



House of Lords
House of Commons
Joint Committee on
Human Rights

Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers

Seventeenth Report of
Session 2006–07

*Report, together with formal minutes and
appendix*

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Joint Committee on Human Rights

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1 Report

Under cover of a letter dated 14 June 2007 from Liam Byrne MP, Minister of State for Immigration, Citizenship and Nationality, we have received the Government's Response to our Tenth Report of this Session, *The Treatment of Asylum Seekers* (HL Paper 81, HC 60). We publish this Response as an Appendix to this Report. We will comment as appropriate on this Response in future Reports which we publish dealing with asylum issues.

Appendix

Memorandum dated 14 June 2007 from Liam Byrne MP, Minister of State, Home Office

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)

We accept that the development of asylum policy should proceed on the basis of evidence. We believe that evaluating the impact of changes is an important part of the policy development process and we accept the benefit of publishing evidence where possible. It is important to highlight that the responsibility to protect the public and secure our borders requires in a number of instances that policy solutions be developed quickly. We remain firmly of the view that in these cases it continues to be essential to proceed on the basis of evidence, but within the context of tackling urgently any abuse of the immigration and asylum system.

Our border and immigration policies reflect the objectives and commitments which were set out in the July 2006 IND Review 'Fair, effective, transparent and trusted - Rebuilding confidence in our immigration system':

- Strengthen our borders; use tougher checks abroad so that only those with permission can travel to the UK; and ensure that we know who leaves so that we can take action against those who break the rules.
- Fast track asylum decisions, remove those whose claims fail and integrate those who need our protection.
- Ensure and enforce compliance with our immigration laws, removing the most harmful people first and denying the privileges of Britain to those here illegally.
- Boost Britain's economy by bringing the right skills here from around the world, and ensuring that this country is easy to visit legally.

(Border and Immigration Agency is the new name for IND since 1 April reflecting the move to agency status)

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)

A person who wishes to claim asylum should do so at the point of arrival in the UK where screening will usually then be carried out. Those who have entered the UK before applying for asylum will be screened at an Asylum Screening Unit. Asylum Screening Units are

located at Croydon and Liverpool. We are currently considering whether improvements could be made to existing screening arrangements.

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)

The consideration of applications for support under section 95 of the Immigration and Asylum Act 1999 is part of the end to end management of new asylum applications. In all new cases, applications are passed directly to the case owner in a regionally managed asylum team who is responsible for their case. Upon receipt of the application, if the applicant is not already in receipt of section 98 support, case owners will be able to assess whether the applicant appears to be destitute and in need of initial accommodation. Case owners having close contact and control over their cases will improve the efficiency with which applications for asylum support are made and considered. Each applicant has contact details of their case owner with whom they can get in touch during normal working hours in addition to the regular reporting events. Case owners are assisted in the processing of asylum support cases by other members of their asylum team.

The Government accepts that in the past, and particularly during 2005 and the first part of 2006, unacceptable delays occurred in the provision of support under section 4 of the Immigration and Asylum Act 1999. This was because the numbers of applications for support increased significantly and rapidly, from a few hundred to more than 14,000, and backlogs built up as the staff and systems in place at that time struggled to keep pace.

A range of improvements has been put in place since then. The number of staff considering initial applications in the central section 4 team has more than doubled, and applications are now recorded and processed on the ASYS system (the main IT system for asylum support) rather than a stand alone database, as was previously the case. Turnaround times for initial applications are monitored regularly. A prioritisation system exists which enables applications from those who are street homeless or who have medical conditions to be considered first. In addition, there are enquiry telephone lines, the numbers of which are known to the voluntary sector, which enable representatives to check on the progress of particular applications if necessary. Significant improvements in turnaround times have been made. In January 2006 there was a backlog of more than 700 unactioned cases, with applications dating back to October 2005. We have now reached the position that around 40% of the most urgent cases are decided within 2 days, and a frictional backlog of about one to two weeks' work exists for the less urgent cases

Since 1 May 2007, regional asylum teams have considered all applications for section 4 support from applicants whose asylum claims they handled. This has increased further the number of staff trained to consider such applications, and should lead to further improvements in turnaround times.

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)

During the 55 day Foundation Training Programme, case owners are given an overview of asylum support, with a focus on the details they need to know. Other members of the asylum teams who assist case owners, receive more specific training, as it is they who deal with asylum support, working through a number of asylum support issues. There are also experienced case owners in the asylum teams within the regions available to give further guidance and support as required.

Training for members of the new asylum teams is subject to continuous review and improvement.

In addition to training materials, members of asylum teams have access to comprehensive written guidance on all aspects of asylum support through an intranet which has a dedicated section specifically for asylum support.

The intranet also offers a forum by which case owners and those involved in the determination of support can offer feedback where they feel there are shortcomings in the process or where they or their managers feel training or development issues exist.

Teams are currently being recruited who will look at the quality aspects of the asylum teams' work. These teams will enable us to better monitor and feedback to asylum teams the quality of the support work carried out.

Regarding advice and information for asylum seekers, their case owner is now the single point of contact for applicants throughout the asylum process. Within a few days of applying for asylum the applicant will meet with their case owner. At this first reporting event, the case owner explains to the applicant how the asylum process works and answers any questions. They also provide information about how to seek access to legal representatives. The applicant is able to contact their case owner at any stage during the asylum process. Accommodation providers and voluntary sector organisations also deliver briefings to applicants about the asylum process and applicants' rights and responsibilities whilst they are in the UK.

The Border and Immigration Agency is currently working with accommodation providers and voluntary sector organisations to ensure that briefing materials are up-to-date. Asylum applicants who are granted leave to remain are provided with a range of information about the terms of their leave, their entitlements and how to access relevant services. Entitlements depend on the type of leave they have been granted – for example, those who are granted asylum (refugee leave) or humanitarian protection are provided with an Integration Loan

Application Form relating to a scheme which from 12 June will consider applications for interest free loans to be used on items and activities that facilitate integration.

5. The continued use of the section 55 provision to deny support in subsistence-only cases leaves many asylums 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 judgement, and is in clear breach of Article 3 ECHR. We recommend that section 55 be repealed. (paragraph 92)

Section 55 of the Nationality, Immigration and Asylum Act 2002 prevents the provision of asylum support to asylum claimants who did not make their asylum claim as soon as reasonably practicable after their arrival in the United Kingdom. It was introduced as part of a wider package of measures aimed at tackling abuse of the asylum system and removing incentives to the making of non-genuine claims for asylum. The sooner an asylum claim is made, the sooner the processing of it can begin and the greater the chance of being able to obtain factual information and travel documents which will assist in the determination of the claim.

There have always been a number of safeguards built into section 55 to protect the vulnerable. Most significantly, it does not prevent the provision of support if it would be a breach of human rights not to provide it. Moreover, it does not prevent a person from receiving medical treatment in the United Kingdom. The Government recognises the concerns about potentially increased levels of destitution as a result of section 55. However, support is not refused under section 55 to any person who does not have alternative support available, including overnight shelter, adequate food and basic amenities.

There are no plans at present for section 55 to be repealed.

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).

The Government is committed to ensuring that unsuccessful asylum seeking families do not remain in the UK indefinitely. We consider that voluntary returns are by far the more dignified way of making a return for the families concerned.

Under the section 9 staged pilot process, special care was taken to inform and engage with families, to ensure that they fully understood the requirement to cooperate with a voluntary return, how to do this, and the implications of not doing so. This engagement allowed individual families the opportunity to identify to the Border and Immigration Agency any European Convention on Human Rights (ECHR) issues where it would not be appropriate for support to be discontinued.

Families were provided with details of voluntary return packages at each stage of the process. Parents are free to take appropriate steps to leave the country. Sections 17 or 20 of

the Children Act 1989 provide a legal framework for a local authority to support children if parents fail to take those steps, and if it is necessary to avoid a breach of ECHR rights.

The results of the pilot suggest that section 9 was not effective as a standalone measure. However, since the introduction of section 9 there have been a number of significant developments in relation to the management of asylum applications and assisted voluntary returns – including the new process for asylum decision making and the enhanced assisted voluntary returns scheme.

