



QUALITY INITIATIVE PROJECT  
SIXTH REPORT TO THE MINISTER

STRICTLY CONFIDENTIAL

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

April 2009



## CONTENTS

GLOSSARY OF TERMS	v
EXECUTIVE SUMMARY	vii
1. INTRODUCTION	1
2. QI ACTIVITIES SINCE FIFTH REPORT	3
Solihull Pilot	3
Quality Audit Team	3
Decision Template	5
CRD	5
Implementation of Recommendations from Previous Reports	6
Conclusion on Recent Activities	9
3. AUDIT OF THE QUALITY OF DECISIONS IN CHILDREN'S CLAIMS	10
Introduction	10
Background to Audit	10
Methodology	11
Quality of Asylum Decisions in Children's Claims	14
Interview Quality	23
Asylum process for children impacting on interview and decision quality	30
Details and Findings of Training Observation	37
Summary of findings	38
4. CONCLUSION	41
5. RECOMMENDATIONS	43
6. ANNEX A	45



## GLOSSARY OF TERMS

Asylum	'Asylum' is used in this report to refer only to the section of UKBA previously referred to as 'NAM'
AI	Asylum Instruction
CID	Case Information Database
COI	Country of Origin Information
COIS	UKBA Country of Origin Information Service
'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 Immigration Removal Centres)
ECHR	1950 European Convention on Human Rights
FRE	First Reporting Event
IFA	Internal Flight Alternative
'Minimum Standards Document'	UKBA/UNHCR Jointly Agreed Minimum Standards for a System of Quality Assurance in the UK First-Instance Asylum Decision-Making Process'
NAM	New Asylum Model
OGN	Operational Guidance Note
PSG	Particular Social Group
'The Refugee Convention'	1951 Convention relating to the Status of Refugees
RFRL	Reasons for Refusal Letter
RSD	Refugee Status Determination
SEF	Statement of Evidence
QAT	UKBA Quality Audit Team
'QI Project'	UNHCR Quality Initiative Project
'Separated Children'	Children separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.
SCW	Senior Case Worker
UKBA	UK Border Agency
'Unaccompanied Children'	Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.
'UNHCR Handbook'	The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status
UNHCR	United Nations High Commissioner for Refugees



## EXECUTIVE SUMMARY

The Quality Initiative (QI) Project is based on the supervisory role of the United Nations High Commissioner for Refugees (UNHCR) under the 1951 Convention relating to the Status of Refugees. The QI Project is a collaborative UNHCR/United Kingdom Border Agency (UKBA) endeavour that aims to improve the quality of the Refugee Status Determination process through the monitoring of both procedures and the application of the refugee criteria. The Sixth Report covers the period from March 2008 to March 2009 and presents observations on the general activities of the QI Project and the findings and recommendations of an audit of the quality of children's first-instance asylum decisions.

UNHCR welcomes the work that has been done in the reporting period towards the implementation of prior recommendations linked to improving credibility assessment in asylum decisions, accreditation of Case Owners and the provision of information to applicants. UNHCR invites UKBA to take forward outstanding recommendations with respect to the provision of asylum training and the Detained Fast Track.

UNHCR reports on positive initiatives within UKBA towards improving the quality of first-instance decision-making; this includes the trialling of a 'front-loaded' decision-making process and UNHCR's ongoing collaboration with the Quality Audit Team (QAT) towards integrating quality assurance mechanisms more generally. UNHCR welcomes UKBA's commitment to making ongoing improvements to its system of quality assurance, demonstrated principally by the adoption of a set of Minimum Standards for a System of Quality Assurance within the UK asylum system.

The QI Project's specialist audit of the quality of children's asylum decisions ensues from the introduction of UKBA's new process for dealing with asylum applications from children. Whilst the audit is primarily concerned with first-instance asylum decisions it also extends to other aspects of the children's asylum process that impact on decision quality; namely, interviewing, procedures and training. UNHCR's audit is specifically concerned with establishing the extent to which UKBA's children's process recognises and has regard to the special circumstances of asylum-seeking children and ensures that the best interests of the child are a primary consideration. UNHCR observes that UKBA will become subject to a statutory duty to 'safeguard and promote the welfare of children who are in the United Kingdom', which follows from the UK's lifting of the reservation to Article 22 of the 1989 Convention on the Rights of the Child.

