugee children.<sup>226</sup> We recommend that the Department of Health establish guidelines on health services for unaccompanied asylum seeking children and for children in families of asylum seekers, including refused asylum seekers, so as to comply with its obligations under the CRC.**

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<sup>220</sup> Appendix 29.

<sup>221</sup> Appendix 31.

<sup>222</sup> Q85.

<sup>223</sup> Q415.

<sup>224</sup> *Impact and use of health services by international migrants: Questionnaire survey of inner city London A&E attenders.* Hargreaves and others, BMC Health Services research, November 2006.

<sup>225</sup> Articles 3, 8, 14, 2 ECHR.

<sup>226</sup> *Asylum seekers and health- a BMA report*, British Medical Association, October 2002.

### Access to interpreters

160. The Refugee Council considered that the shortfall in interpreting services presents a significant barrier to asylum seekers in need of health care.<sup>227</sup> The British Psychological Society agreed, stating that “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.”<sup>228</sup> The Government stated that the Home Office gives careful consideration to health needs when determining where to place those asylum seekers who are supported by IND, and that 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.<sup>229</sup> Witnesses have told us that, in practice, interpreting facilities are not always available.<sup>230</sup>

### Charging policy

161. We found a number of administrative difficulties in relation to the introduction and implementation of current policy, both in primary and secondary care. The Commission for Racial Equality (CRE) had concerns about the way in which the Charging Regulations were formulated, during a period when there was significant press coverage of alleged “health tourism”.<sup>231</sup> The Terrence Higgins Trust pointed out “research indicated that ... most recent migrants with HIV were unlikely to be aware of their [HIV] status until they had been in the UK for more than 9 months”.<sup>232</sup> 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 entitlement be subject to race equality impact assessments, in order to examine their impact on particular ethnic groups and to put in place measures to ensure that discrimination would not take place.

162. The Health Minister told us that she had “looked at issues regarding public health” but had not conducted a race equality impact assessment before introducing the 2004 Regulations.<sup>233</sup> Witnesses have told us about the public health risks of denying treatment to people with HIV. The Joint Council for the Welfare of Immigrants (JCWI) told us that a race equality impact assessment was particularly important given the nationalities of people who are being refused or charged for treatment, and stated that “there are race implications which have to be tackled by the Department for Health”.<sup>234</sup>

**163. We note that no race equality impact assessment was carried out before introducing the 2004 charging regulations or with regard to the current discretionary arrangements for GP registration. We agree with the JCWI and the CRE that the**

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<sup>227</sup> Appendix 31.

<sup>228</sup> Appendix 45.

<sup>229</sup> Appendix 69.

<sup>230</sup> Appendix 45.

<sup>231</sup> Appendix 10.

<sup>232</sup> Terrence Higgins Trust and George House Trust (2003), *Recent Migrants using HIV Services in England*.

<sup>233</sup> Q371

<sup>234</sup> Q26

**current arrangements and proposals for charging refused asylum seekers for healthcare give rise to a risk of race discrimination.**

164. The Minister suggested that providing HIV treatment would act as a draw for others to come to the UK for free treatment.<sup>235</sup> NAT stated that “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.”<sup>236</sup> NAT added that refused asylum seekers with HIV “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.”<sup>237</sup>

165. The House of Commons Health Committee has previously drawn attention to the lack of any cost-benefit analysis of the overseas visitor charging regulations:

“The Department’s consultation on changes to the 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 cost-benefit analysis, and without the Department having even a rough idea of the numbers of individuals that are likely to be affected.”<sup>238</sup>

**166. The Health Minister told us that that no information had been collected centrally about the costs and benefits of charging refused asylum seekers for secondary healthcare. We are concerned and very surprised that no steps are being taken to monitor the cost or effect of the 2004 charging regulations in relation to the provision of secondary healthcare.**

167. We heard evidence that there is much confusion about the rules for both hospital and GP care, which means that asylum seekers may be discriminated against and refused treatment to which they are entitled. MDM told us “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”.<sup>239</sup>

168. The Health Minister told us that “GPs cannot refuse anybody unless there are ... reasonable grounds for doing so”.<sup>240</sup> Evidence from our witnesses shows that practice is clearly different from policy. She accepted that the guidance to GPs was confusing, and told us that she thought “the awareness of the muddle has been around since 2004”.<sup>241</sup> The view of Medact is that the 2004 regulations are “leading to a huge amount of confusion and

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<sup>235</sup> Q378.

<sup>236</sup> Q97.

<sup>237</sup> Q101.

<sup>238</sup> House of Commons Health Select Committee Third Report of Session 2004-05, *New Developments in Sexual Health and HIV/AIDS Policy*, HC 252.

<sup>239</sup> Appendix 46.

<sup>240</sup> Q397.

<sup>241</sup> Q398.

there are many examples where people who still have an active asylum case and therefore are entitled to treatment are being denied care. In the second part it is taking an increasing amount of health workers' time in advocacy to ensure that people who are vulnerable can receive care.”<sup>242</sup>

169. It appears to us the confusion arises in part because under current arrangements medical staff are expected to carry out immigration checks. The Minister told us that “it is almost impossible to know whether somebody is seeking asylum or has failed their asylum appeal” and yet the current regulations require GP and hospital reception staff to make such an assessment before providing care.<sup>243</sup>

**170. Under the ECHR, discrimination in the enjoyment of Convention rights on grounds of nationality requires particularly weighty justification. The restrictions on access to free healthcare for refused asylum seekers who are unable to leave the UK are examples of nationality discrimination which require justification. No evidence has been provided to us to justify the charging policy, whether on the grounds of costs saving or of encouraging refused asylum seekers to leave the UK. We recommend that free primary and secondary healthcare be provided for all those who have made a claim for asylum or under the ECHR whilst they are in the UK, in order to comply with the laws of common humanity and the UK's international human rights obligations, and to protect the health of the nation. Whilst charges are still in place, we consider that it is inappropriate for health providers to be responsible both for (i) deciding who is or is not entitled to free care and (ii) recovering costs from patients. We recommend that a separate central agency be established to collect payments.**

**171. The timetable for reviewing the regulations on charging for healthcare is unsatisfactory and has exacerbated the confusion around entitlement. The consultation on primary care was closed in 2004 but no analysis has been published. We recommend that the Government collect evidence of the impact of the 2004 Charging Regulations on patients, NHS costs and NHS staff, and that it carry out a race equality impact assessment and a public health impact assessment of these Regulations using data obtained to inform future policy decisions.**

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<sup>242</sup> Q78.

<sup>243</sup> Q388.

## 5 Treatment of children

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172. We discuss the treatment of children in families in other Chapters. This Chapter deals more generally with the UK's obligations under the UN CRC and with the support arrangements for separated asylum seeking children.<sup>244</sup> In the next Chapter we consider the human rights issues arising from the detention of children.

### The UK's reservation to the UN Convention on the Rights of the Child (CRC)

173. Article 22 of the Convention on the Rights of the Child (CRC) guarantees the protection of children seeking refugee status. More generally, the rights protected by the Convention apply to all children within the jurisdiction, irrespective of nationality. On ratifying the Convention in 1991, the UK entered a general reservation as regards the entry, stay in and departure from the UK, of those children subject to immigration control, and the acquisition and possession of citizenship.

174. The UK's reservation to the CRC states that "The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay 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 reservation is justified by the Government as necessary to prevent the Convention affecting immigration status.

175. The reservation has been widely criticised by both the Committee on the Rights of the Child, the international monitoring body for the CRC, and parliamentary committees. We and our predecessor Committee have expressed concerns on a number of occasions. Most recently, for example, in our Report on Human Trafficking we said that:

"...evidence submitted to us emphasised the potential conflict between UK immigration and asylum policy and child protection principles, which dictate that the primary consideration is the best interests of the child."<sup>245</sup>

176. We recommended in our previous Reports that the Government's reservation be withdrawn. It is also the view of all of the UK's Children's Commissioners that the Government should withdraw its reservation to the CRC.<sup>246</sup> This is because the reservation sends out a powerful signal that the rights of asylum seeking children are less important than those of other children. Although the reservation relates specifically to the entry of children and their families and is intended to be quite narrow in its application, the evidence presented to us suggests that the reservation has, in practice, been interpreted widely to include issues relating to the welfare and support of children seeking asylum. There is concern among many advocates and practitioners working with children that in

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<sup>244</sup> We have chosen to use the term 'separated children' in this chapter because this is the term used in most countries to describe those children who are outside their country of origin and separated from their parents or legal or customary primary carer. In the UK, separated children who have applied for asylum are commonly referred to as unaccompanied asylum seeking children (UASC). This term does not include those children who are accompanied by an adult who is not their parent, guardian or primary carer.

<sup>245</sup> Twenty-sixth Report of Session 2005-06, *op. cit.*, para. 180.

<sup>246</sup> Appendix 56.

the drive to remove greater numbers of asylum applicants and restore public confidence in the asylum system the rights of children *as children* have been marginalised.

177. The exclusion of the National Asylum Support Service (NASS), Immigration Service and immigration removal centres (IRCs) from section 11 of the Children Act 2004 is viewed as illustrative of this wider failure to treat children seeking asylum as children first and foremost. Section 11 imposes a duty on public bodies to have regard to the need to safeguard and promote the welfare of children in discharging their normal functions and to ensure that their services are provided with regard to that need. The exclusion of immigration agencies from section 11 has potentially negative human rights implications for children seeking asylum in the UK. The Children's Commissioner for England told us that:

“Section 11 of the Children Act 2004 was ... a great disappointment to the Commissioners because key agencies responsible for the welfare and support of refugee seeking families were excluded from its provisions...The exclusion of NASS, the Immigration Service and managers of IRCs from the (Section 11) 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.”<sup>247</sup>

178. Although we did not consider the treatment of children in the asylum determination process during this inquiry, we were told by the Children's Commissioner that there is a widely held view that the UK's Reservation to the CRC has implications for the overall approach to children seeking asylum and therefore for the way in which their claims are assessed.<sup>248</sup> These concerns include the punishment of children who arrive undocumented under section 2 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004, the differential treatment of children from “white list” countries, the lack of access to quality legal advice and representation and a general lack of information provided to children about their rights and entitlements whilst in the UK. Witnesses have suggested that the Government's reservation to the CRC goes against the object and purpose of the Convention. Save The Children told us that “despite the Government's commitment to honour the spirit of the UNCRC in relation to the standards of care and treatment available to asylum seeking children, 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”.<sup>249</sup>

179. The Government has justified its reservation to the CRC as necessary in the interests of effective immigration control, but has also stated that the reservation does not prevent the UK from having regard to the Convention in its care and treatment of asylum seeking children.<sup>250</sup> In his evidence to us, the Immigration Minister reiterated the Government's view that the reservation to the CRC was necessary to maintain immigration controls.<sup>251</sup>

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<sup>247</sup> Appendix 56.

<sup>248</sup> *ibid.*

<sup>249</sup> Appendix 74.

<sup>250</sup> Seventeenth Report of Session 2004-05, *Review of International Human Rights Instruments*, HL Paper 99/HC 264.

<sup>251</sup> Q500.

He also told us that its removal was not necessary because the reservation did not have any effect in practice:

“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.”<sup>252</sup>

**180. As we have made clear in our previous Reports, we consider the Government's concerns in relation to the Convention on the Rights of the Child to be unfounded. Of the 192 signatories to the CRC, only three have entered declarations relating to the treatment of non-nationals and only the UK has entered a general reservation to the application of the Convention to children who are subject to immigration control. We do not accept that the CRC undermines effective immigration controls. Our principal concern is that the practical impact of the reservation goes far beyond the determination of immigration status, and leaves children seeking asylum with a lower level of protection in relation to a range of rights which are unrelated to their immigration status. The evidence we have received testifies to the unequal protection of the rights of asylum seeking children under domestic law and practice.**

**181. We reiterate our previous recommendation that the Government’s reservation to the CRC should be withdrawn. It is not needed to protect the public interest and undermines the international reputation of the country. Even if, as the Minister states (which we do not accept), the removal of the Reservation would be nothing more than a “gesture”, we consider that this is important in expressing the value given to protecting the rights of separated asylum seeking children.**

**182. We also recommend that the Government consider how section 11 of the Children Act could be extended to include authorities providing support for asylum seekers, the Immigration Service and the IRCs.**

## Care of separated asylum seeking children

183. A significant minority of those claiming asylum in the UK are separated children. Home Office statistics indicate that in 2005, 2,965 children applied for asylum in the UK. This represents 11.5 per cent of all applications for asylum in that year. This figure does not include a further 2,425 (9.4 per cent) of applications made by those claiming to be children whose age was subsequently disputed and who were treated as adults for the purpose of the asylum process and welfare support.<sup>253</sup> Recent research suggests that these statistics are incomplete and that some children seeking asylum do not come into contact with the

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<sup>252</sup> Q500.

<sup>253</sup> *Asylum Statistics United Kingdom 2005*, Home Office.

authorities.<sup>254</sup> Separated asylum seeking children arrive in the UK from a wide variety of countries of origin. The Home Office's statistics indicate that the majority arrive from countries experiencing armed conflict or serious repression of minority groups or political opponents. In 2005 the main countries of origin were Afghanistan (18 per cent), Iran (15 per cent), Somalia (8 per cent), Eritrea (7 per cent), Iraq (6 per cent), China (6 per cent) and the Democratic Republic of the Congo (5 per cent). The number of separated asylum seeking children in the UK is perceived by IND to be a growing problem in terms of immigration control, and creates issues for local authorities about how to provide appropriate accommodation, support and care.

### **Level and quality of support**

184. Although the Home Office is responsible for deciding whether a separated child should be granted asylum in the UK, it has no power to provide accommodation or financial support whilst the asylum application is being processed.<sup>255</sup> The duty to provide support to separated asylum seeking children falls to local authority social service departments, who are under a statutory duty to safeguard and promote the welfare of any child in need, irrespective of his or her immigration status, under the Children Act 1989. The Government accepts that the provision of services for children should be funded centrally and, in 1996, introduced a grant for separated asylum seeking children. Social service departments claim each year for the costs of services provided for this group of children. A proportion of these costs is then met by the Home Office. The Department of Health (which was responsible for separated asylum seeking children before this responsibility was transferred to the Department for Education and Skills in 2004) issued guidance to local authorities in 2003<sup>256</sup> stating that where an asylum seeking child has no parent or guardian in the UK, there is a presumption that the child will be accommodated under section 20 of the Children Act 1989. 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. Once a child is accommodated the local authority has further ongoing duties to safeguard and promote the child's welfare, provide an appropriate package of support and conduct "Looked After Reviews" on a regular basis to ensure that the child's needs are being met.

185. The presumption that separated asylum seeking children should be looked after under section 20 of the Children Act can only be rebutted if the child does not wish to be accommodated and the local authority believes the child is sufficiently competent to look after himself or herself. However, we have heard evidence that separated asylum seeking children are not always provided with an appropriate care package. A study undertaken by Save the Children in 2005 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 was not always adequate. The study suggests that local authorities are not sufficiently resourced to provide proper and appropriate care for separated children,

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<sup>254</sup> Bhabha and Finch (2006) *Seeking Asylum Alone: Unaccompanied and separated children and refugee protection in the UK* Massachusetts: Harvard University

<sup>255</sup> Appendix 69.

<sup>256</sup> Local Authority Circular (LAC) 13 (2003) *Guidance on Accommodating Children in Need and their Families*.



particularly those who have outstanding immigration issues. Recent research has also found that some local authorities are very reluctant to top up the grants provided by central government towards the accommodation and support of separated children from their own resources.<sup>257</sup> They are therefore reluctant to accommodate them under section 20 and provide them with foster care or supported hostel placements. Instead they choose to assist them under section 17 of the Children Act and place them in what amounts to bed and breakfast accommodation, often with minimal contact or support.

186. In their evidence to us, Save the Children described the current situation as resulting in a “lottery of care” which had very negative impacts on the health and welfare of separated children:

“It really is a lottery in terms of the services an unaccompanied child get, whether they have a qualified social worker or an unqualified social worker, whether they have a named social worker or an unnamed social worker, whether they have any knowledge of the systems they are going through or whether they do not and...the quality of legal advice, if they get any at all, and access to education and access to health. We are seeing 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.”<sup>258</sup>

In his evidence to us, the Children’s Commissioner for England confirmed that a “looked after” service under section 20 was almost always going to be the most appropriate care route for a separated asylum seeking child, but raised concerns, shared by other Commissioners, that some children continued to be provided with a less comprehensive service under section 17 of the Children Act in order to avoid the costs of providing a leaving care service:

“The Commissioners are concerned that many local authorities continue to provide accommodation to unaccompanied minors under section 17. 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.”<sup>259</sup>

187. In addition witnesses told us that some local authorities were routinely “de-accommodating” separated asylum seeking children in order to reduce the costs of providing support. “De-accommodation” is a technical term which means essentially that children are taken out of the “looked after” system and provided with support under the leaving care provisions of the Children Act *before* they turn 18. These children will be provided with the support package that is provided to care leavers. They will have access to a personal adviser rather than a qualified social worker. Their needs *as children* will not be assessed or reviewed. The issue of “de-accommodation” was raised by the Children’s Commissioner, who expressed concerns about the policy and practice of the London Borough of Hillingdon. Hillingdon has particularly extensive experience of and responsibility for asylum seeking children, because many enter the UK via Heathrow airport, which is located within Hillingdon’s boundaries. The Children’s Commissioner was concerned that separated asylum seeking children, who are frequently extremely

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<sup>257</sup> Bhabha and Finch (2006) op. cit.

<sup>258</sup> Q122.