The Government accepts this is a tough policy and acknowledges the concerns that have been raised. It must however remain our priority to increase the voluntary returns of families who no longer have a right to remain in the country. We do not accept that it would be right for people refused asylum to be supported indefinitely when they are choosing not to return to a home country that has been found safe for them to live in.

The agenda for reform within the Border and Immigration Agency delayed the evaluation of the pilot. The Immigration Minister, in evidence taken for the enquiry, made a commitment to publish the evaluation report over the next few months, once he had had opportunity to test the conclusions.

Section 44 of the Immigration, Asylum & Nationality Act 2006 provides for the repeal of section 9 by order. Section 44 has not been commenced and, prior to completion of the section 9 review, it would be premature to bring this section of the Act into force.

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.

There are some tribunals for which Community Legal Service (CLS) funding for representation is routinely available, for example those which discuss particularly complex legal points or where an appellant suffers from mental incapacity and it would therefore be difficult for a user to represent him or herself.

However, in most tribunal proceedings it should not be necessary for a user to be represented. Tribunals are not courts – the majority are inquisitorial in nature, questioning the user to find out relevant information rather than relying on the user to present an argument. Tribunal hearings in most cases are intended to avoid being complex and legalistic. This means that tribunal users should be able to present evidence by themselves. In the case of appeals before the Asylum Support Tribunal (AST), we accept that many appellants will have little or no knowledge of English. Qualified interpreters are provided for appellants to ensure that they can fully understand the questions put to them at the

hearing, and can provide the evidence necessary for an independent decision to be reached on their appeal.

The Government does not believe it appropriate to extend CLS funding for representation to asylum support appeals. Providing public funding for representation at asylum support appeals would be disproportionate to the complexity of the issues and evidence under consideration. Furthermore, it would be significantly out of step with existing, and developing, context for CLS immigration funding.

It should be remembered, however, that funding for general legal advice (falling short of advocacy) is available to those who qualify financially, under the Legal Help scheme. This would potentially include appellants before the AST. The scheme allows legal aid solicitors to advise clients on tribunal procedures and can include the provision of written or oral advice, obtaining counsel's opinion if appropriate, and the preparation of a case to present at a tribunal. In addition, the Lord Chancellor has the power, on receipt of a recommendation from the Legal Services Commission (LSC), to authorise "exceptional funding" for representation under the Access to Justice Act 1999 s.6(8)(b) in those few cases where representation may be essential for a fair hearing, and where no other sources of help can be found.

Home Office policy is to provide travel costs for those who need to attend a hearing before the Asylum Support Adjudicators (now the Asylum Support Tribunal). If it is not possible for the appellant to arrive in time for his/her appointment if s/he were to set off at 6.30am, arrangements are made for the person to travel to the location the day before the appointment and provided with overnight accommodation in the local area. These provisions are published in guidance to case workers contained in Asylum Support Policy Bulletin 28.

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

It is true that the number of contracts held in the immigration category of law has decreased significantly, from 644 in 2003 to 367 in 2006. There are a number of reasons for this including action taken by the LSC to exclude suppliers who do not meet required standards of performance and reduced demand. In line with the fall in the number of people applying for asylum the LSC is committed to establishing a smaller, increasingly quality assured, supplier base remaining sufficient to meet need.

The LSC monitors the supply of publicly funded immigration and asylum services across the country to ensure that supply is sufficient to meet demand based on the latest intake figures. Contingency measures are introduced in any potential risk areas. However, the LSC remains committed to ensure that only high quality advice that is of benefit to the client is paid for from public funds and any such contingency measures will not be allowed to compromise quality requirements.

Where the LSC is aware that there are problems with the supply of immigration advisers, measures are taken to address them. The LSC can take the following general steps to ensure that there is sufficient capacity to meet demand in each area:

- increase the allocation of new matter starts to existing suppliers.

- award new contracts to other law firms or organisations
- award new contracts to existing suppliers who wish to establish new offices in other locations;
- support existing suppliers who wish to expand their offices or recruit additional caseworkers;
- support outreach services by existing suppliers to meet demand in other locations.

Advice in relation to asylum support appeals is not only provided by immigration advisers. Such advice can also be given by providers who advise on welfare benefits matters.

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)

The Government has agreed standards and signed contracts with all our section 95 accommodation providers which ensure that there is no breach of Article 8 ECHR or Article 11 ICESCR. We would investigate any case where an asylum seeker considered that the quality and terms of their accommodation interfered with these rights.

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)

The Government view is that the provision of any cash support to unsuccessful asylum seekers is not appropriate. However, most families do get cash support until the children turn 18 or the family leave the UK. A more limited support regime endorses the message that the asylum seeker has exhausted his or her appeal rights and should take steps to leave the UK once the barrier to leaving has been resolved. The legislation does not allow cash to be provided under section 4 and it is not the Government's intention to change this.

Once appeal rights are exhausted, families remain eligible for section 95 support provided they have a child under the age of 18 in their household before the grace period ends. Individuals, childless couples and those who have a child after the grace period are eligible for section 4 support.

Support under section 4 is provided through board and lodging, or in the form of self-catering accommodation with vouchers, to the value of £35 per week, to purchase food and

essential toiletries. This is broadly in line with the level of cash support provided to asylum seekers and ensures basic living needs are met.

The vouchers issued to those in receipt of support under section 4 are primarily luncheon vouchers, supermarket payment cards or supermarket vouchers which are widely used by people who are not unsuccessful asylum seekers. They can be used at supermarkets and a variety of other outlets. Accommodation providers have negotiated for local shops to take vouchers to ensure dietary needs are met. Where practical difficulties arise with provision of support through vouchers, the Border and Immigration Agency works with the providers concerned to ensure solutions are found. The Agency is committed to quickly resolving any problems that arise and has established a mechanism for doing so within 24 hours.

Regulations under section 4(10) of the Immigration and Asylum Act 1999 will provide improved support to the most vulnerable – pregnant women, young babies and children – and those who may require support for longer than six months. The regulations will enable facilities to provide for travel to necessary medical appointments and for communications. If the Secretary of State is satisfied that a supported person has an exceptional need for certain services or facilities he may provide for that need. We plan to consult on a second draft of the regulations before the summer recess.

The Government does not accept that the section 4 voucher scheme constitutes a breach of Articles 3 and 8. Nor does it accept that the scheme could constitute a breach of Article 14 by way of discrimination on the grounds of nationality. Whilst there is different treatment as between unsuccessful asylum seekers on section 4 support and others, for example, British nationals, persons with leave and asylum seekers, it is not accepted that these comparators are in an analogous situation to those on section 4 support.

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)

We are currently undertaking a programme to transfer all people who are receiving section 4 support into accommodation which is subject to the same target contracts which apply to section 95 accommodation. The target contracts have explicit provision for maintaining appropriate accommodation standards including requirements for urgent repairs and the use of alternative accommodation. Commercial sanctions may be applied for poor performance by the provider.

Under the target accommodation contracts the accommodation provider is obliged to meet four distinct accommodation standards. The property must be: safe; habitable; fit for purpose; and correctly equipped.

The contract develops the definition of each accommodation standard and sets out what would constitute an issue of non-compliance. For example, a gas leak or flooding/free standing water within a property would designate it as “unsafe”.

Timescales are set out for the provider to address issues of non-compliance according to their severity. For a property designated as “unsafe” the accommodation provider has a response time of 2 hours.

The accommodation provider's responses to such issues are monitored and audited. Financial sanctions may be applied in certain circumstances if the accommodation provider's response has not complied fully with their contractual requirements. For example, dispersals to a particular provider can be stopped until we are satisfied that effective remedial action has been taken.

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)

A number of legal cases have clarified the law in England and Wales in respect of adult asylum seekers with care needs. The Home Office has no power to support those who have been assessed as having a need for care and attention which has not arisen solely as a result of destitution or the physical effects, or anticipated physical effects, of being destitute.

Asylum Policy Bulletin 82 provides guidance for all those involved in asylum support, including local authorities, on the handling of applications from asylum seekers who may have additional needs.