Overall, UNHCR is pleased to observe positive child-sensitive practice in children's decision-making, interviewing, procedures and training. However, UNHCR notes that improvements can be made to develop the children's asylum process in order to ensure that the special circumstances of asylum-seeking children are taken into consideration and that the best interests of the child are a primary consideration.

In relation to decisions, UNHCR observes that improvements can be made to ensure that there is an explicit consideration of age in credibility assessment and that there is recognition of age-specific mitigating factors when considering the level of detail and consistency in a child's asylum claim. In addition, UNHCR observes that improvements can be made to ensure Case Owners' awareness and application of their duty to ascertain or gather evidence in support of a child's asylum application whilst recognising when a liberal application of the benefit of doubt would be appropriate. UNHCR also

identifies that improvements are required to ensure that all Case Owners demonstrate awareness of children's rights and child-specific forms of persecution.

With regards to interviewing, UNHCR observes that there is scope for further development in order to ensure that all Case Owners allow for the child's expression whilst taking into account any vulnerabilities or special needs. In particular, UNHCR notes that improvements can be made in preparing for the interview, testing inconsistencies, and focusing questioning on material issues in the claim.

UNHCR would encourage UKBA to take further steps to strengthen procedures within the children's asylum process so as to ensure that the child's best interests remain a primary consideration. UNHCR is pleased to note that, on the whole, there is consistent Case Ownership in children's claims, which provides a single point of contact for both the applicant and all other parties involved in ensuring the best interests of the child. Whilst UNHCR observes some appropriate prioritising of children's claims coupled with evidence of flexibility in extending timescales where necessary, improvements can still be made to avoid inexplicable delays that may not be in the best interests of the child. UNHCR observes that there are other aspects of procedure where further improvements can also be made; namely as regards, the gathering of supporting evidence, the decisions to interview children, the role of the responsible adult and the acknowledgement of age disputes in decision letters.

In relation to training, UNHCR is pleased to observe the introduction of specialist mandatory training course for Case Owners who interview and/or make decisions on children's asylum claims. UNHCR notes that, whilst specialist training is a positive development, its content could be improved by placing more emphasis on the specific skills and knowledge required for interviewing or making decisions on children's asylum claims.

At the end of the report, UNHCR makes 12 recommendations arising from the audit of the quality of children's decisions. These recommendations highlight the need for relevant training and guidance to focus more thoroughly on the specific knowledge and skills required for interviewing or making decisions in children's asylum claims. UNHCR also recommends that UKBA Case Owners should have sufficient time to prepare for interviews and that all efforts should be made by the Case Owner to create a child-friendly environment during the interview.

With respect to asylum procedures for children, UKBA is advised to institute a formal and ongoing procedure to consider the best interests of each asylum-seeking child at all stages of the asylum process. To this end, UNHCR also recommends that UKBA support the development of a 'guardianship' system, independent of UKBA, whereby, upon identification, each asylum-seeking child is assigned a qualified guardian who will ensure the child's best interests are fully represented at all stages of the process. Finally, UNHCR emphasises the importance of ensuring that UKBA's quality assurance system pay particular attention to the quality of children's decisions and that UKBA should consider developing child-specific quality assessment tools for this purpose.

Throughout UNHCR's audit of children's decisions, UKBA staff have demonstrated great openness and transparency. UNHCR 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 decision quality in children's claims. UNHCR looks forward to continued collaborative work with UKBA in the next phase of the QI Project.



