



QUALITY INTEGRATION PROJECT  
FIRST REPORT TO THE MINISTER

STRICTLY CONFIDENTIAL

**UNHCR Representation to the United  
Kingdom in London**

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Appendix 1

UNHCR Quality Initiative Fifth Report, March 2008

Appendix 2

Minister’s response to the UNHCR Quality Initiative Fifth Report, December 2008



## GLOSSARY OF TERMS

AFT	Asylum Foundation Training
Asylum	“Asylum” is used in this report interchangeably with NAM+
AI	Asylum Instruction
AIU	Asylum Intake Unit
CID	Case Information Database
COI	Country of Origin Information
‘Convention Reason’	The five grounds for persecution identified in the Refugee Convention as Race, Religion, Nationality, Membership of a Particular Social Group and Political Opinion
CRD	Case Resolution Directorate
DFT	Detained Fast Track (accelerated refugee status determination process in place in Harmondsworth and Yarl’s Wood IRCs)
DNSA	Detained Non-Suspensive Appeals
ECHR	1950 European Convention on Human Rights
IFA	Internal Flight Alternative
IRC	Immigration Removal Centre
NAM+	UKBA’s follow-on from the ‘New Asylum Model’
‘The Refugee Convention’	1951 Convention relating to the Status of Refugees
RFRL	Reasons for Refusal Letter
PSG	Particular Social Group (Convention nexus)
QADT	Quality Audit Team
‘QI Project’	UNHCR Quality Initiative or Integration Project
SCW	Senior Case Worker
‘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

The Office of the United Nations High Commissioner for Refugees (UNHCR) in the United Kingdom has been working collaboratively with the UK Border Agency (UKBA) since 2004 with the joint aim of improving the quality of first instance asylum decision-making. UNHCR monitors both the application of criteria under the 1951 Convention relating to the Status of Refugees (the Refugee Convention) and the UK-specific asylum procedures in so far as they impact upon the application of these criteria. UNHCR's collaborative endeavours with UKBA are based on Article 35 of the Refugee Convention which stipulates that states will undertake to co-operate with the Office of UNHCR to facilitate its duty of supervising the application of the provisions of the Refugee Convention.

From 2004 to 2009 the collaborative work undertaken between the two agencies fell under the guise of the Quality Initiative Project. During this five year period UNHCR issued six confidential reports to the UK Minister for Borders and Immigration setting out the Office's findings and observations under the remit of the project as well as detailing specific recommendations. The Quality Integration Project, established in 2010 as a follow-on to the Quality Initiative Project, will work to implement existing recommendations and to engage in quality assurance matters across the UK asylum process.

This report is the first report of the Quality Integration Project. It covers the period from January to March 2010 and presents observations and recommendations arising from an audit of first instance asylum decisions made in the Detained Fast Track (DFT) process at Yarl's Wood and Harmondsworth Immigration Removal Centres (IRC) during this period. This audit follows on from the findings and recommendations of UNHCR's Fifth Report of the Quality Initiative Project, which also considered asylum decisions made in the DFT process at Yarl's Wood and Harmondsworth from late 2007 to December 2008.

UNHCR's re-visit of DFT decision making highlights specific trends in DFT decision-making, pointing to areas that continue to be of concern as well as indicating some areas of improvement. Since UNHCR's Fifth Report, UNHCR has observed better engagement with the individual material elements of the claim when assessing credibility, some better practice in regard to considering sufficiency of protection and internal flight, and clear improvements to the structuring of decisions. However, UNHCR remains concerned with various aspects of decision making including continued evidence of an incorrect approach to credibility assessment, inappropriate use of section 8 of the 2004 Treatment of Claimants Act and insufficient and inappropriate use of relevant objective country of origin information. UNHCR is also concerned to observe that Case Owners do not consistently and correctly apply Refugee Convention criteria.

As with UNHCR's Fifth Report, the current report also examines the use of procedural safeguards in the DFT. Such safeguards, including the screening and routing of asylum applicants into the DFT and procedures for flexible timescales and the removal of unsuitable cases from the DFT, aim to ensure that the speed of the DFT process does not negatively impact on the quality of decisions. In this audit, UNHCR records continued concerns that these safeguards do not always operate effectively enough to identify complex claims and vulnerable applicants not suitable for a detained accelerated decision-making procedure.

UNHCR concludes the report by providing twelve recommendations that address the identified concerns.

Staff at Yarl's Wood and Harmondsworth IRCs have demonstrated openness and transparency in engaging with the audit. UNHCR once again commends the spirit in which the feedback from its audit has been received and notes the evident commitment among supervisory staff and Case Owners to improving the quality of decision making in the DFT.

## 1 INTRODUCTION

### 1.1 The Quality Integration Project

- 1.1.1 The Quality Integration (QI) Project is a joint UNHCR and United Kingdom collaborative endeavour based on Article 35 of the Refugee Convention with the aim of improving the quality of all elements of the refugee status determination (RSD) procedure in the UK. Article 35 stipulates that contracting states will undertake to co-operate with the Office of UNHCR to facilitate its duty of supervising the application of the provisions of the Convention.
- 1.1.2 This supervisory role was the formal basis for the Quality Initiative Project (2004 to 2009), the remit of which was to assist the UK Home Office in the improvement of quality of first instance asylum decision making through the monitoring of procedures and application of the refugee criteria.
- 1.1.3 The new Quality Integration Project has been founded on the recognition of the collaborative work undertaken to date between UNHCR and the UK Border Agency (UKBA) on Quality Assurance within Asylum.
- 1.1.4 With the recognition of UKBA's significant progress in the area of Quality Assurance since 2004, and the creation of the Quality and Learning Team within UKBA, it has been jointly acknowledged that continued co-operation will be valuable to further develop UKBA's own quality assurance mechanisms as regards first-instance decision-making as well as its planned expansion into other areas of the 'end to end' asylum process. In this regard, it is agreed that the Quality Initiative Project shall now continue in a new phase as the Quality Integration Project in order to assist in the implementation of existing recommendations and to engage in quality assurance issues across other areas of the 'Asylum Business'.

### 1.2. The Current Report

- 1.2.1 This report is the first of the Quality Integration Project. The report outlines the observations and findings resulting from UNHCR's January to March 2010 audit of the quality of decisions of UKBA's accelerated and detained asylum decision making procedure known as the Detained Fast Track (DFT).
- 1.2.2 Unlike reports one to six of the Quality Initiative Project, the current report does not provide an update on activities and developments of the project but focuses solely on the quality of decision making in the DFT.
- 1.2.3 UNHCR continues to work with the UKBA to support the timely implementation of previous recommendations stemming from the Quality Initiative Project that touch upon the five areas identified in UNHCR's Fifth Report and which were reiterated in its Sixth Report: credibility assessment, workloads, targets, training and accreditation, and the provision of information to applicants. In addition, recommendations relating to asylum decision making in unaccompanied children's claims (Sixth Report) remain a focus.