Additionally, advice has been issued to local authorities on the operation of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 which affects entitlement to section 21 of the National Assistance Act 1948 for those falling within the specified classes.

There is also guidance issued by the Department of Health on access to care services in England and Wales.

The legislative provisions in Scotland are different from those in England and Wales. Glasgow City Council considers that their powers under these provisions are more limited than the powers available to local authorities in England and Wales. In the absence of recent Scottish case law on this specific point, Border and Immigration Agency staff in Scotland working with Glasgow City Council to ensure that suitable support is available on a case by case basis.

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.

Response to recommendations 13, 14 and 15:

The Government strongly refutes the Committee's claim of a deliberate policy of destitution towards asylum seekers. The Government has consistently stated that genuine asylum seekers are welcome and has put in place considered arrangements to provide support to those in need.

In general, asylum seekers are not permitted to work whilst their claim is being considered. The Government's policy is to remove incentives for people to come to the UK to work illegally, and to maintain the integrity of managed migration routes.

The Government is committed to ensuring that there is a distinct separation between asylum processes and labour migration processes. It is essential to maintain a robust asylum process that works effectively and swiftly in the interests of refugees and is not open to abuse by those who come here to work. Other entry routes for people who want to work in the UK include the Highly Skilled Migrant Programme, the Working Holidaymakers Scheme and the Seasonal Agricultural Workers Scheme.

The EU Directive for Reception Standards for Asylum Seekers led to the amendment of the Immigration Rules which came into force on 4 February 2005. Since then, asylum seekers have been able to take up employment if a decision at first instance has not been taken on their claim within one year of the date on which it was recorded and the reason for the delay cannot be attributed to them. If an asylum seeker is granted permission to take up employment under rule 360 of the Immigration Rules then it shall only be until such time as his claim for asylum is finally determined.

Following the recent regionalisation of asylum casework, the majority of new asylum claims receive a decision within two months. An increasingly smaller proportion of people, therefore, are entitled to apply for the concession to work.

Asylum seekers are entitled to undertake voluntary activity but this should not amount to either employment or job substitution. Asylum seekers are not expected to be out of pocket as a result of volunteering, and reimbursement may be made for meal or travel costs but should not be made as a flat rate allowance.

Under section 8 of the Asylum and Immigration Act 1996, it is an offence for an employer to employ a person who requires leave to enter or remain in the UK and does not have it or has leave which is subject to a condition prohibiting employment.

Those who are recognised as a refugee and granted asylum can work here legally. The Government welcomes the enormous contribution that the skills and knowledge of genuine refugees makes to our society and economy.

With regard to appeal processing timescales, it is of course right that appellants should expect a speedy resolution of their asylum appeal. The introduction of the single tier of appeal under the Asylum and Immigration Tribunal (AIT) in April 2005 has significantly reduced the timescales for the determination of asylum appeals.

We do accept that a small portion of appeals will take over 12 months to reach a final conclusion after receipt at the Tribunal. Adjournments are often sought by claimants and legal points are usually raised by them. It would not be correct to see claimants obtaining the right to work by raising enough points to prolong the consideration of their cases over periods of 12 months or more.

For some time the LSC, Home Office and service providers have been concerned that the asylum determination process is weighted against early resolution. There are a significant proportion of asylum claims refused at initial stage, which are subsequently overturned by an Immigration Judge. This can result in not only increased and wasted expense but also distress and anguish for genuine claimants.

LSC has, since November 2006, been piloting arrangements that involve the front loading of legal advice and assistance in asylum cases. Under the pilot scheme the asylum interview will represent the last rather than the first opportunity for asylum claimants to ensure clarity and agreement, where possible, on the issues in dispute.

The legal representative and the Home Office case owner will work together to ensure that in the vast majority of cases all factual issues are put into account and that the full case has been presented before the end of the interview. The legal representative will participate fully in the interview. If disputes continue to remain at the end of the interview then a decision can still be made and, if refused, there may be an appeal to the AIT in the normal way. The issues for consideration before the Immigration Judge will be more clearly focused. The pilot is due for evaluation shortly and consideration is being given to extending it for a longer period.

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 of life. Moreover, consequent increased reliance on A&E as a substitute is more expensive, increases 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)

Note: recommendation 21 (paragraph 159) is shown separately below.

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 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)

Response to recommendations 16-20, 22-25

When Department of Health Minister, the Rt Hon Rosie Winterton, gave evidence to the Committee on February 5th she was not in a position to give a date by which a conclusion could be reached on the various issues relating to access to healthcare by overseas visitors.

Shortly afterwards, on March 7th, the Home Office published *Enforcing the rules: A strategy to ensure and enforce compliance with our immigration laws*, which commits Department of Health and the Home Office jointly to undertake a review of access to the NHS by foreign nationals. The review is due to be completed by October. A programme of communication and good practice to help the NHS to implement any new rules flowing from this review will be completed by September 2008. Rosie Winterton wrote to the committee on March 20th to draw their attention to this but it appears that this was too late for them to take account of in their report.

Subsequent work to determine the detailed scope of the review has taken into account the comments and recommendations of the JCHR, and the review will look at all the healthcare issues raised by the committee's report. The aims of the review in relation to primary medical services will be to establish clear rules which are, wherever possible, consistent with the rules relating to secondary care. Any new rules will take into account the key preventative and public health role of NHS primary medical care as well as international laws and humanitarian principles.

We acknowledge that the existing rules regarding eligibility for primary medical services are unclear and leave much to the individual discretion of GPs and practices. The response to the 2004 consultation was divided and highlighted the links between a range of complex and sensitive issues including asylum, migration, citizenship, public health, ID cards and equality.

The review will take into account the responses to the 2004 consultation and we are committed to ensuring that any new rules are both fair to UK citizens and to foreign nationals, offer value for money and can be implemented effectively in primary care settings.

In relation to secondary care, the review will focus on specific issues which have arisen since the *NHS (Charges to Overseas Visitors) Regulations 1989* were amended in 2004, including the position of failed asylum seekers, asylum seeking children, and the UK's obligations under international law. It will also look at public health issues, humanitarian issues and cost implications, as well as investigating ways in which the NHS can better protect its resources for those entitled to use them, and work more closely with the Border and Immigration Agency to identify those who are not.

As Rosie Winterton said during her evidence to the Committee, an equality impact assessment will also be carried out as part of this review process, in relation to both primary medical services and secondary care.

Additional response to recommendation 19

The Government's approach is in accordance with our obligations under the European Convention on Human Rights (ECHR), on which there is extensive case law both domestic and from the European Court of Human Rights. It can be a breach of Article 3 of the ECHR to remove someone from the UK if to do so would amount to inhuman or degrading treatment on account of the suffering caused as a result of their medical condition, but the threshold for inhuman and degrading treatment in such cases is very high. Persons who are in the final stages of a terminal illness and would not have access to medical care to prevent acute suffering while they are dying, or who would face imminent death without medical or other support if returned to their home country, would however be likely to meet that threshold, in which case they would be granted Discretionary Leave to remain in the UK.

The House of Lords case of *N* clearly establishes that states are under no obligation to allow those otherwise liable to removal to remain in their territories for the purpose of receiving medical treatment. It would be unfair to those suffering from other serious conditions to offer a special concession to those with a particular condition such as HIV/AIDS.

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)

The National Service Framework for Children, Young People and Maternity Services sets out clear standards for children's health and social care services, and for promoting the health and well being of children and young people. Children who are claiming asylum in their own right or as part of a family group are entitled to access NHS services without charge, with individual treatment like all NHS care subject to clinical judgement and waiting lists. This is in line with the UN Convention on the Rights of the Child. Some healthcare for failed asylum seeking children may be subject to a charge. However this policy is being looked at as part of the Review of access to the NHS by foreign nationals.

Children claiming asylum as part of a family group who are in need of accommodation and subsistence support, can access DH funded health assessments while in initial accommodation provided by the Home Office. Generally, where a young person is an asylum seeker then a health assessment, whether in initial accommodation or on registering with a GP practice, should take into account their specific circumstances such as whether they have been immunised in their home country. The Department of Health *Framework for the Assessment of Children in need and their families* is also useful for assessing the needs of asylum seeking children and delivering a multi agency approach in response.