<sup>259</sup> Appendix 56.

vulnerable, were 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 was 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.”<sup>260</sup>

188. There is some evidence that the problem of “de-accommodation” arises from the fact that the financial costs, both direct and indirect, of providing an appropriate accommodation and support package to separated asylum seeking children under section 20 of the Children Act are only partly met by the Home Office’s grant. The London Borough of Hillingdon told us that it had no formal or blanket policy to “de-accommodate” separated asylum seeking children and that its practice was to provide services on the basis of assessed need.<sup>261</sup> However, further information produced by the Children’s Commissioner,<sup>262</sup> provided clear evidence that Hillingdon had adopted a de-accommodation policy. The evidence stated that, contrary to local authority guidance, there was no expectation that children would remain “looked after” unless there was an “exceptional reason” and advised social workers to avoid placing asylum seeking children in foster care to avoid the “obvious problems” that would arise. Hillingdon also told us that the Home Office grant was insufficient to cover its costs:

“At the current time Hillingdon is responsible for 1137 UASC... As a consequence of the local authorities support to UASC, this council has faced the following funding problems (Funding Gap 2004/05 £1.6m, Funding Gap 2005/06 £4.7m, Funding Gap Ongoing £6m). London Borough of Hillingdon is currently pursuing a Judicial Review of the Government in respect of retrospective charges 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.”

189. The Immigration Minister told us that the proposed reforms to arrangements for the support of separated asylum seeking children would not lead to more resources being available to local authorities:

“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

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<sup>260</sup> Appendix 80.

<sup>261</sup> Appendix 84.

<sup>262</sup> Appendix 80.

that way, nor do I have evidence that the rates we have published in the field are the wrong rates.”<sup>263</sup>

**190. We are concerned about the detrimental consequences of providing inadequate and inappropriate support and accommodation to separated asylum seeking children. These children, who come to the UK, often traumatised, from some of the most troubled regions of the world, are particularly vulnerable. All local authorities should follow the guidance set out in LAC13 (2003) and provide separated children with support under section 20 of the Children Act. Children should not be “de-accommodated” before they turn 18.**

**191. We recognise that the difficulties local authorities face in providing an appropriate package of accommodation and support to separated asylum seeking children are compounded by the lack of additional resources available to social service departments, and by a broader political and policy context which pushes the needs of separated children down the already long list of priorities facing local authorities in providing children’s services. Local authorities must be provided with sufficient funds to deliver an appropriate package of support and care, including leaving care costs.**

192. We have heard evidence that the difficulties that many separated children face in accessing appropriate care and support are exacerbated by the fact that these children, including those who have been granted discretionary leave, are not provided with a legal guardian or advocate who can ensure that they receive the services and support to which they are entitled. Although the Refugee Council’s Children’s Panel of Advisers is able to support some children, it does not have a statutory role and its resources are limited.<sup>264</sup> One mechanism for ensuring that separated asylum seeking children are aware of their rights and have access to the support to which they are entitled is to provide these children with a guardian, as recommended by the Children’s Commissioner.<sup>265</sup> The guardian would be appointed as soon as a separated child is identified and the arrangement would continue until the child reached the age of 18 or permanently left the UK. According to Save the Children such an arrangement would be able to prevent the “lottery of care” which currently exists.<sup>266</sup>

**193. We are concerned that there is currently no statutory oversight for ensuring that separated children are able to access the services and support to which they are entitled, and for ensuring that the wide range of bodies in contact with a child act in his or her best interests. This is despite the requirement of Article 19 of the EU Reception Directive, that separated children should be provided with a guardian. We recommend that a formal system of guardianship should be established for separated children subject to immigration control, including separated asylum seeking children. The guardian would have a statutory role and would be appointed by a statutory body to safeguard the best interests of the child and provide a link between all those providing services and support. The guardian should be expected to intervene if public bodies act in contravention of their legal duties towards a child.**

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<sup>263</sup> Q506.

<sup>264</sup> Q122.

<sup>265</sup> Appendix 56.

<sup>266</sup> Q122.

### ***The Government's proposals for improving support to separated children***

194. The Home Office told us that it had been considering a number of improvements to the way that separated asylum seeking children are supported.<sup>267</sup> Its proposals to reform current arrangements for the support of separated children were published as a consultation paper on 1 March 2007. The UASC Reform Programme is of great significance in its systematic and wide-ranging scope and in its attempt to subordinate welfare services provided to unaccompanied children to the objectives of immigration control. An explicit objective of the programme is to realign immigration and child care systems and to ensure that care systems acquire an “immigration focus”. These reform proposals could create major challenges for social workers providing services to separated children. The following are among the proposals outlined in the consultation paper:

- creation of reception and dispersal model for unaccompanied young people;
- closely aligning immigration and care systems;
- Home Office commissioned Social work Teams;
- social workers to work more closely with Immigration Officers;
- “separate and different” support services for unaccompanied young people;
- “care planning” in preparation for deportation;
- attempt to drive down costs and reduce the quality of care;
- restricted educational opportunities post 16;
- improved systems of surveillance and supervision;
- possible use of X rays and dental checks as means of age assessment;
- planned returns of under 18s and Fast Track deportations of 18 year olds.

195. Many groups working with unaccompanied asylum seeking children are concerned that these proposals will further undermine the safety and welfare of one of the most vulnerable groups in society. For example, the Medical Foundation for the Care of Victims of Torture<sup>268</sup> stated that the proposed changes amounted to a cost-saving exercise that was a betrayal of the Government’s undertaking on child welfare and that the changes, many of which have already been negotiated or even introduced, would have a major and negative impact on the care, support and protection arrangements for child asylum seekers. The Children’s Commissioners have described the Home Office’s approach to the needs of separated asylum seeking children as “unsympathetic, sceptical and insensitive” and have criticised the focus on enforcement and cost savings:

“Overall these proposals will make it harder for children to seek protection in the UK, restrict their entitlements while here, including access to education, and speed

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<sup>267</sup> Appendix 69.

<sup>268</sup> Press release available at [http://www.torturecare.org.uk/news/latest\\_news/912](http://www.torturecare.org.uk/news/latest_news/912).

up their removal with little regard for their best interests. The historic failure of the asylum determination system to properly account for separated children's protection needs mean that these proposals present a high risk strategy which jeopardises the Government's commitment to safeguarding children."<sup>269</sup>

**196. We recommend that the Government's proposals to reform the arrangements for supporting unaccompanied asylum seeking children should be carefully scrutinised against the benchmark of the UN Convention on the Rights of the Child to ensure that this group are not excluded from the care, consideration and protection to which all children and young people are entitled.**

### *Disputes over age*

197. There has been a significant increase in the number of asylum seekers arriving in the UK who state that they are under 18 years of age but whose status as children is disputed by the Home Office and/or a social services department. In 2005 nearly half (45 per cent) of all applications made by those presenting as unaccompanied asylum seeking children were age disputed and the applicants treated as adults.<sup>270</sup> Many of these disputes remain unresolved with implications for the Home Office, for social services departments, for legal representatives, for voluntary sector practitioners and, most importantly, for the unaccompanied children and young people themselves.

198. The Home Office suggests that the key issue is that of adults pretending to be children in order to access services and support to which they are not entitled. According to Jeremy Oppenheim, the Children's Champion for IND, there are three possible reasons for the increase in age disputed cases:

“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...”<sup>271</sup>

199. Evidence from voluntary sector organizations and from the research undertaken by Bhabha and Finch suggests that the Home Office often disputes the stated age of an applicant without taking into proper account the potential risks and violation of rights which arise from wrongly treating as a child as an adult. According to Bhabha and Finch:

“A very significant number of unaccompanied or separated children are denied access to a child appropriate asylum process and to social services accommodation because their age is disputed... This sometimes occurs because the child travelled on a passport with an adult's date of birth, even though the case worker accepts that the

<sup>269</sup> Press release available at <https://www.childrenscommissioner.org/adult/news/news.cfm?id=1964&newsid=75>.

<sup>270</sup> *Asylum Statistics UK 2005*, Home Office, 2006.

<sup>271</sup> Q511.

passport in question was false. More usually it occurs because the officer simply thinks the child looks like an adult.”<sup>272</sup>

200. ILPA is currently undertaking research into the experiences of children whose age is disputed. The research has found that the IND staff do not always give the “benefit of the doubt” in practice and that there are inconsistencies in the process of age assessment currently undertaken by social service departments. Statistical evidence supports the claim that the Home Office does not give the “benefit of the doubt” as its own policy says it should. In 2005 over 60 per cent of those detained at Oakington who were assessed by the local authority were found to be children following a formal age assessment.<sup>273</sup>

201. The Children’s Commissioner has expressed his concern about disputes over the age of asylum seeking children and a lack of appropriate procedures for ensuring that children are properly and fairly age assessed and are not simply treated as adults:

“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.”<sup>274</sup>

The Royal College of Paediatrics and Child Health (RCPCH) considers that age determination is an inexact science, and that estimates of a child’s physical age from X rays of his or her dental development are only capable of producing a four year age range for 95 per cent of the population.<sup>275</sup> The Royal College of Radiologists has also advised its members that a request from an immigration officer to have an X ray to confirm chronological age would be unjustified both on grounds of accuracy and also because of the risks attached to using ionising radiation for non-clinical purposes.<sup>276</sup> According to the RCPH guidelines, the determination of age is a complex process where various types of physical, social and cultural factors all play their part, although none provide a wholly exact or reliable indication of age, especially for older children. For this reason, assessments of age should only be made in the context of an integrated examination of the child and no single measurement or type of assessment should be relied on.<sup>277</sup> However, the Home Office proposes to introduce dental X-rays in an attempt to assess the age of those presenting as children. According to the Immigration Minister this is to prevent the risks associated with having adults in systems designed for children:

“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

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<sup>272</sup> Bhabha and Finch (2006) *op. cit.* p.55.

<sup>273</sup> Appendix 56.

<sup>274</sup> *ibid.*

<sup>275</sup> RCPCH (1999) *The Health of Refugee Children: Guidelines for Paediatricians*, para. 5.6.

<sup>276</sup> Royal College of Paediatrics and Child Health (1999), *The Health of Refugee Children: Guidelines for Paediatricians*

<sup>277</sup> Bhabha and Finch, *op. cit.* (2006).

children's system poses a serious threat to our obligation to protect children effectively."<sup>278</sup>

202. We have also heard concerns about the continuing detention of children whose stated age is disputed. The Government has recently conceded that the approach to fast-track detention in disputed age cases, prior to a change in policy in November 2005, did not strike the right balance between, on the one hand, the interests of firm and fair immigration control and, on the other hand, the importance of avoiding the detention of unaccompanied children, save in exceptional cases and limited circumstances.<sup>279</sup> However there is evidence of a gap between the new policy which was introduced to redress the balance and the reality of current practice. Voluntary sector practitioners maintain that age disputed children continue to be detained, especially at the end of the process when the Home Office is seeking to remove them from the UK. The Children's Commissioner states that:

"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, reduced the discretion of immigration officers to authorise detention in the fast track asylum processing regimes operating at Oakington, Harmondsworth and Yarls Wood removal centres.

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."<sup>280</sup>

**203. We are concerned by the lack of recognition given by the Government to the risks of having children whose age is disputed in the adult system. We are not convinced that the Home Office is ensuring that the "benefit of the doubt" is given to separated asylum seeking children or that local authorities receive appropriate training and support to enable them to undertake an integrated assessment process. We are also concerned that age disputed children continue to be detained as adults despite Government policy which says that this should not happen; and legal actions, in which the Home Office has conceded that this approach is not appropriate.**

204. It is clearly a priority that the gap between current policy in relation to age disputed cases and the realities of current practice are closed. Children must be given the benefit of the doubt because the risks associated with treating children as adults are much greater than those of treating adults as children. **We recommend that where an asylum seeker's age is disputed even where the benefit of the doubt has been given, he or she should be provided with accommodation by the appropriate social service department in order for an integrated age assessment to be undertaken, considering all relevant factors. X-rays and other medical assessment methods should not be relied upon, given the margin of error. The process for dealing with age disputes should be reviewed, particularly in light of the evidence and recommendations arising from the research currently being undertaken by ILPA and due to be published shortly, with a view to**

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<sup>278</sup> Q514.

<sup>279</sup> [http://news.bbc.co.uk/1/hi/uk\\_politics/6302919.stm](http://news.bbc.co.uk/1/hi/uk_politics/6302919.stm).

<sup>280</sup> Appendix 56.

**ensuring that no age disputed asylum seeker is detained or removed unless and until an integrated age assessment has been undertaken.**



## 6 Detention and Removal

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205. Over recent years there has been a significant increase in the detention of asylum seekers. There are currently ten Immigration Removal Centres (IRCs) in the UK with a total capacity of 2,545 places. There were around 200 places a decade ago. There is also a small number of beds at short-term 'holding' facilities at Colnbrook, Dover, Harwich and Manchester.

206. Although the Government does not publish annual figures on the number of asylum seekers who are detained, it does publish annual figures on the number of people leaving detention. According to the latest available annual figures for 2005, 16,805 asylum detainees left detention during the course of the year, of which 59% were removed from the UK. The remainder were given temporary admission or released on bail.<sup>281</sup>

207. Two main policy developments account for the increased detention of asylum seekers. These are the introduction of 'fast track' asylum procedures and the increased emphasis on removal.

208. The Nationality, Immigration and Asylum Act (2002) formally changed the name of detention centres to removal centres to reflect the increased use of detention in the removal of asylum seekers from the UK, but several IRCs hold asylum applicants who are at the beginning rather than the end of the asylum process and whose claims are considered suitable for 'fast track' asylum processing. These include Yarl's Wood IRC which has a 'super fast track' process. Cases considered suitable for fast track processing are those which the Government considers can be determined quickly. In these cases the asylum seeker and his or her family will be detained pending an initial decision. Some asylum seekers in the fast track process have a right to an in-country appeal if their claims are refused but asylum seekers from countries on the so-called 'white list' of countries<sup>282</sup> that are considered 'safe', and from which claims are certified as 'clearly unfounded', are not able to appeal whilst in the UK.

209. Detention is also viewed by the IND as being a necessary mechanism for ensuring that those whose applications for asylum fail leave the UK at the end of the process. The Government has a "Tipping the Balance" target, which states that the number of refused asylum seekers removed each month should exceed the number of new asylum applicants who, it is predicted, will not be granted leave to remain in the UK, as a result of their asylum application. According to figures released by the Home Office the target was met in 2006; 18,235 refused asylum seekers were removed from the UK, compared with an estimated 17,780 applicants who it is predicted will fail to be granted refugee status or other leave.<sup>283</sup>

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<sup>281</sup> *Asylum Statistics UK 2005*, Home Office, 2006.

<sup>282</sup> The Nationality, Immigration and Asylum Act 2002 (Section 94 (4)) made provision for a list of countries from which asylum or human rights claims are to be certified as clearly unfounded unless the claimant is able to satisfy the Secretary of State that their asylum claim is not clearly unfounded. 17 countries are currently on the list: Albania, Bolivia, Brazil, Bulgaria, Ecuador, Ghana (males only), India, Jamaica, Macedonia, Moldova, Mongolia, Nigeria (males only), Romania, Serbia, South Africa, Sri Lanka, Ukraine.

<sup>283</sup> [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk), Asylum figures lowest since 1993.

210. The Home Office provided us with an explanation of the use of immigration detention:

“...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 process. Decisions to detain are made on a case by case basis taking into account the particular circumstances of the individual.”<sup>284</sup>

211. Article 5 of the ECHR guarantees the right to liberty and sets out the exceptions when detention can be lawful, including the prevention of a person making an ‘unauthorised entry’; and against someone for whom ‘action is being taken to effect deportation or extradition’ (i.e. removal).<sup>285</sup> The exceptions to liberty must be narrowly interpreted. Detention must not be applied in an arbitrary manner. The detention of asylum seekers is unlawful if it can be shown to be arbitrary, or disproportionate, or amounting to unjustified discriminatory treatment under Article 14 ECHR.

212. The legality of detaining applicants for the purpose of the fast track process was challenged in the case of *Saadi*.<sup>286</sup> The case ultimately ended in the European Court of Human Rights which decided in July 2006 that detaining asylum seekers who were not at risk of absconding was in accordance with Article 5(1)(f) ECHR.<sup>287</sup> The Strasbourg Court also found that detaining for a short, tightly controlled period of time was not disproportionate. Detention of potential immigrants is permitted only if detention is a genuine part of the process to determine whether the applicant should be granted immigration clearance or asylum and is not arbitrary, for example, on account of the length of time a person is detained. The detention of Mr Saadi for seven days under the fast track process was not considered “excessive”. Although the European Court of Human Rights has refused to set a maximum period for detention, because detention is imposed on administrative authority alone, that fact is relevant to the assessment of whether detention is arbitrary.<sup>288</sup>

213. During the course of our inquiry widespread concerns were expressed that current practice in relation to the detention of asylum seekers not only fails to reflect the Home Office’s own policy guidance but also breaches the right to liberty because it is arbitrary. Many of these concerns reflect the point in the asylum process at which detention is considered necessary and proportionate by IND; and the circumstances in which an asylum seeker and his or her family is taken into detention.

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<sup>284</sup> Appendix 69.

<sup>285</sup> Article 5(1)(f) ECHR.

<sup>286</sup> *Saadi v SSHD* [2002] UKHL 41 *Saadi v United Kingdom*, Grand Chamber Judgment, 11 July 2006, Application No 13229/03.

<sup>287</sup> *ibid.*

<sup>288</sup> *ibid.* para 45.

