UNHCR
The UN Refugee Agency

DETAINED ASYLUM CASEWORK IN THE UNITED KINGDOM

A review of decision-making in the Detained Asylum Casework Procedure

2023

CONTENTS

GLOSSARY OF TERMS

- **AAR:** Adults at Risk In Immigration Detention
- **ADMT:** Assisted Decision Making Tool
- **AIU:** Asylum Intake Unit
- **CID:** Case Information Database
- **COI:** Country of Origin Information
- **DAC:** Detained Asylum Casework
- **DIA:** Detained Immigration Appeal
- **DFT:** Detained Fast Track (accelerated refugee status determination process previously in operation at Harmondsworth Immigration Removal Centre and Yarl's Wood Immigration Removal Centre)
- **DGK:** Detention Gatekeeper
- **ECHR 1950:** European Convention on Human Rights
- **ETD:** Emergency Travel Document
- **EUL:** EU Letter
- **FTP:** Foundation Training Programme
- **IE:** Immigration Enforcement
- **IFA:** Internal Flight Alternative
- **IRC:** Immigration Removal Centre
- **LAA:** Legal Aid Agency
- **LGBTIQ+:** Lesbian, Gay, Bisexual, Transgender, Intersex or Queer
- **MPSG:** Membership of a Particular Social Group
- **NRC:** National Removals Command
- **NRM:** National Referral Mechanism
- **NSA:** Non-Suspensive Appeal
- **The Refugee Convention:** 1951 Convention relating to the Status of Refugees
- **RDs:** Removal Directions
- **RFRL:** Reasons for Refusal Letter
- **ROA:** Right of Appeal
- **RSD:** Refugee Status Determination
- **QI Project:** UNHCR Quality Initiative/Integration Project
- **QPP:** UNHCR and Home Office Quality Protection Partnership
- **SCW:** Senior Case Worker
- **UKHO:** United Kingdom Home Office
- **UKVI:** United Kingdom Visas and Immigration
- **UNHCR Handbook:** The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (Geneva, January 1992)
- **UNHCR:** United Nations High Commissioner for Refugees

EXECUTIVE SUMMARY

This is the first public audit of the United Kingdom Home Office (UKHO) approach to refugee status determination decisions made under the Detained Asylum Casework (DAC) process. It was carried out by UNHCR, The UN Refugee Agency, under the Quality Protection Partnership (QPP), in close collaboration with the UKHO, with the aim of strengthening the quality and efficacy of first instance asylum decision-making in the UK.

This audit commenced in 2018 and carried on through 2019 and into early 2020. As the COVID-19 pandemic surfaced, the UKHO's broad reliance on immigration detention decreased significantly with hundreds of persons being released on bail from Immigration Detention during April 2020. Whilst the UKHO continued to utilise the detention estate for those who presented a security risk or for whom administrative removal or deportation remained a realistic prospect within a reasonable timescale, it was considered appropriate to place this audit on hold until the UKHO restarted the use of the DAC process.

Following a relaxation of the general public health restrictions in the UK, and following a return to the use of Immigration Detention and the DAC process in 2021, UNHCR concluded the audit and has made a number of recommendations to the UK Government within this report. Following discussions with the UKHO, a final report was then shared with the UKHO for consideration in December 2021. Formal and final responses to all recommendations were then received in December 2022.

Deciding an asylum claim is an important responsibility for any government. Introducing processes that are designed to expedite decision-making or policies that guide operational staff on the application of the standard of proof but only serve to make the decision-making process more complicated should always be avoided. This includes avoiding processes where individuals are detained and have limited access to typical avenues of evidence gathering and expert support.

It is well established in international and UK law that asylum-seekers may only be detained as a measure of last resort and only for legitimate purposes. For asylum-seekers, especially those identified as particularly vulnerable, the experience of detention itself presents a significant risk of harm. In addition, as part of an asylum procedure, detention has the potential to impair the quality of asylum decision-making and erode procedural fairness. For these reasons, procedures which provide for the consideration of asylum claims from within detention, such as the DAC process, require especially close and continuous scrutiny.

The DAC Process was introduced following the suspension of the Detained Fast Track (DFT) process on 2 July 2015.[1] The DFT was suspended after the Court of Appeal deemed The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014[2] to be *ultra vires*.[3] The DAC process has been subject to further legal challenges. At date of publication, the UK Courts have continued to find the operation of the DAC to be lawful.

During this audit, UNHCR identified some positive approaches to asylum decision-making, however many decisions reviewed within the DAC clearly reveal that improvement is required to ensure accordance with international standards. The report highlights the need to exercise extreme care in conducting first instance asylum decision-making in detention and in taking the decision to maintain detention for the purpose of considering asylum claims in the first place.

UNHCR proposes a number of recommendations seen as crucial to improving the fairness and efficiency of first instance decision-making where DAC processes continue to be implemented by the UK.

The improvements recommended will better protect individuals against harm caused by inappropriate detention and against refoulement of refugees in need of international protection. Limiting the room for error at the earliest stage of the asylum process and in decisions to detain also reduces unnecessary financial and human costs in applications to the Immigration and Asylum Chambers and the Appellate Courts.

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1 Statement of Immigration Minister, 2 July 2015, available at: https://questions-statements.parliament.uk/written-statements/detail/2015-07-02/HLWS75.
2 The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2014 No. 2604, available at: https://www.legislation.gov.uk/uksi/2014/2604/made.
3 *Detention Action v First-Tier Tribunal (Immigration and Asylum Chamber) & Ors* [2015] EWHC 1689 (Admin), available at: https://www.bailii.org/ew/cases/EWHC/Admin/2015/1689.html.

We note that since this audit was initiated there have been a number of changes in asylum and detention policy. As noted in the UKHO response to our recommendations, some of the changes we call for have already been implemented by the UKHO. In other areas the UKHO agrees to the need for change and UNHCR is pleased to note that such changes are now being actively considered. For instance, we acknowledge and welcome that UKHO asylum decision-makers no longer use the assisted decision-making tool and now follow a more structured decision-making process; that the training of asylum decision-makers is significantly improved; and that a standard minute has been introduced for detention gatekeepers that requires them to provide full justification for their decisions. Despite these changes being introduced in the intervening period since the commencement of this audit, we note that a number of other pertinent issues continue to require attention; this is acknowledged by the UKHO in their response to our recommendations. For instance, we note the UKHO's acceptance of our recommendation that country of origin information must be used correctly when determining asylum claims and that any further reforms required by amendments to the Adults at Risk policy will need to be reviewed.

UNHCR welcomes the ongoing opportunity to work with the UKHO to build on the positive aspects noted in this audit; to address the shortcomings identified; and to provide support as is required in the implementation of the recommendations.

RECOMMENDATIONS

Approach to detention decision-making

1. UNHCR notes that despite the effort the UKHO has put into developing and improving the Detention Gatekeeper (DGK) function, greater procedural safeguards are needed to ensure that all information is available to enable a full assessment of whether or not a person is suitable for DAC.[4] UNHCR therefore recommends that the UKHO ensure that all decisions taken by the DGK are made in full light of all the available evidence that the UKHO has, not just what the DGK is given by the referring officer. This will ensure that the individual circumstances, including the nature of the asylum claim, will be before the DGK prior to their decision being made.
2. Related to the above recommendation, it is noted in particular that, in the majority of the cases audited, the asylum screening interview had not been completed at the time the DGK authorised detention. UNHCR recommends that in all cases where persons have raised an asylum claim, they must first be given a screening interview before the referral is forwarded to the DGK. This is already required for cases where the individual is making their claim at an 'Asylum Intake Unit, a port, or elsewhere after the claimant's apprehension'. Completing the screening interview prior to referring the detention decision to the DGK will ensure that the DGK has all the relevant and necessary information on the basis of the claim and the background to it and will not have to rely on generalised assumptions about key crtiteria such as the likelihood of a quick decision or certification.
3. UNHCR recommends that in order to ensure timeliness of decision-making and not increase the time that a person remains in detention following screening, only those cases that are considered as being suitable for continued detention should be referred to the DGK. There should therefore no longer be a requirement that all asylum claims raised by persons already detained 'must' be referred to the DGK.

4 Stephen Shaw first recommended the need for an independent approach to detention decision-making in his '*Review into the Welfare in Detention of Vulnerable Persons, A report to the Home Office by Stephen Shaw*', January 2016, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf. In his report, Shaw notes that he has seen *first-hand the effort and work put into the detention gatekeeper function to maintain a consistent approach to decision making. The team balances a number of factors when making a decision on detention. These include the availability of beds; the individual's circumstances and case history; the prospect of removal within a reasonable timescale; and assessments under the Adults at Risk policy and the impact that detention could have.*

4. In order to ensure that this process is promptly completed and that detention is not prolonged, UNHCR further recommendeds that the Screening Interview template be developed to ensure that questions in relation to detention decision-making are set out more clearly to allow for the individual to explain their circumstances as fully as possible. The UNHCR/IDC Vulnerability Screening Tool offers many solutions that would help in this instance. UNHCR stands ready to assist with this work.

5. UNHCR recommends that all DGKs receive refresher training on the criteria for detention and the need to give reasons specific to the individual in order to justify such a decision.

Approach to assessing and determining asylum claims

6. Credibility concerns should be put to applicants during their interview, as per the UKHO 'Asylum Interviews' policy. If this is not possible, then the concerns should be put to the applicant at the next possible opportunity. A decision should not be produced in any application for asylum where a credibility concern has not been put to the applicant for their response and not fully examined.

7. Further, all available information relevant to the asylum claim should be collected and reviewed in sufficient time prior to the interview. This will enable the caseworker to narrow down the elements of the claim that will require further questioning at interview and to ensure for example, that the applicant is given an opportunity to respond to specific evidence relevant to the claim. Where this is not done, there is a risk of a failure by the caseworker to ensure the effectiveness of the interview process in assisting the claimant in discharging the burden of proof.

8. UNHCR recommends that the UKHO reviews the training given to decision-makers in respect of understanding and applying the concept of 'Convention Reasons' in Article 1A of the Refugee Convention. This is an important issue as it forms the basis of analysis and decision-making going forward in the adjudication.

9. UNHCR recommends that the UKHO ensures that all asylum decisions are made following a structured decision-making format of 'Material Facts Consideration' then 'Summary of Findings of Fact' then 'Assessment of Future Fear' and then 'Sufficiency of Protection'. The analysis of asylum decisions in this audit suggest that the approach to structured decision-making can be improved.

10. UNHCR also strongly recommends that, as required by the Immigration Rules,[5] the UKHO uses up to date and relevant country information in all cases.

11. The review of cases in the audit suggests that decision-makers would benefit from specific training on the application of IFA. UNHCR recommends that there should be a review of the current Foundation Training Programme provided to new decision-makers on IFA and that consideration should be given to developing a module on IFA for existing decision-makers in order to ensure consistency of asylum decision making.

12. UNHCR recommends that the UKHO considers amending the DAC Policy in order to ensure clarity on the position for families without minor children who are detained within Yarl's Wood IRC.[6] It is UNHCR's view that decision-makers should be tasked with interviewing both the main applicant and adult dependants where possible.

5 See Rule 339J(i) and 339JA, Immigration Rules (HC395 as amended), available at: https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum.

6 Since the audit report was completed, the designation of Yarl's Wood IRC has changed. However, the recommendation is still applicable and should be read as seeking clarity within the DAC policy on the position for families without minor children who are detained at any place of detention within the UK.

Ensuring Procedural Safeguards

13. UNHCR recommends the AAR policy and the Rule 35 process be reviewed to ensure that they remain fit for purpose – specifically focussing on the necessity to balance a person's previous immigration history with their status as a vulnerable person.

14. UNHCR recommends that where such a balancing exercise is carried out, consideration should be given to the individual's reasoning and explanations for any past non-compliance, where that non-compliance has been proven.

15. The UKHO reviews and seeks to remedy the clear differences in timescales for determining asylum claims in detention between Yarl's Wood IRC and Harmondsworth IRC.[7]

1. INTRODUCTION

Set up in 2019, the Quality Protection Partnership (QPP) is the successor to the Quality Integration Project and Quality Initiative Project which respectively ran from 2010 to 2018 and from 2004 to 2009. The QPP has its basis in Article 35 of the Refugee Convention which stipulates that signatory states will undertake to co-operate with UNHCR to facilitate its duty of supervising the application of the provisions of the Refugee Convention.[8] In implementing this duty under the QPP, UNHCR and the UKHO work together in partnership to ensure the best possible first instance asylum decision-making. UNHCR welcomes the commitment shown by UKHO to improving the quality of asylum decision-making under the auspices of the QPP.

UNHCR has previously undertaken two audits of UKHO decision-making on asylum claims which have been decided from within immigration detention. At the time of these audits, the Detained Fast Track (DFT) procedure was in place. The DFT was a process for deciding asylum claims that were considered suitable for an accelerated time scale decision whilst the person was in detention. The first audit was completed in March 2008 and the second audit in August 2010.[9] When the DFT procedure was suspended in July 2015,[10] and a new procedure was introduced for managing asylum claims in detention in July 2015,[11] UKHO and UNHCR agreed that it would be appropriate for UNHCR to conduct an audit of the current process for considering asylum claims made by people already subject to immigration detention. UNHCR agreed to also review the extent to which the new detention estate, and determination of asylum claims from within it, impacts on the quality of these decisions.

The audit seeks to contribute to the following four objectives agreed between the UKHO and UNHCR:

- **To develop protection-sensitive processes for identifying and dealing with persons in need of international protection and to develop safe, secure and credible screening and routing procedures which are able to identify applicants with particular vulnerabilities or protection needs as early as possible;**

7 Since the audit report was completed, the designation of Yarl's Wood IRC has changed. However, the recommendation still applies and should be applied more broadly.
8 UNHCR, The UN Refugee Agency, The 1951 Refugee Convention, available at: https://www.unhcr.org/uk/1951-refugee-convention.html
9 Quality Initiative Project, Fifth Report to the Minister, March 2008, http://www.unhcr.org/uk/576013837; and Quality Integration Project, First Report to the Minister, August 2010, http://www.unhcr.org/uk/576010337.
10 Fn.1
11 Home Office, 'Asylum claims in detention', Version 4.0, published September 2017, Last updated 22 March 2019, available at: https://www.gov.uk/government/publications/asylum-claims-in-detention

- To promote and develop fair and efficient asylum determination procedures which provide asylum applicants with adequate opportunity to fully present their asylum claim and facilitate full consideration of an application;
- To promote and develop well-reasoned first-instance asylum decision-making by Immigration Enforcement; and
- To ensure that the use of detention, insofar as it affects persons of concern to UNHCR, accords with international standards, and is utilized in line with the relevant policy.

In order to achieve these objectives, the audit was carried out with the following criteria:

- Ensure that the quality of asylum decision-making within DAC accords with international standards and detention is being used appropriately; and
- Consider the application of UK detention policy and standards, including the Adults at risk in immigration detention (AAR) policy.[12]

2. BACKGROUND AND LEGAL FRAMEWORK

2.1. Immigration Detention in the UK

The powers to detain an individual in immigration detention are established within Schedule 2 of the Immigration Act 1971 (which provides the power to detain persons liable for removal),[13] Section 62 of the Nationality Immigration and Asylum Act 2002 (which provides the power to detain those liable for removal),[14] Schedule 3 of the Immigration Act 1971[15] and Section 36 of the UK Borders Act 2007 (which provide the power to detain those liable to deportation).[16]

The starting point in terms of the common law is with the principles as set out in the case of Hardial Singh.[17] These principles have been clarified by the Supreme Court in Lumba,[18] which confirms:

1. The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;
2. The deportee may only be detained for a period that is reasonable in all the circumstances;
3. If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within a reasonable period, he should not seek to exercise the power of detention; and
4. The Secretary of State should act with reasonable diligence and expedition to effect removal.

Applying these principles, the UKHO has issued guidance in relation to Asylum Screening and Routing[19] which directs the caseworker to take into account relevant considerations when deciding whether or not to detain someone, which include:

- The likelihood of the person being removed;
- Likely timescale of removal;
- Whether the claimant has taken part in a determined attempt to breach the UK's immigration laws;
- Any history of absconding;
- Any risk of offending or harm to the public; and
- The person's ties with the UK.