## **2. BACKGROUND TO SECOND/REVISIT AUDIT**

### **2.1. Accelerated and Detained Asylum Procedures in the UK**

- 2.1.1 The UK's current DFT Procedure is an asylum procedure whereby asylum applicants are detained whilst they have their applications examined in an accelerated procedure of three days. The procedure was introduced at Harmondsworth Immigration Removal Centre in 2003 and at Yarl's Wood in 2005. Both prior to its introduction and since, UNHCR in the UK has reiterated its long held position that the detention of asylum seekers is inherently undesirable,<sup>1</sup> that detention should be considered only as a last resort, and that accelerated procedures should only be considered acceptable where adequate safeguards are in place to guarantee fairness of procedure and quality of decision making.<sup>2</sup>
- 2.1.2 It was with this position in mind that UNHCR accepted a 2005 invitation from the UK Minister of State for Immigration, Citizenship and Nationality to audit the quality of first instance decision making in the DFT.<sup>3</sup> The more than year-long audit of 112 DFT decisions also examined the ways in which the unique procedural elements of the DFT impact upon the quality of decisions and the effectiveness of safeguards designed to prevent complex cases and vulnerable claimants from having their claims decided in a detained and accelerated environment. UNHCR's findings and recommendations were presented to the Minister in the UNHCR's Fifth Report in March 2008 (see Appendix 1).
- 2.1.3 In sum, the audit concluded that many quality concerns highlighted in previous Quality Initiative Reports appeared to be particularly accentuated in DFT decisions. The decisions evidenced an enhanced failure to focus on the individual merits of each claim. UNHCR expressed concern that findings indicated that the speed of the DFT process may inhibit the ability of decision makers to produce quality decisions. UNHCR further pointed to evidence that procedures set up for routing applicants into the DFT, for allowing necessary flexibility to timescales and for removing unsuitable cases from the DFT, were often not operating effectively enough to identify complex claims and vulnerable applicants and prevent them from entering or remaining with the DFT. This in turn impacted detrimentally upon the quality of decisions within the DFT.

### **2.2. Minister's Response and UKBA Activities subsequent to Fifth Report**

- 2.2.1 In December 2008, Minister Phil Woolas responded by letter to UNHCR's Fifth Report noting UNHCR's concerns about the operation of the Detained Fast Track. He acknowledged the need to ensure the accelerated DFT process functions fairly. Whilst the Minister indicated his difficulty in reconciling UNHCR's findings with the low level of DFT decisions overturned at appeal, he committed the government to implementing most, if not all, UNHCR's recommendations (see Appendix 2).

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<sup>1</sup> See UNHCR ExCom Conclusion No. 44 (XXXVII) and UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers, February 1999.

<sup>2</sup> See for example: UNHCR 18 March 2002 Comments on "Secure Borders, Safe Haven" UK White Paper on Asylum and Immigration; UNHCR 18 September 2002 Briefing On Nationality, Immigration and Asylum Bill; UNHCR Submission to The Conservative Party National and International Security Policy Group, March 2007; UNHCR Comments to the Initial Consultation on Simplifying Immigration Law, August 2007.

<sup>3</sup> Letter from Tony McNulty, Minister of State to Bemma Donkoh, UNHCR UK Representative, 24 October 2005.

2.2.2 To date, UNHCR has been pleased to support UKBA in the implementation of some of the DFT-specific recommendations. These have included the removal of incorrect standard decision paragraphs from the UKBA DocGen system (the section of the UKBA's Case Information Database or 'CID' that facilitates Case Owners' drafting of Reasons for Refusal Letters) as well as particular and specific improvements to the Asylum Foundation Training Programme which has subsequently been delivered to new DFT Case Owners. UNHCR has supported UKBA colleagues in updating guidance on credibility to ensure concerns highlighted in its Fifth Report are addressed. UNHCR has also provided input into the development of new guidance on the process of referring individuals to the DFT. UNHCR commended some improvements to the guidance in its Sixth Report<sup>4</sup> but, as the current report highlights, significant gaps in guidance remain.

### **2.3. Context of Current Audit**

2.3.1 Since concluding its prior audit of the DFT in December 2008, UNHCR has been engaging closely with UKBA to support the work of the then newly-created (September 2008) internal Quality Audit and Development Team (QADT). Since that time, the QADT has built up their capacity to audit an average of ten percent of DFT decisions per month. Each regional auditor feeds back both regionally and nationally on a monthly basis in the form of a monthly audit report and provides specific recommendations for improvements to decision making.

2.3.2 Members of the UNHCR QI team have liaised closely with the QADT in the context of the current audit, visiting the regions together in January 2010 and sharing observations of good practice as well as areas of clear difficulty for DFT decision makers. Throughout the period of the current audit, UNHCR has continued to perform its 'peer review' mechanism, conducting regular reviews of auditors' assessments of decision quality and providing suggestions aimed at ensuring that comprehensive and consistent assessment techniques are employed.

2.3.3 The QI and QADT teams will make joint visits to the DFT regions post publication of this report with the intention of commending evidence of good decision making practice and highlighting to DFT staff areas indicating needed improvement.

2.3.4 In conducting the audit, UNHCR has been greatly appreciative of the continued proactive and open engagement of UKBA staff and in particular the NAM+ Quality and Learning Team and DFT-based colleagues.

## **3. METHODOLOGY**

### **3.1. Sample Selection**

3.1.1 UNHCR reviewed statistical information on the two asylum regions which undertake DFT decisions: Harmondsworth and Yarl's Wood Immigration Removal Centres (IRCs). The statistics confirmed the majority of DFT decisions are taken in Harmondsworth and, therefore, the audit sample taken encompasses a representative ratio of decisions to reflect this.

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<sup>4</sup> UNHCR 'Sixth Report' (QI) section 2.5.9

- 3.1.2 In advance of this audit, UNHCR visited Harmondsworth and Yarl's Wood to explain the Office's engagement with quality in the UK's asylum decision making. UNHCR referred to its Fifth Report and explained that this audit would revisit decision making in the DFT.
- 3.1.3 For each month of the review, UNHCR called for a random selection of cases from a wide sample of Case Owners in order to gain a broad picture of the quality of DFT decisions.

### **3.2. Final Audit Sample**

- 3.2.1 The final audit sample comprised of 30 decisions issued between January and March 2010: 12 from Yarl's Wood and 18 from Harmondsworth. During this three month period a total of 346 DFT decisions were taken in both Harmondsworth and Yarl's Wood (272 in Harmondsworth and 74 in Yarl's Wood).<sup>5</sup> UNHCR's sample therefore reflects nine percent of the overall number of decisions taken. One decision from Yarl's Wood resulted in a grant of refugee status while the remaining 29 were outright refusals of any form of protection. The full and final sample comprised of applicants from 12 different countries: Afghanistan (6), Bangladesh (3), Burundi (1), China (6), Ghana (1), Jordan (1), Kenya (1), Malaysia (1), Nigeria (5), Pakistan (3), Sudan (1), and Uganda (1). The gender ratio was 18 male applicants and 12 female applicants. UNHCR assessed decisions from 24 different Case Owners.

### **3.3. Assessment Methods**

- 3.3.1 The audit was carried out by way of a review of the paper file and any additional information available on the UKBA Case Information Database (CID). Due to practical and resource difficulties no 'live' interviews were observed for this review.
- 3.3.2 As with previous audits, the review was conducted using the standardised decision assessment forms previously agreed with UKBA and used by their own Quality Audit Team.
- 3.3.3 UNHCR also used a separate 'pro-forma' to gather procedure-related pieces of information such as timescales, application of the DFT 'flexibility' criteria and suitability for the DFT process.
- 3.3.4 To fully assess the quality of DFT decisions and to highlight remaining areas of concern in decision making in an accelerated and detained process, UNHCR draws from legal sources and international standards outlining best practice.<sup>6</sup>

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<sup>5</sup> Data provided by UKBA on request for this report.

<sup>6</sup> *Inter-alia*: UNHCR ExCom Conclusion No. 30 (XXXIV) of 20 October 1983 on the problem of manifestly unfounded or abusive applications for refugee status or asylum; UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 1 January 1992; UNHCR Guidelines on International Protection: Gender-Related Persecution within the context of Article 1(A)2 of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (May 2002); Asylum Processes (Fair and Efficient Procedures), Global Consultations on International Protection, 31 May 2001 (EC/GC/01/12); Improving Asylum Procedures Comparative Analysis and Recommendations for Law and Practice: A UNHCR research project on the application of key provisions of the Asylum Procedures Directive in selected Member States, March 2010.