## **1. INTRODUCTION**

### **1.1. Background**

- 1.1.1. The Quality Initiative (QI) Project is based on the supervisory role of the United Nations High Commissioner for Refugees (UNHCR) under the 1951 Convention relating to the Status of Refugees (the 'Refugee Convention'). The aim of the project is to assist the Home Office in the refugee determination process through the monitoring of both procedures and the application of the refugee criteria.
- 1.1.2. In late 2003, after discussions between the Home Office and UNHCR's representative in London, an agreement was reached whereby UNHCR would lend its good offices to the UK Government to safeguard the integrity of the institution of asylum through the enhancement of the quality of first-instance decisions. It was agreed to call this the Quality Initiative Project.
- 1.1.3. During the course of 2004, the project went through its first phase of implementation. A needs assessment was conducted whereby UNHCR reviewed the Home Office's first-instance decision-making systems, including, inter alia, training programmes and the interpretation and application of the Refugee Convention.
- 1.1.4. **First to Fifth reports**
- 1.1.5. A first report was provided to the Minister on a confidential basis in February 2005. It set out UNHCR's formal observations arising from the initial fact-finding visits and meetings with Home Office staff. A second report was presented to the Minister in October 2005 following a wider audit of first-instance asylum decisions made by the Home Office. Following an expansion of the audit to include assessments of asylum interviews in Croydon and Liverpool, a third report setting out UNHCR's observations and recommendations on interviews was presented to the Minister in March 2006. UNHCR's Fourth Report presented an overview of the progress to date, from UNHCR's point of view, in the implementation of its recommendations and, where appropriate, provided suggestions for the way forward.
- 1.1.6. UNHCR's Fifth Report provided an update on activities and developments since the project's Fourth Report and set out the findings of UNHCR's audit of decision-making in the Detained Fast Track (DFT). UNHCR also highlighted five key areas where, in its view, further efforts should be made with respect to implementation of previous recommendations as a matter of priority; namely, training and accreditation, improving credibility assessment in asylum decisions, workloads, agency targets and the provision of information to asylum applicants.

### **1.3 The Current Report**

- 1.3.1. The current report, the QI Project's Sixth, provides an update on UNHCR's activities since the Fifth Report. Unless otherwise stated, all findings relate to

Asylum (formerly New Asylum Model (NAM)) rather than the Case Resolution Directorate (CRD). In particular, the report focuses on UNHCR's audit of the quality of children's asylum decisions. This report presents new recommendations arising from this recent audit. UNHCR remains of the view that the five areas identified in UNHCR's Fifth Report should remain priority fields for implementation and UNHCR intends to continue supporting UKBA in these areas in the next phase of the project.

## **2. QI ACTIVITIES SINCE THE FIFTH REPORT**

### **2.1.1. Solihull Pilot**

2.1.2. From the time of the conceptualisation of the ‘front-loaded’ decision-making process in 2006 (later known as the Solihull Pilot), UNHCR has consistently voiced support for such a procedure.<sup>1</sup> This support stems from UNHCR’s firm belief that it is vital that any decision-making process allow for all relevant and obtainable evidence to be brought to light as early as possible for consideration before an initial decision is made. In addition, the Minister has acknowledged that such a procedure will act as a mechanism for implementation of previous UNHCR recommendations.<sup>2</sup> Such recommendations include better pre-interview preparation and more flexible timescales to facilitate evidence gathering as early as possible in the decision-making process.

2.1.3. Following completion of the Pilot, UNHCR presented a final report of findings to the Solihull Pilot Evaluation Group and its independent report writer in August 2008. The findings suggested that the front-loading design led to improved quality in the procedural aspects of decision-making. Most notably, in almost all Solihull Pilot decisions assessed, more evidence was available pre-decision. Further, the report outlined how, in some instances, the availability of such evidence had led to better quality decisions. UNHCR pointed out that many decision quality concerns observed in Pilot cases were similar to those found in non-Pilot cases examined during the same period. In UNHCR’s view this highlighted much broader issues with the decision-making abilities of Case Owners and therefore should not be considered a Pilot-specific variable.

2.1.4. UNHCR’s final evaluation report formed part of the evidence base for independent report writer Jane Aspden’s final Solihull Pilot Evaluation Report of October 2008. Jane Aspden’s report was then forwarded to the Solihull Pilot Project Board. In March 2009 the Project Board made a decision to trial front-loading procedures for a further period.