When unaccompanied asylum seeking children become looked after then local authority children's services are responsible for providing them with the same services as any other young person in care. This policy is the responsibility of DfES. All children in care must have a care plan based on an assessment of their needs setting out the arrangements that the local authority will make to ensure that the full range of their needs, which must include health needs, are met. This plan is referred to as a "pathway plan" when young people are aged 16+. When young people first enter local authority care then as part of the assessment process they must be offered the opportunity of accessing a health assessment undertaken by a suitably qualified medical practitioner. The findings from this assessment must then form the basis for the health module of a young person's care/pathway plan.

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 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)

We believe that effective immigration control could be compromised were we to withdraw or narrow the extent of the general Reservation with regard to matters of immigration or nationality. The partial reservations entered by other states demonstrate that the United Kingdom is not alone in this belief. But we must consider the need for a Reservation within the context of the law and practice of the United Kingdom rather than how other states believe it affects them. Removal of the Reservation would allow others an additional opportunity to intervene in immigration processes. These all too often are an attempt to frustrate effective immigration control and in a way that evidence suggests is not supported by the courts. We do not believe that the effect of the Reservation extends beyond matters of immigration and nationality by reason of the domestic legislation which applies equally to all children within the United Kingdom's boundaries no matter their immigration status or citizenship.

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)

We believe that maintaining an effective immigration control is in the public interest and removing the Reservation would prejudice this. Furthermore, we believe that the domestic legislation which has been put in place to protect children, sends out a very strong message that the United Kingdom takes these matters seriously and is sincere in its efforts to ensure the welfare of all children within our jurisdiction. The Government is clear that the responsibility for achieving this is best delivered through local authorities using existing legislation.

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)

The Government's position was outlined by the Immigration Minister in the House of Commons on 9th May 2007 [Hansard col. 235].

The Government's commitment to ensure that the welfare of migrant children is appropriately taken into account is shown by the development of the Border and Immigration Agency's 'Child Safeguarding Strategy'. This will provide a framework which helps ensure coherence and consistency in the Agency's safeguarding arrangements. The statutory Chief Inspector of Immigration will be asked to look closely at the implementation of the strategy.

We are reviewing the argument that the Border and Immigration Agency's responsibilities towards children should be placed on a statutory footing. We are not, however, convinced that section 11 of the Children Act 2004 provides the appropriate means of achieving this. One reason is that although the section 11 duty is qualified, the general nature of the duty and its breadth make it very likely that it would provide further grounds on which the challenges to frustrate immigration control decisions would be based. Another reason is that the section 11 duty applies only to England whereas the Border and Immigration Agency performs its functions throughout the United Kingdom.

The Home Office, in consultation with the Department for Education and Skills, is considering whether there is a practical alternative to adoption of the section 11 duty.

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)

The support arrangements for unaccompanied asylum seeking children are the responsibility of local authorities. It is important, however, that the existing statutory guidance from central government is applied consistently. The need for consistency in service provision is one of the themes of the Government's consultation paper on proposed

changes to the immigration and support system for this group of young people: “Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children”. We believe our key proposals around the need to place the young people only with selected local authorities that have the specialist infrastructure to deal with their particular needs will go a long way towards raising standards of support and care.

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)

We do not accept that the needs of these young people are compromised by a general lack of resources or a political and policy context that affords them little priority. The Border and Immigration Agency currently spends about £140 million each year on reimbursing local authorities for the costs of supporting nearly 6,000 unaccompanied asylum seekers aged under 18. It is the case that some local authorities, especially those in London and the South-East of England, face budgetary pressures caused by the concentration of disproportionately high numbers in their areas. There is also a more general concern about funding leaving care assistance when the young people turn 18. We are committed to addressing these issues and our consultation paper proposes a range of solutions. The consultation period ended on 31 May and we are examining the responses before publishing our plan for the way forward.

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)

We do not accept that all separated children need a “legal guardian” or that the terms of the EU Reception Directive requires us to provide one . Any child who is unaccompanied and in need of support would be referred to a local authority to be assessed under the Children Acts 1989 and 2004

Unaccompanied Asylum Seeking Children are supported by local authorities in the same way as children who are British citizens. Their needs are assessed and they are provided support accordingly. We are satisfied that local authorities provide the support that UASC need and that the support provided is underpinned by the appropriate legislation.

In addition to the support provided by local authorities, UASC are referred to the Children's Panel of the Refugee Council by the Border and Immigration Agency. The Panel provides independent guidance and support to the young person helping them to navigate the asylum system.

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)

The UN Convention on the Rights of the Child was carefully considered while we were drawing up our plans for reform. We believe our proposals are fully consistent with the Convention.

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)

The Government takes extremely seriously the issue of age assessment and fully recognises the risks attached to a wrong assessment. However, the determination of age is a complex and often inexact science, 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.

The Border and Immigration Agency needs to be clear about the age of an asylum applicant in order to apply the correct asylum policies and processes and the type of support that an applicant is entitled to. Unfortunately some applicants are aware that there are more generous policies and process for children, which they seek to benefit from.

The Border and Immigration Agency recognises as a minor a person under the age of 18 or who, in the absence of documentary evidence establishing age, appears to be under that age.

Where an applicant claims to be a minor but his/her appearance strongly suggests that he/she is over 18, the applicant is treated as an adult until such a time as credible documentary or other persuasive evidence is produced which demonstrates the age claimed.

In borderline cases, the benefit of the doubt will be given, and the applicant treated as a minor.

The Border and Immigration Agency works very closely with local authorities on age disputed cases. A Merton compliant age assessment carried out by a local authority that

establishes the applicant as under 18 years of age at the time of their asylum application will be accepted as evidence of their age unless BIA:

- has documentary evidence which has not been taken into account that the applicant is an adult; or
- has reasons to doubt that the age assessment refers to the applicant in question; or
- is not satisfied that a full assessment has been carried out.

The very limited circumstances under which children can be detained under immigration powers is set out in response to Recommendations 42 and 43.

An age disputed applicant will only be subject to detention or detained fast-track processes if the Border and Immigration Agency is satisfied that:

- i) there is credible and clear documentary evidence they are 18 or over; or
- ii) a full Merton-compliant social services age assessment is available stating that they are 18 or over; or
- iii) their physical appearance/demeanour very strongly indicates that they are significantly over 18 and no other credible evidence exists to the contrary.

In recognition of the difficulties around assessing age the Border and Immigration Agency has recently introduced a new process for processing asylum claims from those whose age is in dispute. A dedicated segment has been designed within the end to end asylum process specifically for these cases.

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).

Admission to children's services is a matter for local authorities, but we would naturally encourage a local authority to provide accommodation if they have a doubt about a young asylum seeker's age and a final decision cannot be made immediately. We do not accept the comments on x-rays. It is true that x-rays are incapable of assessing age with absolute precision, but neither are any other assessment techniques. The margin of error associated with x-rays appears to be considerably smaller than other techniques. This is, however, an issue on which we are consulting. As part of that consultation process we are also considering the ILPA findings. Some of their recommendations, including the suggestion that regional age assessment centres are established and staffed by people with a particular expertise in this area, have some similarities with our own proposals. We are in agreement with ILPA that age assessment processes do need to be improved

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

Staff training takes into account the diverse nature of the removal centre population and this requires the provision of background information about the many different cultures staff are likely to come into contact with. Those tasked with running our centres are required to deliver human rights and diversity training to all their staff.

Staff employed in the admissions process are trained to recognise behaviour and signs that indicate anxiety, distress or risk of self-harm and systems are in place to ensure that information about such individuals is recorded and relayed to the health care team and others responsible for the care of the detainee. Immigration removal centres must implement training and refresher training programmes which include, but are not limited to:

- communication and interpersonal skills, including with children where necessary
- values and principles underpinning the treatment of detainees
- race awareness training
- suicide awareness
- child care, protection and supervision.