12 Home Office, 'Adults at risk in immigration detention' policy guidance, Version 7.0, published on 8 November 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784634/adults-at-risk-policy-v5.0ext.pdf
13 Schedule 2 of the Immigration Act 1971, available at: https://www.legislation.gov.uk/ukpga/1971/77/schedule/2
14 Section 62 of the Nationality Immigration and Asylum Act 2002, available at: http://www.legislation.gov.uk/ukpga/2002/41/section/62
15 Schedule 3 of the Immigration Act 1971, available at: https://www.legislation.gov.uk/ukpga/1971/77/schedule/3
16 Section 36 of the UK Borders Act 2007, available at: https://www.legislation.gov.uk/ukpga/2007/30/section/36
17 *R v Governor of Durham Prison ex parte Hardial Singh* [1984] 1 WLR 704, available at: https://www.refworld.org/cases,GBR_HC_QB,3ae6b6ce1c.html
18 *Wal§umba Lumba (Congo) 1 and 2 (Appellant) v Secretary of State for the Home Department (Respondent) Kadian Delroy Mighty (Jamaica) (Appellant) v Secretary of State for the Home Department (Respondent)* [2011] UKSC 12, available at: https://www.supremecourt.uk/cases/docs/uksc-2010-0062-judgment.pdf
19 Home Office, Asylum Screening and Routing, Version 6.0, 31 December 2020, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878626/screening-and-routing-v5.0ext.pdf

2.2. Detained Asylum Casework

Detained Asylum Casework[20] ('DAC') is an asylum policy for those applicants who have either claimed asylum whilst already in immigration detention or who claim asylum in other circumstances such as at an Asylum Intake Unit, at a Port or immediately following apprehension.

The policy does not guide or direct UKHO caseworkers on how to conduct asylum decision-making in detention and is instead intended to be read alongside published UKHO policy related to asylum processing, including: *Screening and routing*;[21] *Asylum interviews*;[22] *Assessing credibility and refugee status*;[23] *Gender issues in the asylum claim*;[24] *Human trafficking – frontline staff guidance;*[25] and *Sexual orientation asylum claims*.[26]

The decision to either detain or maintain[27] the detention of people in immigration detention who claim asylum can only be made in circumstances where they are found to meet the general immigration detention criteria applied to all immigration cases.

Further, when deciding whether to detain or maintain the detention of an individual, the UKHO must take into consideration the AAR Policy[28] which sets out that, in making detention decisions, an individual's vulnerabilities and any identified risk of harm caused by detention must be weighed against the individual's immigration history including any risk of absconding.

Unlike the DFT, there are no specific timescales for the consideration of an asylum claim within the DAC process. However, as detailed below, the average timescale from point of claim to service of decision across all the cases in the audit was 49 days, with a variation from 24 to 93 days. For female applicants being detained at Yarl's Wood, the average time was 30 days, with a variation from 24 to 39 days. For family cases (without minor children) being detained at Yarl's Wood, the average time was 34 days, with a variation from 24 to 38 days. For male applicants detained at Harmondsworth, the average time was 70 days with a variation from 47 days to 93 days.

2.3. Scope of UNHCR's audit

As set out on page 7, the primary purpose of this audit is to assess the quality of decision-making with respect to cases in detention and procedures in the DAC policy. The audit also considers how procedural safeguards are applied in practice, and whether they are adequate.

20 Fn.11
21 Fn.19
22 Home Office, Asylum interviews, Version 8.0, 03 June 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807031/asylum-interviews-v7.0ext.pdf
23 Home Office, Assessing credibility and refugee status, Version 9.0, 6 January 2015, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf
24 Home Office, Gender issues in the asylum claim, Version 3.0, 10 April 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699703/gender-issues-in-the-asylum-claim-v3.pdf
25 Home Office, Human trafficking – frontline staff guidance, Version 3.0, 18 March 2016, available at: https://www.antislaverycommissioner.co.uk/media/1057/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf
26 Home Office, Sexual orientation asylum claims, Version 6.0, 3 August 2016, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf
27 Note that the DAC Policy permits the detention of an individual for the purposes of determining their claim even if they are not in detention at the point of claim – 'Detention considerations for DAC cases', see page 6, Fn.9
28 Fn.12

3. METHODOLOGY

3.1. Assessment methods and sample selection

In preparation for this audit, UNHCR completed a desk-based review of the relevant legislation and guidance relevant to asylum and detention decision-making in the UK.

An inception meeting was then arranged with the DAC Team, Asylum and Detention Policy Team and the Asylum Intake and Casework team for coordination and information gathering purposes. Following this inception meeting the terms of reference and methodology were confirmed as follows:

- An audit of 36 UKHO case files;
- Files to be selected where decisions were made since the publication of the UKHO Asylum Policy Instruction on *Asylum claims in detention*, published in September 2017;[29]
- Attendance at DAC asylum interviews at Harmondsworth IRC and Colnbrook IRC – which included shadowing interviews and discussions with the interviewing officer before and after the interview;
- The preparation of this report providing an overview of decision-making practice and policy and providing recommendations. This was to include a written outline of the information obtained and highlight observed strengths and weaknesses in current procedures based on international, regional and national legal standards;
- A formal debrief with the DAC Team, Asylum Policy and UKVI, and development of an implementation plan. Depending on the findings of the audit, UNHCR and UKHO will agree on concrete ways the UK authorities with the support of UNHCR might address any recommendations and make relevant improvements; and
- UNHCR publication of this report.

UNHCR selected 36 cases[30] for the audit which were chosen from a list of over 800 files offered by the UKHO for selection. These 800+ files were made up of all asylum claims managed by the DAC team from the point of version 4.0 of the DAC policy being published in September 2017 to the date the list for selection was shared with UNHCR. UNHCR considers that this therefore reflected an accurate representation of the type and nature of cases generally considered by the DAC team.

The variables considered for this selection were:

- Countries of origin of applicants typically subject to decision-making in this area;
- LGBTIQ+ claims;
- Survivors of trafficking;
- Claims involving torture;
- Claims with other medical or mental health issues;
- Claims in which a medico-legal report has been produced in evidence;
- The application of Rule 35 (2001 Detention Centre Rules);[31]
- A selection of different decision-makers, to avoid over auditing the same caseworker; and
- Final decision taken.

UNHCR has based the audit findings on a complete review of the original UKHO paper case file, as well as any additional information available on the UKHO Case Information Database (CID).[32] Each review typically involved an assessment of the applicant's own application for asylum with attached evidence, a decision letter by the UKHO, and any additional evidence on file such as past and present immigration applications, past and present detention decision-making, and all arising medical evidence.

Each file review was conducted using a standardised decision assessment form developed and agreed in consultation with the UKHO and based on international standards, national legislation and policy guidance.

29 Fn.11

30 The 36 comprised 15 files relating to single males detained in Harmondsworth IRC or Colnbrook IRC, reviewing the decision to maintain detention following the asylum claim, the asylum decision, and the process taken in making the asylum decision; 15 files relating to single females detained in Yarl's Wood IRC reviewing the decision to maintain detention following the asylum claim, the asylum decision, and the process taken in making the asylum decision; and six files relating to adult dependents (three couples) detained in Yarl's Wood IRC, reviewing the decision to maintain detention following the asylum claim, the asylum decision, and the process taken in making the asylum decision.

31 See Rule 35, Detention Centre Rules, 2001, available at: http://www.legislation.gov.uk/uksi/2001/238/contents/made

32 The Caseworker Information Database (CID) application is used by UK Visa Immigration and Border Force to support the administration of all Asylum, General Settlement and Nationality applications. It also contains details of all non-British Nationals that come to the attention of the Immigration Service.

3.2. Audit Selection

Of the original 36 cases selected for audit, six were not suitable for review and so were removed from the sample.[33] The final sample was therefore comprised of 30 cases out of which there were 13 cases from female applicants and 17 cases from male applicants. Of these cases, six were mixed gender couples' cases. There were 18 different nationalities within the audit.[34]

There were three identified entry and commencement points of claims: Port Applications where people were refused leave to enter the UK, were detained pending removal and then claimed asylum (six cases); Overstayers where people had previously lawfully entered the UK but remained beyond their leave, were detained pending removal and then claimed asylum (14 cases); and Illegal entrants who were detained pending removal and then claimed asylum (nine cases). All but one of the 30 cases were already in detention at the point of claim.

Out of the 30 cases reviewed, four had their applications accepted and were granted refugee status in the UK, 16 were refused with a right of appeal, seven were refused with their claims also being certified under s94 of the 2002 Act;[35] and three were refused with their claims also being certified under s96 of the 2002 Act.[36]

In 27 out of 30 cases, the applicants were assisted by a legal representative. Of the 27 claims that were represented, 11 were assisted by Legal Aid.[37] The remaining three claims were without legal representation.

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33 This was because the files sent were copies from CID with no internal HO handwritten notes included.

34 Albania, Bangladesh, Cameroon, China, Ghana, India, Kenya, Kosovo, Namibia, Nepal, Nigeria, Pakistan, Philippines, Rwanda, Sri Lanka, Taiwan, Ukraine, and Zimbabwe.

35 Under s.94 the Secretary of State shall certify an individual's claim as clearly unfounded where the claimant is entitled to reside in a State listed in subsection (4) unless satisfied that it is not clearly unfounded, the consequence of which is that an individual will not be granted an in-country right of appeal where their claim is refused. See section 94 of the Nationality, Immigration and Asylum Act 2002, available at: http://www.legislation.gov.uk/ukpga/2002/41/section/94

36 Under s.96 the Secretary of State or in certain circumstances an immigration officer, may certify an individual's claim as clearly unfounded where the claimant was notified of an earlier right of an appeal either under s82 or received a notice under s120 (2), and could have been raised at the time irrespective of whether the appeal right was exercised, the consequence of which is that an individual will not be granted an in-country right of appeal where their claim is refused. See section 96 of the Nationality, Immigration and Asylum Act 2002, available at: http://www.legislation.gov.uk/ukpga/2002/41/section/96

37 See Ministry of Justice, Legal Aid, 'Civil', available at: https://www.gov.uk/topic/legal-aid-for-providers/civil

4. DETENTION DECISION-MAKING

4.1. Home Office Policy Guidance

The DAC Policy[38] outlines the process map for asylum processing in this area. It provides:

"If an asylum claim is made while an individual is detained pending removal, the National Returns Command (NRC) detained hub must refer the case to the DGK (Detention Gatekeeper).

If the claim is made at the Asylum Intake Unit (AIU), a port, or elsewhere after the claimant's apprehension as a clandestine illegal entrant or overstayer, the unit responsible for the case must complete asylum screening and refer the case to the DGK if detention appears to be appropriate."

The Detention Gatekeeper's (DGK) role is to review and scrutinise the suitability of all referrals made for the purpose of seeking to detain.[39] The role of the DGK is discussed in more detail below.

The DAC Policy further confirms that:

"After being referred a detained asylum case, the DGK must:

- *consider the suitability of the individual for detention according to detention policy and the factors outlined in Detention policy and suitability*
- *where appropriate and subject to practical considerations such as IRC space priorities or Detained Asylum Casework (DAC) casework capacity, authorise detention/ongoing detention at the required authorisation level (see Detention policy and suitability)*
- *allocate the case to NRC London Asylum to manage the claimant's detention*
- *request the referring unit to send the file to the DAC team managing the asylum claim"*

A relevant matter in this audit was the application of the DAC Policy in respect of what information the DGKs are given when determining if detention is appropriate, and the detail they then give when communicating their decision to the individual.

In all but one case in the audit the applicants were in detention at the time they claimed asylum, as they had been detained pending removal.

4.2. Gatekeeper Decision-Making

Since late 2016, decisions about whether to detain individuals have been referred to DGKs. It is the role of the DGK to assess whether detention decisions are proportionate; whether there is a realistic prospect of removal within a reasonable timeframe; and whether individuals may be at risk of harm in detention due to any vulnerabilities.

In the majority of cases audited, the basis for maintaining detention was either not fully expressed by the DGK or made without clear explanation. UNHCR found that in these cases, full and clear reasoning was not always detailed on either the paper file or the Case Information Database (CID). Moreover, the actual stated reasons were not always fully explained with reference to the information that the DGK had been given by the referring enforcement officer.

The role of the DGK is to fully review the position of the individual and ensure that all relevant policy issues, including the AAR Policy are considered. UNHCR instead observed that in many cases the DGK relied on speculation that the asylum application would be refused, and that if the claimant was from a Non-Suspensive Appeals (NSA) designated state, a certificate would be applied. Alternatively, it was assumed that where they were not from an NSA designated state a certificate could regardless be applied and where an appeal was possible, it would be placed into the Detained Immigration Appeals (DIA) process.

Decisions to maintain detention were often justified on the belief that the asylum claim was lodged in order to frustrate the removal process. This is apparent in the majority of cases reviewed within this audit. This is particulary concerning given that this was part of the overall reasoning provided in three of the four cases in the audit where grants of asylum were eventually issued.

38 Fn.11 page 7

39 See para 13, Home Office Detention Service Order, Management of Adults at Risk in Immigration Detention, July 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816821/DSO_08_2016_Management_of_adults_at_risk_in_immigration_detention.pdf

In one such instance, the applicant was detained at the point of claiming asylum at the Asylum Intake Unit (AIU) in Croydon. Whilst the DAC Policy permits this to happen, it appears to be rare.

The decision to detain was made by an Assistant Director, acting as the DGK, on the basis that the claimant:

[...] *is an NSA national and the presumption therefore is that his claim is unfounded.*

Although there is a presumption of release, the history here includes a clear and knowledgeable breach of immigration control which casts doubt on his reliability to adhere to any conditions imposed. We can expect a quick decision on the asylum claim and removal would be via EUL. We could therefore anticipate removal within a week of the claim being concluded. As such a claim is deemed unfounded at the outset, we should not expect the decision to take more than three weeks, and it is reasonable to conclude therefore that removal will occur within a month [...]

The presumption that the case would be refused within three weeks and the claimant removed from the UK within four weeks proved erroneous. The applicant was granted refugee status after a period of just over three months: the decision to move into the DAC was taken on 5 September 2017 and the asylum interview took place on 17 October 2017, which is a period of two weeks after the Assistant Director had believed, when approving detention, that the claimant would have been removed from the UK. The grant of asylum was then issued seven weeks later on 6 December 2017.

In another case, the claimant had arrived into the UK at the border and sought leave to enter as a visitor for one week. The claimant had a return ticket and a hotel reservation for one night. The claimant stated that she was working, single, and had paid for her own ticket. The official dealing with this matter at this time did not believe that she was a genuine visitor and so refused her leave to enter the UK. At the point of refusal and following the decision to detain pending removal, the applicant claimed asylum. After referral, the DGK decided that the timing of the asylum claim was:

"an attempt to frustrate removal and get TR [Temporary Release]*. It is considered that the asylum claim was lodged to frustrate removal rather than for genuine protections* [sic] *reasons. Although she is not from a NSA* [Non-Suspensive Appeal] *state, her asylum claim could be certified on a case-by-case basis, depending on the merit of the claim. If an i/c ROA* [in-country Right of Appeal] *is given, it would go through the DIA* [Detained Immigration Appeal] *process."*

In UNHCR's view, although there may have been reasons for coming to that conclusion, the reasoning documented on file is not sufficient to justify detention under the relevant law and policy,[40] and the lack of documented reasoning undermines the basis on which the decision is made. Moreover, no further consideration appears on the paper file or on CID which would justify the reasons given in the decision-maker's analysis.

In a further case, the decision of the DGK to refer the individual to the DAC was expressed in simple terms:

"Subject claimed asylum after RD[41] were set. He is from a NSA designated state and there is a presumption that his claim could be certified. Case suitable for DAC referral."

In UNHCR's view this approach to decision-making is insufficient. UNHCR would expect to see more anxious scrutiny in the assessment of the background of the applicant and the reasons for claiming asylum. Simply relying on the fact that the applicant is from an NSA country is not sufficient as there is only a presumption that the claim could be certified.[42] Moreover, it is not clear from the review of the applicant's file what information was given to the DGK and what information the DGK reviewed in this matter.