- 3.3.5 The first section of the current report considers the quality of decisions reviewed. The second part addresses aspects of procedure that impact on the quality of decisions. In the final section of the report, UNHCR presents its findings and aims to identify particular trends that affect the quality of decisions in the DFT and perhaps more widely within UKBA.
- 3.3.6 More general protection concerns relating to individuals seeking asylum in the UK are not addressed specifically in this report as this falls outside the specific remit of the QI project.

#### **4. QUALITY OF DECISION-MAKING IN DFT CLAIMS**

The current section outlines the key trends observed in Yarl's Wood and Harmondsworth decisions. It points to findings from UNHCR's previous audit, acknowledging both indications of improvements since the previous audit as well as signs of continued areas of concerning practice.

Overall, UNHCR observed that Case Owners engaged more closely with the individual material elements of each asylum claim when assessing credibility. However, a failure to engage with the specific facts of the claim when applying the Refugee Convention criteria remains a concern. Of particular concern remains the inappropriate use of section 8 of the 2004 Act to make adverse credibility findings against the asylum claimant. UNHCR also observes problems with the common approach of arguing why a case would not meet the Convention Criteria even if were accepted as credible (UKBA colleagues often refer to this as arguing the claim 'at its highest' or 'in the alternative'). These arguments are often unwieldy in length and do not focus on, or engage sufficiently with, the case-specific facts.

Concerns with the handling of women's asylum claims were once again observed in the sample of twelve cases from Yarl's Wood. Examples are provided throughout the report with one example of good practice in gender-sensitivity when assessing the claim.

##### **4.1. Assessing Credibility and Establishing the Facts of the Claim**

- 4.1.1 A key observation of UNHCR's Fifth Report was the poor assessment of credibility by Case Owners when establishing the material facts of an asylum claim.<sup>7</sup>
- 4.1.2 In the decisions sampled for this audit, UNHCR observed some improved practice in credibility assessment including: somewhat clearer identification of, and engagement with, individual material facts of the claim (however, note concerns that some Case Owners indicate a lack of understanding as to what constitutes a material fact at section 4.1.11 below), clearer conclusions on whether such facts have been accepted or rejected, some increased use of the concept of the 'benefit of the doubt', fewer instances of inappropriate language use and a lessened inclination to dismiss a claim in its entirety based on limited findings of facts. In the sample of 30 cases reviewed, there were no demonstrated instances of inappropriate or excessive weight being given to evidence from the screening interview. These are all welcome observations.
- 4.1.3 Whilst acknowledging these improvements, the assessment of credibility remains an area of concern in the current review. Two thirds of the decisions reviewed

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<sup>7</sup> UNHCR 'Fifth Report' (QI) section 2.3.12 – 2.3.23

demonstrated some form of problematic practice.

- 4.1.4 DFT decision makers still do not demonstrate consistent employment of the appropriate method for assessing the credibility of a material fact, i.e. by examining the internal consistency of evidence that goes toward establishing that fact, by ascertaining the consistency of internal evidence with objective country information and, then, where the latter is lacking, by considering whether or not to employ the benefit of the doubt. While there were some examples of appropriate assessment of internal credibility and an increased use of the concept of the benefit of the doubt, this remained the exception rather than the rule. As noted below, there remains insufficient use of relevant objective country information to assess credibility which can lead to speculative arguments.
- 4.1.5 A particular and ongoing concern to UNHCR is what the Office considers inappropriate and misguided use of section 8 of the 2004 Act whereby certain behaviours are found to ‘damage’ an applicant’s credibility.<sup>8</sup>
- 4.1.6 Whilst UNHCR acknowledges section 8 places on a statutory footing the requirement for decision makers to consider certain behaviours, including aspects of immigration history, as ‘damaging’ to credibility, the Office considers it is used excessively and inappropriately. This is because some Case Owners fail to abide by UKBA’s own policy guidance<sup>9</sup> and UK case law<sup>10</sup> which clarifies how, when and to what extent such behaviours should be considered to damage credibility. Below, UNHCR provides examples of use of section 8 which indicate that DFT Case Owners are indeed using the 2004 legislation in a manner that UNHCR had, at the time of its drafting, suggested would not be in line with international legal standards.<sup>11</sup> Specifically, UNHCR notes Case Owners using certain ‘behaviours’ to determine the credibility of the claimant without assessing those behaviours in conjunction with all other relevant facts. For example, inappropriately penalising asylum seekers who use illegal means to access safety and juxtaposing transit through a third country with the credibility of an asylum claim.
- 4.1.7 In many of the cases reviewed, section 8 behaviours are considered with a ‘stand alone’ paragraph in the decision.<sup>12</sup> The decision will note the behaviour “(...) clearly falls within section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, and therefore credibility has been damaged as a result of your actions”. Rarely, if ever, is there a clear explanation of how the applicant’s credibility has been damaged and to what extent, despite the credibility guidance indicating this is necessary. Particularly

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<sup>8</sup> Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

<sup>9</sup> UKBA Asylum Policy Instruction: Assessing Credibility in Asylum and Human Rights Claims Version 2.0 (27/10/2009); ‘Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004’ and ‘Background to Section 8 of The Asylum and Immigration (Treatment of Claimants, etc) Act 2004’.

<sup>10</sup> JT (Cameroon) v. Secretary of State for the Home Department, [2008] EWCA Civ 878 and SM (Section 8: Judge’s process) Iran [2005] UKAIT00116.

<sup>11</sup> UNHCR Briefing for the House of Commons at 2nd Reading of Asylum and Immigration (Treatment of Claimants, etc) Bill, 15<sup>th</sup> December 2003; Summary of UNHCR’s principal concerns for the House of Commons at 2nd reading of Asylum and Immigration (Treatment of Claimants etc.) Bill, 15<sup>th</sup> December 2003; UNHCR Briefing for the House of Lords at 2<sup>nd</sup> Reading of Asylum and Immigration (Treatment of Claimants, etc) Bill, 12th March 2004

<sup>12</sup> In the greater majority of Yarl’s Wood decisions, section 8 behaviours are considered before the material facts of the claim have been examined, with credibility being ‘damaged’ before the individual and material facts of the claim have been assessed.

concerning to UNHCR is the observed use of what appears to be a common standard paragraph quoting the UK Immigration Rules<sup>13</sup> that reads:

*As a section 8 finding has been made against you your general credibility (339N) has not been established. Therefore in line with 339L you will now have to substantiate each aspect of your claim as the benefit of the doubt will not be applied*

4.1.8 Such reasoning indicates a misunderstanding of the purpose of section 8, of the immigration rules, and of the concept of the benefit of the doubt and sets an unreasonably heavy burden on asylum applicants to substantiate their claim.

4.1.9 UNHCR also continues to observe a general tendency for DFT Case Owners to fail to appreciate their proportion of the shared duty between applicant and decision maker to ascertain and evaluate all the relevant facts of a refugee claim. This failure is evidenced through insufficient use of objective country information when assessing credibility as well as inappropriate conclusions that an applicant has failed to provide ‘evidence’ to prove their claim. In one particularly concerning example, an asylum applicant from Afghanistan who had provided twelve pieces of documentary evidence (including photographs and letters of appreciation for services) to support his claim of having worked as an interpreter had all of these documents dismissed as evidence due to weakly substantiated inconsistencies with “dates, logos and other details”. The Case Owner then reasoned;

*It is noted you have not produced documentary evidence of translation work dated beyond [date]. In light of [a] (...) lack of evidence to support you worked as a translator after this, it is not accepted that your role as a translator continued after [date] (...)*

4.1.10 Such examples indicate that Case Owners are applying an inappropriately high standard of proof and are failing to appreciate their role in assisting to ascertain and evaluate the facts of the claim. This is of particular concern in a detained and accelerated environment where timescales and access to resources can hinder asylum applicants’ ability to access and pull together evidence to support their asylum claim.