2.1.5. UNHCR considers it significant to note some of the findings of the current audit of children’s decisions; namely that adequate pre-interview preparation does not take place on all occasions and that application of flexibility to prolong decision-making timescales where necessary is exercised inconsistently. In UNHCR’s view these findings affirm the need to ensure implementation of previous UNHCR recommendations that are to be addressed through front-loading procedures.

## **2.2 Quality Auditing Activities in UKBA**

2.2.1. The Quality Audit Team (QAT) was created in July 2007 to audit the quality of asylum decisions and interviews across the UK and provide regular internal reports. The QAT’s activities therefore represent a central element of UKBA’s commitment to mainstreaming quality assurance issues within the asylum

---

<sup>1</sup> UNHCR ‘Fourth Report’ (QI) section 4.1.4, and UNHCR ‘Fifth Report’ (QI) Recommendation 1.

<sup>2</sup> Liam Byrne, Response to UNHCR ‘Third Report’ (23 June 2006).

system. In late 2008, UKBA and UNHCR reiterated their commitment to implementing and maintaining a system of quality assurance in UKBA through endorsement of a jointly agreed document on minimum standards in quality assurance.<sup>3</sup> UNHCR is pleased to note that this document highlights quality auditing as an essential element of the system and an important way of supervising and evaluating the quality and consistency of decision-making.

- 2.2.2. UNHCR's Fifth Report highlighted the importance of ensuring strong links between the Quality Audit Team and training and policy colleagues within Asylum.<sup>4</sup> UNHCR is therefore pleased to observe that close collaboration is taking place, particularly with respect to auditors advising on the content of Foundation Training for new Case Owners. This is a positive development which allows auditors to ensure that the quality concerns identified through their auditing activities are addressed appropriately in training and understood by new recruits. However, UNHCR notes that further work is required with respect to addressing concerns with existing Case Owners where the QAT reports show a need for improvement in some areas of decision-making. Depending on the concerns identified, these could be addressed either through updating policy guidance or through presenting workshops and consolidation training on key areas of concern.
- 2.2.3. In the reporting period, UNHCR has continued to engage with the QAT through a series of jointly-held meetings covering different aspects of quality auditing. Discussions have addressed quality auditing in both the DFT and in children's claims and the correct approach to credibility assessment. These meetings have resulted in helpful exchanges of information on best practice approaches to quality assurance. UNHCR has also conducted regular peer reviews of auditors' assessments of decision quality<sup>5</sup> and has provided suggestions aimed at ensuring that comprehensive and consistent assessment techniques are employed. Finally, UNHCR has worked with the QAT to agree a revised set of assessment forms for quality auditing in asylum which address the gaps that both teams have identified when using earlier versions of the forms. UNHCR understands that the auditors will start to use the revised version of the forms in the near future.
- 2.2.4. Further, UNHCR is of the view that whilst a consistent approach to auditing asylum claims is desirable, certain categories of asylum claim may require auditors to be sensitive to particular issues with respect to application of the Refugee Convention, decision-making concepts and procedure. This has been particularly apparent in the course of UNHCR's own audit of children's decisions where development of specialised assessment tools allowed for a child-sensitive assessment of both decisions and interviews. UNHCR has offered to work with UKBA towards the creation of specialised tools for assessing children's claims.

---

<sup>3</sup> 'Jointly Agreed UKBA/UNHCR Minimum Standards for a System of Quality Assurance in the UK First-Instance Asylum Decision-Making Process' (Dec, 2008) ('Minimum Standards Documents'). See Annex A.

<sup>4</sup> UNHCR 'Fifth Report' (QI) section 2.2.16.

<sup>5</sup> UNHCR is not currently assessing the quality of interview assessments.