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40 '*All factors arguing both for and against continued detention must be taken into account. The decision on whether to maintain detention requires a careful balancing of these factors. Decisions must ultimately be made in line with the 'Hardial Singh' principles, that is, that there must be a realistic prospect of removal within a reasonable period of time and that if, at any time before the expiry of that reasonable period, it becomes clear that removal will not take place detention must not continue*.'. Home Office, Detention: General instructions Version 2.0, 14 January 2022, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046288/Detention_General_instructions.pdf.

41 RD in this context means 'Removal Directions'.

42 Section 94(3) of the Nationality, Immigration and Asylum Act 2002, provides that when refusing a protection and/ or human rights claim from a person entitled to reside in one of the listed states, the Secretary of State must certify the claim unless satisfied that the claim is not clearly unfounded. See: http://www.legislation.gov.uk/ukpga/2002/41/section/94. Also see *Home Office Policy, Certification of protection and human rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims),* available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778221/certification-s94-guidance-0219.pdf

In another case considered within the audit, which related to two nationals of Nepal, the main applicant was male and had entered the UK as a student in 2012. His wife, the dependant in the asylum claim, had entered the UK as his dependant in 2013. They were both arrested in 2017 after failing to report. They were notified of the UKHO's intention to remove them from the UK in 2017. The asylum claim was lodged two days after the notification of intention to remove was served. The DGK approved the initial detention on the basis that "*The subject and his wife have been detained as overstayers and are removeable on EUL*." Following the asylum claim, the DGK then approved the subsequent decision to maintain detention and consider the asylum claim under the DAC Policy on the basis that "*Sub is from a non NSA country therefore it is considered that any refusal would attract an in country ROA. However, cases can be certifiable on a case by case basis. The sub moved addresses and did not update the HO as to his whereabouts. Further to this, the timing of the subject's claim casts doubts on whether the claim in genuine. The subject had booked an AIU appointment in April of this year but failed to attend and only claimed asylum, once detained as an overstayer and removal from the UK was imminent. Based on the above factors, detention is deemed proportionate*". On neither the paper files, nor CID were any detailed assessments of the referrals for approval of the detention decision found.

It is of concern that no officer involved in interviewing or decision-making in this case considered the health issues raised by the dependant during her screening interview which arguably call into question the decision to detain. In the absence of more reasoned explanation for the authority to detain given by the DGK, these questions are not adequately addressed.

In a separate case, the applicant was accompanied to the UK by another person who claimed to be her aunt and stated they had come to the UK for a short holiday. The Immigration Officer at the port of entry decided that the applicant was a trafficked child. The "aunt" was arrested and charged with facilitating illegal entry. The applicant was referred into the NRM and placed into the care of a foster parent via social services. The following morning, the UKHO received information that the passport used by the applicant did not belong to her. They returned her to the airport. The applicant was treated as an adult and detained. A number of attempts to remove the claimant failed due to her non-compliance before she then claimed asylum. It is not clear what happened to the NRM referral that was made at the point she was moved into the care of social services, but it appears to have fallen away with the decision to treat the claimant as an adult and detain her.

The DGK in this matter confirmed that detention for the purpose of considering the asylum claim within the DAC would be suitable:

"AAR not engaged.

Although applicant was initially treated as a minor, her true identity has been established and no vulnerabilities identified. She has shown a total disregard for UK immigration procedure by attempting to enter the UK with fraudulent documentation, then only claimed asylum after being refused entry and faced with removal.

Her behaviour and lack of ties strongly suggests she is a serious absconder risk were she to be released from detention. Her continued detention is therefore reasonable and proportionate at this time."

No information was given to the DGK in respect of the fact that criminal charges were being brought against the "aunt" in relation to trafficking offences. The decision as set out by the DGK, further to their above stated findings, was:

"Sub claimed asylum after RDs were set.

Three attempts were made to remove the subject. Two RDs were cancelled due to disruption. The 3rd RDs were cancelled due to the late asylum claim.

The timing of her asylum claim is seen as an attempt to frustrate removal and get TR. It is considered that the asylum claim was lodged to frustrate removal rather than for genuine protections reasons. Although she is not from a NSA state, her asylum claim could be certified on a case-by-case basis, depending on the merit of the claim. If an ic ROA is given, it would go through the DIA process.

The ETD is agreed, sub could be removed within a reasonable period of time if the asylum claim is refused."

This case demonstrates that where a person has provided fraudulent documentation, a great deal of care should be taken to assess whether there are any indicators of trafficking or other potential vulnerability situations. Persons entering the UK with false documentation are not always in control of their documents prior to arrival and could also be under pressure or coercion to repeat information that may not be true. UNHCR recommends that DGKs consider all evidence in relation to why a person may present a false document on arrival to the UK, rather than assuming that the person is purposefully showing disregard for the immigration system.

In the cases reviewed, the DGK was rarely seen to consider individual circumstances. The consistent approach was to instead reference the timing of a claim and state that it was being made in order to frustrate removal. In the one case that was lodged when the applicant was not detained, the Assistant Director decided that detention was suitable on the basis that the applicant would be removed quickly as he was from an NSA country and, because of this, would receive a quick decision without an in-country right of appeal; he was granted asylum.

RECOMMENDATIONS:

1. UNHCR notes that despite the effort the UKHO has put into developing and improving the DGK function, greater procedural safeguards are needed to ensure that all information is available to enable a full assessment of whether or not a person is suitable for DAC.[43] UNHCR therefore recommends that the UKHO ensures that all decisions taken by the DGK are made in full light of all the available evidence that the UKHO has, not just what the DGK is given by the referring officer. This will ensure that the individual circumstances, including the nature of the asylum claim, will be before the DGK prior to their decision being made.
2. Related to the above recommendation, it is noted, in particular, that in the majority of cases audited the asylum screening interview had not been completed at the time the DGK authorised detention. UNHCR recommends that in all cases where persons have raised an asylum claim, they must first be given a screening interview before the referral is forwarded to the DGK, as is required for cases where the individual is making their claim at an *'Asylum Intake Unit, a port, or elsewhere after the claimant's apprehension'*. Completing the screening interview prior to referring the detention decision to the DGK will ensure that the DGK has all the relevant and necessary information on the basis of the claim and the background to it and will not have to rely on generalised assumptions about key crtiteria such as the likelihood of a quick decision or certification.
3. UNHCR recommends that in order to ensure timeliness of decision-making and not increase the time that a person remains in detention following screening, only those cases that are considered as being suitable for continued detention should be referred to the DGK. There should therefore no longer be a requirement that all asylum claims raised by persons already detained 'must' be referred to the DGK.
4. In order to ensure that this process is promptly completed and that detention is not prolonged, UNHCR further recommendeds that the Screening Interview template be developed to ensure that questions in relation to detention decision-making are set out more clearly to allow for the individual to explain their circumstances as fully as possible. The UNHCR/IDC Vulnerability Screening Tool offers many solutions that would help in this instance. UNHCR stands ready to assist with this work.
5. UNHCR recommends that all DGKs receive refresher training on the criteria for detention and the need to give reasons specific to the individual in order to justify such a decision.

43 Fn.4

5. REFUGEE STATUS DETERMINATION IN THE UK

The Refugee Convention and the 1967 Protocol is the cornerstone of the international system for the protection of refugees. The UKHO policy *Assessing credibility and refugee status*, of 6 January 2015, recognises this and states that it is in accordance with the United Kingdom's obligations under the Refugee Convention.[44] UKHO policy also provides guidance on how to assess credibility using a structured approach, and on the assessment of refugee status and its various elements.

The European Council Directive 2004/83/EC ('the Qualification Directive') lays down provisions and criteria for interpreting the Refugee Convention to be adopted across the EU. Transposed into UK law through The Refugee or Person in Need of International Protection (Qualification) Regulations 2006[45] and Part 11 of the Immigration Rules, the Procedures Directive 2005/85/EC sets minimum standards for Member States for granting and withdrawing refugee status.

6. QUALITY OF ASYLUM DECISION-MAKING IN DETAINED ASYLUM CASEWORK

This section outlines the key trends observed in asylum decision-making for the DAC cases observed as part of this audit.

6.1. Assessing credibility and establishing the facts of the claim

UNHCR has previously expressed concerns regarding the way in which asylum caseworkers assess credibility and establish the facts in asylum claims.[46] In previous audits of the DFT, UNHCR observed that the assessment of credibility had posed a significant challenge for caseworkers working in a detention and expedited case setting.

In previous audits on the DFT, UNHCR observed that in many cases where claims were refused, UKHO caseworkers would state that every aspect of an applicant's claim was disbelieved or rejected; concluding in many cases that claims were "not credible at all", when the caseworkers were in fact routinely accepting, for example, nationality and age. Of note, UNHCR observed in the DAC audit that this approach had changed and that caseworkers were now addressing each material fact that was accepted or rejected individually and that there was no longer a tendency to conclude that no aspect of a claim was accepted.

Within the present audit of decision-making in the DAC process, UNHCR observed that caseworkers continue to have difficulty in identifying and engaging with material facts. Examples are set out below.

UNHCR also observed that in contrast to the findings of the two DFT audits, it was positive to see that no negative decisions were taken where a claim was rejected in its entirety on the basis of one or two negative findings. However, in assessing credibility there was frequently a lack of full and proper anxious scrutiny and appropriate engagement with

44 It is important to reference at this juncture that the UKHO positions are not always consistent with UNHCR positions.
45 The Qualification Directive remains extant in domestic law as "retained EU law" by virtue of ss 2 to 4 of the European Union (Withdrawal) Act 2018 ("EUWA"), as amended by the European Union (Withdrawal Agreement) Act 2020.
46 UN High Commissioner for Refugees (UNHCR), Beyond Proof, Credibility Assessment in EU Asylum Systems : Full Report, May 2013, available at: https://www.refworld.org/docid/519b1fb54.html

the analysis of material facts. This undermined the correct assessments of credibility and risk by decision-makers. Examples and explanations are set out in the below sections.

What is also apparent from many cases audited is the effect of being in detention on the assessment of credibility, notably in respect of how Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004[47] is applied. The UKHO policy *Assessing credibility and refugee status*[48] sets out at section 2.4 that:

"Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 requires decision-makers to take into account the claimant's conduct when applying the benefit of the doubt to unsubstantiated material facts. It is essential to provide the claimant with an opportunity to explain the reasons for such behaviour." (our emphasis)

This policy further guides decision-makers by setting out that there are specified behaviours which have to be taken into account as potentially damaging when assessing credibility. This includes *"any behaviour that appears to have been intended to conceal information, mislead, or to obstruct the resolution of the claim"*. However, the policy also guides caseworkers that they *"must provide the claimant with an opportunity to explain their actions or inaction; failure to do so will result in the caseworker being unable to rely on the provision".*[49]

UNHCR is not entirely in agreement with the Section 8 approach to assessing credibility and this is addressed below.

6.2. Approach to Credibility Assessment and Gathering Evidence at Interview

The term 'Credibility Assessment' in this context is used to refer to the process of gathering relevant information from the applicant, examining it in the light of all the information available to the decision-maker, and determining whether the statements of the applicant relating to material elements of the asylum claim can be accepted.

UNHCR has published guidelines on undertaking credibility assessments in the asylum context. This UNHCR guidance identifies and clarifies key concepts on credibility, derived from international, UK and EU bodies.[50] This section reports on the extent to which these standards are reflected in the cases audited for this report.

Evidence that may be relevant to a determination of refugee status is either evidence relating to the applicant's personal circumstances[51] or evidence concerning geo-political and other general circumstances (such as the way in which the state is able and willing to provide protection) in the country in question. The audit found strengths and shortcomings in the evidence gathering practices undertaken by decision-makers in both these areas.

The following relates to the first area of an applicant's personal circumstances. For an overview of strengths and shortcomings relevant to the evidence concerning the geo-political and other general circumstances, please see section 7.

The asylum interview should provide a crucial opportunity for the applicant to fully explain the reasons they cannot return to their country of origin or former habitual residence, and for the decision-maker to identify all the material facts; to gather, as far as possible, from the applicant all the necessary information related to those material facts; and to probe the credibility of the asserted material facts.[52] The asylum interview will only achieve this if it is conducted in a manner, and in conditions, which are

47 Section 8, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, available at: http://www.legislation.gov.uk/ukpga/2004/19/section/8
48 Fn.23
49 Fn.23
50 Fn.46
51 Handbook on procedures and criteria for determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, Reissued Geneva, February 2019, available at: https://www.unhcr.org/uk/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html. See para 43: '*These considerations need not necessarily be based on the applicant's own personal experience. What, for example, happened to his friends and relatives and other members of the same racial or social group may well show that his fear that sooner or later he also will become a victim of persecution is well-founded. The laws of the country of origin, and particularly the manner in which they are applied, will be relevant. The situation of each person must, however, be assessed on its own merits.*[...]'
52 Ibid.

conducive to accurate disclosure by the applicant of the reasons for the asylum claim. Throughout this audit, UNHCR has reviewed interview transcripts to assess whether the interviewing style allowed the applicant to substantiate their application and provide the basis for a full and appropriate credibility assessment. Several areas of positive practice as well as shortcomings were identified in the cases audited.

In one case, the caseworker determined that as the applicant had not claimed asylum as soon as they had arrived in the UK, the claim was not credible. The caseworker set out in the decision letter that: "*If you were genuinely in fear for your life, it is not considered credible that you would have failed to make an asylum claim* […]". In the Asylum Interview, the applicant was asked two questions within a 77-question interview about his reasons for not claiming asylum sooner than he did. The applicant was clear in his response that initially he "[…] *did not know about asylum*", and that after he had sought advice, a solicitor had advised him against this, suggesting that he instead make a human rights application. At this point in the interview, the caseworker does not ask any further questions in respect of the delay in making the claim. Instead the caseworker, in response to the answers given in the interview, sets out in the decision letter that: *"You have provided no evidence to show that your allegations have been put to your previous solicitors to allow them to respond. Therefore, in the absence of an explanation from the solicitors, your allegations in this regard cannot be accepted on face value."*

The caseworker should arguably have invited further evidence during the interview or prior to finalising the Reasons for Refusal Letter (RFRL) on this point to fully satisfy the requirement in section 8. The UNHCR Handbook sets out at paragraph 199 that *"While an initial interview should normally suffice to bring an applicant's story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview* […]"[53] The caseworker did not share their concerns or thoughts on what might be helpful evidence, but nonetheless refused to give any consideration to this aspect of the applicant's account in its absence.

Furthermore, the UKHO Policy instruction '*Assessing credibility and refugee status'* sets out "[…] *a reasonable explanation for a delay in claiming asylum is a matter for the caseworker to determine, but depending on the individual facts of the case could include a genuine lack of knowledge about the asylum system* […]"[54] In this specific case, UNHCR believes that further evidence should have been requested on this issue prior to the decision.

In another case, which highlights key issues with the application of section 8,[55] the caseworker determined that the applicant had "*failed to provide a credible reason"* for not claiming asylum when she first arrived in the UK. In an interview of 157 questions, only two were asked about the reason for not claiming asylum sooner, to which the applicant replied: "*At that point I did not know how to do it and did not speak English.*" and "*I did not know how to do it. I came to travel and earned a little bit of money because the money I brought had ran out.*" The interviewer did not put to the applicant that the explanation was not credible. The applicant was not therefore afforded a full opportunity to satisfy the interviewer, and the interviewer instead moved on to questioning the applicant on their evidence relevant to events occurring in their country of origin.

In not putting credibility concerns to the applicant, the caseworkers in these cases have not followed UKHO policy. The overall credibility assessment is therefore flawed as the caseworkers have determined the applications to be not credible without affording the claimants a full opportunity to respond to their credibility concerns.