214. We have also heard concerns that whilst a legal power to detain an asylum seeker may exist at the outset of the detention, the detention *becomes* unlawful because it continues for longer than was expected or is reasonable. We have been informed that this is most common in removal cases, for example where an asylum seeker is detained for the purposes of removal but then, because of problems in that person's country of origin, or because of administrative delay in obtaining travel documents, the detention continues for many months without the Immigration Service coming any closer actually to removing the person.<sup>289</sup>

215. The treatment of asylum seekers in detention and at the point of removal has also been a focus of our inquiry and will necessarily engage the state's positive obligations to protect a range of Convention rights. Most IRCs are run by private companies which are contracted to the IND, although the Prison Service runs three centres. Her Majesty's Inspectorate of Prisons (HMIP) has statutory responsibility to inspect all IRCs and holding facilities on behalf of IND, and regularly publishes reports of the inspections that are carried out, including recent reports on facilities and procedures at both Harmondsworth and Yarl's Wood.<sup>290</sup> HMIP considers its role to be particularly crucial in a system where decisions to detain asylum seekers and other migrants are administrative, rather than judicial, and where such decisions are not subject to any automatic judicial reviews of continuing detention. HMIP reports on IRCs have highlighted the necessity of reminding the Government of its international obligations in respect of asylum seekers.

**216. We recommend that all IRC staff, including those of private contractors, are given training in refugee and human rights.**

## The decision to detain

B had been imprisoned for 6 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 3 months in detention. *London Detainee Support Group*

217. The criteria by which any decision to detain should be made are set out in the Home Office's Operational Enforcement Manual (OEM). According to Chapter 38 of the OEM, there is a presumption in favour of temporary admission or temporary release. Detention should only be used as a matter of last resort where there are no alternatives for ensuring compliance with immigration proceedings, including removal directions, and where there are strong grounds for believing that a person will not comply with conditions of temporary admission or release. Once detention has been authorised, it must be kept under close review to ensure that it continues to be justified.

<sup>289</sup> Appendix 30.

<sup>290</sup> A full list of Inspectorate Reports is available at <http://inspectorates.homeoffice.gov.uk/hmiprisons>.

### ***Fast track detention at the beginning of the process***

218. Detained fast track processes currently operate at three centres: Harmondsworth, Yarl's Wood and Oakington. The fast track process at Harmondsworth and Yarl's Wood is a key part of the IND's New Asylum Model, and the Home Office Five Year Strategy sets out plans to process up to 30% of new cases using detained fast track. IND states that the process is geared to claimants being detained, pending a quick decision on their asylum claims and that the average timescale from making a claim to removal is one month, including any appeal.<sup>291</sup>

219. The fast track process operating at Harmondsworth (since April 2003) and Yarl's Wood (since May 2005) is sometimes referred to as 'super fast track'. This entails an even quicker timescale whereby the asylum applicant is interviewed on day two, served with a decision on day three, has two days to lodge any appeals, and the appeal hearing is on day nine. A duty legal representative scheme, with fast track contracts awarded to selected suppliers, is run by the Legal Services Commission. There are courts on site where fast track appeals and applications for bail are heard.

220. Witnesses raised concerns about the quality of decision-making and procedural safeguards within the detained accelerated process and the use of detention in 'fast-track' or accelerated cases. There is evidence that the vast majority of fast track asylum claims are initially refused. The Government views the high refusal rate as evidence of the high number of unfounded claims.<sup>292</sup> However non-governmental organisations are concerned that the tight timescales involved in the accelerated procedures render fair decision-making almost impossible and that the process substantially reduces the likelihood that an asylum seeker will fully reveal what has happened in his or her country of origin. There is particular concern about the willingness of torture victims to talk to the authorities in this context, and the limited time in which to gather independent evidence of torture.

221. The London Detainee Support Group (LDSG) stated that, in their experience, torture victims were regularly detained for fast track purposes because asylum seekers were not asked about their claim or about their health at the screening interview where the decision to detain was made. According to the Group, the fast track procedure itself did not allow sufficient time for medical reports to be obtained, and many solicitors did not make referrals, citing a lack of time.<sup>293</sup>

222. Witnesses also expressed concerns about the ability of victims of sexual violence to disclose the full extent of their experiences whilst detained in the fast track process. BID stated that women have told them that they '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 were disappointed with the quality and accessibility of the legal representation provided'.<sup>294</sup> Of the 345 cases heard at Yarl's Wood between May 2005 (when the fast track

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<sup>291</sup> [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk) Asylum factsheet.

<sup>292</sup> *Five Year Strategy for Asylum and Immigration*, February 2005, [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk).

<sup>293</sup> Appendix 47.

<sup>294</sup> Appendix 30.

centre began to process the cases of women asylum seekers) and September 2006, 26% of women did not have legal representation and only 2% of appeals were granted.<sup>295</sup>

223. Concerns about access to legal advice and representation during the fast track process were raised by a number of organisations who submitted written evidence to us, including Liberty,<sup>296</sup> Southampton and Winchester Visitors Group,<sup>297</sup> the Association of Visitors to Immigration Detainees (AVID)<sup>298</sup> and LDSG.<sup>299</sup> BID told us that the fast track raised significant human rights concerns because the speed of the process made it impossible to get a fair hearing and because legal representation was subject to a merits test which left many without representation at their appeal.<sup>300</sup>

224. ILPA also expressed concern about the lack of legal representation available to applicants in the fast track process and the implications of this for identifying vulnerable persons who should not be detained:

“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 one’s case under conditions that do not place the individual concerned at a substantial disadvantage vis-à-vis his opponent and to be represented by counsel for that purpose. In the case of fast track, to comply with these international obligations, impecunious detainees should have a right to free legal aid without a merits test.”<sup>301</sup>

225. ILPA told us that it saw a need for those in the fast track to have legal representation throughout, stating “We would say there should not be a merits test in fast track; there should be lawyers assisting those people throughout the process”.<sup>302</sup> The length of detention for fast track processing of asylum applications is also a cause of some concern. JCWI is aware of cases where asylum seekers have been detained for long periods of time under fast track procedures and maintains grave concerns about suggestions from the Home Office that these procedures need to be flexible and may last more than the seven to ten days specified by the European Court.<sup>303</sup> According to the JCWI, any policy extending fast track detention beyond seven days must render detention arbitrary and unlawful. Amnesty International was opposed to the detention of asylum seekers except in the most exceptional circumstances and considered that the fast track procedures are unjust because they are premised on detention:

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<sup>295</sup> Appendix 30.

<sup>296</sup> Appendix 75.

<sup>297</sup> Appendix 19.

<sup>298</sup> Appendix 47.

<sup>299</sup> Appendix 17.

<sup>300</sup> Appendix 30.

<sup>301</sup> Appendix 70.

<sup>302</sup> Q2.

<sup>303</sup> Appendix 68.

The organisation (Amnesty) 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.<sup>304</sup>

**226. We are concerned that the decision to detain an asylum seeker at the beginning of the process simply in order to consider his or her application may be arbitrary because it is based on assumptions about the safety or otherwise of the country from which the asylum seeker has come. It is self-evident that some asylum seekers – most obviously torture victims and those who have been sexually abused - are unlikely to reveal the full extent of experiences to the authorities in such a short-time period, and that this problem will be exacerbated where they are not able to access legal advice and representation, and the support of organisations able to help them come to terms with their experiences.**

**227. We are also concerned that although fast track detention for anything more than a short, tightly controlled period of time is unlawful, some asylum seekers find themselves detained at the beginning of the asylum process for periods in excess of this. The act of claiming asylum is not a criminal offence and should not be treated as such. If asylum seekers are detained at the beginning of the asylum process, then the period of detention should be limited to a maximum of seven days.**

**228. We recommend that asylum seekers who are detained as part of the fast track and super fast track processes should be provided with free, on-site legal advice - for example, on the model previously provided by the Refugee Legal Centre and the Immigration Advisory Service at Oakington – to ensure that victims of torture and other forms of abuse are identified and taken out of the process; and that claims for asylum are properly considered.**

### ***Detention of vulnerable adults***

229. The Immigration Service's instructions set out categories of people who are "normally considered suitable for detention in only very exceptional circumstances..."<sup>305</sup> These include unaccompanied children, the elderly, pregnant women (unless there is the clear prospect of early removal), 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. The instructions also state that "The decision to detain an entire family should always be taken with due regard to Article 8 of the ECHR. Families, including those with children, can be detained on the same footing as all other persons liable to detention."<sup>306</sup>

230. In his evidence, the Immigration Minister confirmed that "certain persons will be detained only in exceptional circumstances"<sup>307</sup> and that "those where there is independent

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<sup>304</sup> Appendix 60.

<sup>305</sup> OEM section 38.10.

<sup>306</sup> OEM section 38.9.4.

<sup>307</sup> Appendix 69.

evidence to show that they have been tortured would be included among persons who would normally be considered unsuitable for detention.”<sup>308</sup>

231. Witnesses have told us that, despite the existence of guidance to the contrary, some vulnerable people are detained and that consideration of their vulnerability does not form part of the decision making process.

232. BID told us that in its 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’.<sup>309</sup> BID’s experience was that vulnerable people are detained, often without access to appropriate or adequate medical help. It stated that it had dealt with people with evidence of torture, rape victims, pregnant women and people with severe mental and physical health problems.<sup>310</sup>

233. LDSG told us that, in their experience, the detention of torture victims remained routine. The LDSG stated that it had supported many torture victims in detention with medical reports supporting their claims to be victims of torture, but that adequate procedures did not exist to ensure that this evidence was taken into consideration. According to the Group, torture victims were not routinely released, even where healthcare staff within the detention centre reported evidence of torture to the Immigration Service. ILPA cited a recent legal case which found that the Immigration Service had failed to carry out medical examinations on asylum seekers within 24 hours of arrival at a detention centre in breach of Detention Centre Rules. Because such examinations are required in particular to identify those unsuitable for detention, such as torture survivors, this failure rendered the detention unlawful.<sup>311</sup>

234. In his evidence to us, the Immigration Minister acknowledged that there was a need to improve current practice in relation to the identification of victims of torture:

In the last few months, I have been out to talk to their senior officers about how 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.<sup>312</sup>

235. Mr Stuart Hyde, Director of Enforcement and Removal at the Home Office, told us that he had recently 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”.<sup>313</sup>

**236. We are deeply concerned by the evidence we have heard about the current gap between policy and practice in relation to the detention of vulnerable adults. The Home**

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<sup>308</sup> *ibid.*

<sup>309</sup> Appendix 30.

<sup>310</sup> [www.biduk.org](http://www.biduk.org).

<sup>311</sup> Appendix 70.

<sup>312</sup> Q533.

<sup>313</sup> Q534.

Office acknowledges that victims of torture, pregnant women and those with serious physical and mental health conditions should not be detained and yet it continues to happen in practice. This is clearly a violation of the UK's human rights obligations towards those individuals. We welcome the acknowledgement by the Home Office that this is an issue which needs to be addressed and the news that some steps are being put into place to improve current practice.

237. We recommend that the Home Office continues to take appropriate steps to ensure that its own policy guidance is followed and that it consults on a regular basis with BID and the Association of Visitors to Detainees (AVID), to ensure that its own procedures are being followed. Evidence that vulnerable adults continue to be detained should be treated seriously and acted upon.

### *Detention of children*

238. Although it is Home Office policy not to detain separated asylum seeking children, children in families are detained in significant and growing numbers. In 2005, 1,860 children were detained under immigration powers (not including those whose age is disputed), the majority of whom (85%) were asylum detainees.

239. The detention of children has been a major concern to HMIP since its inspections of IRCs began. Since 2003 HMIP has maintained that the detention of children should be exceptional and only for a matter of hours as detention itself compromises the welfare and development of children and this increases the longer that detention continues.

240. The Children's Commissioner for England has raised concerns as to whether the detention of children is compatible with international human rights instruments (including the UN Convention on the Rights of the Child and the UN Rules on Juveniles Deprived of their Liberty), and pointed to similar concerns from the UN Committee on the Rights of the Child, the European Commissioner for Human Rights and the HMIP.<sup>314</sup> He stated that Home Office policy prior to October 2001 was broadly in line with most of these international standards in that it required detention to be effected as close to removal as possible but had been changed so as to allow detention of families whose circumstances justified it, adding that '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'. He concludes that:

The UN JDL Rules provide that deprivation of liberty should only occur in exceptional cases. 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.<sup>315</sup>

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<sup>314</sup> Appendix 56.

<sup>315</sup> *ibid.*



241. It is the view of the Children's Commissioners that families with children should not have their claims determined in the detained 'fast track' process:

The Commissioners see no justification for detaining children on arrival in the UK for the purely administrative matter of processing their families' asylum claims... Although the House of Lords and the ECHR have declared that it is lawful to detain asylum seekers pending examination of their claim under Article 5 (1) (f) of ECHR, 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 UN JDL rules.<sup>316</sup>

242. BID opposes the use of detention for families and believes that 'its use is disproportionate and that children are harmed by the very act of being detained':

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 the 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.<sup>317</sup>

243. In her written evidence, Her Majesty's Chief Inspector of Prisons Anne Owers told us that '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 an autistic child who was not eating properly).'<sup>318</sup> She further stated in her evidence to us that:

We do not routinely find any evidence that the interests of the child are considered at all in making [the] 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.<sup>319</sup>

244. The implications of detention for the welfare of children has also been a source of growing concern among non-governmental organisations over recent years and has been a major concern to HMIP since its inspections began.

245. At Dungavel IRC (then the main centre for detaining families) in 2003, HMIP and the Scottish education inspectorate (HMIE) stated that the detention of children should be

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<sup>316</sup> Appendix 56.

<sup>317</sup> Appendix 30.

<sup>318</sup> Appendix 57.

<sup>319</sup> Q151.

exceptional and only for a matter of days, as detention in and of itself compromises the welfare and development of children, and this increases the longer that detention is maintained.

246. HMIP's view that children should not be detained has been strengthened by the evidence obtained from children themselves during the course of inspections of Yarl's Wood IRC.<sup>320</sup> HMIP has undertaken two inspections of Yarl's Wood and continues to find evidence that the process and fact of detention have a traumatic effect on children. This problem is, according to HMIP, exacerbated by the fact that there are no independent mechanisms for assessing the effect of detention on the welfare and development of children and for ensuring that the specific needs and best interests of children are taken into account. The Chief Inspector expresses particular concern in her Yarl's Wood report about the welfare of some of the children who were detained. Although it is noted that the centre had made admirable efforts to provide a child-friendly environment (if not always successfully), it was also clear that detention was having a negative impact on some children.

247. In February 2006 the Chief Inspector carried out an unannounced short follow-up inspection of Yarl's Wood, the report of which was published in May 2006. She was able to report some progress in relation to the recommendations of her earlier inspection but remained very concerned about children detained at the Centre. Yarl's Wood held 32 children at the time of the inspection, seven of whom had been there for more than 28 days. There was still no evidence that children's welfare was taken into account when making decisions about initial and continued detention. Though a social worker had recently been appointed, her role was unclear, and there were no systems to ensure that her advice informed detention decisions.

248. The Children's Commissioner for England, made an announced visit to Yarl's Wood on 31 October 2005. Following the visit the Children's Commissioner published a report of his findings and made a series of recommendations which emphasised the need for children to be treated as children first and foremost and for their rights, needs and welfare to be safeguarded. The Commissioner remains firmly of the view that children should only be detained as a measure of last resort, following an assessment of the family.

249. During our visit to Yarl's Wood we were shown around the facilities, including the children's play and education facilities, and met and talked privately to detained families. A Pakistani man detained with his wife and two children (aged 8 and 10) told us that he had been in the UK for two years and had been detained at 6am one morning. His wife has severe arthritis. The family had been moved around the detention estate, spending time at Dungavel, Liverpool, Tinsley House and Harmondsworth as well as Yarl's Wood. The journey from Dungavel to Yarl's Wood had involved an eight hour journey in a freezing cold van. That family told us that living conditions were satisfactory at Yarl's Wood, although staff did not always show respect. They had been unable to access legal advice and were due to be removed shortly.

250. We also spoke to a Jamaican woman who had been in the UK since 2000 and was detained with her two children (also aged 8 and 10). She told us that 30 police had arrived

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<sup>320</sup> Appendix 57.

to take them into detention and that they had previously been detained on two separate occasions. Her daughter had an ear infection and was sometimes suicidal.

251. We also met a local authority social worker based at Yarl's Wood whose role is to assess the welfare of the children who are detained there. The social worker told us that he undertook around nine welfare assessments a week, as a result of which some families were released. He told us that at any one time, two or three families in Yarl's Wood would be in crisis.

252. When we asked about the purpose of the welfare assessments it was not clear that the evidence presented in the report about the welfare of a child was ever considered by the Immigration Service or an immigration judge. The social worker informed us that he had never been asked to give evidence directly to a judge and explained that he provided detainees with a copy of the report which they could include in any bail application which they were able to lodge.

253. There is evidence that in reality the reports produced by the social worker at Yarl's Wood simply do not appear in the bundle of evidence considered at bail (and other) hearings. Nehar Bird, an immigration judge, told us: "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".<sup>321</sup>

254. When we put this point to the Immigration Minister he also expressed concern about what is – and is not – happening to welfare assessments in practice:

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.<sup>322</sup>

255. It seems likely that given the limited number of bail applications made at Yarl's Wood and the lack of on-site legal advice and representation, parents simply do not have the necessary knowledge or the opportunity to request that the information they have been given about the welfare of their children is taken into account in the on-going decision to detain.