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)

The detained fast track process is not arbitrary. Any asylum claim, whatever the nationality of the claimant, may be fast-tracked where it appears after screening to be one that may be decided quickly. In assessing suitability for the fast track process, a number of groups are considered unsuitable for example: pregnant females of 24 weeks and above and those with a medical condition which requires 24 hour nursing or medical intervention; or where there is independent evidence that the claimant has been tortured or the claimant is an unaccompanied asylum seeking child. The Court of Appeal in the UK has said that it did not consider the system itself is inherently unfair and so long as it operates flexibility it can operate without an unacceptable risk of unfairness.

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 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)

Immigration detention is a legitimate element of maintaining an effective immigration control.

Individuals are not detained simply for having claimed asylum. Detention is normally used: initially, whilst a person's identity and basis of claim is established; where there are reasonable grounds for believing that a person will fail to comply with the conditions of temporary admission or release; as part of a fast-track asylum process; or to effect removal.

In *R (Saadi) v Secretary of State for the Home Department* [2002] 1 WLR 3131 the House of Lords considered the lawfulness of detaining asylum claimants pursuant to the fast-track process at Oakington, for the sole purpose of deciding their claims quickly. Their Lordships concluded that detention for the purpose of claims being decided quickly was lawful both within the Immigration Act 1971 and under Article 5 of the European Convention on Human Rights. Although the matter is currently before the Grand Chamber of the European Court of Human Rights, whose final judgement is now awaited, the finding of the House of Lords was upheld by the European Court of Human Rights in July 2006.

A time limit of 7 days in detention is not practicable. If the claim is one that may be certified as clearly unfounded, then an initial decision will invariably be made and served within 14 days of the date of entry to the process. If the claim is certified there is no in-country right of appeal and it will often be appropriate to maintain detention to enforce removal from the UK. If the claimant enters a fast track process with an in-country right of appeal then it is possible to move more quickly at the initial decision stage and the claim will normally be decided and served within 7 days. However, it will normally be appropriate to maintain detention throughout the fast-track appeals process and beyond but every case is judged on its merits and detention reviews are regularly completed. In addition, the detainee may apply for bail and an Immigration Judge may decide that the case should be taken out of the fast track process and this will normally trigger the release of the detainee from detention.

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.

To ensure that clients in the process have early access to quality legal advice and representation, the LSC runs duty representative schemes at Harmondsworth, Oakington and Yarl's Wood removal centres. Fast track advice is provided through 'Exclusive Contract Schedules'. Services are awarded in this way to those organisations that can demonstrate they are able to offer the best service to clients through skilled and experienced staff, effective supervision arrangements and a good track record of audit with the LSC. Only suppliers who have an LSC contract and who have gone through an additional tendering process are able to provide publicly funded advice under the scheme.

The LSC is currently piloting the provision of regular on-site advice surgeries to individuals who are detained to ensure that those who have not received legal advice, or who no longer have a legal adviser and who require advice, will be able to access advice. Initial findings have been that the service was successful in providing detainees with access to prompt, quality legal advice.

We recognise that it is important that prompt legal advice is available to assist appellants with their case and the LSC has sponsored the Immigration Law Practitioners Association (ILPA) to develop a best practice guide for fast track cases.

Suppliers are given devolved powers to grant Controlled Legal Representation (CLR) in fast track cases. A tender process will take place later this year in relation to the provision of advice services for those who are detained in Immigration Removal Centres.

The Committee additionally raises concerns about the use of the merits test in fast track cases and cites a number of witnesses who call for it to be removed from the process. The merits test for representation at the Tribunal has been in existence since representation at appeal and bail hearings was brought into the scope of legal aid in January 2000. For funding to be granted the prospects of success have to be moderate or better which is defined as clearly over 50%. However, in asylum cases, if the prospects of success and merits of the case are borderline or unclear, then funding can still be granted if the case has wider public interest or is of overwhelming importance to the applicant. Where a case has a poor prospect of success, the fact that making or pursuing an application or representations will in itself prolong a client's right to remain in the UK will not be treated as a sufficient benefit to continue with public funding.

It is inevitable that in any system of merits testing there will be applicants with poor cases who do not receive publicly funded representation. The LSC's guidance to suppliers on the Fast Track scheme states that where the client's substantive appeal lacks merit and would not warrant the grant of funding for the appeal, the case may still merit the grant of funding for a bail application.

The government believes that removing the test would contradict its aim of ensuring that public funding is targeted on cases with merit and that weak cases are not supported. We need to make best use of limited resources by ensuring that only cases with merit are funded and that those genuine applicants are adequately supported through the process.

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 acknowledged 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 in place to improve current practice (paragraph 236)

The Border and Immigration Agency's policy is that detention may not be appropriate in certain circumstances but detention is not ruled out per se. For example, pregnant women should not normally be detained although the exception to this general rule is where removal is imminent and medical advice does not suggest confinement before then.

Pregnant women of 24 weeks and over must not be detained as part of the Detained Fast Track process.

Where independent evidence is produced that supports a claim to have been tortured detention would not normally be appropriate. The Detention Centre Rules 2001 (Rule 35) require the medical practitioner to report to the removal centre manager the case of any detained person who he is concerned may have been the victim of torture. The Border and Immigration Agency has been examining how this procedure has been working in practice and has developed a process which ensures that all allegations of torture made by detainees and which are forwarded to the appropriate case owner are properly logged. Case owners are required to consider and acknowledge receipt.

The Detained Fast Track (DFT) Asylum Processes Suitability List identifies a number of groups of vulnerable adults who are not considered suitable for the DFT process. The policy is rigorously applied by a specialist unit that makes the initial decision as to whether to route the claimant into the DFT process. Where fresh evidence comes to light after a claimant has entered the DFT process, then suitability will be reviewed and if the claimant is identified as unsuitable for the DFT process they will be released from it. A decision to release a person from the DFT process will normally but not always trigger a release from detention as each case needs to be judged on its merits taking account of all the circumstances of the case.

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)

Border and Immigration Agency Detention Services holds quarterly meetings of the Detention Users Group, which includes representatives from BID and AVID amongst other interested groups. All those represented are aware that they are welcome to raise issues of concern at these meetings and are free to make contact (outside of the meetings) with the Director of Detention Services should an issue arise that needs urgent consideration, and regularly avail themselves of this opportunity. Although BIA Detention Services is not directly responsible for actual decisions to detain in individual cases, steps are taken to raise issues with caseholders where it appears that there may be some substance to a particular concern, or where there is a need to offer some assurance or clarification. As already indicated, however, detention of vulnerable adults is not ruled out per se although those reaching decisions on whether or not to detain are required to take such factors into account.

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)

A review of Family Removals Processes was announced by the former Immigration Minister Tony McNulty in January 2006 in order to identify any potential improvements in this sensitive area of work. The review is now complete and awaiting publication. This review was undertaken alongside wider work to develop a child safeguarding strategy for the Border & Immigration Agency and centres on processes before, during and after family detention visits.

Families with children are normally detained for very short periods and usually at the point of removal. The decision to detain a family is taken on a case by case basis, taking into account all relevant factors including:

- The likelihood and proximity of removal
- Evidence of previous absconding/failure to comply with conditions of temporary release, bail or the requirements of immigration control
- Determined attempts to breach immigration laws
- Ties with the UK including the existence of close relatives or someone providing support; a settled address or employment
- Any incentive to keep in touch such as an outstanding appeal, application for judicial review or representations.

There is a presumption in favour of temporary admission or temporary release unless there are strong grounds for believing that the family will not comply with associated conditions. All reasonable alternatives to detention must be considered before detention is authorised. The option of detaining the head of household only and issuing self check-in removal directions for the rest of the family is also available. Factors to be considered when deciding whether to detain the family as a whole or just the head of household include whether a parent is the natural parent of the children, the length of the relationship between the parents and with the family and whether there is a history of one parent spending a lengthy period apart from the family. Having undertaken this assessment it may of course be concluded that detention is still the only viable option.

A formal review of the need for continued detention is conducted on each case where a child is detained at the 7 day, 10 day, 14 day and each subsequent 7 day stages. Cases are referred to Ministers as they approach 28 days in detention to ensure authorisation is given before the 29th day. Cases are regularly monitored in between the formal reviews to ensure that any change in circumstance is actively considered and, where appropriate, to arrange release.