In a further case, in response to the applicant's evidence that she agreed to marry a man that she only knew by his nickname, the caseworker determined that the applicant was not credible. This credibility finding was made despite the applicant stating in the asylum interview her reasons for only knowing his nickname and in absence of consideration of her stated background as a victim of child abuse. In this case, the applicant claimed that she had been forced into prostitution at the age of 13. She states that she was able to escape her situation when she was 25 with the help of a man who had promised to marry her. In light of this background, the fact she did not know this man's name should not be held as such a defining negative credibility finding. The applicant had also explained in her asylum interview that she had been trafficked by a woman who she was able to name and had named previously. However, the interviewer

53 Ibid.
54 Fn.23
55 Fn.47

appeared to be confused during the interview as to whether or not the applicant had named this woman and it takes the intervention of the legal representative to clarify that the applicant had indeed given the woman's name. Despite this, and despite clarity from the applicant during the interview that "*I don't know his real name but a nick name they call him* [redacted]" and *"He took me to a joint like a restaurant. He promised to marry me when I explained every situation in my life",* the caseworker determines that the evidence given was not credible. This decision was taken without allowing the applicant an opportunity to fully address these specific concerns. The caseworker also failed to set out the basis for deeming this aspect of the claim to not be credible.

Whilst on the evidence submitted, the decision-maker accepted that the applicant was Nigerian and was a member of a particular social group "*as a female who does not have anywhere to stay or any family"*, the decision-maker refused to accept that the applicant had been subjected to persecution. In consideration of the evidence that the applicant gave during her UKHO interview, UNHCR notes that little information was requested in relation to the period in her life where she claimed that she was forced into prostitution. Yet this period was at the heart of the applicant's claim, which was based on her fear that a woman she named, who she states forced her into prostitution and who she believed would subject her to harm and further sexual violence if she were returned to Nigeria. The applicant also stated that she feared persecution in Nigeria as a single woman. None of these issues were explored in sufficient detail during the interview.

The interview lasted for a total of only 52 questions. Their focus was to ascertain how the applicant left Nigeria, why the applicant did not seek asylum sooner and further, whether or not the woman who forced her into prostitution would have the capacity to locate her again if she was returned to Nigeria. A reading of the interview transcript would suggest that upon being asked how long the applicant had been forced into prostitution, the interviewer had accepted that the applicant had been forced into prostitution from the age of 13. However, a review of the asylum decision indicates that this was not the case. In the asylum decision, the decision-maker stated that:

"*When you were asked to describe the events that took place prior to your departure from Nigeria, your account lacked detail and is considered vague. Your own evidence is that you cannot remember the location of where the events took place other than 'Lagos' (AIR Q 11 & 16). It is considered reasonable to expect you would know this information in greater detail and your failure to provide this information in greater detail does not make it possible to substantiate your claims."*

A review of the transcript clearly shows that no further questions were asked about the applicant's experience of prostitution as a child in Lagos and the interviewer appeared content to move on when the applicant mentioned that she was forced into prostitution from the age of 13:

Q11: Where did this happen?
A11: It happened in Lagos.
Q12: How long were you forced into prostitution?
A12: From the age of 13.
Q13: How were you able to escape from [redacted] the day you ran away?
A13: I ran away from the man she handed me over to. This was the man that told me [redacted] *that was looking for me to kill me.*
Q14: How were you able to run away that day?
A14: Immediately the man told of [redacted] actions so I ran away from the man.
Q15: Could you have ran away sooner?
A15: I couldnt [sic] run away because I was living with her there.
Q16: Where did you run away to?
A16: I ran away from this man and I met another. (Okay but what location where did you run to?) I can't remember the name of the street.
Q17: Did you go to the Police?
Q18: No.

The decision-maker in this case accepted that the applicant was a member of a particular social group and accordingly that she could have been vulnerable to exploitation and harm. In this case, the evidence relied upon within the RFRL suggests that women, as a particular social group in Nigeria, are at risk given the reference to the guidance in the RFRL which confirms that: "[...] *women face greater difficulties in seeking and obtaining protection than men particularly for sexual-and gender-based violence.*" Past persecution and the risk of future persecution, although related, should be treated as two distinct issues. It is further concerning that the decision-maker forms such clarity in the decision letter when the interview itself was so brief and follow up questions were not asked.

RECOMMENDATIONS:

6. Credibility concerns should be put to applicants during their interview, as per the UKHO 'Asylum Interviews' policy. If this is not possible, then the concerns should be put to the applicant at the next possible opportunity. A decision should not be produced in any application for asylum where a credibility concern has not been put to the applicant for their response and not fully examined.

7. Further, all available information relevant to the asylum claim should be collected and reviewed in sufficient time prior to the interview. This will enable the caseworker to narrow down the elements of the claim that will require further questioning at interview and to ensure for example, that the applicant is given an opportunity to respond to specific evidence relevant to the claim. Where this is not done, there is a risk of a failure by the caseworker to ensure the effectiveness of the interview process in assisting the claimant in discharging the burden of proof.

7. APPLICATION OF REFUGEE CONVENTION CRITERIA

7.1. Convention reason

Article 1A(2) of the Refugee Convention sets out the legal definition of a refugee, as one who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[56]

Within the cases audited, there was a mix of reasons specified for claiming asylum. Some of these came under the grounds of the Refugee Convention, while others were deemed to not be Convention-related.

Among the cases audited, those presenting apparent[57] Refugee Convention-related reasons for persecution comprised claims based on:

- Political opinion (3 cases)
- Religion (1 case)
- Particular social group (10 cases)
- Political opinion and race (1 case)
- Particular social group and religion (1 case)
- Race and religion (1 case)

Several claims were assessed by the UKHO as being based on non-Convention reasons, comprising those based on:

- Money lending (4 cases)
- Familial abuse (2 cases)
- Forced marriage (2 cases)
- General fear of abuse (1 case)
- Blood feud (1 case)
- Abuse from authorities (arising from criminality) (1 case)
- Land dispute (1 case)
- Military conscription (1 case)

56 Fn.8
57 Convention-related reasons either as stated by the applicant or as understood by the Home Office

The UNHCR Handbook explains at paragraph 67 that:

It is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared and to decide whether the definition in the 1951 Convention is met [...]

The UKHO policy instruction *Assessing credibility and refugee status*[58] sets out that:

[...] *the Refugee Convention is a living humanitarian instrument and the interpretation of what constitutes persecution or the identification of a particular social group (for example) is not fixed for all time. Where protection needs have been established, caseworkers should be wary of rejecting claims as non-Convention based, without careful examination of whether there is in fact a connection to a Convention ground and thus a valid claim to refugee status. This is most likely to be the case where membership of a particular social group could be established."*

UNHCR found that in the majority of the audited cases, decision-makers correctly ascertained the reasons for the persecution feared and proceeded to correctly identify the Convention reason. There were, however, a number of rejections made which, on the basis of the relevant files audited, do not appear to have carried out the inclusion assessment properly. Examples of both are given below.

In one case, where there is significant confusion over the identification of the Convention reasons, the applicant was from Ghana and claimed that he was bisexual and had converted from Islam to Christianity. In respect of his religious persecution claim, the applicant stated that he had been born into Islam but converted at the age of 19 into the Pentecostal Church. He had been beaten by family members as a result of this conversion and had to relocate. His new location was discovered and he was beaten again by his siblings and their friends. He was unable to report these instances of religious persecution to the police because he stated he had relatives who were serving police officers. The applicant also claimed that he was bisexual, and at risk as a result of his sexuality. The UKHO correctly identified in the RFRL under the subheading of '*Convention Reasons*' that: "*You claim to have a well-founded fear of persecution in Ghana on the basis of your religion and membership of a particular social group in that you are a bisexual.*" However, when continuing to explain the decision, the decision-maker does not make any further reference to the aspect of the claim relevant to fear of persecution arising from religion. In the 'Convention Reasons' section, the decision-maker appears to concentrate the bases as being wholly related to the claim to be bisexual and a member of a particular social group: "*I have considered your claim to be a bisexual man and whether this means you are a member of a particular social group and whether that particular social group exists in Ghana.*" It is noted that the decision-maker does go on to consider the claim of religious persecution under the 'Material Facts Consideration' sub-heading, and that the decision-maker concludes that the applicant was not persecuted as a result of his religious conversion; however, without this being clearly documented and correctly noted within the Convention Reasons section, it is unclear as to whether or not this important issue has been at the forefront of the decision-maker's mind when considering whether or not this particular Convention Reason was clearly set out or not. As such, it is not clear whether the decision-maker has properly understood and identified all the reasons for the basis of the applicant's claim, and additionally whether or not they fall within the Refugee Convention criteria.

A number of other cases in the audit concerned applications in which Membership of a Particular Social Group was the stated/understood Convention reason.

In a second case, the decision-maker fully sets out the issues and considers them under the correct headings within the decision letter. UNHCR was pleased to note the approach in this matter to properly determining the stated claim as falling under the Refugee Convention. The applicant was from Nigeria and claimed to be gay. The numerous and distressing material facts in this case were set out in detail by the applicant during his interview and the decision-maker deals with each fact individually and then in the round in the decision letter. In this case, the decision-maker clearly and correctly assesses the claim as falling within the Refugee Convention. The decision-maker sets out in the decision letter that: "*You have stated that one of your problems in Nigeria is due to your membership of a particular social group, in that you claim to be gay*" and that therefore "*when taken*

58 Fn.23

at face value, it is considered that this particular reason you have given for claiming a well-founded fear of persecution under the terms of the 1951 United Nations Convention relating to the Status of Refugees, could be one that engages the UK's obligations under the Convention."

In another case, the applicant was from Kenya and claimed to be bisexual. However, the decision-maker wrongly refers to the applicant as being a "gay male" rather than bisexual, within the decision letter: "*You claim to have a well-founded fear of persecution in Kenya on the basis of your membership of a particular social group (gay man).*" Further, "*I have considered your claim to be gay male and whether this means you are a member of a particular social group and whether that particular social group exists in Kenya. It is commonly accepted that members of a particular social group share an immutable (or innate) characteristic and that recognition of the group by the surrounding society might help to identify it as a distinct entity.*"

In this matter, the decision-maker determined that the Refugee Convention reason was applicable because the applicant claimed to be gay, rather than bisexual. The arising issue in that respect relates more to an apparent use of a template paragraph within the RFRL relevant to the assessment of sexual identity and the application of relevant common law, rather than a misunderstanding of the application.[59]

The decision-maker then sets out in the Material Facts Consideration section that their approach is to consider whether the applicant is bisexual, and there is no suggestion that the Convention does not apply. The decision-maker concludes that the applicant is not bisexual and the claim is dismissed. UNHCR has concerns with the manner in which the assessment of Convention reasons is carried out. Whilst these concerns do not necessarily impact on the appropriateness of the final decision in this case, they do reflect a lack of thoroughness and attention to detail, especially when an applicant's gender and sexual identity is so important in assessing the Convention reason.

In another case, the applicant is assessed by the decision-maker as having made a claim on the basis of being a member of a particular social group because she is a Nigerian female with no family or anywhere to stay if she were to return to Nigeria. The decision-maker first considers whether the applicant's claim to be a member of a particular social group is correct by reviewing the country information: "*Women in Nigeria are considered to form a particular social group (PSG) within the meaning of the 1951 Refugee Convention. This is because they share an immutable (or innate) characteristic – their gender – that cannot be changed and they form a distinct group in society as evidenced by widespread discrimination in the exercise of their fundamental rights.*" The decision-maker proceeds to confirm that "*[a]lthough women in Nigeria form a PSG, this does not mean that this will be sufficient to make out a case to be recognised as a refugee. The question to be addressed in each case is whether the particular person will face a real risk of persecution on account of their membership of such a group*." The decision-maker then accepts that the applicant has "*a convention reason as you are a member of a PSG.*" Here, the decision-maker correctly applied the Refugee Convention alongside the up to date and correct country information in ascertaining the Convention reason.

In another case, the applicant from Cameroon was granted refugee status by the decision-maker on the basis that it was accepted he was a bisexual man at risk on return to Cameroon. In this case, the Convention reason was also correctly identified and the claim determined sensitively and with care.

Two audited cases stand out in which the UKHO considered that there were no Convention Reasons, but in the view of UNHCR there are clear Convention reasons. These are discussed below.

The UNHCR Handbook sets out at paras 77-79 that:

"A "particular social group" normally comprises persons of similar background, habits or social status. A claim to fear of persecution under this heading may frequently overlap with a claim to fear of persecution on other grounds, i.e. race, religion or nationality.

Membership of such a particular social group may be at the root of persecution because there is no confidence in the group's loyalty to the Government or because the political outlook, antecedents or economic activity of its members, or the very existence of the social group as such, is held to be

59 The decision letter in this matter sets out that: "*In the case of HJ (Iran) [2010] UKSC 31 the Supreme Court considered whether an asylum applicant who is claiming to be gay can be a member of a particular social group for the purposes of Article 1A(2) of the 1951 Geneva Convention.*" and "After careful consideration of the case-law above, it is accepted that you would potentially be a member of a particular social group as a gay male and that this group exists in Kenya."

an obstacle to the Government's policies. Mere membership of a particular social group will not normally be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground to fear persecution."

In one case the applicant stated that she and her husband were police officers who were being conscripted against their wishes to perform military service in Ukraine. The decision-maker does not identify a Convention reason in determining this matter and does not consider the possibility that there could be a[n imputed] political opinion. The decision-maker does not accept that the applicant and her husband were avoiding military conscription in Ukraine but makes no clear finding of fact as to whether they accept/reject or consider unsubstantiated the issue of whether the applicant was ever a police officer.

In another case the applicant feared forced marriage and/or honour killing, particularly by her father, as it had been proposed that she marry a family friend who expressed an interest in her. In this case the decision-maker determined that the applicant's claim of fear based on forced marriage/honour killing was not related to the Refugee Convention. This decision was taken despite the representations from the immigration solicitor which indicated that the applicant would appropriately be considered a member of a particular social group as she was a woman at risk of forced marriage. Whilst it was not raised by the applicant in her interview, in the letter of representations from the immigration solicitor the lawyer raised the point that the applicant's membership of a particular social group (namely women) also suggested that she would be at risk of trafficking/exploitation in the event that she was returned. This should have been a further ground to consider the applicant as falling under the Convention reason of membership of a particular social group. In light of UNHCR's Guidance on International Protection 1[60] and 2,[61] and the facts of the case, in UNHCR's opinion, it is unclear as to why the decision-maker determined that the applicant did not present a Convention reason for seeking asylum.

RECOMMENDATION:

8. **UNHCR recommends that the UKHO reviews the training given to decision-makers in respect of understanding and applying the concept of 'Convention Reasons' in Article 1A of the Refugee Convention. This is an important issue as it forms the basis of analysis and decision-making going forward in the adjudication.**

60 UNHCR Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 7 May 2002, available at: https://www.unhcr.org/uk/publications/legal/3d58ddef4/guidelines-international-protection-1-gender-related-persecution-context.html

61 UNHCR Guidelines on International Protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 7 May 2002, available at: https://www.unhcr.org/uk/publications/legal/3d58de2da/guidelines-international-protection-2-membership-particular-social-group.html

7.2. Well-founded fear

Once the facts of a claim have been established, a decision-maker is required to assess, based on the established facts, whether the applicant has a subjective fear of future harm and whether there are objective grounds indicating a reasonable likelihood that the harm feared will occur.

UKHO policy[62] provides that:

"In assessing whether a fear is well-founded, caseworkers must be satisfied that:

a. the claimant has manifested a subjective fear of persecution or an apprehension of some future harm, and

b. objectively, there is a reasonable degree of likelihood (or a real risk) of the claimant's fear being well-founded on return to the country of origin."

The UNHCR Handbook[63] confirms that:

"[...] it is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgement on conditions in the applicant's country of origin. The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin – while not a primary objective – is an important element in assessing the applicant's credibility. In general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there."

UNHCR previously noted in the earlier audits on DFT decision-making that in the majority of cases reviewed, the second stage of the above guidance was missing and that decision-makers were instead proceeding to consider sufficiency of protection by the State, rather than assessing whether the fear was objectively well-founded to the lower standard of proof.[64]

In most of the cases reviewed as part of the present audit, UNHCR notes that decision-makers continue to fail to assess the objective risk of harm to the reasonable degree of likelihood standard. Through the Assisted Decision Making Tool (ADMT) (which is no longer used by the UKHO for asylum decision -making) decisions were expected to have been made following a template format of 'Material Facts Consideration' then 'Summary of Findings of Fact' then 'Assessment of Future Fear' and then 'Sufficiency of Protection'. However, in most of the reviews in the audit the decision-maker progressed to considering sufficiency of protection without first addressing whether there was objectively a reasonable degree of likelihood that the applicant's fear would be well-founded on return to their country of origin.