256. Although there is a process of ministerial authorisation required in those cases where children are detained for more than 28 days there are concerns that this is too long and in reality a 'rubber stamping exercise' because the Minister does not necessarily see all the paperwork involved, such as reports from a social worker, or because he focuses his attention on the immigration rather than the welfare related issues.

257. Comments made by the Minister reinforce these concerns. He told us that 'To date I have not refused any request for extended detention'. When describing the basis on which this authorization was made, the main criterion taken into account was whether the removal of the family was considered likely. No reference was made to the welfare of the child:

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

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<sup>321</sup> Q450.

<sup>322</sup> Q552.

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...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.<sup>323</sup>

**258. We are concerned that the current process of detention does not consider the welfare of the child, meaning 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. We are particularly concerned that the detention of children can – and sometimes does – continue for lengthy periods with no automatic review of the decision. Where the case is reviewed (for example by an immigration judge or by the Minister after 28 days), assessments of the welfare of the child who is detained are not taken into account. It is difficult to understand what the purpose of welfare assessments are if they are not taken into account by Immigration Service staff and immigration judges.**

**259. The detention of children for the purpose of immigration control is incompatible with children’s right to liberty and is in breach of UK’s international human right’s obligations.<sup>324</sup> Any decision to detain a child, at whatever stage of the asylum process must be compliant with international standards and subject to judicial oversight. We believe that the detention of asylum seeking children constitutes a breach of the UK’s human rights obligations. Asylum seeking children should not be detained. This includes detention as part of fast track or accelerated procedures for asylum determination. Alternatives should be developed for ensuring compliance with immigration controls where this is considered necessary.**

**260. For the fast track process, the Home Office has recognised the risks of wrongly detaining age-disputed children as adults and has revised its policy to clarify that age-disputed children must not be detained as adults in the fast track.<sup>325</sup> There remains a risk that age-disputed children are still detained as adults in other circumstances, such as prior to removal. We recommend that the Home Office policy is further revised, so as to ensure that under no circumstances are age-disputed children detained as adults.**

**261. In the absence of an end to the detention of children, minimum safeguards must be put in place to ensure that the human rights of children and their families are protected as far as possible. Automatic bail hearings should be provided for families with children after a seven day period of detention. The assessment of a social worker**

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<sup>323</sup> Q528.

<sup>324</sup> Article 5 ECHR, Article 37 CRC “No child should be arbitrarily deprived of their liberty. Detention should be a measure of last resort and detained children should be treated with humanity”.

<sup>325</sup> This policy change has come in the form of revised ‘fast track suitability criteria’. In February 2006, the Home Office added age disputed applicants to the list of ‘claimants unsuitable for detention fast track’ unless their physical appearance or demeanour very strongly indicates that they are 18 years of age or they have been formally age assessed by a local authority as being an adult. The guidance goes on to stress that if there is any room for doubt, age disputed asylum seekers should not be detained in fast track.

**must be taken into account at this stage and in any subsequent reviews of the decision to detain.**

### *Detention with no imminent prospect of removal*

262. We have heard concerns in relation to the detention of asylum seekers at the end of the process. Amnesty International told us that their research had shown ‘that people who had sought asylum were detained even though the prospect of effecting their forcible removal within a reasonable time was slim.’<sup>326</sup>

BID also expressed concern about the decision to detain those who could not be removed from the UK, stating that:

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... 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 UK; or sometimes suffering ill-treatment in the process, or suffering illness or further detention.<sup>327</sup>

263. AVID provided us with specific examples of cases where asylum seekers have been detained for long periods without the prospect of imminent removal for reasons such as refusal by the receiving country to accept them as a national or an inability to obtain travel documents. AVID stated that in June 2006 there were 20 people in one centre alone who had been detained for over one year:

B, an asylum seeker from Iran, was detained for 2 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 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.<sup>328</sup>

264. During our visit to Yarl’s Wood we heard that one woman was released in December 2006 after 23 months in detention. We were told that long stays were usually because of difficulties with documentation.

265. Although prolonged periods of detention are often associated with cases involving particular countries, the Immigration Minister said that he considered that there were very few countries to which asylum seekers cannot be removed:

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<sup>326</sup> Appendix 60.

<sup>327</sup> Appendix 30.

<sup>328</sup> Appendix 47.

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 come. 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.<sup>329</sup>

266. We found the Minister's evidence in this regard somewhat contradictory. On the one hand he argued that the courts were in a better position than the Government to determine whether or not it was appropriate to return an asylum seeker to a particular country of origin:

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 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.<sup>330</sup>

267. At the same time however it is clear that the Government has repeatedly challenged the courts where it has been determined that a country is unsafe and asylum seekers should not be returned. Zimbabwe is itself illustrative of this. As a result, asylum seekers can find themselves in limbo, facing destitution or prolonged periods of detention.

**268. We are concerned that in the drive to increase the number of asylum seekers who are removed at the end of the asylum process and to achieve the 'Tipping the Balance' target which the Government has set itself, insufficient care is being paid before an asylum seeker is detained, as to whether or not he or she can actually be removed.**

**269. We believe that current policies for the detention of asylum seekers potentially lead to human rights breaches under the ECHR, in particular the right to liberty under Article 5. Asylum seekers should only be detained at the end of the process if their application has been fully and properly considered and where there are travel and other documents in place to ensure that the removal happens swiftly and detention does not become prolonged.**

## Judicial oversight

Patrick is an asylum seeker from the Democratic Republic of Congo. He has spent ten 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 in 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 3 hours. In response to a letter about the incident to John

<sup>329</sup> Q475.

<sup>330</sup> Q474.

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. *Liberty*

270. There is no maximum time limit on the length of immigration detention and no automatic judicial oversight of continuation of detention. Although Part III of the Immigration and Asylum Act (1999) made statutory provision for two automatic bail hearings for all those detained under the Immigration Acts, the relevant sections were never brought into effect and were repealed by the Nationality, Immigration and Asylum Act 2002. This means that the onus remains on a detainee making his or her own application for bail.

271. Witnesses have expressed concern about the lack of prompt judicial oversight of the decision to detain and the lack of automatic judicial reviews of the continuance of detention.

272. ILPA stated that in a number of recent cases the Immigration Service had been found to have acted unlawfully by failing to give detainees written reasons for their detention so that they can know why they are being detained; failing to allow detainees enough time to consider decisions and mount challenges to prevent removal; and failing to act on High Court injunctions ordering a stay on removal.<sup>331</sup>

273. HMIP expressed concern about the number and quality of reviews of detention, stating that 'we find that monthly (non-judicial) reviews are repetitive, do not reflect changed circumstances, including the longevity of detention, and in some cases are missing altogether'.<sup>332</sup> Similar concerns were expressed by Amnesty International.<sup>333</sup>

**274. We do not believe that it is right that the decision to detain an asylum seeker – which goes to the heart of that person's liberty - should be entirely administrative. We recommend that there should be an automatic, prompt, independent judicial review of the decision to detain in all cases after seven days.**

**275. We are concerned that there is currently no maximum time limit for which asylum seekers can be detained and that this can – and does – lead to protracted periods of detention whilst various steps are taken to secure removal. In the absence of a systematic process for reviewing the decision to detain there is a significant risk that a period of detention which IND initially intended to last for a few days can turn into weeks, months and even years. This has a negative impact on asylum seekers and their families.**

**276. We recommend that where detention is considered unavoidable to facilitate the removal of asylum seekers who are at the end of the process, subject to judicial oversight the maximum period of detention should be 28 days. In our view this is sufficient time in which to make arrangements for return, especially if appropriate**

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<sup>331</sup> Appendix 70.

<sup>332</sup> Appendix 57.

<sup>333</sup> Appendix 60.

**steps are taken prior to detention to secure travel documents. For families with children, the maximum length of detention should be 7 days.**

### **Access to bail**

277. The right to apply for bail applies to almost everyone in immigration detention. The only group who still *cannot* apply for bail are those who are held pending examination, who have not yet been in the UK for seven days.

278. During his evidence to us, the Minister acknowledged the importance of bail for asylum seekers who are detained:

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.<sup>334</sup>

279. The Minister also told us that he considered that the existing provisions for ensuring access to bail for those who are detained were adequate:

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.<sup>335</sup>

280. We have heard considerable evidence that although the right to apply for bail is available to all detained asylum seekers after seven days, in reality many detainees are unaware, or unable to exercise, this right because of language difficulties, a lack of legal representation and mental health issues. Bail hearings, when they occur, are usually unsuccessful.

281. We have been provided with information by IND on the number of bail hearings at Yarl's Wood. In the two year period between January 2005 and January 2007 there was a total of 149 applications for bail. Of these applications for bail, 76 were refused and 54 were withdrawn. Only 19 applications were granted.<sup>336</sup>

282. We also heard concerns about the information that is made available to the immigration judge at the bail hearing. These concerns are particularly evident not just in relation to children, but also vulnerable applicants, and those for whom there are no imminent prospects of removal, whose period in detention may become prolonged.

283. When a detainee asks for bail they are brought to an Immigration Court (the AIT) where an independent immigration judge makes a decision on whether or not release

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<sup>334</sup> Q539.

<sup>335</sup> Appendix 69.

<sup>336</sup> Appendix 86.



should be allowed. Mr Justice Hodge, President of the Asylum and Immigration Tribunal, told us that there are sometimes problems with the quality of the applications for bail on which judges are required to make a decision:

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 are often not as well briefed as we would like them to be on these cases, but we get through. The statistics show that something like 30 percent of bail applications are withdrawn, probably because the information is not full enough.<sup>337</sup>

284. Mr Justice Hodge also commented on shortcomings in the Home Office's delivery of bail applicants to court:

The reason [bail applicants] are not there is all to do with the way in which people are moved from detention and prison facilities into the courts and 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 are pleased to say that the Home Office have agreed to put in video links into the removal centres.<sup>338</sup>

285. We also heard evidence about the poor quality of Home Office representation at bail hearings, of cases where no Home Office representative turned up at all and therefore the immigration and asylum judge was not helped by anyone from the Home Office, or cases where the representation simply was not good enough to enable the judge to make an informed decision. In his evidence to us, the Minister sought to reassure us that there was Home Office representation in 98 per cent of cases.<sup>339</sup> However he subsequently informed us that this figure related to the Home Office representation at asylum and immigration appeal hearings and that the Home Office did not have figures for the level of its representation at bail hearings.<sup>340</sup>

### ***Legal advice and representation***

286. In order to access bail and other legal remedies asylum seekers who are detained need to be provided with good quality legal representation. Her Majesty's Chief Inspector of Prisons has repeatedly expressed her concerns about the lack of access to legal representation for asylum seekers (and others) who are detained for immigration purposes. In her written evidence she states that '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'. Anne Owers adds that 'less than half of the detainees we have surveyed have had a legal visit in detention'.<sup>341</sup>

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<sup>337</sup> Q440.

<sup>338</sup> Q447.

<sup>339</sup> Q556.

<sup>340</sup> Appendix 93.

<sup>341</sup> Appendix 57.

287. ILPA told us that the provision of legal representation for asylum seekers was very patchy and that there were parts of the country where asylum seekers had enormous difficulties in securing access to legal representation.<sup>342</sup> We also heard evidence that asylum seekers faced particular difficulties in accessing legal representation while they were in detention and when they were moved around the detention estate. ILPA believed that the lack of legal advice and representation during the so-called ‘super fast track’ was a particular problem and limited access to justice to those seeking asylum in the UK.<sup>343</sup> These difficulties appear to have been compounded by the restrictions since April 2004 on publicly funded immigration and asylum work.

288. Mr Justice Hodge said that he did not think that the quality of legal representation was any better or worse in fast track cases than in regular ones, but that in general, more people were appearing unrepresented than before legal aid cuts, and the quality of legal representation in general had gone down.<sup>344</sup>

289. The Immigration Minister recognised the importance of legal advice in securing access to justice and told us that:

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 with the requirements of international law.<sup>345</sup>

290. Unfortunately the evidence presented to us suggests that the Minister’s confidence in the system to ensure fair and just access to justice is misplaced. BID told us that there was a shortage of legal representation available to assist detainees in accessing bail. They stated that although public funding was introduced for bail applications in January 2000, there were too few solicitors able or willing to take on bail applications, and that there were serious flaws in the bail process which reduced access to the courts. These included the requirement for sureties, the merits test for public funding for legal representation and the lack of accommodation for asylum seekers. As a result, the demand for advocacy and training services provided by BID was very high.<sup>346</sup>

**291. Free on-site legal advice should be provided to all detained asylum seekers to ensure that they are able to access a bail hearing and that all the information needed to secure a fair and just outcome is available to the immigration judge. We recommend that family cases should be prioritised, with social work reports and medical reports made available as a matter of course to judges for bail hearings.**

## Treatment of asylum seekers in detention

Ms B, a Jamaican former asylum seeker was detained at Yarl’s 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 1, also had anaemia. Rickets is

<sup>342</sup> Q2.

<sup>343</sup> Appendix 70.

<sup>344</sup> Q459, Q460.

<sup>345</sup> Appendix 69.

<sup>346</sup> www.biduk.org.uk.

connected to poor diet and lack of sunlight and can cause permanent bone damage. *Hammersmith & Fulham Community Law Centre*

292. The treatment of asylum seekers in detention will necessarily engage the state's positive obligations to protect a range of Convention rights.

293. HMIP told us that their inspections had revealed gaps in the arrangements for the care and treatment of detainees. Some of the key human rights issues that emerged from inspection reports were:

- the absence of a continuous record, and proper monitoring, of a detainee's custodial history and movements;
- poor communication, and action upon, allegations of previous torture or abuse;
- deficits in specialist healthcare in relation to mental illness, trauma and previous abuse;
- the use of force or segregation; and
- inadequate welfare support, or preparation for removal or release.<sup>347</sup>

294. HMIP suggested that frequent moves, without a comprehensive custodial record, served to disguise the total period in custody. It also expressed concern about the lack of any formal processes for welfare support of detainees and preparation for removal or release.<sup>348</sup>

### **Healthcare**

295. In relation to torture, HMIP found evidence that healthcare professionals were not always alert to, or competent to detect, signs of torture or previous abuse, and that there were no clear systems for monitoring or following up presumed torture cases even where these were identified. HMIP stated that 'it is not clear that healthcare professionals in IRCs are always alert to, or competent to detect, signs of torture or previous abuse' and that 'there are no clear systems for monitoring or following up presumed torture cases which are referred onwards to IND'.<sup>349</sup>

296. BID made detailed points on the treatment of asylum seekers whilst in detention and, in particular, what it described as "an institutional failure to address health concerns" and an "institutional resistance to evidence of torture". According to BID this was reflected in the detention of asylum seekers with severe mental and physical health conditions and the growing incidence of hunger-strikes and incidents of self-harm or suicide.<sup>350</sup>

297. Medact stated that 'those detained (in IRCs) include many survivors of torture in contradiction of Home Office guidelines'.<sup>351</sup> Hammersmith and Fulham Law Centre stated

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<sup>347</sup> Appendix 57.

<sup>348</sup> *ibid.*

<sup>349</sup> *ibid.*

<sup>350</sup> Appendix 30.

<sup>351</sup> Appendix 13.

that ‘there appears to be a lack of knowledge or monitoring of detainees’ health, in particular children’s health, or of child protection issues.

298. NAT described the case of a Rwandan woman who had been detained and had not been able to keep her HIV status private while in detention:

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 was being so awkward.<sup>352</sup>

299. Evidence presented by the Royal College of Psychiatrists referred specifically to the provision of mental healthcare to detainees held at Campsfield House. There were no regular visits to the centre by qualified mental health staff, no equivalent to community mental healthcare, no daycare and no outpatient care. The Society expressed concern about the lack of specialised provision for torture victims and the absence of protocols for the identification, assessment and treatment of substance misusers.<sup>353</sup>

300. The Bail Circle of the Churches’ Commission for Racial Justice similarly stated that the interaction between detention and the experiences of asylum seekers in the past could create real and dangerous health effects. It was their experience that these effects were disregarded or ignored by Immigration Service staff.<sup>354</sup>

301. Medical Justice considered that many of the problems were caused by poor contract compliance due to poor enforcement by IND, pointing to a ‘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 (and) failure of contract monitoring to detect, act effectively about or prevent such events’.<sup>355</sup>

302. When we visited Yarl’s Wood we were surprised to learn that despite it being a centre primarily for women, the regular GP was male and so women who preferred to be seen by a female GP had to wait until an appointment for them to see a woman doctor could be arranged. We have also heard concerns that efforts by the Home Office to reduce the operating costs of the detention estate may also lead to deterioration in the treatment of asylum seekers in detention. For example, we were informed that a new contract at Yarl’s Wood will lead to a significant reduction in the overall cost of the operating contract over the eight year contract period. The GMB union expressed concerns to us about the implications of these cuts for the treatment of asylum seekers in detention:

...any reductions in manning levels could well affect 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

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<sup>352</sup> Appendix 50.

<sup>353</sup> Appendix 37.

<sup>354</sup> Appendix 58.