4.1.11 UNHCR did observe some poor practices that had not been observed in its previous audit of the DFT. For example, a greater proportion of DFT decision makers demonstrated a lack of understanding of what constitutes a material fact. They also had a greater tendency to confuse elements of the asylum consideration by including in their credibility assessment factors that were more relevant to the consideration of future fear (e.g. the applicant’s subjective fear on return). For example:

*In light of the above and given the overall credibility in your claim, it is therefore not accepted that the authorities in Afghanistan **want** to arrest you because of your father’s involvement in Hezb-e-Islami.*<sup>14</sup> [emphasis added]

4.1.12 Finally, UNHCR observed that some DFT Case Owners fail to understand the purpose

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<sup>13</sup> United Kingdom Immigration Rules (HC 395), as amended.

<sup>14</sup> The above quote was taken from the ‘Credibility’ section of the decision before the Case Owner had moved on to assess the well-foundedness of the applicant’s fear.

of evidence in an asylum claim and how to link consideration of such evidence with the material fact it is being adduced to support. There are also notable failures in the proper evaluation of evidence (see section 4.3). While these findings were not observed in UNHCR's Fifth Report, they are reminiscent of findings from previous audits of decisions; both DFT and non-DFT where UNHCR observed evidence not being considered or given sufficient weight.<sup>15</sup>

4.1.13 The weaknesses identified in this section may suggest a failure by some Case Owners to fully prepare for the substantive asylum interview to ensure its effectiveness.<sup>16</sup> All available information relevant to the claim should be collected and reviewed in sufficient time prior to interview, to enable the decision maker to narrow down the elements of the claim that will require further questioning at interview, and to ensure that the applicant is given an opportunity to respond to objective country evidence relevant to the claim.

## 4.2 Application of Refugee Convention Criteria

4.2.1 While UNHCR has observed improved engagement with the individual material elements of the claim when assessing credibility, regrettably improvements in the application of Refugee Convention Criteria were not observed.

4.2.2 In over half of the claims reviewed, UNHCR observed the use of 'in the alternative' arguments, also known as considering the claim 'at its highest'. Such reasoning is adopted when the decision maker rejects the credibility of the applicant's claim but goes on to argue that the overall claim would not engage the Refugee Convention even if accepted as true. Very often, as noted below at sections 4.2.9 - 4.2.10 these 'alternative' arguments skip over required elements of consideration, e.g. subjective and objective fear and whether the harm feared in fact constitutes persecution, in order to make the argument that sufficient protection or an internal flight alternative exists in any case. Skipping over certain elements of the consideration in turn causes any latter consideration of sufficiency of protection or internal flight to be problematic in that, amongst other issues, no finding has been made on what harm the applicant would need to be protected against.

4.2.3 Where elements of the claim are examined as an 'alternative' argument, Case Owners do not always tailor their consideration sufficiently on the specific issue(s) upon which the claim would stand or fall were credibility to be accepted.

### *Convention Reason*

4.2.4 Similar to previous findings, in two thirds of the cases reviewed UNHCR noted either insufficient engagement with the facts of the claim when considering whether the claim engages a Convention Reason or problematic reasoning when doing so. This was particularly accentuated in women's claims and in relation to the identification of the Convention Reason of Particular Social Group (PSG).

4.2.5 In some cases there were allegations that the claim did not engage the United Kingdom's obligations under the Refugee Convention due to the lack of a Convention

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<sup>15</sup> UNHCR 'Second Report' (QI) section 2.2.10 and UNHCR 'Third Report' (QI) section 2.3.8.

<sup>16</sup> UNHCR APD Study, Requirements for an Interview, p. 35 UNHCR Implementation of the Asylum Procedures Directive.

nexus without any proper consideration or justification of this finding. For example, the below decision included this short paragraph (with no reference to relevant COI) to justify the finding that no Convention Reason was engaged

*Your claim for asylum is based on your fear of persecution in Nigeria because of a reason not covered by the Geneva Convention namely that your In-laws [sic] accuse you of being a witch and using witchcraft to kill your husband. It is therefore not accepted that your claim falls to be considered in terms of the 1951 Geneva Convention as your fear is not for a reason of, race, religion, ethnicity, nationality or part of a particular social group.*

- 4.2.6 In other cases, reasoning is employed but is sometimes not based on appropriate consideration of the Convention. For example

*You claim that you have a well-founded fear of persecution in Ghana due to a well-founded fear of being persecuted by non state agents in Ghana who wish you to become a priestess. Further you fear a return due to your past involvement in the Trokosi and a potential forced marriage. It is not accepted that your claim falls to be considered in terms of the 1951 Geneva Convention. It is not accepted that these non state agents [sic] actions are tolerated by the authorities in Ghana nor that they would be unwilling or unable to provide a sufficiency [sic] of protection nor that they amount in any way to a “sizeable faction” of the population. It is not therefore considered that your claim falls within the 1951 Convention.*

- 4.2.7 Not only does the above example demonstrate a lack of appropriate reasoning as to why the claim does not engage the Convention Reason of PSG but it confuses Convention Reason with the assessment of sufficiency of protection.
- 4.2.8 In general, UNHCR observed little to no use of gender-specific objective country information in five out of the twelve Yarl's Wood decisions assessed.

#### *Well-founded fear*

- 4.2.9 Once the facts of a claim have been established, a Case Owner must go on to assess, based on the established facts, firstly whether the applicant has manifested a subjective fear of future harm and secondly, whether there are objective grounds indicating a reasonable likelihood that the harm feared will occur in the applicant's country of origin or habitual residence.
- 4.2.10 UNHCR observes that, in one third of the decisions reviewed, this stage of the consideration is missing entirely and Case Owners move straight on to consider sufficiency of protection or IFA. Where it is considered, in half of claims there is no consideration of any objective evidence to facilitate assessment of whether there is a reasonable likelihood of the harm feared on return and Case Owners move on to argue sufficient protection was available and / or that IFA was an option for the applicant.
- 4.2.11 Where Case Owners consider the applicant's subjective fear, in one third of DFT decisions reviewed it is suggested the applicant's fear is 'speculative' and without justification. In the below example, the applicant feared persecution from non state



agents to whom he owed money and was of the view that the authorities would not protect him from these agents.

*It is considered that your fear of persecution on return to China is based primarily on your speculation and subjective fear*

4.2.12 The reasoning in this decision and others observed indicates a lack of understanding of the concept of subjective fear and how it should be assessed in relation to objective country information.

#### *Persecution*

4.2.13 A continuing and significant problem (recorded in four fifths of the cases reviewed) is a lack of analysis or poor analysis of whether the harm feared by the applicant constitutes persecution.

For example;

*In deciding whether a person is a refugee, an act of persecution must be sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right. This however has not been established in your case. The harassment you claim to have suffered, more specifically the occasion in [date] when you were physically attacked, whilst lamentable, does not reach the level of severity so as to constitute persecution within the meaning of Regulation 5 (1) of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006.*

4.2.14 Nowhere in the decision quoted above was there an analysis or explanation of why the harm suffered did not constitute persecution or an appreciation that such a finding on this past experience of mistreatment was only relevant in so far as it informs upon the assessment of future risk with an accompanying analysis of that risk.