UKHO policy[65] confirms that:

"To qualify for asylum (or Humanitarian Protection), an individual not only needs to have a well-founded fear of persecution, they must also demonstrate that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. But the concept of 'sufficiency of protection' does not apply if the actor of persecution is the state itself or an organisation controlling the state."

In one case, the applicant had entered the UK as a visitor. She remained in the UK after her entry clearance had expired and made no applications for further leave to remain until she claimed asylum. The basis of her claim was that she had invested in a business and owed large amounts of money to loan sharks who were threatening her. The applicant also claimed that she was being threatened by her husband. In this case, the credibility of the applicant's claim to have borrowed money and been threatened by loan sharks and by her husband was rejected. The decision-maker completed a section entitled 'Assessment of Future Fear' and only briefly engaged with the relevant facts in this case. It is determined in this case that: *"it is considered that any subjective fear you have claimed is not*

62 Fn.23
63 Fn.51, see para 42
64 Fn.23. See Paragraph 6.6: *The low threshold for the reality of the risk on return was decided in Sivakumuran, R (on the application of) v Secretary of State for the Home Department [1987] UKHL 1 (16 December 1987). The House of Lords accepted that even 'a 10 percent chance of being shot, tortured or otherwise persecuted' could be enough of a risk for a fear to be considered well-founded.*
65 Fn.23, 8.1 Sufficiency of protection

objectively well founded because there is sufficient protection provided by the authorities in Taiwan (Republic of China) and you will also have the option to relocate within your country if you no longer feel safe in the area where you intend to live upon return."

In another case where the applicant had a stated fear of religious persecution, the country of origin information report referred to by the decision-maker in their decision of January 2018 contained the following extracts:

"In November 2005, 149 students of the Seventh-day Adventist (SDA) church at the University of Ghana, Legon, took legal action to restrain the university from requiring the students to take examinations on Saturdays, the SDA's day of worship."

"In late 2006 the Embassy organized several iftar programs throughout the country, including dinners and food donations, in which Embassy officials spoke about the importance of religious tolerance and encouraged collaboration between religious groups both within and across different denominations."

"Since 2002 outreach to the Muslim community has been a focal point of the Embassy's activities."

The decision-maker concludes in this matter that: "*It has therefore been concluded that based on the objective evidence, there is a general tolerance towards religious freedoms.*" Given that the decision was issued in January 2018, UNHCR would expect the decision-maker to rely on more recent country information relevant to future risk. Whilst it is correct to consider the relevant available country evidence that covers a specific time in the past in order to assess credibility, that historic evidence cannot assist with the assessment of a future fear. An approach to considering a well-founded fear must take into account the most recent and available country information.

In another case that was determined in November 2017, the decision-maker, in assessing whether a threat to the applicant existed from neighbours relating to a land dispute in Bangladesh, considered objective information from November 2014 and February 2015. The decision-maker also consider the applicant's stated ongoing issue with debt in reference to the same dated country information. The decision-maker concluded on the basis of reviewing the evidence as published in November 2014 and February 2015, that: "*I have carefully considered your claim and together with the evidence provided and relevant information considered above, I have decided that there is no reasonable degree of likelihood that you would be persecuted on return to Bangladesh*." The decision-maker in this matter has failed to take into account up to date country information. Of importance, in September 2017, the UKHO published a report following a fact finding mission to Bangladesh.[66] In that report, inter alia, the UKHO confirmed that: '*Several sources described land disputes as a big issue*'; and '*A source stated that it can take many years, often generations, to resolve land disputes through the civil courts and because of this criminal activities often start*'; and '*The police have special officers who will attempt mediation but this does not always work*'. Of some importance, the report did also confirm that the '[...] *special unit deal with land disputes 'successfully' and UKBET pointed to Government improvements in mapping and digitisation of land registration that is having a positive impact on the resolution of land disputes.*' None of this important objective evidence that was gathered by the UKHO itself on mission to Bangladesh was considered in the RFRL.

In a further case that represents a good example of decision-making, the applicant had left India because of both familial problems (relevant to issues concerning his daughter) and a land dispute. He entered the UK without seeking leave to enter. He was encountered by the police following a routine traffic stop. He was detained and claimed asylum. In determining the asylum claim, the applicant was deemed to be credible in respect to the evidence he provided. The decision-maker proceeded to carefully consider and assess future fear and sufficiency of protection where specific objective information relevant to policing in India is set out. This presents an example of good practice in dealing with applications where the applicant is credible and has a subjective fear, but that fear does not engage the Convention.

In the cases considered in this audit, the practice within the detained asylum claims decision-making teams in Yarl's Wood and Harmondsworth appears to be based on identifying material facts, considering whether or not to accept the credibility of those facts, and assessing whether there is a sufficiency of protection by considering objectively, whether

66 See page 25, UK Home Office, *Report of a Home Office Fact-Finding Mission, Bangladesh, Conducted 14-26 May 2017*, Published September 2017, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655451/Bangladesh_FFM_report.pdf.

there is a reasonable degree of likelihood that the applicant's fear would be well-founded on return to their country of origin. This decision-making process, however, is not structured and instead appears to flow as a single consideration.

RECOMMENDATION:

9. **UNHCR recommends that the UKHO ensures that all asylum decisions are made following a structured decision-making format of 'Material Facts Consideration' then 'Summary of Findings of Fact' then 'Assessment of Future Fear' and then 'Sufficiency of Protection'. The analysis of asylum decisions in this audit suggest that the approach to structured decision-making can be improved.**

7.3. Persecution

The UNHCR Handbook sets out at paragraph 51 that:

"There is no universally accepted definition of "persecution", and various attempts to formulate such a definition have met with little success. From Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights – for the same reasons – would also constitute persecution."[67]

The UKHO policy guides decision-makers on the definition of 'persecution' in reference to Regulation 5(1) of the 2006 Regulations:

"5.—(1) In deciding whether a person is a refugee an act of persecution must be:

a. sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms(1); or
b. an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a)."[68]

Within the audit, UNHCR noted a number of cases where there appeared to be a lack of analysis as to whether or not what the applicant claimed to fear amounted to persecution, as per the published guidance.

In one case, the applicant, a Ghanaian National, claimed he feared persecution at the hands of his family because he converted from Islam to Christianity and because he had a number of same sex relationships that they knew about. He was questioned extensively in his asylum interview about his sexual identity and religion.

In determining the claim, the decision-maker set out, paraphrasing the Regulations, that;

"Consideration has been given to the specifics of your claim to assess whether you have faced 'an accumulation of measures which are sufficiently serious by their nature and repetition that they constitute persecution'."

During his asylum interview the applicant said that his family started to persecute him as far back as the early 1990s when he was seen reading the Bible. He gave evidence that on one occasion he had been locked in a room and beaten for five days. He further claimed to have been beaten in 1995, 2003, 2005 and in 2006. He explained that he had been hospitalised on several occasions.

67 Fn.51
68 See regulation 5, The Refugee or Person in Need of International Protection (Qualification) Regulations 2006, UK Statutory Instruments, 2006, No. 2525, available here: http://www.legislation.gov.uk/uksi/2006/2525/regulation/5/made

The applicant also stated in evidence that he was arrested and detained by the police and despite internally relocating continued to experience problems up to and as recently as 2016, when he states that he and his partner were attacked by an armed gang. The applicant claimed that his partner died after three weeks in the hospital and that he himself was hospitalised for five days as a result of the attack.

It is apparent that this history of past ill-treatment amounted to persecution. However, the decision-maker stated that the applicant only claimed to have experienced discrimination from his family and local communities:

It is noted that you did not face any mistreatment of [sic] *persecution at the hands of the state in Ghana but you claim to have experienced discrimination from your family and the local communities* [...]

The applicant expressed in clear terms during his asylum interview, however, that he had been arrested and detained by the police. He also expressed a clear fear of gangs that were acting with impunity and who arguably had the support of the authorities. It is concerning that the decision-maker has assessed acts amounting to persecution as discrimination. The applicant was subjected to unlawful detention, beatings during that detention and threats to his life. These events do not need to be repeated or accumulated to be considered as serious harm amounting to persecution.

7.4. Sufficiency of protection

In respect of guidance on determining sufficiency of protection, the UKHO asylum policy instruction on *Assessing credibility and refugee status* sets out that:

"[...] an individual not only needs to have a well-founded fear of persecution, they must also demonstrate that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country"

Within this audit, UNHCR identified cases which contained errors in the consideration and assessment of the concept of sufficiency of protection. In most of the cases reviewed, the decision-maker relied on country of origin information that was published many years prior to the decision being made. Whilst in some instances older objective evidence may prove helpful in determining whether past persecution has taken place, the use of historic objective evidence noted in this audit was not deployed in order to assess the account of past persecution. The historic evidence was rather referred to as evidence relevant to future fear, when there is more recent information relevant to the case. It is concerning that up to date objective evidence was not being used to consider future fear and that in many cases the evidence used did not even correlate with the claim in respect to past persecution. This is important given that the Refugee Convention is forward looking and the concept of sufficient protection relies on a specific analysis of whether or not such protection is actually available in law and practice.

In one case, the applicant had familial problems and claimed to face persecution arising from his daughter's decision to marry someone of a different caste. The decision-maker, in refusing the application in April 2018, referred extensively to Country Information and Guidance on India, dated February 2015 and the US State Department Human Rights Report from 2016 (covering the period of 2015). No current evidence specific to risk on return or the availability of protection was relied on in the RFRL.

Similarly, in another case, the applicant claimed asylum on the basis that she had experienced domestic violence and that she feared return to the Philippines. The decision-maker refused the application for asylum in March 2018. In the refusal the decision-maker extensively referred to US State Department reports from 2016 relevant to sufficiency of protection. Given that the application for asylum was decided in 2018 and the application relates to future fear of familial violence, it is concerning that the decision-maker does not refer to more recent country information. Furthermore, the decision-maker also referred to a report on a 2003 law that was enacted in 2004 to provide severe penalties for causing, or threatening to cause, harm to a woman or her child. There is no information at all within the decision letter as to whether this law has ever been operational in practice or whether this law would provide protection to the applicant, should she be returned to the Philippines.

RECOMMENDATION:

10. **UNHCR also strongly recommends that as required by the Immigration Rules[69] the UKHO use up to date and relevant country information in all cases.**

69 Fn.5

7.5. Internal flight alternative

The UKHO asylum policy instruction on *Assessing credibility and refugee status* sets out the following guidance on determining the availability of an Internal Flight Alternative ('IFA') (also known as internal relocation):

"[…] the question to be asked is whether the claimant would face a well-founded fear of persecution or real risk of serious harm in the place of relocation, and whether it is reasonable to expect them to travel to, and stay in that place. This requires full consideration of the situation in the country of origin, means of travel, and proposed area of relocation in relation to the individual's personal circumstances."

The UNHCR handbook, confirms at paragraph 4 that:

"International law does not require threatened individuals to exhaust all options within their own country first before seeking asylum; that is, it does not consider asylum to be the last resort. The concept of internal flight or relocation alternative should therefore not be invoked in a manner that would undermine important human rights tenets underlying the international protection regime, namely the right to leave one's country, the right to seek asylum and protection against refoulement."

In the audit there was a case where the decision-maker appeared to expect the applicant to have exhausted all options for an IFA and, where it was considered that they had demonstrated a considerable personal fortitude in relocating to the United Kingdom and attempting to establish a life in the UK, this meant that they could rely on the same fortitude upon return to their country of origin.

In this case the applicant was refused asylum on the basis that the decision-maker believed that there was a sufficiency of protection available. They added, in considering the availability of an internal flight alternative, that: "*You have already demonstrated considerable personal fortitude in relocating to the United Kingdom and attempting to establish a life here and you have offered no explanation why you could not demonstrate the same resolve to re-establish your life in Taiwan*". UNHCR does not consider that this is a valid consideration in the assessment of whether an IFA is relevant. Moreover, in this case, the applicant had stated clearly during her interview that she feared for her life. To therefore conclude that the applicant had not offered an explanation is incorrect. Whether that explanation is credible or reasonable is another matter.

Whilst the question of whether an IFA is reasonable correctly arises in many cases reviewed, in a further case, older and arguably unreliable country information was used in relation to consideration of relevant situations that would ensure a safe and not unduly harsh IFA in the country of origin. This latter aspect is an ongoing issue in this audit. In this case, the applicant's claim was determined in 2018 on the basis that country information from 2015 confirmed that it would be safe and reasonable for a lone woman to internally relocate in Nigeria. No consideration was given to whether IFA would be safe or not unduly harsh for this particular applicant. In this matter, the applicant stated that she had been forced into prostitution as a 13-year-old child. The information relied on, from 2015, included:

"The US State Department 2015 report noted that the constitution and law provide for freedom of internal movement and that there are no laws barring women from particular fields of employment.

"Being a woman (or a girl) does not on its own establish a need for international protection. Although women may encounter discrimination in Nigeria, it is unlikely to meet the high threshold required to constitute persecution or serious harm."

"Women are able to move throughout Nigeria and it is likely that internal relocation will be an option, depending on their individual circumstances, to escape localised threats from members of their family or other non-state actors."

The decision-maker did not however consider the Country Guidance from the Tribunal, handed down in 2016[70] which provides that in relation to vulnerable trafficked women, a woman being returned to Nigeria without familial support may be at risk of trafficking, domestic servitude and sexual exploitation. Given the past history of sexual exploitation, the decision-maker should have assessed the possibility for IFA against the confirmed position as set out by the Tribunal in the published Country Guidance. Having not done so, it cannot be said that the decision-maker fully considered the situation in the country of origin in reaching a decision.

70 *HD (Trafficked women) Nigeria* (CG) [2016] UKUT 454 (IAC) (17 October 2016), available at: https://www.bailii.org/uk/cases/UKUT/IAC/2016/454.html

Furthermore, the decision-maker found that the applicant can relocate internally based on incorrect criteria: "*You have already demonstrated considerable personal fortitude in relocating to the United Kingdom and attempting to establish a life here and you have offered no explanation why you could not demonstrate the same resolve to re-establish your life in Nigeria. It is therefore concluded that you have skills that you could utilise upon your return to Nigeria, including an ability to gain lawful employment. As such you do not qualify for international protection.*" This approach does not recognise the specific country conditions, risk of re-trafficking or return to forced prostitution, and, as noted above, the totality of risks facing women without family support in Nigeria.

RECOMMENDATION:

11. **The review of cases in the audit suggest that decision-makers would benefit from specific training on the application of IFA. UNHCR recommends that there should be a review of the current Foundation Training Programme provided to new decision-makers on IFA and that consideration should be given to developing a module on IFA for existing decision-makers in order to ensure consistency of asylum decision-making.**

8. TREATMENT OF DEPENDENTS IN DECISION-MAKING

UNHCR audited three cases of dependent family members who had applied for asylum whilst in detention. In total there were six files for each individual. There were no adult children. In two of the three cases, the main applicants were female and the dependents were male. In the third case, the main applicant was male and the dependant was female.

Cases available for auditing did not include same sex or other/alternative relationships.

Of the cases where there was a main applicant and a dependant, none of the dependants were interviewed as part of the asylum application that was lodged whilst the applicants were detained.[71] UNHCR's Procedural Standards for Refugee Status Determination Under UNHCR's Mandate,[72] sets out that:

"Wherever feasible, Eligibility Officers should take the opportunity to meet briefly with each adult family member/dependant of the Refugee Status Applicant, to ensure that they understand the refugee criteria and to give them the opportunity to discuss any independent protection needs they may have. Family members/dependants who may have a refugee claim in their own right should have their claim determined independently.

A separate interview with a family member/ dependant must be conducted in the following circumstances:

If an adult family member/dependant did not have an individual Registration Interview; the interview should be conducted with a view to gather and examine information relating to individual protection neds of the family member/dependant or the relationship of dependency with the Refugee Status Applicant, as appropriate;

If the information provided in the RSD Application Form or gathered during the Registration Interview of an accompanying family member/ dependant, or any other information obtained during the examination of the Refugee Status Applicant's claim, indicates that a person who is seeking derivative refugee status may have an independent refugee claim in their own right, which should be examined through a separate RSD interview."[73]

71 Note that in one case, the dependent on the asylum claim had previously had an asylum claim considered whilst he and his wife were living in the community. Therefore, in this matter, an interview pre-existed which outlined the now dependent's protection needs in full.