<sup>355</sup> Appendix 36.

issue of having sufficient time to respond to detainees' welfare matters and the current good practice of meaningful dialogue and concern.<sup>356</sup>

303. The Immigration Minister was not able to provide any further information about the change of contracts at Yarl's Wood nor was he able to reassure us that the change would not have an impact on the quality of care provided.<sup>357</sup> He sought to reassure us that the standards for detention centres, including those for healthcare, were very comprehensive, stating that:

“All centres must ensure that all detainees are medically screened within two hours of detention. This screening must include an assessment for risk of self-harm and suicidal behaviour. Doctors at removal centres are also required to report to the centre manager cases where a detainee may have been the victim of torture.”<sup>358</sup>

304. The Immigration Minister acknowledged that there had been a concern about the way in which procedures had been applied and stated that the Home Office was “keen to learn any lessons that would help us to ensure that the standard of care provided is to the required standard.”<sup>359</sup>

**305. We are not satisfied that the quality of healthcare currently provided to asylum seekers in detention is fully compliant with international human rights obligations, in particular the rights to freedom from inhuman and degrading treatment and to the enjoyment of the highest attainable standard of physical and mental health.<sup>360</sup> We are particularly concerned about gaps in care for people with HIV and with mental health problems. It is not clear that procedures for identifying and supporting torture victims work in practice. We recommend that the Department of Health establish a policy for supervising the health services that are available in detention centres, and that the standard of services should be monitored. Female GPs and other medical practitioners should be available in detention centres where women are held.**

## Information

306. 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 legal advice and full information about their cases. According to HMIP, “Both are in short supply: and it is often for that reason that half of all detainees in our confidential surveys report feeling unsafe’.<sup>361</sup>

307. We have heard evidence that the mental health impacts of detention are exacerbated by the fact that many of those who are detained may not understand why they are being detained and what is happening in their case. Amnesty International UK told us that ‘at the time of being taken into detention the individuals concerned were not told how long they

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<sup>356</sup> Appendix 87.

<sup>357</sup> Appendix 93.

<sup>358</sup> Appendix 92.

<sup>359</sup> *ibid.*

<sup>360</sup> Article 3 ECHR, Article 12 ICESCR.

<sup>361</sup> Appendix 57.

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'.<sup>362</sup>

308. Evidence provided by Alistair Burt MP raised concerns about the treatment of asylum seekers at Yarl's Wood, which is within his constituency. Mr Burt told us that his reservations centred not around the actions of GSL, the company running the centre, but around the behaviour and performance of the IND at all levels. He spoke out about his concerns in the House of Commons on 5 July 2005<sup>363</sup> and explained the reasons why he had felt compelled to speak out in his evidence:

...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 escorts, who took out their anger at detainees' refusal to board aircraft in a physical manner.<sup>364</sup>

309. Our meetings with detained asylum seekers during our visit to Yarl's Wood confirmed that some of them are not aware of the reasons why they are being detained or how long their detention will last. There is evidence that the problem of a lack of information and of maintaining contact with others able to assist an asylum seeker in understanding what is happening in his or her case is exacerbated where detainees are repeatedly moved around the detention estate. Positive Action in Housing told us that 38% of those visited by the Scottish Visitors Group (SVG) in Dungavel IRC volunteered the information that they had been transferred from other detention centres in England. SVG reported that the frequency of transfers has increased over the past year. The group also reported strong anecdotal evidence that transfers are sometimes used as punishment for publicising cases or taking part in protests.<sup>365</sup>

**310. We are concerned about the lack of information provided to detained asylum seekers about the reasons for their detention and the progress of their case. This exacerbates the stress and anxiety which is inevitably associated with being detained and with uncertainty about what the future holds. Some of the evidence we have received suggests that this problem is likely to get worse with the removal of case workers from IRCs and their replacement with administrative staff. All asylum seekers should be provided with written information about the reasons for their detention. Movements around the detention estate should be minimised.**

## Removal

One year after applying for asylum a family was taken into detention at Dungavel IRC in Scotland for a total of 17 days. At approximately 6am 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

<sup>362</sup> Appendix 60.

<sup>363</sup> HC Deb 5 July 2005 Cols 225-230.

<sup>364</sup> Appendix 88.

<sup>365</sup> Appendix 1.

not understand what was happening... Upon their arrival in 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.  
*Amnesty International UK*

311. As was noted at the beginning of this Chapter, the Government has significantly increased the emphasis on removals as part of its wider effort to restore confidence in the asylum process.

312. We have received many submissions which are critical of the methods used to remove failed asylum seekers. These criticisms have included suggestions that families and other vulnerable groups are being targeted for removal and that unnecessarily heavy handed methods are used when asylum seekers are taken into detention, when they are transferred to different parts of the detention estate and when they are removed from the UK<sup>366</sup>

### ***Circumstances under which families are taken into detention***

313. The evidence presented to us has raised issues about the circumstances in which families are taken into detention and the fact that families are shocked and distressed by the arrival of uniformed staff in the early hours of the morning. It has been suggested that IND does not follow its own guidance when taking families into detention and that families are often not given an opportunity to gather important possessions, documents, medication and basic childcare equipment. We have also received evidence about the fact that children are carried in vans for long distances and if a child needs the toilet or is sick, the van can only stop at authorised secure stops. For example the authorised stopover between Gatwick and Dungavel is Manchester Airport.<sup>367</sup>

314. 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 there is evidence that it still continues.<sup>368</sup> We have heard evidence that asylum seeking families are often removed from their homes and detained in the early hours of the morning with little or no advance warning and their children are unable to say goodbye to friends and may be removed from school shortly before sitting their exams.

315. The Children's Commissioner told us that 'typically families are given no warning of their imminent arrest and removal to detention prior to removal from the UK' and provided an extract from a letter from a Head Teacher about the effect of removals on the other children at school:

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

<sup>366</sup> Appendix 30.

<sup>367</sup> Appendix 47.

<sup>368</sup> Appendix 27, Appendix 60, Appendix 75.

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?<sup>369</sup>

316. The Scottish Refugee Council also expressed its concern at the way that early morning removals are conducted (especially those involving children) and ‘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’.<sup>370</sup> It added that ‘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.’<sup>371</sup>

317. BID provided us with the example of a woman and her child who were detained very early on a Sunday morning and a fax sent to the woman’s former solicitor at 8am that day. 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. Moreover it was known to the immigration authorities that the woman was the sole carer of her partner who suffered from lymphoma, brain seizures and hemi paresis. In BID’s view this amounted to a breach of the right to be free from inhuman and degrading treatment and the right to judicial oversight of the detention decision because legal representatives could not be contacted.<sup>372</sup>

318. We heard of cases where people who had been complying fully with IND reporting requirements, were taken into detention, without warning, after attending for interview and without the opportunity first to collect any belongings from home.<sup>373</sup> One woman at Yarl’s Wood told us she had been particularly asked to bring her child with her to the interview. She and the child were detained there, and taken to Yarl’s Wood with no opportunity to collect from home either her own or her child’s clothes and belongings. During our visit to Yarl’s Wood, we spoke to a woman from Jamaica who had twice been detained at Oakington after attending interviews at the police station. **This policy gives the impression of requiring people to attend interviews under false pretences and can create a perverse incentive not to comply with reporting requirements for fear of immediate detention.**

319. The Scottish Refugee Policy Forum listed a number of concerns about removal methods, stating that ‘the system needs to be made more humane’. It asks that ‘immigration staff should never force children to go with them separately from parents’, adding that ‘this happens in Glasgow and we believe is in breach of right to family life ECHR Article 8 and ICCPR Article 24.’<sup>374</sup>

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<sup>369</sup> Appendix 56.

<sup>370</sup> Appendix 59.

<sup>371</sup> Appendix 59.

<sup>372</sup> Appendix 30.

<sup>373</sup> Appendices 20, 25, 71, 72 and 85.

<sup>374</sup> Appendix 71.



320. AVID told us that they had 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 another two cases, children were not detained but deprived of breastfeeding mothers, as there would appear to be no policy on detention of breastfeeding mothers:

A woman, who was married to a British citizen, was detained without her baby. The Home Office was unaware of the baby. It was suggested by the Home Office 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...She was detained for two days before being released.<sup>375</sup>

321. The Home Office has disputed allegations that families and other vulnerable groups are being targeted for removal and that unnecessarily heavy handed methods are used:

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.<sup>376</sup>

322. The Immigration Minister and officials assured us that there were no time limits on how long the process of taking a family into detention should take but also made it clear that they were keen to avoid a situation in which neighbours and the wider community became aware that the family was being taken into detention and potentially disrupted the process. This, rather than any official time limit, appears to be the driving force behind the apparent speed at which raids are conducted.<sup>377</sup>

323. The Immigration Minister told us that whilst his own preference was for families to comply with voluntary check-in arrangements so that there would be no need for them to be forcibly removed from their homes, efforts to implement such procedures had been unsuccessful because families had failed to comply with arrangements:

“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 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.

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<sup>375</sup> Appendix 47.

<sup>376</sup> Appendix 69.

<sup>377</sup> Q517-519.

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.”<sup>378</sup>

324. The Minister also told us that he considered that the responsibility for anxiety caused to children lay with the parents, who had chosen not to comply with removal directions or to take up the option of voluntary 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.<sup>379</sup>

325. We subsequently received evidence from the Scottish Refugee Council expressing concerns about the way in which the arrangements for voluntary self check-in in the Scottish case to which the Immigration Minister had referred:

“The self check-in initiative he [the Minister] discusses in no way sought a dignified or sustainable return, nor did it allay fears of those who were involved about returning to their country of origin. Nor in actual fact did it target fully-refused claims, but also included those who had outstanding fresh representations.”<sup>380</sup>

326. According to the Scottish Refugee Council, there was great confusion within the community about the implications of the self check-in notices issued by the Home Office, particularly as many of the families concerned had lodged fresh representations with IND and so believed that their claims were still being given consideration. 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, all of whom were extremely distressed and fearful. The Scottish Refugee Council argued that this initiative had been a disaster, not because “individuals... are so determined to evade the instructions that they have been given by the immigration service”,<sup>381</sup> but because of a failure of IND to engage effectively and constructively with key stakeholders to whom asylum seekers turn for advice, and a failure 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.”<sup>382</sup>

327. The Minister and his officials did however accept that there were problems in ensuring that those being removed were able to be reunited with their possessions and to put their affairs in order. When we met the welfare officer based at Yarl’s Wood, he told us that around half of his time was spent trying to retrieve detainees’ property, either from another detention centre, the airport or a home address. He estimated that he was successful in around 60% of cases, and that it was most difficult retrieving property from

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<sup>378</sup> Q526

<sup>379</sup> Q518

<sup>380</sup> Appendix 91.

<sup>381</sup> Q526.

<sup>382</sup> Appendix 91.

home addresses. The rest of his time was spent on resolving outstanding practical and financial matters. Mr Hyde, Director of Enforcement and Removal, told us that he recognised the problems of ensuring that asylum seekers were able to be reunited with their property prior to removal:

In relation to the property ... 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.<sup>383</sup>

**328. We welcome the Home Office's announcement that IND is intending to review the way in which family removals are conducted<sup>384</sup> but are disappointed that over a year later the review is still in progress and no changes have yet been proposed or made. We find the attitude of the Home Office towards families facing removal troubling. The Government seems at a loss to understand why families at the end of the asylum process do not simply take the money made available to them to return 'voluntarily' to their country of origin. And yet it seems clear that for the families concerned – many of whom have been effectively made destitute and face losing their children into the care system – the fears of return are very real. There is also evidence that many families are not aware that their case has come to an end until they are arrested early in the morning at their home address, and that in some cases families are detained before their case has come to an end, for example, if a fresh claim has been submitted or there is an outstanding appeal hearing.**

**329. We are concerned about the failure of the Home Office to develop alternatives to detention beyond the relatively limited use of voluntary check-in arrangements which are unlikely to be successful without a properly functioning casework model which can support asylum seekers throughout the process and make them aware of the different options available to them at different stages.**

**330. The detention of asylum seekers – particularly asylum seeking families – should be undertaken with dignity and humanity. A pastoral visit should be undertaken in all cases to ensure that the family's circumstances are fully known to the officers who will be undertaking the removal itself. People should have time to collect their belongings, and to sit exams, and journeys should be as comfortable as possible.**

### ***Excessive use of force***

**331. We have been provided with a large number of examples where it is believed by those submitting evidence that asylum seekers have been subjected to excessive use of force whilst being taken into detention or during an attempt to remove them from the UK.**

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<sup>383</sup> Q520.

<sup>384</sup> *ibid.*

332. The Scottish Refugee Policy Forum stated that ‘we cannot accept that there is any justification for the restraint and handcuffing of anyone within the process and that this happens too 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.’<sup>385</sup> HMIP stated that during visits to holding facilities at Heathrow, ‘we noted that there were many instances of force being used on reluctant returnees who caused disruption ...yet it was rarely possible to effect removal in such circumstances, as airlines refused to carry those who were disruptive’. HMIP urged that the removal process be managed with greater dignity and safety, by ensuring that detainees were fully informed about what was happening to them and were able to seek advice.<sup>386</sup>

333. Amnesty International UK referred to its own research into detention and stated that 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’ and described one particular case:

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.<sup>387</sup>

334. BID provided us with a number of specific examples where it is claimed that violence occurred.<sup>388</sup> Both BID and Amnesty International expressed concern about the use of private companies in general and to enforce removal and have questioned whether these companies are held accountable for their actions.<sup>389</sup> The recent disturbance at Campsfield House<sup>390</sup> was triggered by an early morning removal, illustrating the point that removals need to be carried out with sensitivity in order to maintain the welfare of both detainees and staff. During our visit to Yarl’s Wood, we talked to a woman with a child aged seven months, who had been taken to the airport with no notice and who, despite her requests, had been given no opportunity to collect a jumper for the child, change its nappy, or collect baby milk before being put in the van with the baby. Whilst waiting at the airport she had no access to washing facilities or facilities to sterilise the baby’s bottles. After waiting all night at the airport, she had then been returned to Yarl’s Wood.

335. During our inquiry one member of the Committee accompanied an escorted removal of a female detainee from Yarl’s Wood to Heathrow Airport on her way to Uganda. During the removal the detainee received a telephone call from her solicitor informing her that a

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<sup>385</sup> Appendix 71.

<sup>386</sup> Appendix 57.

<sup>387</sup> Appendix 60.

<sup>388</sup> Appendix 30.

<sup>389</sup> Appendix 30, Appendix 60.

<sup>390</sup> On 14 March 2007.

Court Order had been granted to prevent her removal. The escorts waited for confirmation and the woman, who was calm and composed throughout, was then returned to detention to await developments.

**336. We understand that removal is a difficult, sometimes very difficult, process, particularly where asylum seekers do not, for a wide variety of reasons, wish to return to their country of origin. We remain concerned by the many reports of excessive use of force and, in many cases, the lack access to possessions.**

**337. HMIP has recommended that proper procedures should be established to prepare detainees, particularly asylum seekers, for removal. Such procedures are necessary to ensure that removals can be conducted properly and with dignity.**<sup>391</sup>

**338. We are concerned that the drive to meet performance targets may be leading to unnecessary or poorly planned removals.**

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<sup>391</sup> Appendix 57.

## 7 Treatment by the media

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339. The treatment of asylum seekers by the media raises questions about whether the state is fulfilling its positive obligations to protect asylum seekers from unjustified interference with their right to respect for their dignity, private life, and physical integrity, and to secure their enjoyment of Convention rights without discrimination, consistently with the right to freedom of expression. Signatories to the 1951 Refugee Convention, which include the UK, have specific responsibility to protect people forced by a well-founded fear of persecution to flee their countries and seek asylum. The Home Office stated that “it tries to ensure that journalists use the correct terminology and will seek to correct inaccuracies where appropriate” and that it chairs a sub-group of the National Refugee Integration Forum which “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”.<sup>392</sup>

### Media coverage of asylum seekers

340. In its Report on the Convention on the Elimination of Racial Discrimination, our predecessor Committee expressed concern about negative media reporting on asylum issues.<sup>393</sup> It recommended that media strategies should seek to counter inaccurate and inflammatory reporting of asylum issues and that the formulation and implementation of government policy on asylum must take full account of the impact on race relations.

341. We received evidence of the negative media coverage of asylum seekers and of the consequences of this coverage for individuals, communities and wider social cohesion. The UNHCR pointed to its magazine *Refugees*<sup>394</sup> for examples of dehumanising and hostile news coverage of asylum seekers and told us that asylum seekers in the UK had been subjected to particularly hostile reporting in recent years by some sections of the UK press, stating that “attempts to dehumanise asylum seekers ... continue, despite a lessening in frequency since the well-documented most vitriolic reporting in 2003”.<sup>395</sup> The UNHCR also pointed out the lack of news coverage about abuse of asylum seekers, and the lack of political leadership in dealing with the issues:

“In recent years, a number of asylum seekers and refugees have been targeted and killed despite having escaped persecution for the safety of industrialized democracies like the UK. 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.

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.

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<sup>392</sup> Appendix 69.

<sup>393</sup> Fourteenth Report of Session 2004-05, *The Convention on the Elimination of Racial Discrimination*, HL 88/HC 471, paras 59-63.

<sup>394</sup> UNHCR *Refugees* magazine Number 142 ‘Victims of Intolerance’.

<sup>395</sup> Appendix 73.

The numbers of both 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 this issue.”<sup>396</sup>

342. Oxfam told us that “media monitoring and research on the media around asylum and refugee issues continues to show much misrepresentation and negative portrayal that is having negative effects in communities in terms of harassment and racial abuse.”<sup>397</sup> It further stated that “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. This has been born out in research and acknowledged by organisations such as the CRE and ACPO issuing guidance and support in this area.”<sup>398</sup> Oxfam also pointed out that in accordance with Article 10 ECHR, all individuals, including refugees and asylum seekers, have a right to freedom of expression and access to information and that this 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.<sup>399</sup>

343. Oxfam mentioned a range of good practice, including positive initiatives by press organisations such as Presswise/Mediawise, work by the NUJ in supporting refugee media support networks with the voluntary sector and the National Refugee Integration Forum. However it added that there had not been enough positive articulation, advocacy or discussion at a political level around the issues of the independence of the press, freedom of speech, balance and impartiality and objectivity.