4.2.15 Case Owners often fail to recognise that it is the **future** harm feared which must be analysed, thereby failing to appreciate the forward-looking nature of the refugee definition.<sup>17</sup>

For example the decision above continues;

*Additionally your fear of persecution on return to Bangladesh is based almost entirely on speculation. At its highest your claimed fear has been generated by a single physical attack. You were not attacked during the several months in which you lived in Sylhet after this, and never contacted the police either in your home town, Sylhet or Dhaka. Furthermore, you were in hospital for 10 days after the attack during which time you state that they were searching for you in hospitals. It is evidence that the means at their disposal are not as effective as you fear.*

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<sup>17</sup> UNHCR 'Fifth Report' (QI) section 2.3.29

### *Sufficiency of Protection*

- 4.2.16 In its current review of DFT decisions, UNHCR was pleased to note significantly fewer instances of Case Owners failing to appreciate or recognise which bodies or agents can provide protection from persecution compared to the previous review.<sup>18</sup>
- 4.2.17 However, two thirds of decisions reviewed had failings or errors in the consideration and assessment of the concept of ‘sufficient protection’. This indicates a general lack of understanding of what constitutes sufficient protection. In addition, it suggests a failure to engage with the individual circumstances of the applicant, and the particular type of protection available to that individual in their particular country of origin or habitual residence.
- 4.2.18 Case Owners failed to adequately assess, and demonstrate with objective evidence, whether the state would be willing and able to offer a sufficient level of protection to the applicant against the specific harm feared and whether the particular applicant could avail him or herself of that protection. This is most problematic in gender claims. For example

*During your asylum interview you were asked if you have ever been to the police in Nigeria to report your problems and you stated that you have not involved the police and that it is something that happens to everyone. This is not considered a reasonable explanation for not seeking assistance in Nigeria before seeking international protection in the UK. In summary whilst it is accepted that the protection in Nigeria may not be the same as in the United Kingdom, it is considered that a sufficiency of protection as laid down by the House of Lords case, Horvath v SSHD (2000) UKHL 37 does exist in Nigeria. Consideration has also been given to the possible availability of Non-Governmental Organisations (NGO's) within Nigeria. Objective evidence clearly shows that NGO assistance in general and specifically for women, is available within Nigeria.*

- 4.2.19 The above also provides an example of some Case Owners’ tendency to focus exclusively on prior attempts (or lack of attempts) to access protection rather than whether protection could be obtained if returned. Again this is suggestive of a failure to appreciate the forward-looking nature of the refugee definition (see above at 4.2.15).
- 4.2.20 Problematic practice was seen in the selective use of objective country information or the quoting of COI that did not back up the reasoning provided; most often with legal statutes and sizes of police forces being quoted as evidence of ‘improvements’ and sufficient protection. The tendency to argue sufficiency of protection ‘in the alternative’ (section 4.2.2 and 4.2.3) may be causing Case Owners to provide a quite cursory analysis.

### *Internal Flight Alternative*

- 4.2.21 UNHCR observed improved consideration of the concept of Internal Flight Alternative (IFA) in so far as DFT Case Owners were more inclined to appreciate the need to identify a suggested area of relocation in order to make a proper analysis. However, in

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<sup>18</sup> UNHCR ‘Fifth Report’ (QI) section 2.3.32

two thirds of the decisions there remained examples of poor practices identified previously: a failure to assess whether relocation would remove the specific threat of harm for the particular applicant and whether it would be reasonable to expect the applicant to relocate given his or her personal circumstances. This is of particular concern with cases needing a gender-specific analysis of IFA with Case Owners failing to engage sufficiently with gender-relevant considerations when assessing whether a risk of harm would be removed through relocation, whether the woman could access that part of the country, or whether relocation to a named area would be reasonable.

- 4.2.22 It was, however, positive to observe one Yarl's Wood decision giving an example of good practice in this regard with the Case Owner demonstrating full consideration of the female applicant's background (an 18 year old Sudanese female who had never lived in Sudan), education, employment history, age and gender to conclude "it would be unreasonable to expect her to relocate".
- 4.2.23 As indicated elsewhere in this report, potential causes for the weaknesses noted in the consideration of IFA are the insufficient or improper use of tailored objective country information and a tendency to only argue an IFA 'in the alternative'. This can lead to weak analysis and insufficient attention to the specific facts of the applicant's claim.

#### *Decision Structure*

- 4.2.24 UNHCR was pleased to observe clear improvements to the structuring of decisions following on from the findings of its Fifth Report. At that time, UNHCR found that DFT Case Owners indicated limited awareness of how to structure a decision and the Office pointed to examples of decisions wherein sufficiency of protection and IFA were considered before the facts of the claim had been established. In the current review, this practice was not observed and all Case Owners appropriately began their consideration of the claim with an examination of the material facts before going on to apply those facts to the Convention criteria. This indicates clear improvement in this area.
- 4.2.25 The current review, however, identifies further structural concerns that still require improvement. There were some examples of Case Owners mixing considerations of material facts with an assessment of future risk (section 4.1.11), considering documentary evidence as 'stand alone' rather than part of the examination of the material fact towards which the evidence has been presented (section 4.1.12 and 4.1.13), and jumping over key elements of the asylum consideration (section 4.2.10). For these reasons UNHCR reiterates previous recommendations for the proactive use of a decision template that assists decision makers to work through the relevant elements of the refugee criteria while supporting their findings with clear reasoning including reference to relevant country information.<sup>19</sup> To date, UNHCR has worked with UKBA to encourage and support the development of a decision template, piloting its use for decision makers.<sup>20</sup>

### **4.3. Treatment of medical evidence in DFT**

- 4.3.1 UNHCR's Fifth Report recorded a quarter of applicants claiming to be victims of torture. In the current review two of the 30 applicants made the same claim while just over half of

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<sup>19</sup> UNHCR 'Fourth Report' (QI) Recommendation 4.1.3, UNHCR 'Fifth Report' (QI) Recommendation 27.

<sup>20</sup> UNHCR 'Fifth Report' (QI) section 2.3.37, and UNHCR 'Sixth Report' (QI) section 2.3.

all applicants claimed to be victims of some form of ill-treatment not amounting to torture including physical and verbal abuse. As in UNHCR's previous review, in none of the cases assessed was independent medical evidence available to support such claims.

- 4.3.2 UNHCR's Fifth Report further highlighted concerns regarding Case Owners poor understanding of the purpose and use of medical evidence in asylum claims and pointed to inappropriate medical judgements being made by DFT Case Owner.<sup>21</sup>
- 4.3.3 In this review, UNHCR did not record any Case Owners making explicit medical judgements they are not qualified to make. This was a positive observation. However, there were five instances of Case Owners providing reasoning that continues to demonstrate a limited understanding of how medical evidence can and should be used when assessing an asylum claim.
- 4.3.4 In some of these instances, the decision maker considers the applicant's scarring as a 'stand alone' fact that must be 'accepted' or 'rejected' only after the full credibility consideration. In these instances, poor credibility reasoning (see section 4.1) is often then used as a justification for dismissing the scarring and suggesting that no weight will be placed upon it. This practice indicates Case Owners are unaware that scarring should be viewed as a piece of evidence that goes toward establishing a claimed incident of torture or mistreatment.
- 4.3.5 In the below example, in the 'Credibility' section of the letter, the decision maker employed an incomplete methodology for assessing credibility and made speculative arguments. Afterwards, under a subsection entitled 'Consideration of Scars' the decision read

*Your claim of torture and the injuries sustained thereby has been carefully considered in the round along with the rest of your claim. You have stated that you have a 1 inch scar behind your right ear resulting from your treatment from the police during a rally in [capital city]. However the mere fact of the existence of scars does not, in itself, indicate that the injuries were sustained in the manner you have described. Consequently, given the lack of credibility evident in your claim overall, and in the absence of any other credible and independent evidence to support your assertions, it has been decided to attach limited weight to the presence of scars on your body*

## 5. DFT PROCEDURES IMPACTING ON DECISION QUALITY

As in UNHCR's Fifth Report, below UNHCR examines the design and effectiveness of UKBA's DFT procedures and their impact on the quality of decision making.