72 See section 4.3.14 'Interviews of Family Members/Dependants' of UNHCR Procedural Standards for Refugee Status Determination Under UNHCR's Mandate, published 26 August 2020, available at: https://www.refworld.org/docid/5e870b254.html.

73 Ibid. See page 164.

The UKHO interview policy,[74] provides that:

"Caseworkers must ensure that all available evidence in asylum claims is fully considered, including evidence provided by dependants and other family members. It will normally be appropriate to link relevant files to consider claims from family members together, even where separate claims have been lodged, to ensure all relevant factors have been considered, including an evaluation of protection needs in the family context, and to ensure consistency in decision-making."

The policy, further explains that:

"The policy objective when considering all asylum claims involving dependants or former dependants who claim in their own right is to:

- *ensure asylum claims are properly considered in a timely and sensitive manner on an individual, objective and impartial basis;*
- *ensure protection needs are identified and all relevant evidence provided by the principal applicant and any dependants is properly considered and given appropriate weight in the decision-making process; and*
- *minimise spurious applications by ensuring that claims from former dependants submitted only after the principal applicant has been refused are dealt with quickly and certified where appropriate."* [75]

UNHCR notes that there is no reference within the DAC Policy to the consideration of claims from dependant couples and that there is also no reference within the relevant policy instructions on dependants and former dependants to the DAC process which is largely because it has not been updated since May 2014.[76]

UNHCR notes that the DAC Policy does stipulate from the outset that

"All asylum decisions and casework must comply with wider asylum policy and process instructions."

While some examples of such policies are given, as mentioned above, the dependants and former dependants policy is not provided.

It is important to ensure that procedural safeguards are in place to guarantee that dependants are interviewed. Whilst the UKHO policy does not mandate interviewing, UNHCR notes that the procedure does allow for it and in UNHCR's view each dependant in the three cases reviewed should have been interviewed. This is not only to ensure that asylum claims are properly considered, or so that appropriate weight is applied to evidence, but it is also to ensure that dependant evidence is considered at the earliest available opportunity and not only as a further, separate claim for asylum following the refusal of the main applicant's claim.

In one family matter considered within the audit, the main applicant was male and had entered the UK as a student; his wife, the dependant in the asylum claim, joined him in the UK the following year. They were both arrested in 2017 after failing to report. The asylum claim was lodged two days after the notification of intention to remove was served.

The basis of the asylum claim was the couple being in an inter-caste and inter-faith marriage. The evidence given by the main applicant during the asylum interview specifically set out that he feared his wife's family would kill him if he returned to Nepal as they did not approve of the marriage. Whilst the dependant (the wife in this case) had a screening interview, she was not at any point interviewed as part of the asylum process. In her screening interview, the dependant discussed her own fears and issues arising from her ill mental health. Despite not being interviewed as part of the asylum process, the information the applicant's wife gave at the screening interview was used by the decision-maker to reject the credibility of the main applicant's claim:

"You claim your family did not know about the wedding [...] *both families were vehemently opposed to the wedding* [...] *significantly contrary to this when your wife applied for her UK visa she submitted [...] wedding photographs described as a small celebration in the family home."*

And

"*In your further representations* [...] *letter states that "so we fear for the life of our son hence, we want*

74 Home Office Asylum Policy Instruction *Dependants and former dependants*, v2.0, May 2014, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/314042/DependantsAndFormerDependants_External2014-05-22.pdf.

75 Ibid. See section 1.3.

76 Ibid. This policy only refers to the Detained Fast Track at section 6.3 and this is only in relation to former dependants..

them to stay away from here and never come back to Nepal again." This is contradictive of your wife's screening interview where she states both families want to kill you."

Whilst it is evidence that there is contradictory information, the UKHO relied on evidence given by the dependant within her screening interview, but did not seek to clarify this evidence or provide the dependant with the opportunity to explain the inconsistency during a further interview. This undermines the fairness of the procedure and results in the evidence not being fully explored.

In choosing to rely on a screening interview and information given during a visa application some four years earlier, the UKHO caseworker in this instance also failed to follow policy in not fully gathering *all available evidence* that is available from the dependant.

In the second case, the main applicant, a national of Nigeria, was originally a dependant on his spouse's asylum claim, who was also Nigerian. Following the issuance of removal directions at the conclusion of the initial application, and whilst still detained, the former dependant lodged his own asylum claim with his spouse as dependant. After the applicant made his claim from detention, both the applicant and his spouse (the original asylum claimant) were interviewed and the basis of the spouse's asylum claim had not changed. The decision to interview the dependant represents positive practice in this case.

In the third case, the main applicant and her husband were both Ukrainian nationals. The main applicant arrived in the UK in December 2017 and was detained in January 2018 after being arrested at her home. She was with her husband, who was also detained. Initially, the main applicant was detained in Colnbrook Immigration Removal Centre (i§n West London) and her husband was detained in Campsfield House Immigration Removal Centre (in Oxford). Both initially sought voluntary return to Ukraine, however, when issued with Emergency Travel Documents, the dependant husband sought asylum on the basis of his being called up for military service and prosecuted *in absentia*. His wife, the main applicant in this claim, was initially considered as his dependant. Two days after his asylum application was made, his wife lodged her own claim, with her husband withdrawing his claim and moving to be fully dependant on the wife's application. The main applicant's (wife) asylum claim was also based on the requirement for her to complete military service if returned to the Ukraine. The decision letter in this matter only addressed the concerns raised by the main applicant.

UNHCR is concerned that no consideration was given to the dependant's case. The dependant in this matter was not interviewed about his own fear of return. Whilst it is accepted that his claim was withdrawn, as he was a dependant on his wife's claim any arising issues relating to risk on return should have been considered. This is especially important in light of the fact that both the main applicant and the dependant have the same issue at the core of their reasons for seeking asylum in the UK.

This is especially concerning when noting that the main applicant was interviewed twice, and on the second occasion was told:

"I have not had the opportunity to go through everything you said at your last interview, so even if I ask the same questions as before, I still need you to answer the questions for me."

UNHCR notes the lack of preparation for this second full asylum interview in this case. This issue, coupled with the decision to neither interview nor address any possible risks on return for the dependant, is concerning.

The shortcomings in this case are compounded by the misapplication of the Refugee Convention criteria, as detailed above from page 21 onwards.

RECOMMENDATION:

12. **UNHCR recommends that the UKHO consider amending the DAC Policy in order to ensure clarity on the position for families without minor children who are detained within Yarl's Wood IRC. It is UNHCR's view that decision-makers should be tasked with interviewing both the main applicant and adult dependants where possible.**

9. NON-SUSPENSIVE APPEAL (NSA) CASES AND CERTIFICATION

Within the UK, under sections 94 and 96 of the Nationality, Immigration and Asylum Act (the 2002 Act),[77] there are circumstances in which an asylum applicant has no in-country right of appeal against a refusal of refugee status. These circumstances are discussed below.

In 2005, UNHCR commented on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status.[78]

"UNHCR is concerned that the right to remain is limited to the duration of the first instance procedure. To ensure compliance with the principle of nonrefoulement, appeals should, in principle, have suspensive effect, and the right to stay should be extended until a final decision is reached on the application. The threat to which refugees are exposed is serious and generally relates to fundamental rights such as life and liberty. In line with Executive Committee Conclusions No. 8 (XXVIII) of 1977 and No. 30 (XXXIV) of 1983, ***the automatic application of suspensive effect could be waived only where it has been established that the request is manifestly unfounded or clearly abusive.*** *In such cases, a court of law or other independent authority should review and confirm the denial of suspensive effect, based on a review of the facts and the likelihood of success on appeal (see also comment on Article 38)."*

UNHCR's position on the matter is further set out in the *Statement on the right to an effective remedy in relation to accelerated asylum procedures issued in the context of the preliminary ruling reference to the Court of Justice of the European Union from the Luxembourg Administrative Tribunal regarding the interpretation of Article 39, Asylum Procedures Directive (APD); and Articles 6 and 13 ECHR*, 21 May 2010,[79] specifically as follows:

"With regard to the 1951 Convention, UNHCR supports the right of an individual to appeal a first (negative) decision. In UNHCR's view, it is essential that the appeal must be considered by an authority, court or tribunal, separate from and independent of the authority which made the initial decision and that a full review is allowed.

UNHCR considers that the right to an effective remedy in asylum cases includes the right to appeal a (negative) decision made in an accelerated procedure."

It is UNHCR's view that, in respect to the principle of non-refoulement, the remedy must allow automatic suspensive effect except under very limited circumstances.

9.1. Certification under s94 of the Nationality, Immigration and Asylum Act 2002

UKHO policy confirms that:

"Section 94(1) of the Nationality, Immigration and Asylum Act 2002 states that the Secretary of State may certify a protection or human rights claim as clearly unfounded.

In all cases where a protection and/ or human rights claim is refused caseworkers must consider whether certification is appropriate and cases that are clearly unfounded should be certified unless an exception applies.

The effect of certification under section 94 is to restrict the right of appeal against refusal so that the claimant can only appeal once they have left the UK (referred to as a non-suspensive appeal)."

It is important to note that the UKHO also retains discretion to certify a claim on a case by case basis under section 94(1) where an applicant comes from a country not designated under section 94(4).

77 Fn.35 and Fn.36

78 See page 51, Summary of UNHCR's Provisional Observations on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Council Document 14203/04, Asile 64, of 9 November 2004), 10 February 2005, available at: http://www.unhcr.org/refworld/docid/42492b302.html

79 UNHCR Statement on the right to an effective remedy in relation to accelerated asylum procedures Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union from the Luxembourg Administrative Tribunal regarding the interpretation of Article 39, Asylum Procedures Directive (APD); and Articles 6 and 13 ECHR, 21 May 2010, available at: https://www.refworld.org/pdfid/4bf67fa12.pdf

The policy sets out that:

"The legal test as to what amounts to a clearly unfounded claim is the same for claims certified on a case by case basis as for those from designated states.

Each claim must be considered on its individual merits and should only be certified if the caseworker is satisfied that the claim is clearly unfounded."

In practice this means that where an applicant is not from a designated country, as set out in section 94(4)[80] but the decision-maker considers the asylum claim to be clearly unfounded,[81] the application must be certified under section 94(1)[82]. Where the applicant is from a designated country then the certificate must be applied under section 94(3) "*unless satisfied that it is not clearly unfounded*".[83]

UNHCR's position is that the claim must either be *manifestly unfounded* or *clearly abusive* before a state can waive an automatic application of suspensive effect. UNHCR notes the position of the UKHO that the threshold applied, whether described as 'clearly unfounded' or 'manifestly unfounded' is the same.

In the audit, there were a number of cases that were certified as "clearly unfounded" in part because the applicant's country of origin is listed under s94(4) of the 2002 Act. Cases relevant to claims from Albania stand out, with further issues relating to claims from Ukraine and Kosovo deserving of comment.

In one Albanian case the decision-maker assessed that the applicant's fear of forced marriage/honour killing was a non-Convention reason. There was no explanation of how this decision was reached and best practice would have been for the decision-maker to evidence and explain the reason why they determined the claim to be a non-Convention reason. The approach to assessing sufficiency of protection and internal relocation is also considered to be flawed. Further, the decision-maker chose to rely on country information without sufficiently exploring individual circumstances.

This decision was made despite the legal representations arguing that the applicant should be considered a woman at risk of forced marriage and therefore as a member of a particular social group. In this case, the applicant's legal representatives set out that in their view, internal relocation without family support would not be a viable option. There would be a risk of trafficking and/or other forms of exploitation. The decision-maker fails in this case to address these submissions and consider whether this brings the applicant within the Refugee Convention as a member of a particular social group. As a result of a failure to address this issue, the decision-maker cannot then consider future risk on this point in light of relevant published country guidance from the Upper Tribunal.[84] These are serious omissions which are compounded by the claim's certification under s.94 and the denial of an in-country right of appeal.

A further concerning feature of this particular case, for which the legal representatives should rightly be criticised, is that, following the service of the asylum decision and three days after the applicant was served with removal directions, she changed solicitors, but the new solicitors failed to update the UKHO that they had been instructed until the day after she was removed from the UK. It is important to also note that the legal representatives were unaware that removal directions had been set and therefore failed to act in time to prevent removal. In this particular situation, the UKHO cannot be criticised for carrying our enforcement action, but this matter does highlight the need for thorough first instance decision-making; especially in circumstances where a claim is being certified.

In another Albanian case the applicant feared domestic violence at the hands of her husband's family. UNHCR notes that in reference to the published country guidance and country information, a sufficiency of protection and internal flight alternative for a woman who fears domestic violence at the hands of her husband/partner or in-laws may exist but only in very clear circumstances.[85] The factual background in this case is not dissimilar to that in the previously considered matter.

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80 Albania, Macedonia, Moldova; Bolivia, Brazil, Ecuador, South Africa, Ukraine; India; Mongolia, Bosnia-Herzegovina, Mauritius, Montenegro, Peru, Serbia, Kosovo and South Korea.

81 It has been established in the UK that "clearly unfounded" is interpreted as meaning "*so clearly without substance that it was bound to fail*", see: *Thangarasa and Yogathas* [2002] UKHL 36, available at: https://publications.parliament.uk/pa/ld200102/ldjudgmt/jd021017/yoga-1.htm

82 UK Home Office, Certification of protection and human rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778221/certification-s94-guidance-0219.pdf

83 Ibid.

84 *TD and AD (Trafficked women)*(CG) [2016] UKUT 92 (IAC) (9 February 2016), available at: https://www.bailii.org/uk/cases/UKUT/IAC/2016/92.html

85 Ibid. Please also see various Albanian country policy guidance notes available at: https://www.gov.uk/government/publications/albania-country-policy-and-information-notes

In this case, the decision-maker determined that:

You have based your asylum claim on your fear of your husband's family as well as your own family who blame you for the failure of your marriage. This is not a convention reason

It is important to note the UNHCR Handbook at paragraph 21 on page 84, which sets out that:

In cases where there is a risk of being persecuted at the hands of a non-State actor (e.g. husband, partner or other non-State actor) for reasons which are related to one of the Convention grounds, the causal link is established, whether or not the absence of State protection is Convention related. Alternatively, where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established.

The decision-maker continues:

[...] *Consideration has therefore been given to whether you belong to a Particular Social Group (PSG). I have considered whether as a woman victim of domestic violence in Albania, you belong to a Particular Social Group."*

The decision-maker then refers to reviewing Country and Information Guidance from April 2016 which sets out that "*Women at risk of domestic violence in Albania are not considered to form a particular social group within the meaning of the 1951 UN Refugee Convention.*" And that therefore: *"It is deemed that women in Albania do not form a PSG"*

The UKHO has cited the Country Guidance case of *DM (Sufficiency of Protection, PSG, Women, Domestic Violence) Albania CG* [2004] UKIAT 00059. This Country Guidance determination confirms there to be a general sufficiency of protection for women in fear of violence from an ex-boyfriend. There is, however, no consideration of the fact that in the audited case the applicant claimed to fear her husband, his relatives and her own direct relatives. This decision-maker in this matter does not consider whether or not the case is either applicable or distinguishable on the basis of the relevant facts.

However, in this case the applicant was able to lodge a Judicial Review through her lawyer, preventing her removal following the service of the certified decision. At this point, the UKHO granted bail on the basis of the long timelines for Judicial Review hearing dates. Following the grant of permission by the High Court in the Judicial Review, the UKHO withdrew the earlier decision to certify the application and instead served a further refusal, but with an in-country right of appeal.

In a matter relating to a national of Ukraine the UKHO determined that:

As your claim is based on your fear of returning to Ukraine which is a country which is listed in section 94(4) of the Nationality, Immigration and Asylum Act 2002, no consideration has been given to the credibility issues within your account such as those detailed below. This is because there is considered to be a sufficiency of protection and an option to internally relocate in Ukraine for you in relation to your claimed fear whether it is a manufactured claim or one which is genuine.