344. The CRE believed that the reporting of asylum issues in the UK press had implications for good race relations, potentially shaping the way in which sections of the public viewed asylum seekers, refugees, new migrants and even ethnic minorities more broadly.<sup>400</sup> It noted that “in certain high-circulation newspapers coverage of asylum in recent years has often been disproportionate, inaccurate and hostile” and that “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”.<sup>401</sup> The CRE suggested that such coverage ran the risk of promoting hostility not just towards asylum seekers but new migrants in general, and even established ethnic minority communities. It also suggested that the biased reporting of tabloid newspapers influenced perceptions and engendered feelings of cynicism in immigration caseworkers which in turn affected their decision making on individual cases concerning entry and asylum.<sup>402</sup> The CRE drew attention to some examples of good practice, including its own *Race in the Media* awards scheme, and local projects, such as

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<sup>396</sup> *ibid.*

<sup>397</sup> Appendix 66.

<sup>398</sup> *ibid.*

<sup>399</sup> *ibid.*

<sup>400</sup> Appendix 10.

<sup>401</sup> *ibid.*

<sup>402</sup> *ibid.*

one run by the *Leicester Mercury* newspaper, which aimed to foster a more informed and positive debate on race issues.<sup>403</sup>

345. Liberty stated that “some sections of the media ... from across the political spectrum, have misrepresented asylum seekers as a homogeneous group of scroungers, a drain on state resources, a threat to British identity and even a danger to our health and security.”<sup>404</sup> It added that “the press has also provided an important mechanism for telling compelling stories of individual asylum seekers, vital to the pressing need to re-humanise this group of people” and that the local media had played a particularly important role in this.<sup>405</sup> Liberty also pointed out that the press had provided “an important mechanism for telling the compelling stories of individual asylum seekers, vital to the need to re-humanise this group of people.”<sup>406</sup> It added that the local media in particular had played an important role in this and had provided support for groups campaigning against the destitution, detention and removal of local asylum seekers and families.<sup>407</sup>

346. The Scottish Refugee Policy Forum stated that “inaccurate media stories often have direct consequences for our members who are more likely to be victims of racist attacks when they are published”.<sup>408</sup> We have seen recent newspaper stories which describe such racist attacks in Glasgow, and note that the Scottish Executive study has labelled the level of racist harassment as “shocking”.<sup>409</sup> The Forum believed 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.” It added that “we must congratulate the media outlets who work against this trend as many do”.<sup>410</sup> A MORI survey conducted in 2004 indicated that the media was the primary source from which Scots gained their knowledge of asylum issues, but that one in two Scots did not feel that the reporting of asylum issues by newspapers is fair and accurate.<sup>411</sup>

347. Recent research by the Information Centre about Asylum and Refugees (ICAR) suggested that although coverage had improved, there was still a preoccupation with negative issues:

“there has been an overall improvement in press coverage since the Press Complaints Council Commission (PCC) introduced new guidance for journalists. The investigation found inaccurate terminology in just one per cent of articles surveyed and only a small number potentially breached existing guidelines. However, coverage in all papers suggests journalists are preoccupied with a system in “chaos” rather

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<sup>403</sup> *ibid.*

<sup>404</sup> Appendix 75.

<sup>405</sup> *ibid.*

<sup>406</sup> *ibid.*

<sup>407</sup> *ibid.*

<sup>408</sup> Appendix 71.

<sup>409</sup> BBC Scotland 5 March 2007, *Asylum seekers targeted by gangs*.

<sup>410</sup> Appendix 71.

<sup>411</sup> *Scottish attitudes towards the reporting of asylum issues*, Ipsos MORI, 16 November 2004.



than (potentially more enlightening) discussion about the context of asylum – though this may be attributable to the priorities of politicians rather than international media bias.”<sup>412</sup>

348. The UK Independent Race Monitor’s report in 2005 expressed concern about the potential for hostile news coverage to affect immigration decision making:

“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.”

**349. We are concerned about the negative impact of hostile reporting and in particular the effects that it can have on individual asylum seekers and the potential it has to influence the decision making of officials and Government policy. We are also concerned about the possibility of a link between hostile reporting by the media and physical attacks on asylum seekers.**

350. Newspaper representatives told us that they believed their coverage of asylum seekers was appropriate. Mr Peter Hill, Editor, *The Daily Express* told us “We ... 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 large scale immigration in general. In this we reflect the overwhelming views of our readers.”<sup>413</sup> Mr Robin Esser, Managing Editor, *The Daily Mail* stated that “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.”<sup>414</sup> Mr Alan Travis, Home Affairs Editor, *The Guardian* explained that:

“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.”<sup>415</sup>

351. The Press Complaints Commission (PCC) did not accept that there was a major problem. It told us:

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<sup>412</sup> *Reporting Asylum: The UK Press and the Effectiveness of PCC Guidelines*, ICAR, March 2006

<sup>413</sup> Appendix 81.

<sup>414</sup> Appendix 79.

<sup>415</sup> Q239

“The number of complaints (received by the PCC) 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.”<sup>416</sup>

## The rights and responsibilities of the press

352. The Article 10 ECHR right to freedom of expression carries certain duties and responsibilities, and may be subject to restrictions, including those required for the protection of the reputation or rights of others.<sup>417</sup> The PCC explained that all of its 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”.<sup>418</sup> The Commission oversees a Code of Practice which acts both as a set of rules for journalists for the interpretation of such restrictions and a framework under which members of the public can complain. The PCC explained that it did not write the Code itself; there is a separate committee of editors that writes the Code, and charges the PCC with enforcing it.<sup>419</sup>

353. The PCC stated that Clause 1(Accuracy) and Clause 12 (Discrimination) of the Code of Practice were relevant for regulation of asylum issues. The wording of those Clauses is as follows:

“Clause 1: The Press must take care not to publish inaccurate, misleading or distorted information, including pictures. A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and – where appropriate – an apology published.

Clause 12: 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. 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.”

The PCC also provided a copy of its Guidance Note on Refugees and Asylum Seekers which draws attention to the need for care in the terminology used when describing refugees and asylum seekers.

354. The PCC believes that the mechanisms in place work effectively. It provided two examples of upheld complaints concerning asylum seekers (issued in 1999 and 2000) which it says “gave an important signal to the whole of the press” and that “it has not been necessary to issue similar rulings for some time”:

“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

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<sup>416</sup> Q333

<sup>417</sup> Article 10(2) ECHR expressly states that the exercise of the rights in Article 10(1) “carries with it duties and responsibilities”.

<sup>418</sup> Appendix 76.

<sup>419</sup> Q342

in turn help to raise standards generally. In the context of your inquiry, therefore, I believe that the current system fairly and effectively balances the rights of freedom of expression with other rights such as the right to respect for privacy.”<sup>420</sup>

355. Newspaper editors told us that their staff were aware of, and abided by the PCC guidance. Mr Peter Hill told us that “all my staff are perfectly aware of the PCC and its rules and guidance. They know perfectly well, and I constantly reinforce this message, that we must be truthful in what we say.”<sup>421</sup> Mr Robin Esser said that “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”.<sup>422</sup>

356. The ICAR research suggested that the PCC’s guidance note had been helpful, but that there was room for improvement:

“...the Guidance Note has been helpful in identifying and proscribing terms that are erroneous. However such terms were only found infrequently before the Note was introduced, and they have not been eradicated completely. In giving only one specific example the Guidance Note has missed an opportunity to prevent a range of alternative erroneous terms being used, suggesting a residue of lazy journalism and poor understanding of the legal framework governing asylum applications. Inaccuracy was more frequent in the top six papers ... which would suggest PCC Guidance is having least impact on the widely circulating papers.”<sup>423</sup>

357. The CRE did not consider that the PCC’s guidance had been sufficient to prevent negative and prejudicial reporting, particularly in the tabloid media, and that it had not helped to reduce community tensions.<sup>424</sup> The CRE wrote to the PCC in April 2006, proposing two amendments to the Code of Practice; including “gross exaggeration” in the scope of Clause 1 and amending Clause 12 to widen the prohibition of discrimination to include racial, ethnic or religious groups. The PCC Editor’s Code of Practice Committee declined to make the suggested amendments suggested by the CRE.

358. The Equality and Diversity Forum (a network of national organisations including the CRE) also wrote to the PCC in 2005 to ask that it consider “the potential to address inflammatory reporting through the Code”, stating that Clauses 1 and 12 had apparently “not proved sufficient to prevent the kind of reporting we have seen for instance of Gypsies, Muslims or refugees”. The Forum wrote again in February 2006, suggesting that the word “exaggerated” be added to Clause 1 (Accuracy) and proposing an additional clause in the Code:

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<sup>420</sup> Appendix 76.

<sup>421</sup> Q265.

<sup>422</sup> Q269.

<sup>423</sup> *Reporting Asylum*, ICAR, *op. cit.*

<sup>424</sup> Appendix 10.

“The press must avoid gratuitous 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.”<sup>425</sup>

359. The PCC Editor’s Code of Practice Committee rejected the suggestion of adding “exaggerated” to Clause 1, stating that it was already covered by the description “distortion”. It also rejected the suggested additional clause because it “would effectively be allowing complaints from groups, rather than individuals”:

“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 that 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.”<sup>426</sup>

360. Mr Tim Toulmin, Director, PCC told us the suggestion that Clause 12 might be widened so as to protect groups as well as individuals was “a very timely suggestion because representations are currently being invited by (the) committee to make suggestions about how the code might be improved”,<sup>427</sup> but added that the issue had been considered before and that the committee had “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.”<sup>428</sup> Mr Toulmin added that “the philosophical basis of (the Code) is about protecting named individuals” and suggested<sup>429</sup> that objections about groups were generally better dealt with under Clause 1 (Accuracy).

361. Oxfam believed that the PCC guidance “remains too general and weak and is disappointing in its enforcement”.<sup>430</sup> The UNHCR agreed, stating that “while the introduction of PCC guidance was welcomed, the guidance needs strengthening and should take account of new shifts in media representation”.<sup>431</sup> It judged the guidance to have been of “mixed success” and recommended that it be reissued with an accompanying media campaign to boost awareness amongst the press, and that the language in the 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.

362. When asked whether the current system of regulation was adequate, the PCC’s view was that “the specific complaints we get are the basis on which we were set up, to deal with complaints from individuals and their representatives”<sup>432</sup> and that the PCC would be reluctant to extend Clause 12 to cover groups as well as individuals:

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<sup>425</sup> Appendix 9.

<sup>426</sup> Appendix 90.

<sup>427</sup> Q342.

<sup>428</sup> *ibid.*

<sup>429</sup> Q343.

<sup>430</sup> Appendix 66.

<sup>431</sup> Appendix 73.

<sup>432</sup> Q362.

“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.”<sup>433</sup>

363. We note that other jurisdictions have included more robust protection for groups within a framework of self regulation and freedom of expression and recommend that the PCC draws on best practice from overseas. The right to free speech is sacrosanct in the USA, but has not prevented the media from working within a Code which provides protection for vulnerable groups. For example, the Code of Ethics from the US Society of Professional Journalists includes the imperatives to “Tell the story of diversity and magnitude of the human experience boldly, even when it is unpopular to do so” and to “Distinguish between advocacy and news reporting. Analysis and commentary should be labelled and not misrepresent fact or context”.<sup>434</sup>

364. We cherish the fundamental right to free speech and the freedom of the press and support self regulation. As the editors who gave evidence to us recognise, the right to free speech and the freedom of the press are not absolute, but must be exercised in accordance with the duties and responsibilities of the media. The evidence we received from the PCC was not reassuring. Its existing system is not sufficiently robust to protect asylum seekers and other vulnerable minorities from the adverse effects of unfair and inflammatory media stories.

365. If the system of self regulation is to work properly, the PCC should give proper guidance on the professional standards that need to be followed in communicating information and ideas on matters of legitimate public importance and concern. This is especially important when dealing with issues involving highly vulnerable minorities, including ethnic minorities and asylum seekers, whether failed or otherwise. In the USA respected bodies of journalists have agreed upon practical guidelines in this area. The PCC has not drawn on those guidelines or issued guidelines of its own.

366. The PCC Code focuses on the individual complainant’s treatment but fails to give relevant guidance. To focus solely on individual complaints ignores the vital responsibility of the press to act in accordance with proper professional standards. The notion of “responsible journalism” is well known to UK law in the context of qualified privilege and could easily be developed more generally within the Code. **We therefore recommend that the PCC should reconsider its position with a view to providing practical guidance on how the profession of journalism should comply with its duties and responsibilities in reporting matters of legitimate public interest and concern. We emphasise that such guidance must not unduly restrict freedom of speech or freedom of the press any more than similar guidance does in the USA.**

367. The media can reasonably claim that it is their duty to report political comment. If this comment on the subject of asylum seekers is in itself inflammatory or inaccurate, this gives cover to some newspapers to stigmatise asylum seekers in a way that is not conducive to

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<sup>433</sup> Q369.

<sup>434</sup> www.spj.org.

good race relations or fair treatment of this vulnerable group.<sup>435</sup> **We recommend that Ministers recognise their responsibility to use measured language so as not to give ammunition to those who seek to build up resentment against asylum seekers, nor to give the media the excuse to write inflammatory or misleading articles.**

368. The Parliamentary Assembly of the Council of Europe's (PACE) Committee on Migration, Refugees and Population has stated that "it is clear that despite in principle being afforded protection under anti-discrimination and anti-racism legislation, migrants, asylum seekers and refugees remain in a situation of potential vulnerability and are often the victims of abusive and unfair representations in the media". It commented on the positive effects of "projects aimed at guaranteeing greater representation of migrants and refugees in the media" and stated that "these projects merit ongoing support and funding."<sup>436</sup>

369. Newspaper editors indicated their willingness to publish such stories. Mr Hill said "...if you get any of those stories I will look at them and I am quite willing to publish them ... we publish many positive things about people who have come to this country and many great success stories."<sup>437</sup> Mr Esser, agreed, saying "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."<sup>438</sup>

370. The ICAR research suggested that the Home Office could play a part in promoting more balanced reporting:

"The emerging internal media debate is a window of opportunity for the Home Office to build partnerships and engage the many stakeholders to promote a more balanced view of asylum. This would also help balance the currently one-sided use of sources that tend to reflect immigration control rather than integration. However, there may be a problem in that the tone of political debate has been criticised for being "wretched, squalid and shameful". With poor standards and strong views being concentrated in the most popular papers this means the highest standards of reporting are not reaching the widest audience. However, given that this group are often out of step with the rest of the press there may be opportunities for the Home Office and partners to exert pressure on them to act more responsibly."<sup>439</sup>

**371. We were pleased to learn about the positive impact of projects which aim to encourage more considered reporting of asylum seeker issues, and provide a voice for asylum seekers. We are encouraged to hear that newspaper editors would be prepared to publish more such stories, and suggest their willingness to do so should be supported by those working with asylum seekers, submitting positive stories for reporting by them. We support the recent recommendation from the Information Centre about**

<sup>435</sup> See e.g. reports of the Home Secretary's comments on 7 March 2007.

<sup>436</sup> *The image of asylum-seekers, migrants and refugees in the media*, Committee on Migration, Refugees and Population, <http://assembly.coe.int>.

<sup>437</sup> Q327, Q329.

<sup>438</sup> Q329.