### 5.1. Decision to refer to DFT

- 5.1.1 In its Fifth Report UNHCR highlighted evidence of a need for the then Border and Immigration Agency to better define the parameters of those cases that can be decided quickly so that cases involving complex issues and thereby not suitable for an

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<sup>21</sup> UNHCR 'Fifth Report' (QI) sections 2.3.48 – 2.3.54.

accelerated procedure did not continue to enter the DFT.<sup>22</sup> UNHCR's findings below indicate that, despite some work by UKBA on screening and updated guidance to UKBA staff involved in referral and routing procedures, the parameters continue to lack clarity. Consequently, cases already evidently complex at the time of screening continue to be routed into the DFT. It is UNHCR's view that UKBA statistics which indicate 33 percent of applicants are ultimately removed from the DFT procedure go to support the view that this routing procedure requires improvement.<sup>23</sup>

*UKBA Asylum Process Guidance on asylum claims which can be 'decided quickly'*

- 5.1.2 Since UNHCR's Fifth Report, UKBA has updated process guidance for both UKBA screening staff responsible for identifying cases which may be suitable for the DFT as well as Asylum Intake Unit (AIU) staff responsible for making the definitive decision of whether a case is suitable for the DFT.<sup>24</sup> That a 'quick decision' can be made on the claim remains the key criterion for entering the DFT procedure (as opposed to being detained whilst having their asylum claim considered under regular timescales).
- 5.1.3 Prior to the publication of this guidance, UNHCR summarised concerns about the content of the draft guidance, noting:<sup>25</sup>
- questions about whether the screening process as designed overall allows for the gathering of sufficient information to assess whether a 'quick decision' can be made or whether cases are 'unsuitable' for the DFT / DNSA processes;
  - concerns that the instruction does not adequately assist referring officers nor AIU staff to ensure that vulnerable asylum-seekers and/or those with claims that cannot be decided quickly are not routed into an accelerated detained procedure;
  - concern with the general presumption that the majority of asylum applications are ones in which a 'quick decision' can be made; and
  - the observation that the 'unsuitable' criteria set a very high threshold for exclusion from the process.
- 5.1.4 Whilst welcoming the inclusion of some indicatory factors as to what may constitute evidence to suggest that a quick decision is not likely, it was suggested these factors could be expanded to include cases involving complex substantive refugee law issues, detailed claims, and other complex matters that require substantially more time to gather and consider objective and other evidence. It was further recommended that more detailed guidance be given in this instruction to facilitate proper identification of persons who are 'not suitable' for the DFT.

*Cases routed to the DFT with clear complexities at screening*

- 5.1.5 Of the 30 cases reviewed between January and March 2010, UNHCR encountered at least four which, at the point of screening, demonstrated complexities that UNHCR considered would require a decision timescale longer than the DFT accelerated procedure allows in order to be considered fairly and adequately.

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<sup>22</sup> UNHCR 'Fifth Report' (QI) sections 2.3.79 – 2.3.89.

<sup>23</sup> Data provided by UKBA on request for this report.

<sup>24</sup> UKBA Asylum Process Guidance: DFT & DNSA – Intake Selection (AIU Instruction) Version 2.0 (15/04/2009).

<sup>25</sup> UNHCR Comments on the DFT & DNSA – Intake Selection (AIU Instruction), August 2009.

- 5.1.6 In one such case, an Afghan male claimed at his port screening interview to have worked as an interpreter in Afghanistan since 2004 for various foreign entities. He provided the names and dates of the various bodies for whom he had worked over the years. He explained that, after various threats from the Taliban, he moved to another location within Afghanistan but continued to be threatened. He was not asked whether he had any documentation to support his claim. A CID note from the same day of screening recorded that the case had been accepted for the DFT process “based on the information provided at the time of referral” (which, from observation of the file, included a copy of the Screening Interview). Later, once he was able to access his email where he had saved his documentation, he provided 15 separate documents to support his claim. The Case Owner then dismissed these documents without clear efforts to verify their authenticity (see section 4.1.9).
- 5.1.7 The above example indicates the insufficiency of a screening and routing process whereby individuals are not asked whether they have documentation to support their claim at screening while AIU staff are given guidance to assess a ‘quick decision’ on whether it is foreseeable that further enquiries or translations of documents are necessary to obtain clarificatory or corroborative evidence.<sup>26</sup> It further demonstrates an inconsistency between the requirement to minute any assessment of the case against the ‘suitability criteria’ without any equal requirement to fully assess whether a ‘quick decision’ is possible. At present, if the AIU officer accepts a case for the DFT, s/he must “ [u]pdate CID notes with a brief minute confirming the suitability of the subject to the process. In most cases this may simply be a note to say that absent information to the contrary the case appears to be one on which a quick decision can be made, and which satisfies the other suitability criteria.”
- 5.1.8 Cases such as the above indicate why UNHCR has suggested that the UKBA Intake Instruction be amended to make clear that staff responsible for assessing suitability must minute *full reasons* as to why they have come to their conclusions.

*Lack of reasoning as to why cases were found to be suitable for the DFT*

- 5.1.9 Despite full access to UKBA’s applicant case files and CID, UNHCR observed inconsistent practice as regards AIU staff minuting of reasons for deciding a case was suitable for the DFT. Some files recorded no reasoning whilst many provided standard wording to the effect of “case can be decided quickly”. UNHCR did not observe any recorded instance of AIU staff explicitly and substantively considering the individual elements of the claim against the ‘quick decision’ criteria.
- 5.1.10 Whilst this appears to fulfil UKBA’s own standard for minuting and confirming the suitability of the subject to the process, UNHCR found this made it very difficult to understand the reasons for which a claim was found to be suitable for the process.
- 5.1.11 Most of the files reviewed included additional reasons for detention (i.e. in addition to the ‘can be decided quickly’ criteria) indicated from the IS91R form which is provided to the applicant and explains their reasons for detention.<sup>27</sup> In one claim, however, there was

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<sup>26</sup> Section 2.2.3 of UKBA Asylum Process Guidance: DFT & DNSA – Intake Selection (AIU Instruction) Version 2.0 (15/04/2009).

<sup>27</sup> These can include ‘you are likely to abscond if given temporary admission or release’; ‘there is sufficient reliable information to decide whether to grant you temporary admission or release’; ‘your

no clear reason for detaining the applicant apart from a CID note from the AIU indicating that “on the basis of information received at the time of referral, this case has been accepted for DFT Y/W”.

5.1.12 UNHCR observed clear complexities in this case, evident from the screening record, including a detailed political history of Uganda requiring verification and further evidence to be pursued, yet there were no recorded considerations of this against the ‘quick decision’ criteria prior to the applicant’s entry to the DFT. UNHCRs consider this case should not have entered the DFT and there was no full and clear justification for why it did. Further, as explained below, despite requests for removal, the applicant remained inside the DFT (see section 5.3).

## **5.2. Application of flexibility criteria**

5.2.1 UNHCR reiterates that it considers the option of exercising ‘flexibility’ by extending timescales as per the Flexibility Guidelines<sup>28</sup> to be a vital safeguard to ensure quality decision making and fair asylum procedure.

5.2.2 Of the sample of 30 cases, explicit requests for flexibility were observed in five instances. Four of these requests were from the Legal Representative rather than the applicant him/herself. UNHCR suggests this could indicate that asylum applicants within the DFT are not fully aware of the possibility of extending the timescale of the procedure where necessary in order to present their claim. UNHCR remains of the view that individuals going through an accelerated asylum procedure should be informed of their rights and obligations whilst going through such a procedure and should have the time to exercise those rights.<sup>29</sup> This applies equally to any right to request removal from the DFT procedure (bail or otherwise).

5.2.3 In one third of the cases reviewed, timescales were extended a day or longer beyond the regular DFT timescales. However, it was not always possible to confirm whether this was due to the flexibility criteria being applied to ensure fair processing of the claim, or whether as a result of operational constraints.

5.2.4 There were nine separate instances where flexibility was exercised as per the flexibility criteria. The Case Owner chose to exercise flexibility without any specific request having been made in eight of the nine cases and in the other case flexibility was exercised further to the request of a Legal Representative.