The officials responsible for the decision to detain are kept up to date about issues affecting children detained with their families. Those reviewing detention and those responsible for arranging removal of the family do receive copies of assessments and social worker's recommendations. In this way the earliest possible decision can be made to release any child whose needs cannot be met in the centre. In the relatively rare event that detention is

protracted, the outcome of a thorough process of assessment and consideration is reflected in the advice which the Immigration Minister receives on which he decides whether detention should continue. That advice includes any recommendations made by the social worker.

In view of the personal information they contain, it is not appropriate for the Border and Immigration Agency to provide copies of the assessments to Immigration Judges dealing with bail applications. A copy of the assessment is provided to the parents - and explained to them - and it would be open to them to disclose the information should they wish to do so.

Both parties are able to submit any relevant evidence in support of their arguments for consideration by the Immigration Judge. Welfare reports, for example, would be submitted by the appellant party. Immigration Judges would make a decision based on the evidence before them in that particular application or appeal. If evidence is not provided by a party to the application or appeal then it could not be taken into consideration by the Immigration Judge. Immigration Judges determine cases based on findings of fact and the evidence before them. It is neither for the Tribunal, nor Immigrations Judges themselves, to solicit evidence for an appeal hearing or bail application.

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)

Children are detained under Immigration Act powers in two limited circumstances: as part of a family group whose detention is considered necessary (usually at or shortly before the point of removal from the UK); and, very exceptionally, when unaccompanied, whilst alternative arrangements are made, and normally then just overnight. With regard to the former, we consider it generally better for children to remain with their parents/guardians; and, in the second, such decisions are taken purely in the interests of the safety of the child.

Immigration Act powers of detention are administrative and there is no direct judicial involvement in individual decision to authorise or maintain detention. Article 5(1)(f) of the ECHR does not require such involvement and so existing detention procedures are ECHR compliant. Access to the processes of judicial review and habeas corpus satisfies the Article 5(4) requirement that detained persons should be able to bring proceedings before a court to challenge the lawfulness of their detention.

As part of the continuing review of arrangements for families with children, BIA has been considering the use of supported accommodation as an alternative to detention for families with children. This might be used in cases where there is a requirement to effect removal. The provision may also be applicable to families who have been detained and for whom detention is no longer appropriate. To inform our proposals, we are currently evaluating

the available international evidence of accommodation and support schemes which have provided successfully for asylum seeking families.

We are considering the viability of options available within the UK. The purpose of these would be to enable the resolution of residual barriers to removal without the need to hold families in detention. To this end, we are working with relevant NGOs who have experience and capacity to inform alternative proposals.

The Detained Fast Track (DFT) process is focused on single adult males and single adult females with no adult or child dependents. Unaccompanied asylum seeking children are not considered suitable for the DFT process. Annex B of the DFT Asylum Processes Suitability list sets out the strict criteria that must be satisfied before a disputed minor is taken into the DFT process.

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).

The Border and Immigration Agency takes extremely seriously the decision to detain any applicant, whether in the Detained Fast Track or otherwise. As the result of a judicial challenge in 2005 the criteria for detaining a person whose age has been disputed was strengthened so that only those whose appearance and/or demeanour very strongly indicates that they are significantly over 18 and no other credible evidence (such as Merton compliant age assessment or a passport) exists to the contrary could be detained. The policy revision applied to all detention decisions, whether in the context of the detained fast-track process or otherwise. However, individuals who are being treated as adults in line with this policy will have the same liability to be detained as any other adult, whether in the detained fast-track process or for other purposes, such as detention pending removal.

There are occasions when people over the age of 18 claim to be minors in order to prevent their detention or effect their release once detained. In all such cases people claiming to be under the age of 18 must be referred to the Refugee Council's Children's Panel as well as being informed that they can approach a local authority for an age assessment.

44. In the absence of an end of 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 any subsequent reviews of the decision to detain. (paragraph 261)

We are satisfied that our detention policies and procedures are fully compliant with the ECHR. Families with children are normally detained for very short periods and usually at the point of removal. The response to recommendation 41 summarises arrangements for the regular review of detention decisions which in appropriate circumstances may lead to the detainee being released.

In view of the personal information they contain, it is not appropriate for the Border and Immigration Agency to provide copies of social assessments to Immigration Judges dealing with bail applications. A copy of the assessment is provided to the parents - and explained to them - and it would be open to them to disclose the information should they wish to do so.

We do recognise that it is important to individuals that bail applications are dealt with quickly and agree with the principle that detention should be for as short a period as is necessary. The AIT aims to list bail applications for hearing within three days of receipt. To minimise any risk of undue delay the AIT is engaged in a detainee programme which includes a pilot to hear bail applications by video link. The Border and Immigration Agency (BIA) and AIT are working closely with stakeholders to ensure prompt access to a bail hearing for those in immigration detention where transport to an AIT centre would delay the case.

As stated above, it is not for the Tribunal to solicit evidence in any appeal or application. It is individuals who choose to exercise rights of appeal and to provide evidence in support of their appeal or application for consideration by an Immigration Judge.

Affording automatic bail rights to certain categories of detainee would be both be unfair to others in detention and would significantly impact on the capacity of the Tribunal to hear other bail applications and appeals promptly.

We are satisfied that the current bail provisions provide adequate opportunity for all in detention to lodge applications for bail to the AIT. There is no limit on the number of applications a detainee may make and nothing to prevent an applicant, on being refused bail, from making a fresh application.

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)

The Border and Immigration Agency actively encourages failed asylum seekers to leave the country voluntarily. BIA part funds a voluntary return programme which is run by the International Organization for Migration. However if individuals fail to leave voluntarily, detention may be necessary prior to removal.

Where arrest and detention is deemed to be necessary the Border and Immigration Agency adopts an intelligence led approach, part of which involves conducting a range of thorough pre enforcement checks to ensure that individuals are removable. Every care is taken to ensure that we only detain those who are readily removable.

The finite capacity of the immigration detention estate provides an additional reason to focus on those people who only need to be detained for a short period.

46. We believe that the 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.

The right to liberty under Article 5 of the ECHR is a qualified right. Individuals may be detained under Immigration Act powers of detention: pending enquiries as to identity or basis of claim, to prevent absconding, to effect removal and where the asylum claim is one that can be considered quickly under the fast track process. We are satisfied that our policies and procedures for detention under the fast track processes, and those relating to detention more generally, comply fully with the ECHR. Detention lasts for no longer than is reasonable and will not be unduly prolonged. It must be remembered that individuals may prolong their own detention by failing to cooperate.

As mentioned in the response to recommendation 39, entry to the Detained Fast Track is controlled by a specialist unit working to specific suitability criteria.

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)

Detention for immigration purposes under Article 5(1)(f) of the ECHR does not require judicial involvement. Immigration detainees already have legal avenues which satisfy the Article 5(4) requirement that detained persons should be able to bring proceedings before a court to challenge the lawfulness of their detention.

Detention pending removal (whether by way of deportation or otherwise) under the 1971 Act is an exception to the right to liberty under Article 5 of the European Convention on Human Rights. If removal is impossible, detention may be unlawful but the possibility of removal and, hence the legality of detention, is not a matter for the AIT. Proceedings by which the lawfulness of the detention is challenged are normally by way of Habeas Corpus or application for leave to apply for Judicial Review to the Administrative Court but it is for an individual to decide to exercise the appeal rights available to him or her.

Therefore, a bail hearing is not an opportunity to challenge the lawfulness of the detention itself. The bail jurisdiction allows Immigration Judges to allow the release, in suitable cases, of those who are lawfully detained. If a bail application is refused by the AIT, an applicant has a right to make a fresh application.

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).

It is not the case that there is no 'systematic' process for reviewing the decision to detain. Immigration detention is not time limited but it is a well-established principle that it must not last for longer than is reasonable in all the circumstances of the case. Detention is

subject to regular review and, under the terms of Rule 9 of the Detention Centre Rules 2001 (No. 238), every detained person must be provided with written reasons for his/her detention at the time of the initial detention, and thereafter monthly.