<sup>439</sup> *Reporting Asylum*, ICAR, *op.cit.*

**Asylum and Refugees that the Home Office should encourage newspapers to act more responsibly, and we recommend that the Home Office lend its support to the networks and award schemes working in this area.**

## Conclusions and recommendations

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1. We recommend that in the development of asylum policy the Government should proceed on the basis of evidence, rather than assertion, which evidence should wherever possible be published (Paragraph 5)

### Access to financial support and accommodation

2. People who are attempting to claim asylum and support encounter significant practical difficulties because of the limited accessibility of Asylum Screening Units. These difficulties may discourage people from engaging in the asylum process and cause severe hardship for claimants with no resources. We recommend that the Government improves facilities for claiming asylum and provides locations for claiming asylum and support throughout the UK. (Paragraph 81)
3. We have heard countless examples of Home Office inefficiencies in processing support claims, with severe consequences for desperate, vulnerable people who have no other means to support themselves. There is an urgent need to improve the operational performance of the Home Office where decisions are being made about support for asylum seekers. The institutional failure to address operational inefficiencies and to protect asylum seekers from destitution amounts in many cases to a failure to protect them from inhuman and degrading treatment under Article 3 ECHR. (Paragraph 84)
4. We welcome the development of the New Asylum Model (NAM) which has the potential to improve the timeliness of decision making and the quality of support to asylum seekers and refused asylum seekers. However, we are concerned that the Home Office has yet to ensure that NAM caseworkers receive adequate training about asylum seekers' entitlement to support. We recommend that the capacity of NAM is closely monitored whilst it is assuming responsibility for support provision. We also recommend that the Home Office reviews arrangements for the provision of advice and information to asylum seekers and their representatives, both during the applicant's asylum claim and during the transition to mainstream support after asylum is granted. (Paragraph 87)
5. The continued use of the section 55 provision to deny support in subsistence-only cases leaves many asylum seekers reliant on ad hoc charitable support and with no regular means of providing for their basic daily necessities. We believe that this treatment does not comply with the House of Lords Limbuela judgment, and is in clear breach of Article 3 ECHR. We recommend that section 55 be repealed. (Paragraph 92)
6. The section 9 pilot has caused considerable hardship and does not appear to have encouraged more refused asylum seeking families to leave the UK. We urge the Government to publish the results of the pilot without further delay. We believe that using both the threats and the actuality of destitution and family separation is incompatible with the principles of common humanity and with international



- human rights law and that it has no place in a humane society. We recommend that section 9 be repealed at the earliest opportunity. (Paragraph 97)
7. The absence of provision for representation before the Asylum Support Adjudicators may lead to a breach of an asylum seeker's right to a fair hearing, particularly where an appellant speaks no English, has recently arrived in the UK, lives far from Croydon and/or has physical or mental health needs. Where an appeal fails, and as a result of the unavailability of legal representation an asylum seeker is left destitute, the result may also be a violation of Article 3 ECHR. We recommend that the Government should make legal aid funding available for representation before the Asylum Support Adjudicators. Where needed, assistance with accommodation as well as travel costs involved in attending an appeal should also be provided. We heard evidence that suggested in some cases this assistance was not being given. In our view it is a priority that appellants receive accommodation and subsistence for the hearing. (Paragraph 99)
  8. We are concerned that the shortage of competent immigration advice and representation may indirectly result in destitution. (Paragraph 101)
  9. We consider that in some cases the quality and terms of accommodation provision under section 95 of the 1999 Act interferes with the rights of asylum seekers and their children to respect for family and home life under Article 8 ECHR, and the right to adequate housing under Article 11 ICESCR. (Paragraph 104)
  10. We consider the section 4 voucher scheme to be inhumane and inefficient. It stigmatises refused asylum seekers and does not adequately provide for basic living needs. There is no evidence that the voucher system encourages refused asylum seekers to leave the UK. We believe that the section 4 voucher scheme discriminates on the grounds of nationality, and could constitute a breach of Article 14 in conjunction with Articles 3 and 8 ECHR and of Articles 3 and 8 themselves. There are particular responsibilities towards women, especially relating to pregnancy and post natal treatment. In many cases these responsibilities are not being met and there is an immediate need to provide financial support for essential items not covered by the vouchers, including clothing, baby items, telephone costs and travel. We recommend that the Government extends section 95 support to section 4 applicants and abandons the voucher system. (Paragraph 110)
  11. Inadequate housing could give rise to a breach of a family's right to respect for family and home life under Article 8 ECHR, especially where a child is living there. We welcome the Home Office's assurance that it intends to standardise the accommodation contracts to make all section 4 accommodation of the same standard as section 95 accommodation by the end of 2007. We recommend that the Home Office puts in place measures to ensure that where accommodation is of an inadequate standard, urgent repairs are carried out or alternative accommodation is provided. (Paragraph 112)
  12. There is no clear guidance reflecting recent court decisions regarding local authority responsibilities towards asylum seekers with care needs. We are concerned that this may result in discriminatory treatment for asylum seekers with

- care needs in Scotland, in breach of Articles 8 and 14 ECHR. We recommend that the Government issue new guidance setting out when local authorities have a duty to provide community care help to asylum seekers and refused asylum seekers and that it implements procedures to ensure that local authorities comply with this duty. (Paragraph 115)
13. We consider that by refusing permission for most asylum seekers to work and operating a system of support which results in widespread destitution, the treatment of asylum seekers in a number of cases reaches the Article 3 ECHR threshold of inhuman and degrading treatment. This applies at all stages of the asylum claim process: when an individual is attempting to claim asylum, during the period of consideration of their claim and during the period after their claim is refused if they are unable to return to their country of origin. Many witnesses have told us that they are convinced that destitution is a deliberate tool in the operation of immigration policy. We have been persuaded by the evidence that the Government has indeed been practising a deliberate policy of destitution of this highly vulnerable group. We believe that the deliberate use of inhumane treatment is unacceptable. We have seen instances in all cases where the Government's treatment of asylum seekers and refused asylum seekers falls below the requirements of the common law of humanity and of international human rights law. (Paragraph 120)
  14. The policy of enforced destitution must cease. The system of asylum seeker support is a confusing mess. We have seen no justification for providing varying standards of support and recommend the introduction of a coherent, unified, simplified and accessible system of support for asylum seekers, from arrival until voluntary departure or compulsory removal from the UK. (Paragraph 121)
  15. We recommend that the Immigration Rules be amended so that asylum seekers may apply for permission to work when their asylum appeal is outstanding for 12 months or more and the delay is due to factors outside their control. We recommend that where there is evidence that an asylum seeker will not be able to leave the UK for 12 months or more, he or she should be granted limited leave for a 12 month period with permission to work attached. (Paragraph 122)

### Provision of healthcare

16. We note that the Government has not produced any evidence to demonstrate the extent of what it describes as "health tourism" in the UK. (Paragraph 129)
17. We have heard that the 2004 Charging Regulations have caused confusion about entitlement, that interpretation of them appears to be inconsistent and that in some cases people who are entitled to free treatment have been charged in error. The threat of incurring high charges has resulted in some people with life-threatening illnesses or disturbing mental health conditions being denied, or failing to seek, treatment. We have heard of many extremely shocking examples. (Paragraph 134)

18. The arrangements for levying charges on pregnant and nursing mothers lead in many cases to the denial of antenatal care to vulnerable women. This is inconsistent with the principles of common humanity and with the UK's obligations under ECHR Articles 2, 3 and 8 ECHR. We recommend that the Government suspend all charges for antenatal, maternity and peri-natal care. We recommend that all maternity care should be free to those who have claimed asylum, including those whose claim has failed, until voluntary departure or removal from the UK. (Paragraph 143)
19. We accept that there is no universal worldwide access to free medical treatment, but recommend that on the basis of common humanity, and in support of its wider international goal of halting the spread of HIV/AIDS, the Government should provide free HIV/AIDS treatment for refused asylum seekers for as long as they remain in the UK. Absence of treatment for serious infectious diseases raises wider public health risks. The Government should not deport a person in circumstances where that person is in the final stages of a terminal illness and would not have access to medical care to prevent acute suffering while he is dying. (Paragraph 152)
20. We have seen evidence that the current arrangements for access to GPs result in the denial of necessary primary healthcare for many refused asylum seekers and their children. We believe that in many cases this is in breach of the ECHR rights to be free from inhuman or degrading treatment, to respect for private life and to enjoy Convention rights without unjustified discrimination, and also in some cases to the right to life. Moreover, consequent increased reliance on A&E services as a substitute is more expensive, increases A&E pressures and flies in the face of the general NHS policy of moving care away from A&E and hospitals and into primary care, closer to the patient. We recommend that primary healthcare be provided free to those who have claimed asylum, including those whose claim has been refused, pending their voluntary return or removal. We recommend that the guidance to GPs on registering new patients be clarified to remove the existing contradictions. (Paragraph 158)
21. We note the BMA research on the vulnerability and ill-health of refugee children. We recommend that the Department of Health establish guidelines on health services for unaccompanied asylum seeking children and for children in families of asylum seekers, including refused asylum seekers, so as to comply with its obligations under the CRC. (Paragraph 159)
22. We note that no race equality impact assessment was carried out before introducing the 2004 charging regulations or with regard to the current discretionary arrangements for GP registration. We agree with the JCWI and the CRE that the current arrangements and proposals for charging refused asylum seekers for healthcare give rise to a risk of race discrimination. (Paragraph 163)
23. The Health Minister told us that that no information had been collected centrally about the costs and benefits of charging refused asylum seekers for secondary healthcare. We are concerned and very surprised that no steps are being taken to monitor the cost or effect of the 2004 charging regulations in relation to the provision of secondary healthcare. (Paragraph 166)

24. Under the ECHR, discrimination in the enjoyment of Convention rights on grounds of nationality requires particularly weighty justification. The restrictions on access to free healthcare for refused asylum seekers who are unable to leave the UK are examples of nationality discrimination which require justification. No evidence has been provided to us to justify the charging policy, whether on the grounds of costs saving or of encouraging refused asylum seekers to leave the UK. We recommend that free primary and secondary healthcare be provided for all those who have made a claim for asylum or under the ECHR whilst they are in the UK, in order to comply with the laws of common humanity and the UK's international human rights obligations, and to protect the health of the nation. Whilst charges are still in place, we consider that it is inappropriate for health providers to be responsible both for (i) deciding who is or is not entitled to free care and (ii) recovering costs from patients. We recommend that a separate central agency be established to collect payments. (Paragraph 170)
25. The timetable for reviewing the regulations on charging for healthcare is unsatisfactory and has exacerbated the confusion around entitlement. The consultation on primary care was closed in 2004 but no analysis has been published. We recommend that the Government collect evidence of the impact of the 2004 Charging Regulations on patients, NHS costs and NHS staff, and that it carry out a race equality impact assessment and a public health impact assessment of these Regulations using data obtained to inform future policy decisions. (Paragraph 171)

### Treatment of children

26. As we have made clear in our previous Reports, we consider the Government's concerns in relation to the Convention on the Rights of the Child to be unfounded. Of the 192 signatories to the CRC, only three have entered declarations relating to the treatment of non-nationals and only the UK has entered a general reservation to the application of the Convention to children who are subject to immigration control. We do not accept that the CRC undermines effective immigration controls. Our principal concern is that the practical impact of the reservation goes far beyond the determination of immigration status, and leaves children seeking asylum with a lower level of protection in relation to a range of rights which are unrelated to their immigration status. The evidence we have received testifies to the unequal protection of the rights of asylum seeking children under domestic law and practice (Paragraph 180)
27. We reiterate our previous recommendation that the Government's reservation to the CRC should be withdrawn. It is not needed to protect the public interest and undermines the international reputation of the country. Even if, as the Minister states (which we do not accept), the removal of the Reservation would be nothing more than a "gesture", we consider that this is important in expressing the value given to protecting the rights of separated asylum seeking children (Paragraph 181)
28. We also recommend that the Government consider how section 11 of the Children Act could be extended to include authorities providing support for asylum seekers, the Immigration Service and the IRCs (Paragraph 182)

29. We are concerned about the detrimental consequences of providing inadequate and inappropriate support and accommodation to separated asylum seeking children. These children, who come to the UK, often traumatised, from some of the most troubled regions of the world, are particularly vulnerable. All local authorities should follow the guidance set out in LAC13 (2003) and provide separated children with support under section 20 of the Children Act. Children should not be “de-accommodated” before they turn 18 (Paragraph 190)
30. We recognise that the difficulties local authorities face in providing an appropriate package of accommodation and support to separated asylum seeking children are compounded by the lack of additional resources available to social service departments, and by a broader political and policy context which pushes the needs of separated children down the already long list of priorities facing local authorities in providing children’s services. Local authorities must be provided with sufficient funds to deliver an appropriate package of support and care, including leaving care costs (Paragraph 191)
31. We are concerned that there is currently no statutory oversight for ensuring that separated children are able to access the services and support to which they are entitled, and for ensuring that the wide range of bodies in contact with a child act in his or her best interests. This is despite the requirement of Article 19 of the EU Reception Directive, that separated children should be provided with a guardian. We recommend that a formal system of guardianship should be established for separated children subject to immigration control, including separated asylum seeking children. The guardian would have a statutory role and would be appointed by a statutory body to safeguard the best interests of the child and provide a link between all those providing services and support. The guardian should be expected to intervene if public bodies act in contravention of their legal duties towards a child (Paragraph 193)
32. We recommend that the Government’s proposals to reform the arrangements for supporting unaccompanied asylum seeking children should be carefully scrutinised against the benchmark of the UN Convention on the Rights of the Child to ensure that this group are not excluded from the care, consideration and protection to which all children and young people are entitled (Paragraph 196)
33. We are concerned by the lack of recognition given by the Government to the risks of having children whose age is disputed in the adult system. We are not convinced that the Home Office is ensuring that the “benefit of the doubt” is given to separated asylum seeking children or that local authorities receive appropriate training and support to enable them to undertake an integrated assessment process. We are also concerned that age disputed children continue to be detained as adults despite Government policy which says that this should not happen; and legal actions, in which the Home Office has conceded that this approach is not appropriate. (Paragraph 203)
34. We recommend that where an asylum seeker’s age is disputed even where the benefit of the doubt has been given, he or she should be provided with accommodation by the appropriate social service department in order for an

integrated age assessment to be undertaken, considering all relevant factors. X-rays and other medical assessment methods should not be relied upon, given the margin of error. The process for dealing with age disputes should be reviewed, particularly in light of the evidence and recommendations arising from the research currently being undertaken by ILPA and due to be published shortly, with a view to ensuring that no age disputed asylum seeker is detained or removed unless and until an integrated age assessment has been undertaken. (Paragraph 204)

## Detention and removal

35. We recommend that all IRC staff, including those of private contractors, are given training in refugee and human rights. (Paragraph 216)
36. We are concerned that the decision to detain an asylum seeker at the beginning of the process simply in order to consider his or her application may be arbitrary because it is based on assumptions about the safety or otherwise of the country from which the asylum seeker has come. It is self-evident that some asylum seekers – most obviously torture victims and those who have been sexually abused – are unlikely to reveal the full extent of experiences to the authorities in such a short-time period, and that this problem will be exacerbated where they are not able to access legal advice and representation, and the support of organisations able to help them come to terms with their experiences. (Paragraph 226)
37. We are also concerned that although fast track detention for anything more than a short, tightly controlled period of time is unlawful, some asylum seekers find themselves detained at the beginning of the asylum process for periods in excess of this. The act of claiming asylum is not a criminal offence and should not be treated as such. If asylum seekers are detained at the beginning of the asylum process, then the period of detention should be limited to a maximum of seven days. (Paragraph 227)
38. We recommend that asylum seekers who are detained as part of the fast track and super fast track processes should be provided with free, on-site legal advice – for example, on the model previously provided by the Refugee Legal Centre and the Immigration Advisory Service at Oakington – to ensure that victims of torture and other forms of abuse are identified and taken out of the process; and that claims for asylum are properly considered. (Paragraph 228)
39. We are deeply concerned by the evidence we have heard about the current gap between policy and practice in relation to the detention of vulnerable adults. The Home Office acknowledges that victims of torture, pregnant women and those with serious physical and mental health conditions should not be detained and yet it continues to happen in practice. This is clearly a violation of the UK's human rights obligations towards those individuals. We welcome the acknowledgement by the Home Office that this is an issue which needs to be addressed and the news that some steps are being put into place to improve current practice. (Paragraph 236)

40. We recommend that the Home Office continues to take appropriate steps to ensure that its own policy guidance is followed and that it consults on a regular basis with BID and the Association of Visitors to Detainees (AVID), to ensure that its own procedures are being followed. Evidence that vulnerable adults continue to be detained should be treated seriously and acted upon. (Paragraph 237)
41. We are concerned that the current process of detention does not consider the welfare of the child, meaning 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. We are particularly concerned that the detention of children can – and sometimes does – continue for lengthy periods with no automatic review of the decision. Where the case is reviewed (for example by an immigration judge or by the Minister after 28 days), assessments of the welfare of the child who is detained are not taken into account. It is difficult to understand what the purpose of welfare assessments are if they are not taken into account by Immigration Service staff and immigration judges. (Paragraph 258)
42. The detention of children for the purpose of immigration control is incompatible with children’s right to liberty and is in breach of UK’s international human rights obligations. Any decision to detain a child, at whatever stage of the asylum process must be compliant with international standards and subject to judicial oversight. We believe that the detention of asylum seeking children constitutes a breach of the UK’s human rights obligations. Asylum seeking children should not be detained. This includes detention as part of fast track or accelerated procedures for asylum determination. Alternatives should be developed for ensuring compliance with immigration controls where this is considered necessary. (Paragraph 259)
43. For the fast track process, the Home Office has recognised the risks of wrongly detaining age-disputed children as adults and has revised its policy to clarify that age-disputed children must not be detained as adults in the fast track. There remains a risk that age-disputed children are still detained as adults in other circumstances, such as prior to removal. We recommend that the Home Office policy is further revised, so as to ensure that under no circumstances are age-disputed children detained as adults. (Paragraph 260)
44. In the absence of an end to the detention of children, minimum safeguards must be put in place to ensure that the human rights of children and their families are protected as far as possible. Automatic bail hearings should be provided for families with children after a seven day period of detention. The assessment of a social worker must be taken into account at this stage and in any subsequent reviews of the decision to detain. (Paragraph 261)
45. We are concerned that in the drive to increase the number of asylum seekers who are removed at the end of the asylum process and to achieve the ‘Tipping the Balance’ target which the Government has set itself, insufficient care is being paid before an asylum seeker is detained, as to whether or not he or she can actually be removed. (Paragraph 268)

46. We believe that current policies for the detention of asylum seekers potentially lead to human rights breaches under the ECHR, in particular the right to liberty under Article 5. Asylum seekers should only be detained at the end of the process if their application has been fully and properly considered and where there are travel and other documents in place to ensure that the removal happens swiftly and detention does not become prolonged. (Paragraph 269)
47. We do not believe that it is right that the decision to detain an asylum seeker – which goes to the heart of that person’s liberty - should be entirely administrative. We recommend that there should be an automatic, prompt, independent judicial review of the decision to detain in all cases after seven days. (Paragraph 274)
48. We are concerned that there is currently no maximum time limit for which asylum seekers can be detained and that this can – and does – lead to protracted periods of detention whilst various steps are taken to secure removal. In the absence of a systematic process for reviewing the decision to detain there is a significant risk that a period of detention which IND initially intended to last for a few days can turn into weeks, months and even years. This has a negative impact on asylum seekers and their families. (Paragraph 275)
49. We recommend that where detention is considered unavoidable to facilitate the removal of asylum seekers who are at the end of the process, subject to judicial oversight the maximum period of detention should be 28 days. In our view this is sufficient time in which to make arrangements for return, especially if appropriate steps are taken prior to detention to secure travel documents. For families with children, the maximum length of detention should be 7 days. (Paragraph 276)
50. Free on-site legal advice should be provided to all detained asylum seekers to ensure that they are able to access a bail hearing and that all the information needed to secure a fair and just outcome is available to the immigration judge. We recommend that family cases should be prioritised, with social work reports and medical reports made available as a matter of course to judges for bail hearings. (Paragraph 291)
51. We are not satisfied that the quality of healthcare currently provided to asylum seekers in detention is fully compliant with international human rights obligations, in particular the rights to freedom from inhuman and degrading treatment and to the enjoyment of the highest attainable standard of physical and mental health. We are particularly concerned about gaps in care for people with HIV and with mental health problems. It is not clear that procedures for identifying and supporting torture victims work in practice. We recommend that the Department of Health establish a policy for supervising the health services that are available in detention centres, and that the standard of services should be monitored. Female GPs and other medical practitioners should be available in detention centres where women are held. (Paragraph 305)
52. We are concerned about the lack of information provided to detained asylum seekers about the reasons for their detention and the progress of their case. This exacerbates the stress and anxiety which is inevitably associated with being