The UKHO also determined that the reason the applicant gave for claiming asylum was not within the scope of the Convention. However, throughout the asylum interview the applicant stated that she feared return to Ukraine on the basis that her husband had beaten and raped her and that she feared continued abuse, something which in itself could well constitute a Convention ground as a member of a particular social group, were State protection to be denied on that basis. It is notable that the decision-maker in this matter also refers to the situation in Ukraine as of 2015, rather than at the date of decision in 2018. Given the fluidity of the security situation in the Ukraine it should be expected that up-to-date country information should have been relied on when considering both whether the applicant's claim fell under the Refugee Convention and whether there was sufficiency of protection.

9.2. Certification under s96 of the Nationality, Immigration and Asylum Act 2002

Section 96 of the Nationality, Immigration and Asylum Act 2002 (as amended) provides a certification process which removes the right of appeal on asylum and/or human rights claims. The UKHO policy relating to section 96 is entitled *Late claims: certification under section 96 of the Nationality, Immigration and Asylum Act 2002*[86] and specifies the process for when an asylum or human rights claim that could have been made earlier, either at an appeal or in response to a section 120 notice, can be certified under section 96 of the Nationality, Immigration and Asylum Act 2002.

The case of *J v SSHD [2009]* EWHC 705 sets out that:

"Under Section 96 (1) and (2) before the Secretary of State can lawfully decide to certify, she has to go through a four stage process. First she must be satisfied that the person was notified of a right of appeal under Section 82 against another immigration decision (Section 96(1)) or that the person received a notice under Section 120 by virtue of an application other than that to which the new decision relates or by virtue of a decision other than the new decision (Section 96(2)). Second she must conclude that the claim or application to which the new decision relates relies on a matter that could have been raised in an appeal against the old decision (Section 96(1)(b)) or that the new decision relates to an application or claim which relies on a matter that should have been but has not been raised in a statement made in response to that notice (Section 96(2)(b)). Third she must form the opinion that there is no satisfactory reason for that matter not having been raised in an appeal against the old decision (Section 96 (1) (c)) or that there is no satisfactory reason for that matter not having been raised in a statement made in response to that notice (Section 96 (2)(c)). Fourth she must address her mind to whether, having regard to all relevant factors, she should exercise her discretion to certify and conclude that it is appropriate to exercise the discretion in favour of certification."

In this audit there were two reviews that were certified under section 96 of the Nationality Immigration and Asylum Act 2002.

In one review, the applicant was from Nigeria. He stated that he knew he was gay when he travelled to the UK in 2012. He further confirmed that he had suffered a homophobic attack in Nigeria in 2006. The decision-maker in this claim confirmed that "*it is clear that your claimed fear is one which you would have had when you were served with the notice under section 120.*" The decision-maker further confirmed that "*the new decision relates to a claim which relies on a matter that should have been, but has not been, raised in a statement made in response to the S.120 notice.*"

In this case, a section 120 notice was served on 20 August 2012 and, in relation to the entry clearance appeal that followed the decision to refuse entry clearance, on 17 August 2012.

The approach to certification in this review is concerning when considering the reasonableness of applying a section 96 certificate. The decision-maker did not fully engage with the applicant's stated reasons for his delayed claim.

Within the asylum interview the applicant confirmed the reason he did not make his claim sooner. He stated that he had suffered six years of humiliation and when he came to the UK he had wanted to start his life again. He was arrested after arriving to the UK and stated that he '*wasn't encouraged* [to claim asylum] *at all*' and that he felt that he would be giving up on himself again by doing so. Whilst this reason is clearly set out by the decision-maker within their decision, they do not explain why the applicant's explanation is unreasonable; they only state that '*your explanation is not considered to be reasonable*.' The expectation is clearly spelled out that this applicant, regardless of his previous humiliation, would be expected to raise his claim at '*the earliest opportunity*'. This is a position that does not acknowledge the clear UKHO policy which covers the myriad of reasons for delayed asylum claims including shame in respect of sexuality.[87] Whilst the reasons given may not be sufficient to convince a decision-maker to not apply a certificate, both law and policy require that they be fully considered. In this particular matter, the decision-maker determined that the claim was certifiable and applied the certificate without reference to why the given explanation for the delayed claim provided by the applicant during his interview was not reasonable.

86 Home Office policy: *Late claims: certification under section 96 of the Nationality, Immigration and Asylum Act 2002*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421558/Certification_s96_guidance_1.0_EXT.pdf

87 Fn.26

10. ADULTS AT RISK IN IMMIGRATION DETENTION PROCEDURES

Following the publication of Stephen Shaw's Review into the Welfare in Detention of Vulnerable Persons in January 2016,[88] the Home Secretary announced in Parliament on 18 April 2016 that '*Wider changes are underway to improve the welfare of all vulnerable people in detention through a series of reforms, including a new policy on "adults at risk."*'[89]

The AAR is statutory guidance which was issued under section 59 of the Immigration Act 2016,[90] after being laid before Parliament on 22 August 2016.[91] The AAR Policy came into force from 12 September 2016,[92] in accordance with the Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2016 SI No. 847.[93]

The current policy was issued on 8 November 2021 and supersedes the policies that were in force during the period the cases under review by this audit were being determined by the UKHO and during the time this audit report was being drafted.

Out of 30 cases audited, a total of number of 15 claimants were considered at some point under the AAR Policy. There were six occasions where a claimant was accepted at being at Level 1, 18 occasions at Level 2 and one occasion at Level 3. These matters are considered within the context of the application of Rule 35 of the Detention Centre Rules 2001 as this was the clear and most obvious way of auditing detention decision-making in matters where the person was considered to be a vulnerable adult.

11. RULE 35 OF THE DETENTION CENTRE RULES 2001

Rule 35 of the Detention Centre Rules[94] (R35 DCR) set out, during the period being audited, the following:

Special illnesses and conditions (including torture claims)

35.—(1) The medical practitioner shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.

(2) The medical practitioner shall report to the manager on the case of any detained person he suspects of having suicidal intentions, and the detained person shall be placed under special observation for so long as those suspicions remain, and a record of his treatment and condition shall be kept throughout that time in a manner to be determined by the Secretary of State.

(3) The medical practitioner shall report to the manager on the case of any detained person who he is concerned may have been the victim of torture.

(4) The manager shall send a copy of any report under paragraphs (1), (2) or (3) to the Secretary of State without delay.

(5) The medical practitioner shall pay special attention to any detained person whose mental condition appears to require it and make any special arrangements (including counselling arrangements) which appear necessary for his supervision or care.

88 Fn.4

89 Statement by the Home Secretary, '*Immigration detention: Written statement - HCWS679*', available at: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-04-18/HCWS679/

90 Section 59 of the Immigration Act 2016, available at: http://www.legislation.gov.uk/ukpga/2016/19/section/59/enacted

91 The Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2016, available at: http://www.legislation.gov.uk/uksi/2016/847/pdfs/uksi_20160847_en.pdf

92 Statutory guidance, Adults at risk in immigration detention, Immigration detention policy on adults at risk in immigration detention, available at: https://www.gov.uk/government/publications/adults-at-risk-in-immigration-detention

93 The Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2016, available at: http://www.legislation.gov.uk/uksi/2016/847/pdfs/uksi_20160847_en.pdf

94 Rule 35, *'Special illnesses and conditions (including torture claims)'*, the Detention Centre Rules, 2001, available at: http://www.legislation.gov.uk/uksi/2001/238/pdfs/uksi_20010238_en.pdf

Guidance to UKHO caseworkers on the implementation of R35 DCR has been issued as a Detention Service Order. The DSO is 09/2016 '*Detention centre rule 35 and Short-term Holding Facility rule 32*'[95] The guidance sets out the process for the preparation and consideration of reports submitted in accordance with Rule 35 DCR.

Both the DSO and R35 DCR are further explained within chapter 55 EIG, where it is confirmed that guidance is needed '*to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention*'.[96] The UKHO stipulates in its guidance that '*The information contained in such reports needs to be considered by the caseworker and a decision made on whether the individual's continued detention is appropriate, or whether they should be released from detention, in line with the guidance in chapter 55b – Adults at risk in immigration detention.*'[97]

UNHCR notes at this stage that Rule 35 and Chapter 55 EIG (now titled Detention: General Instructions) have been amended since this audit was started.

11.1. Adults at Risk in Immigration Detention and Rule 35 Matters

There were 16 people for whom a Rule 35 report was produced by a detention centre doctor. Three of the 16 were granted refugee status, on first instance, after a decision to maintain detention was issued that took into account a Rule 35 report.

In one case, which was refused, the UKHO official determined within the response to the Rule 35 report that:

You have a very poor immigration history. Whilst it is accepted that you have some reporting history, you entered the UK illegally, worked illegally, and made a late asylum claim only after you had been detained and after Removal Directions (RDs) had been set. Given this history it is considered that you are highly unlikely to be removable unless detained because you cannot be relied upon to comply with any reporting conditions.

In this case, the applicant's claimed history was that her mother had died when she was a baby and that she had been looked after as a child by her aunt. Her aunt forced her into prostitution. She had been branded by her aunt, using a hot circular object, on the back of her leg. The branding was a warning to force her to be quiet. It is relevant in this matter to note that the applicant was detained upon reporting and not as a result of an immigration enforcement raid, and that she had been reporting since December 2014. She had continued to report despite being refused leave to remain as a stateless person and despite receiving a negative decision that she did not have reasonable grounds to be considered as a victim of trafficking under the UK National Referral Mechanism. The reasonable grounds decision minute confirms that "[...]*based on the information available, it is considered that you do not meet the required constituent elements of the trafficking definition and therefore, it is not accepted to the low standard of proof 'I suspect but I cannot prove', that you were trafficked from Nigeria to the UK for the purposes of any type of exploitation.*" While it is arguable that there were initial and valid grounds to detain the applicant – i.e. that she was given removal directions the following week for removal the week after – that in light of her asylum claim and previous compliance with her bail conditions, it is not abundantly clear as to why her case could not have been considered while she remained in the community, especially in light of her position under level 2 of the AAR Policy (as she was prescribed medicine to assist with her ill mental health which was considered to meet level 2 status given her potentially serious medical condition, which is subject to medical intervention (medication)).

In another case, the decision-maker found that:

Your immigration history has been noted. You have shown a total disregard for UK immigration law and procedure. You made no effort to claim asylum until after you were refused leave to enter, detained and served with removal directions for your lawful departure from the UK. You have also attempted to

95 Home Office, *Detention services order 09/2016, Detention centre rule 35 and Short-term Holding Facility rule 32* Version 7, published on 05 March 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783642/Detention_rule_35_process.pdf

96 Home Office, Detention: General Instructions, January 2022, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046288/Detention_General_instructions.pdf

97 Ibid.

deceive immigration staff by providing false details and claiming to be a minor when questioned. There is no evidence whatsoever that you would have made any attempt to claim asylum had you not been refused leave to enter and faced with removal. Your adverse immigration history coupled with your lack of ties to the UK means that you are considered to be a serious absconder risk who is unlikely to comply with reporting restrictions, and you are highly unlikely to be removed (should your asylum claim fail) unless you are detained.

In this matter, the applicant had been detained on arrival at an airport in the UK. She was accompanied by another person who claimed to be her aunt and stated they were both in the UK for a holiday. After being questioned they were refused leave to enter. As the documentation given to the authorities at this point showed the applicant to be a minor, she was referred to local children's services as it was suspected she had been trafficked to the UK. The day after the arrival, Border Force were made aware that the applicant was not a minor and had a different name and nationality. She returned to the airport when asked to do so and where she was interviewed further and was then detained. The 'aunt' who had brought her to the UK was charged with a trafficking offence. This issue of trafficking is not considered at all in the Rule 35 report and the decision to maintain detention was taken on the basis as described above. It is not clear why her case could not have been considered while she remained in the community given that a decision to grant temporary admission had previously been made and she had actually been tested in terms of compliance in that she returned to the airport for further questioning when required and that, moreover, there were indicators that she was a survivor of human trafficking.

In a further case, the applicant feared that her husband would kill her if she returned to the Philippines. She had entered the UK as a visitor but overstayed her leave to enter. She was encountered in the UK and served with removal papers. She claimed asylum on the day she was told she would be removed from the UK. The applicant was identified as being an adult at risk following the production of the Rule 35 report. In that report, the doctor confirmed that:

The scar on her chin is likely due to the mechanism of injury she described. She is likely a victim of torture and domestic violence.

In this matter the UKHO official considering the applicant's position following receipt of the Rule 35 report determined that:

The applicant is a long terms [sic] overstayer who made a late asylum claim when faced with removal. She has also worked illegally in the UK. It is considered that she would not have made herself known to the authorities and/or claimed asylum if she had not been encountered. She is therefore considered to be at risk of absconding if released from detention. Her AAR status is noted but mitigated by the absconding risk posed. There is no indication she is unfit for detention. When balancing the indicators of vulnerability against the immigration factors highlighted above, it is considered that the negative factors outweigh the risks in this case.

It is not clear to what extent the decision-maker considered the actual risk of absconding as this is not set out in the paperwork available to UNHCR. What is documented is that she had been present in the UK since 2004, had been working without permission, and therefore it would be expected that she would have support and available links within the UK.

RECOMMENDATIONS:

13. **UNHCR recommends the AAR policy and the Rule 35 process be reviewed to ensure that they remain fit for purpose – specifically focussing on the necessity to balance a person's previous immigration history with their status as a vulnerable person.**
14. **UNHCR recommends that where such a balancing exercise is carried out, consideration should be given to the individual's reasoning and explanations for any past non-compliance, where that non-compliance has been proven.**

12. TIMELINES FOR CONSIDERATION OF THE ASYLUM CLAIM WITHIN DETENTION

Out of the 30 cases reviewed, there was a significant variance in the time it took to make a decision for those asylum claimants decided in both Yarl's Wood IRC and Harmondsworth IRC.

The average time, from point of claim to service of decision across all the cases in the audit was 49 days, with a variation from 24 to 93 days. For female applicants being detained at Yarl's Wood, the average time was 30 days, with a variation from 24 to 39 days. For family cases (without minor children) being detained at Yarl's Wood, the average time was 34 days, with a variation from 24 to 38 days. For male applicants detained at Harmondsworth, the average time was 70 days with a variation from 47 days to 93 days.

There are no specific indicators on the files within the audit as to why a decision on an asylum claim considered in detention would take longer to process in Harmondsworth than in Yarl's Wood.

UNHCR notes that the decision-making process and relevant policies in place do not differ across the two removal centres. Further, in respect of physical and mental health assessments and other necessary referral procedures which may potentially cause delay, the decisions made in those cases in this audit took similar periods of time to determine in comparison with those without any additional evidence or complexities.

RECOMMENDATIONS:

15. **The UKHO review and seek to remedy the clear differences in timescales for determining asylum claims in detention between Yarl's Wood IRC and Harmondsworth IRC.**

13. CONCLUSIONS

Deciding an asylum claim is an important responsibility for any government. Introducing processes that expedite decision-making or policies that guide operational staff on the application of the standard of proof, that make the decision-making process more complicated, should always be avoided, even where they are intended to ease the administration involved in maintaining effective border controls. This includes avoiding processes where individuals are detained and have limited access to typical avenues of evidence gathering and expert support.

It is well established in international and UK law that asylum-seekers may only be detained as a measure of last resort and only for legitimate purposes. For asylum-seekers, especially those identified as particularly vulnerable, the experience of detention itself presents a significant risk of harm. In addition, as part of an asylum procedure, detention has the potential to impair the quality of asylum decision-making and erode procedural fairness. For these reasons, procedures which provide for the consideration of asylum claims from within detention, such as the DAC process, require especially close and continuous scrutiny.

This is the first public audit of the UKHO approach to refugee status determination decisions made under the Detained Asylum Casework (DAC) process. It was carried out by UNHCR, The UN Refugee Agency, under the Quality Protection Partnership, in close collaboration with the UKHO, with the aim of strengthening the quality and efficacy of first instance asylum decision-making in the UK.

The DAC Process was introduced following the suspension of the DFT process on 2 July 2015.[98] The DFT was suspended after the Court of Appeal deemed The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014[99] to be ultra vires.[100] The DAC process has been subject to further legal challenges. At date of publication, the UK Courts have continued to find the operation of the DAC to be lawful.