5.2.5 Flexibility was exercised for a wide range of reasons. In one case the Case Owner extended the timescale to collect further subjective evidence from the applicant via an additional interview. In another, a file minute indicated flexibility was exercised to allow time to pursue further objective country information. In another, the applicant was given time to change Legal Representatives and another flexibility was exercised in order to

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removal from the United Kingdom is imminent’; ‘you need to be detained whilst alternative arrangements are made for your care’; ‘your release is not considered conducive to the public good’; ‘I am satisfied that your application may be decided quickly using the asylum fast track procedures’.

<sup>28</sup> Detained Fast Track Processes Operational Instruction “Flexibility in the Fast Track Process”, April 2005.

<sup>29</sup> UNHCR Statement to the European Court of Justice on the right to an effective remedy in relation to accelerated asylum procedures, 21 May 2010, paragraph 12 available at: <http://www.unhcr.org/refworld/docid/4bf67fa12.html>

allow for a second interview to review documents which the Legal Representative did not bring to the first interview.<sup>30</sup> In one case the interview was re-scheduled to four days later because the Legal Representative had forgotten his ID and was not allowed to access the detention centre. In a further case, the applicant stated she was not well, and the interview was postponed.

- 5.2.6 In summary, UNHCR observed proactive use by Case Owners of flexibility as per the guidelines which was positive to see. Nevertheless, some concerning examples were noted where flexibility was requested by the legal representative but refused.
- 5.2.7 Legal Representatives requested flexibility in four of the cases reviewed. In one of these cases it was granted and in three cases it was refused. In the one case that was granted, the reason was to allow for the pursuit of medical information from the Yarl's Wood nurse to assess suitability for interview.
- 5.2.8 For the three where it was refused, only two provided reasons; in the first, that there was already 'solid objective information available'; in the second, that the legal representative, who had been instructed by the applicant for several weeks, had had sufficient time to take instructions from the client and pursue evidence.
- 5.2.9 UNHCR's assessment of the decision to refuse because there was already 'solid objective information available' found there was insufficient use of COI in the decision. The COI that was referred to was not tailored to the applicant's claim. Where the reason for refusal was that the Legal Representative had had sufficient time to seek evidence, UNHCR's review of the file indicated the Legal Representative was making attempts to secure medical evidence to support allegations of physical mistreatment. The Case Owner's decision later reasoned, "You have provided very scant and vague accounts of being burnt and attacked, and you have failed to substantiate either of these claims."
- 5.2.10 UNHCR reiterates its previous recommendation, that DFT Case Owners clearly minute what should be a clearly reasoned consideration of a request for an application of flexibility with reference to the specifics of the case at hand.<sup>31</sup>

### **5.3. Treatment of request to remove claims from the DFT**

- 5.3.1 UNHCR's Fifth Report highlighted examples of DFT cases where requests for removal based on the then Suitability Criteria<sup>32</sup> had been inappropriately refused or where there was simply a lack of clear reasoning as to why the request had been refused. UNHCR also provided examples of vulnerable claimants and complex claims where removal was not considered indicating that the Suitability Criteria were not being proactively applied throughout the DFT process.
- 5.3.2 UNHCR's current review found, positively, a higher proportion of instances where Case Owners explicitly considered requests for removal. However, the Office once again

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<sup>30</sup> In this case there was also a request for removal by the Legal Representative after the second interview had taken place and documents were retrieved. This was to allow the Legal Representative to contact certain people to verify the documents were genuine. The request for removal was refused.

<sup>31</sup> UNHCR 'Fifth Report' (QI) Recommendations 21 and 22.

<sup>32</sup> BIA Asylum Process Instruction – Suitability for Detained Fast Track (DFT) and Oakington Processes (28 July 2007).



identifies insufficient or inappropriate reasoning for refusing these requests and finds examples of complex claims unsuitable for a detained and accelerated procedure. This includes those cases where flexibility was exercised, but where UNHCR considers the case should have been removed from the DFT altogether.

- 5.3.3 UNHCR continues to stress that, in order to allow for a quality decision to be made on any asylum claim, it is imperative that vulnerable and/or complex cases are identified as soon as possible and removed from the DFT. Once an individual has entered the DFT process, any onward consideration of suitability should be constantly reviewed; both in relation to an applicant's suitability for detention and as to the suitability of the claim being determined in an accelerated procedure.
- 5.3.4 As in UNHCR's Fifth Report, the Office examined only those claims where a decision was taken within the DFT and therefore did not examine those cases removed from the DFT prior to first instance decision making. As a result, it is not possible to comment fully on the operation of the 'removals' safeguard. UNHCR is aware, however, that 33 percent of cases that entered the DFT during the period January to March 2010 were ultimately removed from the procedure, whether prior to or following an initial decision.<sup>33</sup>

*Insufficient or inappropriate reasons for refusing a request for removal from the DFT*

- 5.3.5 Over the course of the present review, UNHCR recorded eight instances where a request for removal was made by the applicant him/herself or by his/her Legal Representative. Positively, in seven of the eight, the Case Owner addressed the request explicitly in the decision letter. Reasons for refusal of such requests, however, demonstrated insufficient or inappropriate reasoning. Furthermore, UNHCR considered some of those claims indicated clear complexities that may well have justified removal.
- 5.3.6 In one claim in which the complexities of the claim had already been apparent at screening (see 5.1.11 – 5.1.12), the applicant, who had been detained for no other reason than because her 'claim could be decided quickly', requested removal from the DFT to be closer to her support system of friends and lawyer in [UK location] while her claim was being considered. A file note indicated that a UKBA staff member subsequently informed the applicant that "all DFT is dealt with at Yarl's Wood and therefore it was not possible to transfer her to [UK location]". A later Fast Track Detention Record stated

*The subject wrote to Fast Track office on 13/1/10 requesting that she be moved to [UK location] on the basis that her solicitor and friends resided there. Her request was considered and refused on 14/1/10 as her asylum interview has been booked for 26/1/10 and because her case has been deemed suitable for the Fast Track Process.*

- 5.3.7 There was no further record on her file to indicate why her request for removal was refused, with no obvious consideration of the 'can be decided quickly' criteria.
- 5.3.8 The above example also demonstrates evidence of tautological reasoning provided to justify a claim remaining in the DFT. Other letters recorded reasoning such as

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<sup>33</sup> As before, data provided by UKBA on request for this report.

*Subject remains within the fast track process and therefore detention remains appropriate.*

*Failure to identify and remove complex or vulnerable cases*

- 5.3.9 UNHCR considers that cases unsuitable for the DFT are not only those with complex issues but include those where the applicant is potentially vulnerable, including evidence of mental illness or trauma. Even where such issues are not sufficiently severe to engage the high threshold criteria of applicants which may be unsuitable for the DFT, they may prevent the applicant from being able to put his or her claim forward within the short timescales available.<sup>34</sup> No such vulnerable cases were observed in the 30 cases sampled for this review.
- 5.3.10 Of the eight instances where requests for removal from the DFT were made, UNHCR considered that six of these claims were in fact sufficiently complex to justify removal or, at the very least, an extension to timescales.
- 5.3.11 In one claim an Afghan claimant alleged a well-founded fear of persecution from the Afghan authorities due to his link to his father, a religious leader who had, at one point, been interned at Guantanamo Bay on suspicion of being involved in terrorist activities. The applicant's legal representatives requested removal from the DFT due to the complexity of the claim giving rise to a need to pursue both documentary and expert evidence. They highlighted that their client had been in detention for six of the eight days he had been in the UK and had not had time to pursue necessary evidence. In the decision, the Case Owner refused the request and refused the claim, writing