- detained and with uncertainty about what the future holds. Some of the evidence we have received suggests that this problem is likely to get worse with the removal of case workers from IRCs and their replacement with administrative staff. All asylum seekers should be provided with written information about the reasons for their detention. Movements around the detention estate should be minimised. (Paragraph 310)
53. The policy of taking people into detention, without warning, after attending interview gives the impression of requiring people to attend interviews under false pretences and can create a perverse incentive not to comply with reporting requirements for fear of immediate detention. (Paragraph 318)
  54. We welcome the Home Office's announcement that IND is intending to review the way in which family removals are conducted but are disappointed that over a year later the review is still in progress and no changes have yet been proposed or made. We find the attitude of the Home Office towards families facing removal troubling. The Government seems at a loss to understand why families at the end of the asylum process do not simply take the money made available to them to return 'voluntarily' to their country of origin. And yet it seems clear that for the families concerned – many of whom have been effectively made destitute and face losing their children into the care system – the fears of return are very real. There is also evidence that many families are not aware that their case has come to an end until they are arrested early in the morning at their home address, and that in some cases families are detained before their case has come to an end, for example, if a fresh claim has been submitted or there is an outstanding appeal hearing. (Paragraph 328)
  55. We are concerned about the failure of the Home Office to develop alternatives to detention beyond the relatively limited use of voluntary check-in arrangements which are unlikely to be successful without a properly functioning casework model which can support asylum seekers throughout the process and make them aware of the different options available to them at different stages. (Paragraph 329)
  56. The detention of asylum seekers – particularly asylum seeking families – should be undertaken with dignity and humanity. A pastoral visit should be undertaken in all cases to ensure that the family's circumstances are fully known to the officers who will be undertaking the removal itself. People should have time to collect their belongings, and to sit exams, and journeys should be as comfortable as possible. (Paragraph 330)
  57. We understand that removal is a difficult, sometimes very difficult, process, particularly where asylum seekers do not, for a wide variety of reasons, wish to return to their country of origin. We remain concerned by the many reports of excessive use of force and, in many cases, the lack access to possessions. (Paragraph 336)
  58. HMIP has recommended that proper procedures should be established to prepare detainees, particularly asylum seekers, for removal. Such procedures are necessary

to ensure that removals can be conducted properly and with dignity. (Paragraph 337)

59. We are concerned that the drive to meet performance targets may be leading to unnecessary or poorly planned removals. (Paragraph 338)

### **Treatment by the media**

60. We are concerned about the negative impact of hostile reporting and in particular the effects that it can have on individual asylum seekers and the potential it has to influence the decision making of officials and Government policy. We are also concerned about the possibility of a link between hostile reporting by the media and physical attacks on asylum seekers. (Paragraph 349)
61. We recommend that the Press Complaints Commission should reconsider its position with a view to providing practical guidance on how the profession of journalism should comply with its duties and responsibilities in reporting matters of legitimate public interest and concern. We emphasise that such guidance must not unduly restrict freedom of speech or freedom of the press any more than similar guidance does in the USA. (Paragraph 366)
62. We recommend that Ministers recognise their responsibility to use measured language so as not to give ammunition to those who seek to build up resentment against asylum seekers, nor to give the media the excuse to write inflammatory or misleading articles. (Paragraph 367)
63. We were pleased to learn about the positive impact of projects which aim to encourage more considered reporting of asylum seeker issues, and provide a voice for asylum seekers. We are encouraged to hear that newspaper editors would be prepared to publish more such stories, and suggest their willingness to do so should be supported by those working with asylum seekers, submitting positive stories for reporting by them. We support the recent recommendation from the Information Centre about Asylum and Refugees that the Home Office should encourage newspapers to act more responsibly, and we recommend that the Home Office lend its support to the networks and award schemes working in this area. (Paragraph 371)

# ANNEX

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## **Asylum seekers' entitlement to accommodation and support**

### **Home Office**

Recently arrived asylum seekers – full board emergency accommodation (under section 98 Immigration and Asylum Act 1999).

Adult asylum seekers (including families) awaiting a decision on their asylum claim – either cash only or accommodation outside London and cash (under section 95 Immigration and Asylum Act 1999). Support ends when asylum appeal refused or when child reaches 18 (if later).

Refused asylum seekers who are unable to leave the UK and meet specific criteria - vouchers (£35/week) and accommodation with strict conditions (under section 4 Immigration and Asylum Act 1999).

### **Social Services**

Unaccompanied asylum seekers aged under 18 – foster care or hostels or cash and private rented accommodation (under section 20 Children Act).

Asylum seekers 'in need of care and attention' – accommodation and support in kind (under section 21 National Assistance Act 1948). Refused asylum seekers with care needs only qualify if they applied for asylum on arrival in the UK or have an outstanding fresh human rights/asylum claim.

### **No support**

Asylum seekers who have just arrived in the UK and have not yet claimed asylum in person (unless they have a child or care needs).

Asylum seekers whom the Home Office considers did not claim asylum 'as soon as reasonably practicable', unless they can prove the lack of support would breach their human rights.

Refused asylum seekers who have no new asylum/human rights claim and cannot meet the strict conditions for section 4 support.

Refused asylum seekers with a child where the Home Office has certified under 'section 9' that they have not left the UK voluntarily.

# Formal Minutes

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**Thursday 22 March 2007**

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Judd  
Baroness Stern

Nia Griffith MP  
Dr Evan Harris MP

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Draft Report [The Treatment of Asylum Seekers], proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 371 read and agreed to.

Summary read and agreed to.

Annex read and agreed to.

*Resolved*, That the Report be the Tenth Report of the Committee to each House.

Several Papers were ordered to be appended to the Report.

*Ordered*, That the Chairman make the Report to the House of Commons and that Baroness Stern make the Report to the House of Lords.

*Ordered*, That the provisions of House of Commons Standing Order No. 134 (Select committees (reports)) be applied to the Report.

[Adjourned till Monday 26 March at 4.00pm.]

# Witnesses

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## Monday 20 November 2006

**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 Ev 1

**Mr Tauhid Pasha**, Legal and Information Director, JCWI and **Ms Nancy Kelly**, Head of UK and International Policy, Refugee Council Ev 8

## Monday 4 December 2006

**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 Ev 14

**Dr Angela Burnett**, Medact, **Ms Karen McColl**, Director, Médecins du Monde and **Dr Yusef Azad**, Director of Policy and Campaigns, National AIDS Trust Ev 20

## Monday 8 January 2007

**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 Ev 29

**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 Ev 37

## Monday 22 January 2007

**Mr Robin Esser**, Executive Managing Editor, *The Daily Mail*, **Mr Peter Hill**, Editor, *The Daily Express*, **Mr Alan Travis**, Home Affairs Editor, *The Guardian* and **Mr Tim Toulmin**, Director, Press Complaints Commission Ev 49

## Monday 5 February 2007

**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 Ev 67

**Mr Justice Hodge OBE**, President, **Mrs Nehar Bird**, Immigration Judge and **Miss Rebecca Cooper**, Head of the President's Office, Asylum and Immigration Tribunal Ev 77

## Wednesday 21 February 2007

**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 Ev 83

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2 Chartered Institute of Housing, dated 29 August 2006	Ev 104
3 Ayrshire Friends of Refugees Group, dated 21 August 2006	Ev 108
4 Reverend Gill Jackson, Director, Social Responsibility, Diocese of Leicester, dated 17 August 2006	Ev 108
5 Campaign to Close Campsfield and the Barbed Wire Britain Network to End Refugee and Migrant Detention, dated September 2006	Ev 109
6 Your Homes Newcastle, dated 6 September 2006	Ev 111
7 Rev Dr Iain Whyte, dated 8 September 2006	Ev 112
8 Ingrid Eades, dated 20 September 2006	Ev 112
9 Members of The Britain Zimbabwe Society, dated 9 September 2006	Ev 113
10 The Commission for Racial Equality, dated 29 September 2006	Ev 117
11 Coventry Peace House, dated 28 September 2006	Ev 125
12 Refugee Action, dated 29 September 2006	Ev 126
13 Medact, dated 12 October 2006	Ev 134
14 Barnado's, dated September 2006	Ev 139
15 John Horgan, dated 14 September 2006	Ev 142
16 Dr Helen Bolderson, dated 21 September 2006	Ev 143
17 London Detainee Support Group, dated 22 September 2006	Ev 148
18 The Terrence Higgins Trust, dated 22 September 2006	Ev 151
19 Southampton and Winchester Visitors Group, dated 25 September 2006	Ev 154
20 The Warwickshire Monthly Meeting Asylum Group (Quaker), dated 25 September 2006	Ev 156
21 The Reaching Out Project, Medact, dated 29 September 2006	Ev 160
22 The Lambeth Primary Care Trust, dated 29 September 2006	Ev 164
23 Doctors for Human Rights, dated 4 October 2006	Ev 169
24 The Law Centre (NI), dated 3 October 2006	Ev 170
25 Barbara Barnes, dated 25 September 2006	Ev 176
26 The National Asylum Commission, dated 25 September 2006	Ev 179
27 Psychologists Working with Refugees and Asylum Seekers (PSYRAS), dated 26 October 2006	Ev 180
28 Refugee Resource, dated 27 September 2006	Ev 182
29 The British Red Cross Society, dated 5 October 2006	Ev 185
30 Bail for Immigration Detainees, dated 5 October 2006	Ev 189
31 The Refugee Council, dated 5 October 2006	Ev 201
32 The Black and Minority Ethnic Health Forum in Kensington and Chelsea and Westminster, dated 1 October 2006	Ev 206
33 The Children's Society, dated 29 September 2006	Ev 210
34 The Zimbabwe Association, dated 2 October 2006	Ev 213
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36 Medical Justice, dated 29 September 2006	Ev 220
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41 The Settle Monthly Meeting of the Religious Society of Friends (Quakers), dated 27 September 2006	Ev 236
42 The African HIV Policy Network, dated 28 September 2006	Ev 238
43 Asylum Support Appeals Project, dated 28 September 2006	Ev 242
44 The Mapesbury Clinic, dated 28 September 2006	Ev 247
45 The British Psychological Society, dated 29 September 2006	Ev 250
46 Médecins du Monde, dated 29 September 2006	Ev 254
47 The Association of Visitors to Immigration Detainees, dated 29 September 2006	Ev 261
48 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), dated 29 September 2006	Ev 269
49 The Housing and Immigration Group, dated 29 September 2006	Ev 272
50 The National AIDS Trust	Ev 276
51 Pollokshaws Framework for Dialogue Group, dated 7 September 2006	Ev 286
52 Hojjat Masouleh	Ev 287
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54 Reverend Mary Taylor	Ev 288
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56 The Children's Commissioner for England on behalf of the Children's Commissioners for England, Scotland, Wales and Northern Ireland, dated 2 October 2006	Ev 315
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58 The Bail Circle of the Churches' Commission for Racial Justice, dated 9 October 2006	Ev 337
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79 Robin Esser, Executive Managing Editor, The Daily Mail, dated 27 December 2006	Ev 447
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82 Bail for Immigration Detainees, dated 19 January 2007	Ev 457
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, dated 23 January 2007	Ev 459
84 The London Borough of Hillingdon, dated 1 January 2007	Ev 460
85 The Children's Society's Young Refugees North East Project in Newcastle, dated 15 February 2007	Ev 468
86 The Immigration and Nationality Directorate, Home Office, dated 12 February 2007	Ev 470
87 The GMB London Region, dated 19 February 2007	Ev 482
88 Alistair Burt MP, dated 19 February 2007	Ev 482
89 The Rt Hon. Rosie Winterton MP, Minister of State for Health Services, Department of Health, dated 17 February 2007	Ev 484
90 Equality and Diversity Forum, dated 22 January	Ev 485
91 The Scottish Refugee Policy Forum, dated February 2007	Ev 488
92 Mr Liam Byrne MP, Minister of State for Nationality, Citizenship and Immigration, Home Office, dated 5 March 2007	Ev 490
93 Mr Liam Byrne MP, Minister of State for Nationality, Citizenship and Immigration, Home Office, dated 9 March 2007	Ev 493
94 Scottish Refugee Council, dated 15 March	Ev 495



# Reports from the Joint Committee on Human Rights in this Parliament

The following reports have been produced

## Session 2006–07

First Report	The Council of Europe Convention on the Prevention of Terrorism	HL Paper 26/HC 247
Second Report	Legislative Scrutiny: First Progress Report	HL Paper 34/HC 263
Third Report	Legislative Scrutiny: Second Progress Report	HL Paper 39/HC 287
Fourth Report	Legislative Scrutiny: Mental Health Bill	HL Paper 40/HC 288
Fifth Report	Legislative Scrutiny: Third Progress Report	HL Paper 46/HC 303
Sixth Report	Legislative Scrutiny: Sexual Orientation Regulations	HL Paper 58/HC 350
Seventh Report	Deaths in Custody: Further Developments	HL Paper 59/HC 364
Eighth Report	Counter-terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005	HL Paper 60/HC 365
Ninth Report	The Meaning of Public Authority Under the Human Rights Act	HL Paper 77/HC 410
Tenth Report	The Treatment of Asylum Seekers: Volume I Report and Formal Minutes	HL Paper 81-I/HC 60-I
Tenth Report	The Treatment of Asylum Seekers: Volume II Oral and Written Evidence	HL Paper 81-II/HC 60-II

## Session 2005–06

First Report	Legislative Scrutiny: First Progress Report	HL Paper 48/HC 560
Second Report	Deaths in Custody: Further Government Response to the Third Report from the Committee, Session 2004–05	HL Paper 60/HC 651
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume I Report and Formal Minutes	HL Paper 75-I/HC 561-I
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume II Oral and Written Evidence	HL Paper 75-II/HC 561-II
Fourth Report	Legislative Scrutiny: Equality Bill	HL Paper 89/HC 766
Fifth Report	Legislative Scrutiny: Second Progress Report	HL Paper 90/HC 767
Sixth Report	Legislative Scrutiny: Third Progress Report	HL Paper 96/HC 787
Seventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 98/HC 829
Eighth Report	Government Responses to Reports from the Committee in the last Parliament	HL Paper 104/HC 850
Ninth Report	Schools White Paper	HL Paper 113/HC 887
Tenth Report	Government Response to the Committee's Third Report of this Session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters	HL Paper 114/HC 888

Eleventh Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 115/HC 899
Twelfth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006	HL Paper 122/HC 915
Thirteenth Report	Implementation of Strasbourg Judgments: First Progress Report	HL Paper 133/HC 954
Fourteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 134/HC 955
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 144/HC 989
Sixteenth Report	Proposal for a Draft Marriage Act 1949 (Remedial) Order 2006	HL Paper 154/HC 1022
Seventeenth Report	Legislative Scrutiny: Eighth Progress Report	HL Paper 164/HC 1062
Eighteenth Report	Legislative Scrutiny: Ninth Progress Report	HL Paper 177/ HC 1098
Nineteenth Report	The UN Convention Against Torture (UNCAT) Volume I Report and Formal Minutes	HL Paper 185-I/ HC 701-I
Twentieth Report	Legislative Scrutiny: Tenth Progress Report	HL Paper 186/HC 1138
Twenty-first Report	Legislative Scrutiny: Eleventh Progress Report	HL Paper 201/HC 1216
Twenty-second Report	Legislative Scrutiny: Twelfth Progress Report	HL Paper 233/HC 1547
Twenty-third Report	The Committee's Future Working Practices	HL Paper 239/HC1575
Twenty-fourth Report	Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention	HL Paper 240/HC 1576
Twenty-fifth Report	Legislative Scrutiny: Thirteenth Progress Report	HL Paper 241/HC 1577
Twenty-sixth Report	Human trafficking	HL Paper 245-I/HC 1127-I
Twenty-seventh Report	Legislative Scrutiny: Corporate Manslaughter and Corporate Homicide Bill	HL Paper 246/HC 1625
Twenty-eighth Report	Legislative Scrutiny: Fourteenth Progress Report	HL Paper 247/HC 1626
Twenty-ninth Report	Draft Marriage Act 1949 (Remedial) Order 2006	HL Paper 248/HC 1627
Thirtieth Report	Government Response to the Committee's Nineteenth Report of this Session: The UN Convention Against Torture (UNCAT)	HL Paper 276/HC 1714
Thirty-first Report	Legislative Scrutiny: Final Progress Report	HL Paper 277/HC 1715
Thirty-second Report	The Human Rights Act: the DCA and Home Office Reviews	HL Paper 278/HC 1716