A balance needs to be struck between the possible length of detention and the need to maintain effective immigration control. The period for which it is reasonable to maintain detention varies from case to case but, if at any point it becomes apparent that removal cannot be effected within that reasonable period, the detainee must be released. However, the courts have recognised that a person's lawful detention may be prolonged by their own actions, e.g. in failing to cooperate with re-documentation.

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).

We do not accept that a statutory or other fixed time limit on detention would be appropriate or workable. Such a limit would inevitably be arbitrary and would take no account of the individual circumstances of cases. In addition, a fixed upper limit would simply encourage individuals to delay and frustrate immigration and asylum processes, including removal, in order to reach a point where they would be released from detention. That would not assist in maintaining an effective immigration control or robust asylum system.

50. Free onsite 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.

All detainees arriving at an immigration removal centre must be advised of their right to legal representation and how they can obtain such representation, within 24 hours of their arrival at the centre. A copy of the Bail for Immigration Detainees (BID) notebook must also be available in the centre library for detainees' use. The Legal Services Commission have been conducting a pilot exercise to provide legal advice surgeries in immigration removal centres. Initial indications are that this exercise has been a success and consideration is currently being given to its roll-out across the detention estate.

Onsite legal advice is available through regular advice surgeries, open to all individuals who are detained in Immigration Removal Centres in England and Wales. The purpose of the surgeries is to ensure that those in detention and who have not yet received legal advice or who no longer have a legal adviser and who require advice will be able to access advice through this scheme.

Legal aid funding is available for advice and representation in relation to bail applications. Such funding is subject to both a means and merits assessment to ensure fair and just access to justice is given in line within the requirements of international law. Fast Track contract provisions remind advisers that they are required to consider making a bail

application on behalf of a client. We are satisfied that the current bail provisions provide adequate opportunity for all in detention to lodge applications for bail to the AIT.

The AIT prioritises the listing of bail applications from those in detention, aiming to list them for hearing three days from receipt. Given these short timescales it would be impractical to attempt to prioritise further bail applications for family cases.

Immigration Judges determine cases based on findings of fact and the evidence before them. It is neither for the Tribunal, nor Immigration Judges themselves, to solicit evidence for an appeal hearing or bail application. Both parties are able to submit any relevant evidence in support of their arguments for consideration by the Immigration Judge.

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 human 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 works 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 the services should be monitored. Female GPs and other medical practitioners should be available in detention centres where women are held (paragraph 305).

The Border and Immigration Agency takes seriously its duty of care to those who are detained in immigration removal centres. All detainees must have available to them the same range and quality of services as the general public receives from the National Health Service. This includes provision of primary care services to detainees with mental health needs and, where required, access to secondary care services. Individuals who have a diagnosis of HIV and who have begun a course of treatment should be able to continue this treatment whilst detained: individuals who have not begun treatment but who do have a prior diagnosis would normally be referred for confirmatory testing and follow-up action by the local specialist provider. The Border and Immigration Agency has developed operating standards for removal centres and amongst these is one relating to healthcare. Details of this standard and all other standards are available on the Border and Immigration Agency website.

Rule 33 (10) of the Detention Centre Rules 2001 (No. 238) provides that all detained persons must be entitled, if they wish, to be examined only by a person of the same gender and all detainees are required to be made aware of this option. The Rule is also underpinned in the operating standard on healthcare. There is no question of a detainee being required to be examined by a person of the opposite gender where they have an objection to this.

The Detention Centre Rules 2001 (Rule 35) require the medical practitioner to report to the removal centre manager the case of any detained person who he is concerned may have been the victim of torture and the procedures for dealing with such reports have been improved recently.

The Department of Health has been working closely with the Border and Immigration Agency to look at ways of making improvements to the standards and monitoring of healthcare services in immigration removal centres. In relation to monitoring, the Department of Health and the Border and Immigration Agency have instigated registration of contractors who provide health services in the centres with the Healthcare Commission. The Healthcare Commission has responsibility for assessing and scrutinising health services provided by the public and private sectors and registrations are currently being processed.

With regard to wider improvements to the quality of care provided in immigration removal centres, the Department of Health and the Border and Immigration Agency have set up a formal joint Clinical Governance Group to oversee issues in relation to healthcare. They are shortly to jointly commission a piece of exploratory work to look at possible options for bringing health services in immigration removal centres in line with the wider NHS, which would include a feasibility study on transferring services across to the NHS (as has recently been completed with public sector prisons). This work should report early in 2008 and will form the basis of joint work between the Department of Health and the Border and Immigration Agency over the next couple of years.

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).

Every detainee is served at the point of their initial detention with a notice (IS91R) informing them of the reasons for their detention and bail rights, and this must be explained to the individual, using an interpreter if necessary. This is reinforced by Rule 9 of the Detention Centre Rules 2001 (No. 238), which requires that every detained person be provided with written reasons for his/her detention at the time of the initial detention, and thereafter monthly.

Warranted immigration staff based at removal centres were never employed to be caseworkers and the liaison function they performed is ably carried out by the immigration manager and his/her team of administrative staff in each centre. All detainee requests are dealt with and liaison with the ports and local enforcement offices is undertaken promptly.

Detainees are also able to contact their representatives and, where they do not have the means to do so, costs will be met on their behalf.

Every effort is made to keep detainee movement around the detention estate to a minimum. However, it is sometimes unavoidable for operational reasons.

53. 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. (Paragraph 318)

There is no question of a person being asked to report under false pretences. Reporting at Reporting Centres is arranged as part of a regime of regular contact and is set according to our published guidance to ensure a person remains in contact with the Border and Immigration Agency. Reporting conditions are imposed where an individual is liable to detention but the Agency has decided after a risk assessment that detention is not appropriate at that stage. Reporting is one of a package of measures with the important aim of maintaining contact between a person subject to immigration control and the Agency. The decision to detain an individual who is liable to be detained is taken following an assessment of the risk of absconding in the individual case. The risk of absconding will be re-assessed where new information comes to light or there is a change of circumstances. Detention sometimes occurs at reporting events if the individual has been served with an adverse decision or appeal determination and therefore has less incentive for keeping in touch with the Agency. There will be a minimum of 72 hours between service of removal directions and the actual removal. During this time the detained person has access to legal advice and can arrange to have belongings delivered/collected.

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)

Border and Immigration Agency policy on pastoral visits is set out in response to Recommendation 56.

All enforcement visits constitute immigration work of the most sensitive kind with those involving families the most emotive. All operational visits to detain and remove individuals/families who no longer have the right to remain in the UK are done so in line with operational policy and guidance. The Border and Immigration Agency is aware of the possible traumatising effect of early morning visits when they seek to remove the families of failed asylum seekers. Every effort is made to conduct an immigration enforcement visit with the least disruption to the children and at the best time of day to pick up a family as an entire unit, e.g. before any children depart for school or parents depart for work. Families with children are normally detained for very short periods and usually at the point of removal. The decision to detain a family is taken on a case by case basis, taking into account all relevant factors including the submission of further representations.

Individuals who are liable to detention are informed of this fact at each stage of the process (including on the notice which sets out reporting conditions at the beginning of the process). Where their claim is not successful or an appeal is dismissed, they are informed that they are expected to leave the country and provided with information about the

assistance packages available. People, including families, who elect not to depart voluntarily forgo the opportunity to choose the timing of their departure and will be subject to enforced removal.

It is the UK Government's preference that those with no right to remain in the UK return home of their own accord. To that end we support schemes (which ensure dignity and sustainability) to assist applicants who are willing to leave voluntarily. Enforced removal is only considered for those who fail to avail themselves of the opportunities.

Assisted Voluntary Return schemes are operated by the International Organization for Migration (IOM) which is a completely independent international organisation. The IOM can get applicants home within days if necessary. However successful applicants are given up to 3 months in which to get their affairs in order to return home. As long as their intention to leave home voluntarily is genuine, they need not fear the risk of enforcement action for those 3 months.