*You have provided no proof as to the identity of your father, nor have you produced any evidence as to your connections to the man on this list [US newspaper article listing names of those detained in Guantanamo Bay] ... Whilst expert reports may or may not give an opinion on your particular case being consistent with your story, they can not be considered in isolation and can not normally be regarded as provided by themselves, a clear and independent corroboration of your account. Consequently, given the lack of credibility in your claim overall, and taking into account the above authorities [case of Tanveer Ahmed IAT [2002] UKIAT 00439], it has been concluded that the absence of any expert reports does not prejudice your application from being decided fairly. Your application therefore remains suitable to be considered within the Fast Track process. Nevertheless, it is open to you to apply, to the Tribunal, for your case to [sic] adjourned and/or taken out of Fast Track.*

- 5.3.12 UNHCR considers this was a complex case that clearly required detailed research to be able to make a sustainable decision on the claim. The final decision letter indicated that the lack of such research had impacted detrimentally on the quality of the decision. The letter demonstrated poor assessment of credibility and Convention nexus (it was suggested there was none), poor structure, lack of consideration of a number of material facts, speculative arguments, and the suggestion that the Afghan authorities could be

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<sup>34</sup> Improving Asylum Procedures Comparative Analysis and Recommendations for Law and Practice: A UNHCR research project on the application of key provisions of the Asylum Procedures Directive in selected Member States, March 2010, Section 9 of Annex, page 61.

approached to provide protection. These observations support the view that when a claim is complex, time is required to allow the applicant and lawyer to present the claim and to allow the Case Owner full and proper consideration of the claim. For such complex claims, this can not be achieved under the tight time constraints of the DFT.

## **6. CONCLUSION**

### **6.1. Summary of Findings**

- 6.1.1 UNHCR acknowledges that, since its Fifth Report, the UKBA has made significant efforts to improve the training and guidance provided to DFT decision makers and, to a more limited extent, made attempts to improve the processes by which applicants are routed into the DFT.
- 6.1.2 The findings from the current audit indicate some improvements to the quality of decisions in the DFT. Decisions are better structured and credibility assessments are better tailored to the individual elements of each claim. However, UNHCR is particularly concerned at the heavy burden of proof being put on DFT applicants to prove their claim, an observation that is all the more unsettling considering that DFT asylum claimants are being asked to prove their claims whilst based in a detained and accelerated process. Findings also indicate that DFT decision makers still lack sufficient skill when applying the 1951 Refugee Convention criteria.
- 6.1.3 Despite some improvements to process guidance on the DFT intake, including slightly clearer guidance on an asylum claim that cannot be 'decided quickly', this report finds that referral procedures in the DFT are still not precise enough to ensure that unsuitable claims do not enter the DFT. This is supported by UKBA's own drop out rate. The report also provides examples of claims that might have had better quality decisions had they been removed from the DFT or had more time for consideration.

### **6.2. UNHCR and UKBA Engagement**

- 6.2.1 UNHCR welcomes UKBA's clear and continued commitment to improving the quality of asylum decision making within UKBA. This commitment is illustrated by the work of the NAM+ Quality and Learning Team and through their agreement with UNHCR to integrate Quality Assurance throughout the asylum business.
- 6.2.2 UNHCR calls upon UKBA to continue all efforts to address the serious concerns raised in UNHCR's Fifth Report and, in particular, those that the current report demonstrates are clearly still impacting detrimentally upon the quality of decision making in the DFT. UNHCR stands ready to support UKBA in the implementation of all recommendations relating to the quality of asylum decisions within UKBA.

## 7. RECOMMENDATIONS

Below UNHCR reiterates recommendations from its Fifth Report that it considers, based on the findings from the current audit, still require active implementation. The Office also highlights some new DFT-specific recommendations.

### General DFT Recommendations

1. UNHCR recommends that pre-interview preparation be mandatory and that such preparation include a full review of the applicant's case file and relevant country of origin information. UKBA should ensure that all interviewers receive adequate information about the asylum application and any special needs of the applicant, including personal characteristics or vulnerabilities in advance of the interview. Adequate time should be allocated by Case Owners to prepare for each interview.<sup>35</sup>

### DFT Case Owners' Skills and Experience

2. UNHCR reiterates recommendations 10 and 11 of its Fifth Report; that only skilled and experienced decision makers should work within the DFT and that DFT decision makers should be rotated off decision-making duties in order to expose them to a fuller range of cases and other areas of the 'Asylum business'.

### Training in the DFT

3. UNHCR reiterates recommendation 12 of its Fifth Report and calls for the NAM+ Quality and Learning Team to ensure that auditing and training of DFT decision makers continues to address both previous and current DFT findings, including:
  - Inappropriate consideration and application of section 8 of the 2004 Act
  - An understanding of the appropriate burden of proof in an asylum claim alongside a clearer understanding of the purpose and use of any and all types of evidence put forward by an asylum applicant
  - Appropriate and pro-active use of country of origin information
4. Training for DFT Case Owners should ensure that Case Owners are made aware that where a request for removal from the DFT is refused the Case Owner must pro-actively consider whether, in lieu of removal, it would be appropriate to grant an extension to the decision-making timescale (as per the Flexibility Guidelines).

### DFT Guidance

5. UNHCR reiterates recommendations 18 and 19 of its Fifth Report and further recommends that all efforts by UKBA to improve the design and function of screening and routing include as a primary aim the need to ensure that unsuitable claims and vulnerable individuals are not routed in to the DFT.
6. UNHCR considers that grounds for accelerating an examination should be clearly and

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<sup>35</sup> Section 5 (Requirements for a personal interview) Improving Asylum Procedures, Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations, March 2010

exhaustively defined.<sup>36</sup> As such, it is recommended that the DFT / DNSA Intake Instruction be further improved to provide clearer and more substantive guidance to UKBA staff involved in referring to and selecting cases for the DFT so that they can better identify both cases that cannot be ‘decided quickly’ and claimants who may be vulnerable.

7. All guidance aimed at DFT Case Owners should ensure they regularly and pro-actively apply the same standards for suitability for referral into the DFT (as per the ‘Intake’ instruction) to cases that are already within the DFT.
8. Guidance for DFT Case Owners should explicitly require that, where a request for removal from the DFT is refused, the Case Owner pro-actively consider whether, in lieu of removal, it is appropriate to grant an extension to the timescale within the DFT as per the Flexibility Guidelines.

### **Effective use of DFT procedures**

9. UNHCR reiterates recommendations 20, 21, 22 and 23 of its Fifth Report, that lessons can be gained from the ‘early and interactive legal advice’ models being piloted in the Midlands region of the UK, that guidance should explicitly require pro-active consideration of DFT procedural safeguards (flexibility and removal) designed to ensure fair and stringent consideration of the claim, and that all staff who make decisions about who enters or is removed from the DFT must explicitly minute their reasons for making such a decision and base their reasoning on the more substantive guidance recommended above.
10. UKBA should ensure that asylum applicants within the DFT are promptly and fully informed of their right to request additional time to present their claim as per the Flexibility Guidelines and of their right to request removal from the DFT process based on the Suitability ‘Inclusion’ and ‘Exclusion’ Criteria set out in the ‘DFT & DNSA – Intake Selection (AIU Instruction)’.<sup>37</sup>
11. UKBA should ensure that all legal representatives with clients in the DFT are explicitly and pro-actively reminded of their client’s right to request flexibility to timescales or to request removal from the DFT and upon which criteria these requests are granted or refused.

### **Quality Assurance in the DFT**

12. The QADT should include within its auditing remit examination of the ways in which DFT procedures and safeguards impact upon the quality of decision making within the DFT. DFT-specific quality assurance tools should be developed in this regard. UNHCR offers its support in the development of such tools.

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<sup>36</sup> Section 9 (Prioritized and accelerated examination of applications) of Annex to UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations, March 2010

<sup>37</sup> This should include all mechanisms for applying for release from detention including Temporary Admission, Chief Immigration Officer Bail, Bail from an Immigration Judge and by the High Court.