During this audit, UNHCR identified some positive approaches to asylum decision-making, however many decisions reviewed within the DAC clearly reveal that improvement is required to ensure accordance with international standards. The report highlights the need to exercise extreme care in conducting first instance asylum decision-making in detention and in the decision to maintain detention for the purpose of considering asylum claims in the first place.

UNHCR proposes a number of recommendations seen as crucial to improving the fairness and efficiency of first instance decision-making where DAC processes continue to be implemented by the UK.

The improvements recommended will better protect individuals against harm caused by inappropriate detention and against refoulement of refugees in need of international protection. Limiting the room for error at the earliest stage of the asylum process and in decisions to detain also reduces unnecessary financial and human costs in applications to the Immigration and Asylum Chambers and the Appellate Courts.

UNHCR welcomes the ongoing opportunity to work with the UKHO to build on the positive aspects noted in this audit; to address the shortcomings identified; and to provide as much support as is required in the implementation of the below recommendations. This is all the more important as the threat of COVID-19 abates and the UKHO recommences the use of detention in the UK. UNHCR considers that now is exactly the right time to be publishing this report and calls for the UKHO to accept the recommendations and work with UNHCR and civil society to ensure that international best practice is implemented and followed.

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98 Fn.1
99 The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2014 No. 2604, available at: https://www.legislation.gov.uk/uksi/2014/2604/made.
100 Fn.3

RECOMMENDATIONS:

Approach to detention decision-making

The DAC Process includes a critical obligation for the UKHO, through the DGK, to (re)examine and justify the need for detention where a person claims asylum. However, UNHCR observed that decisions to maintain detention were too often made with scarce or no reasoning recorded on applicants' UKHO files. Where reasoning was provided, it was often limited to a summary justification that the asylum claim was lodged in order to frustrate the removal process, with limited or no scrutiny of an applicant's background or reasons for claiming asylum. This was especially concerning to observe in cases where asylum was subsequently granted first instance.

There are areas of improvement that UNHCR believe can be made quite easily to ensure a clearer and more transparent process – specifically for those people being detained in order for their asylum claims to be considered.

1. UNHCR notes that despite the effort the UKHO has put into developing and improving the DGK function, greater procedural safeguards are needed to ensure that all information is available to enable a full assessment of whether or not a person is suitable for DAC. UNHCR therefore recommends that the UKHO ensure that all decisions taken by the DGK are made in full light of all the available evidence that the UKHO has, not just what the DGK is given by the referring officer. This will ensure that the individual circumstances, including the nature of the asylum claim, will be before the DGK prior to their decision being made.

2. Related to the above recommendation, it is noted, in particular, that in the majority of cases audited the asylum screening interview had not been completed at the time the DGK authorised detention. UNHCR recommends that in all cases where persons have raised an asylum claim, they must first be given a screening interview before the referral is forwarded to the DGK, as is required for cases where the individual is making their claim at an 'Asylum Intake Unit, a port, or elsewhere after the claimant's apprehension'. Completing the screening interview prior to referring the detention decision to the DGK will ensure that the DGK has all the relevant and necessary information on the basis of the claim and the background to it and will not have to rely on generalised assumptions about key crtiteria such as the likelihood of a quick decision or certification.

3. UNHCR recommends that in order to ensure timeliness of decision-making and not increase the time that a person remains in detention following screening, only those cases that are considered as being suitable for continued detention should be referred to the DGK. There should therefore no longer be a requirement that all asylum claims raised by persons already detained 'must' be referred to the DGK.

4. In order to ensure that this process is promptly completed and that detention is not prolonged, UNHCR further recommendeds that the Screening Interview template be developed to ensure that questions in relation to detention decision-making are set out more clearly to allow for the individual to explain their circumstances as fully as possible. The UNHCR/IDC Vulnerability Screening Tool offers many solutions that would help in this instance. UNHCR stands ready to assist with this work.

5. UNHCR recommends that all DGKs receive refresher training on the criteria for detention and the need to give reasons specific to the individual in order to justify such a decision.

Approach to assessing and determining asylum claims

The audit revealed areas of asylum decision-making which require improvement. These include the understanding and application of Article 1A of the Convention; the need to follow a structured decision-making process; the need to access, utilize and properly reference up-to-date and relevant country of origin information; and the process of gathering evidence at interviews. Despite some improvement in the area of credibility assessments since UNHCR's audit of the DFT, UNHCR observed that caseworkers continue to have difficulty identifying and engaging with material facts.

1. Credibility concerns should be put to applicants during their interview, as per the UKHO 'Asylum Interviews' policy. If this is not possible, then the concerns should be put to the applicant at the next possible opportunity. A decision should not be produced in any application for asylum where a credibility concern has not been put to the applicant for their response and not fully examined.

2. Further, all available information relevant to the asylum claim should be collected and reviewed in sufficient time prior to the interview. This will enable the caseworker to narrow down the elements of the claim that will require further questioning at interview and to ensure for example, that the applicant is given an opportunity to respond to specific evidence relevant to the claim. Where this is not done, there is a risk of a failure by the caseworker to ensure the effectiveness of the interview process in assisting the claimant in discharging the burden of proof.

3. UNHCR recommends that the UKHO reviews the training given to decision-makers in respect of understanding and applying the concept of 'Convention Reasons' in Article 1A of the Refugee Convention. This is an important issue as it forms the basis of analysis and decision-making going forward in the adjudication.

4. UNHCR recommends that the UKHO ensures that all asylum decisions are made following a structured decision-making format of 'Material Facts Consideration' then 'Summary of Findings of Fact' then 'Assessment of Future Fear' and then 'Sufficiency of Protection'. The analysis of asylum decisions in this audit suggests that the approach to structured decision-making can be improved.

5. UNHCR also strongly recommends that as required by the Immigration Rules the UKHO uses up to date and relevant country information in all cases.

6. The review of cases in the audit suggest that decision-makers would benefit from specific training on the application of IFA. UNHCR recommends that there should be a review of the current Foundation Training Programme provided to new decision-makers on IFA and that consideration should be given to developing a module on IFA for existing decision-makers in order to ensure consistency of asylum decision-making.

7. UNHCR recommends that the UKHO consider amending the DAC Policy in order to ensure clarity on the position for families without minor children who are detained within Yarl's Wood IRC. It is UNHCR's view that decision-makers should be tasked with interviewing both the main applicant and adult dependants where possible.

Ensuring Procedural Safeguards

The audit also shone a light on how asylum claimants are treated where there are self-reported vulnerabilities, available professional opinions on specific vulnerabilities, or indicators of risk apparent from the available or given evidence. There are areas of improvement that UNHCR believe can be made quite easily to ensure that all persons are given the best possible care and to ensure that vulnerabilities are identified and managed from as early on in the detention and asylum decision-making journey as possible.

13. UNHCR recommends the AAR policy and the Rule 35 process be reviewed to ensure that they remain fit for purpose – specifically focussing on the necessity to balance a person's previous immigration history with their status as a vulnerable person.

14. UNHCR recommends that where such a balancing exercise is carried out, consideration should be given to the individual's reasoning and explanations for any past non-compliance, where that non-compliance has been proven.

15. The UKHO reviews and seek to remedy the clear differences in timescales for determining asylum claims in detention between Yarl's Wood IRC and Harmondsworth IRC.

14. HOME OFFICE RESPONSE TO RECOMMENDATIONS

Recommendation 1: Reject

In response to recommendations around the entry process to Detained Asylum Casework (DAC), managed by the Detention Gatekeeper (DGK), these decisions are already made with full recourse to information contained on Home Office systems. Whilst it is acknowledged that in the majority of referrals, an asylum screening interview will not have been completed by the time DGK officers make a decision, there is no intention that DGK officers should be asylum experts. We consider that the detention and the asylum elements are entirely separate considerations and should remain so. In fact, the intake process was removed from DAC in 2015 in order to ensure an objective assessment based on suitability for ongoing detention, rather than suitability for an asylum claim to be assessed in detention.

The decision should reference an individual's suitability for ongoing detention under general detention criteria (Detention – General Instructions) and the Adults at Risk in Immigration Detention (AAR) Policy. Reference should be made to certification under Section 94 of the Nationality, Immigration and Asylum Act 2002 only insofar as the impact it has on likely future timescales in detention including in relation to examination or return and if so why.

Recommendation 2: Partially Accept

It is accepted, however, that in some instances in cases viewed by the UNHCR Team, the full justification for maintaining detention and referring an individual for DAC has not been relayed as effectively as it could/should have been. We have therefore designed a standard minute to be used as a 'prompt' by DGK officers making these assessments to remind them of the appropriate factors to be considering and basing decisions on.

Recommendation 3: Partially Accept

There is a clear instruction within the Detained Asylum Process instruction, for a casework team to refer any individual who has raised an asylum claim from within detention to the DGK for a consideration of suitability for DAC:

'If an asylum claim is made while an individual is detained pending removal, the National Returns Command (NRC) detained hub must refer the case to the DGK.

If the claim is made at the Asylum Intake Unit (AIU), a port, or elsewhere after the claimant's apprehension as a clandestine illegal entrant or overstayer, the unit responsible for the case must complete asylum screening and refer the case to the DGK if detention appears to be appropriate'

We agree to review the wording in the instruction to identify whether the necessity to refer to the DGK for DAC (even were the casework team responsible not actually inclined to) is actually necessary or whether the option to not refer and to release instead would be beneficial.

Recommendation 4: Reject

The screening template already allows for a claimant's circumstances to be set out for the DGK to assess suitability for detention (in conjunction with all other information available to the DGK).

Recommendation 5: Reject

It is not accepted that Detention Gatekeepers require refresher training on the criteria for detention suitability, however with specific regards to assessing the suitability to maintain detention for an individual for their asylum claim to be assessed by the DAC team, we have reviewed comments made by DGK officers assessing referrals (Senior Executive Officers only) and will be making internal changes to the way decision justifications are recorded (see above).

Recommendation 6: Accept

We have updated and expanded the assessing credibility and refugee status guidance as part of our work to implement the Nationality and Borders Act 2022. This includes the section titled 'taking

evidence at interview'. The guidance advises decision-makers that the interview is the primary opportunity to clarify any unclear statements or inconsistencies which may damage the credibility of a claim. Also, the guidance notes that there are further opportunities to explore any concerns post-interview, where it would make a difference to the outcome, for example asking questions in writing. In addition, we have expanded the section on 'credibility indicators' in the same guidance, to help make decision-makers aware of the various factors which could impact on a claimant's credibility.

Recommendation 7: Accept

As part of the update to the assessing credibility and refugee status guidance, the section on 'obtaining evidence' has been expanded to provide decision-makers with further clarification on the various types of evidence that may accompany a claim and any actions they should take ahead of the substantive asylum interview. Furthermore, as the guidance has been updated to incorporate the changes to assessing asylum claims as a result of the Nationality and Borders Act 2022, decision-makers are advised how to review and assess all available information/ evidence to the required standard.

Recommendation 8: Accept

We have reviewed training material as part of operationalising the new asylum system post-commencement of the Nationality and Borders Act 2022. This includes a review of the training on Convention reasons. This helps ensure that decision-makers understand the new requirements under which to assess a claim in light of the new two-stage well-founded fear test, as well as other changes to the asylum system.

Recommendation 9: Accept

Due to the introduction of the Nationality and Borders Act 2022, asylum claims now fall into two categories, legacy or flow depending on whether they were made prior to 28 June 2022 (when the 2022 Act came into force). To help support our decision-makers deciding both legacy and flow claims, we have developed a suite of structured decision templates for both grants and refusals. Each template contains headings, standard paragraphs, areas for free text and also instructional text to guide decision-makers through the consideration process and maintain a uniformed approach. We have also developed a supporting document for decision-makers when drafting refusal letters as a guide – this includes standard paragraphs which can be added to the letter where relevant. Furthermore, Asylum Operations' Chief Case Working Team have developed and delivered a dedicated training package

Recommendation 10: Accept

Decision-makers are generally aware of the requirement to consider up-to-date country information. The use of material evidence – including country of origin information (COI) – is included in the FTP Training, and the country policy & information team (CPIT) have been regular, recurring guest presenters at FTP courses about the work of the team and about use of COI more generally. Our country policy and information notes (CPINs) are published on the gov.uk website and our internal website. They are kept under constant review and updated periodically.

Decision-makers also have access to an information request service. This enables them to make bespoke requests for country information to deal with particular issues raised in individual claims. Relevant responses to information requests are also available on our internal website.

Recommendation 11: Partially Accept

Internal Flight Alternative (IFA) has always featured in Foundation Training Programme as a core consideration in assessing well founded fear. However, in 2021, the Foundation Training Programme was redesigned, modularised, and shared with UNHCR for comment. A specific module has been created on assessing risk on return, which includes training on the concept of IFA and provides exercises and examples. Additionally, decision-makers working in DAC undertake Section 94 training, which consolidates, deepens, and expands decision-makers knowledge and understanding on IFA.

Recommendation 12: Partially Accept

The policy on interviewing dependants is set out in the guidance on dependants and former dependants which explains that all dependants are entitled to claim asylum in their own right and all adults should be asked separately and confidentially, away from their partner, if they wish to apply for asylum in their own right during the screening process.

The specific wording in the dependant's guidance is as follows:

'Caseworkers must ensure that all available evidence in asylum claims is fully considered, including evidence provided by dependants and other family members. It will normally be appropriate to link relevant files to consider claims from family members together, even where separate claims have been lodged, to ensure all relevant factors have been considered, including an evaluation of protection needs in the family context, and to ensure consistency in decision-making. Relevant issues affecting dependants which may give rise to individual protection needs can come to light at any point in the asylum process but are most likely to be identified through evidence provided during a dependant adult's screening interview, written evidence submitted in a "one stop" section 120 notice or by the principal applicant. It may also be important to gather additional information on key aspects of the claim from dependants where this is necessary to fully consider the claim. Caseworkers should be alert to expressions of a need for protection from dependants that suggest they may have a claim in their own right, independently of the principal applicant. Where evidence comes to light suggesting a dependant who has not claimed in their own right has individual and specific protection needs it may be necessary to interview them if such issues cannot be properly considered without further specific evidence from that individual.

In the majority of cases, the principal applicant should be able to provide details of the asylum claim for the whole family unit. It will not normally be necessary to interview dependants where the principal applicant is able to convey individual and collective protection needs on their dependants behalf. However, caseworkers must be aware that dependants may raise issues independent of the principal applicant which may give rise to a protection claim in their own right. They may also be able to provide relevant details that are material to the principal applicants claim which would not otherwise be available. For example, a spouse or partner may be better placed than the principal applicant to provide details of their individual political activities, religious practices, relevant family history or incidents of past persecution, and it may be appropriate to request a written statement from the dependant or interview them if the issue is material to the claim. Caseworkers must gather and assess all relevant information to fully consider the protection needs of the family unit which may involve interviewing one or more dependants.'

The detained asylum casework guidance contains the below advice:

'The interview must be conducted according to the requirements set out in the Asylum interviews instruction.'

While it is not Home Office policy to interview every adult dependant, we have noted the points made in the report and the recommendation. We think that it would be helpful for the Detained Asylum Casework guidance to contain a link to the dependants guidance so that it is easier for decision-makers to locate the necessary advice to assist them in deciding when to interview an adult dependant on a case by case basis. We will ensure the relevant link is added when the Detained Asylum Casework guidance is next updated.

Recommendations 13 and 14: Partially Accept

We believe the Adults at Risk in Immigration Detention (AAR) policy continues to effectively identify vulnerable individuals in detention and provides a clear framework for caseworkers to fairly assess any vulnerability, balancing this against known immigration considerations before making an informed decision on continued detention. However, we do recognise the importance of continuing to review the policy. The Home Office has recently restarted work to review the AAR policy and Detention Centre Rules 2001 (which include the Rule 35 process), after this work was paused to allow for a wide-ranging review of the immigration system as part of the New Plan for Immigration. As we review AAR and the Detention Centre Rules 2001, we need to ensure that any further reforms are compatible with the future system, rather than the one that will soon be reformed.

Recommendation 15: Partially Accept

Consideration of the asylum claims of all applicants accepted into the DAC process, irrespective of detention location, takes place in accordance with the over-arching DAC policy. Operational considerations and the physical layout and the facilities available at a site may influence the speed at which decisions can be reached but we would always seek to keep those to a minimum.


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