Throughout an applicant's case he/she is notified in writing of progress and informed that all immigration decisions can be appealed to an independent judiciary. Moreover, policy dictates that persons subject to enforced removals have sufficient time between the notification of removal directions and the date/time of removal to seek legal advice and/or apply for Judicial Review.

In all but the most exceptional circumstances a minimum of 72 hours (including at least 2 working days) must be allowed between notification of removal directions to the person being removed, and the removal itself. The last 24 hours of this period must include a working day.

Removal directions are also notified to legal representatives where there are details of any representative actively involved in the case post-appeal, or where a person asks that a specified representative be sent copies of papers served with removal directions.

Removal directions will be accompanied by a short factual summary of the case which includes notification that the case is one to which paragraph 18 of the Practice Direction supplementing part 54 of the Civil Procedure Rules applies, informs the subject of the address to which any claim for JR must be copied, advises the subject to seek legal advice, and includes contact details in the event of an injunction.

Persons detained for removal must be given prompt access to telephone facilities to enable instruction and on-going contact with representatives.

It is open to an individual to make representations at any stage of the process, including after they have been detained for removal. The Agency considers all such representations in order to determine whether they amount to a fresh claim and if detained whether detention should be maintained.

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)

Although detention is an important element of maintaining an effective immigration control it is not the only method used for maintaining contact with persons who are subject to immigration control.

The Border and Immigration Agency currently operates a network of 12 dedicated reporting centres that have been established so that we are able to keep in contact with asylum seekers. Applicants who are identified as living within reasonable travelling distance of a reporting centre, currently set at 25 miles, are made subject to regular reporting conditions. Outside the 25 miles, reporting is to a local police station.

Under the new asylum system, a case owner maintains contact with asylum claimants from the point of application to the conclusion of their case (grant followed by integration or voluntary departure/removal). Case owners will ensure that claimants are made aware of the various voluntary return schemes.

All new asylum applicants now have an individualised contact management plan which may include electronic tagging and voice recognition in addition to more traditional reporting and outreach visits by their case owner. Section 36 of the Immigration and Asylum (treatment of claimants etc) Act 2004 allows for the electronic monitoring of those liable to be detained under the Immigration Acts.

If a person fails to comply with a tagging regime (including refusing to have a tag fitted or tampering with the tag itself once fitted) they are liable to re-detention and prosecution. Our precise response to non-compliance is decided on a case by case basis, depending on the individual circumstances, and may include other action such as increased physical reporting.

We are currently exploring how some families might be housed in hostel type accommodation as a step towards departure.

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)

It is Border and Immigration Agency policy that pastoral visits should be conducted in all family cases. This would usually be undertaken 24-48 hours prior to the detention visit. A pastoral visit ensures that as much information is known about the family prior to arrest, detention and removal as possible. It also ensures that any medical or special needs issues can be considered before the detention visit takes place.

Where children are identified at the premises that do not appear to form part of the family unit, social services are contacted if necessary in order to investigate the relationship further.

If it is considered that a pastoral visit is not to be undertaken then a written report or file minute must be submitted to an Inspector for their approval. This should only be in cases where there is good reason to suspect that the family may abscond following a pastoral visit.

Adequate time should be allowed for persons to collect personal belongings on being detained or for removal, but removal will not be unduly delayed. Persons to be removed should also be informed in advance, using the appropriate forms, of the airline's baggage allowance limits.

While the right to education does not entitle a family to remain here once their asylum claim has been finally refused, the consideration of the appropriate time to effect removal in relation to key educational stages is an important area of concern.

Circumstances will differ and children will be at various stages in preparing for examinations when arrangements are made for a family's removal; some may be on the verge of sitting examinations while for others this may be several months away. The Border and Immigration Agency may not have been made aware that a child is undertaking examinations until such time as the Agency conducts a pastoral visit to assess the family's circumstances prior to any removal. Indeed, this may not come to light until the family is picked up pending removal. We are improving our contact management procedures to allow for a greater opportunity for these issues to come to light. Under new asylum processes, each new asylum application is handled by one case owner throughout the process until conclusion in the form of a grant of leave or voluntary departure/removal. Through regular contact, case owners will build up good knowledge of a family's circumstances.

There remains a need to consider this proportionately, bearing in mind continued housing and support costs and maintaining a credible and effective immigration control. It would not be appropriate to delay removal, particularly for a number of months, solely on the basis that a child is preparing to take examinations. Each case must be considered individually and bearing in mind other factors which might direct that enforced removal, even leading up to exams, may continue to be appropriate.

Deferral of removal in order for examinations to be taken may be done where the family gives an undertaking that following this they will depart the UK voluntarily.

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 of access to possessions. (paragraph 336)

Immigration Officers may only conduct arrests if they are certified as arrest officers. Such certification is only given once they have successfully completed training which is, in general terms, of a similar standard to that of the police and which is delivered in partnership with the National Policing Improvement Agency (formerly Centrex). Officers are taught to use the conflict management model and one of the central tenets of the training is that they must only use force where it is necessary, appropriate and justified and that the use of force must be proportionate to the threat faced. Communication is always promoted as a key means of de-escalating potentially threatening situations. In addition, officers are repeatedly made aware of their duty of care towards those with whom they come into contact, including those against whom they may have deemed it necessary to use force. Officers are trained in a variety of approved control and restraint techniques including – but not restricted to - the use of handcuffs and Asps (extendable batons)

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)

A welfare role has been created across the detention estate to deal with, among other things, the preparation of detainees for removal or transfer. Welfare officers or teams at individual removal centres liaise with other centres across the estate to identify “best practice”. This work may involve, for example, ensuring that property is returned to the detainee before removal.

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

We only remove those people who have no legal basis upon which to remain in the UK and proactively promote voluntary departure as the preferred method of return. Where enforcement action is necessary all operations are carefully planned, involving a wide range of checks and the completion of a comprehensive risk assessment.

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)

Note: recommendation 62 (paragraph 367) is shown separately below

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)

Response to recommendations 60, 61 and 63

The Information Centre about Asylum and Refugees in the UK (ICAR) published a report in March 2007 on monitoring of UK newspaper reporting of asylum seekers and refugees today which was commissioned and funded by the Home Office. This report was developed to promote a more fair and balanced reporting of asylum issues. It makes

recommendations to the Press Complaints Commission, newspaper editors and the Home Office on how to improve the reporting of asylum and refugee issues in the media.

The report makes seven recommendations to the Home Office. The improvements and restructuring of the Home Office means the Home Office has acted independently on many of the recommendations in the report, before it was published. The Press Office is appropriately staffed and resourced. The central Home Office Reform programme and the move towards an Overarching Communication Strategy across the Home Office ensure the Home Office engage not only with the media, but also with the public, staff and stakeholders in dialogue and discussion to a far greater extent.

The Consultation document, 'A New Model for National Refugee Integration Services in England', with its central focus on the welfare and integration of the refugee, demonstrates that the Home Office wants input from all sectors of society. The aim of the new approach to refugee integration is to provide the greatest opportunity for each refugee to contribute to the wider UK society.

The Home Office is proud to have funded the report and welcomes its findings and recommendations.

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)

The Committee can be assured that ministers take very seriously their responsibilities to use measured and appropriate language. This does not derogate from Government's responsibility to address issues which might be considered difficult, sensitive or contentious.

Formal Minutes

Monday 25 June 2007

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Judd

Lord Lester of Herne Hill

The Earl of Onslow

Baroness Stern

Nia Griffith MP

Dr Evan Harris MP

Mark Tami MP

Draft Report [Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers], proposed by the Chairman, brought up and read the first and second time, and agreed to.

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

A Paper was 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.

[Adjourned till Tuesday 26 June at 9 am.]

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
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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
Eleventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 83/HC 424
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Thirteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 105/HC 538
Fourteenth Report	Government Response to the Committee's Eighth Report of this Session: Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9 order 2007)	HL Paper 106/HC 539
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 112/HC 555
Sixteenth Report	Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights	HL Paper 128/HC 728
Seventeenth Report	Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers	HL Paper 134/HC 790

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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	HL Paper 75-II/HC 561-II

	Written Evidence	
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
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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
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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
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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
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