- 2.2.5. UNHCR notes that, due to resource constraints, approximately half of the team's quality auditors were transferred to other areas of UKBA in 2008. UNHCR understands that efforts are currently being made to recruit new auditors to the team. Bearing in mind the central importance of the QAT to UKBA's quality assurance strategies, UNHCR hopes that the team will reach its full capacity in the near future, allowing the QAT to meet its commitment to audit 10 per cent of asylum decisions across the UK.<sup>6</sup>
- 2.2.6. In the next phase of the QI Project, UNHCR will continue to support UKBA's efforts to secure a high profile for quality concerns across the asylum business. In particular, UNHCR will remain involved in the creation and development of quality standards and specialised assessment tools for certain categories of asylum claims. UNHCR will also continue to conduct peer reviews of assessments carried out by the QAT auditors in order to support the consistent and accurate interpretation of these standards across the UK.
- 2.2.7. UNHCR commends the QAT on its positive efforts to maintain and improve asylum decision quality in UKBA. UNHCR attaches great importance to preserving a strong working relationship with the QAT. Both UKBA and UNHCR have demonstrated commitment to maintaining this relationship as the QI project moves into a new phase.

### **2.3 Decision Template**

- 2.3.1. In the reporting period, UNHCR has continued to support the development of a Decision Template to assist Case Owners with the structure of interviews and the drafting of asylum decisions. A template was piloted with Case Owners in two Asylum regions in mid-2008. The pilot of the Template helped to bring to light the fact that Case Owners are relying on a number of guidance documents in order to draft decisions including the Reasons for Refusal Letter (RFRL) template and the Asylum Instruction on Writing a Refusal Letter. These documents propose a different way to structure a decision from the Decision Template.
- 2.3.2. UNHCR considers that it is important to streamline all sources of advice on structuring a decision as a means of promoting good quality decisions. In this regard, UNHCR commends and supports the QAT's proposal to produce a generic decision letter (rather than a separate RFRL and grant minute template) and to streamline all guidance, assessment forms and marking standards relevant to structuring a decision. Further, UNHCR supports UKBA's current proposal that the decision letter template be introduced to the Asylum regions through a series of workshops.

### **2.4 Case Resolution Directorate**

- 2.4.1. UNHCR's Fifth Report noted that many recommendations made in the context of the QI project were relevant to the work of the CRD; particularly in view of the

---

<sup>6</sup> See M Coats, 'Minutes of Evidence taken before the Committee of Public Accounts', Q. 22, available: <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpubacc/uc325-i/uc32502.htm>.

specialist nature of the role, the potential for legacy cases to give rise to complex issues, and the skills required of CRD decision makers.<sup>7</sup> Since the completion of the Fifth Report, UNHCR has continued to engage in discussions with the CRD in relation to issues of quality decision-making in legacy cases. UNHCR proposed that a sustainable approach to engagement with the CRD was to focus efforts on supporting the development and mainstreaming of its internal Quality Assurance system.

- 2.4.2. Since November 2008, UNHCR has engaged with the CRD through the sharing of training materials and providing comments on quality assurance forms to be used for cases with asylum content. UNHCR has also offered its assistance with respect to commenting on the framework for quality assurance that is currently being created in the CRD and with the use of quality assessment forms.

## **2.5 Implementation of Recommendations from Previous Reports**

- 2.5.1. In addition to its remit of assessing the quality of asylum decisions made in the UK, the work of the QI Project also involves supporting and advising UKBA colleagues in the implementation of those UNHCR recommendations for improving quality that have received Ministerial support.
- 2.5.2. UNHCR's Fifth Report drew attention to a number of key areas where it is believed that implementation of recommendations should remain a priority: assessment of credibility, workloads, agency targets, Case Owner training and accreditation as well as the provision of information to asylum applicants.<sup>8</sup> Implementation developments since UNHCR's last report are outlined in the sections below.

### Credibility

- 2.5.3. Previous UNHCR reports have repeatedly noted the quality of credibility assessment to be an area of concern.<sup>9</sup> The current audit of children's claims has found that credibility assessment can pose particular challenges for Case Owners when dealing with asylum-seeking children (see 3.4.2 – 3.4.17). Given these ongoing concerns, UNHCR welcomes the planned improvements to the Credibility Asylum Instruction (AI) and the proposal to streamline all guidance including that on credibility assessment, as mentioned above (2.3.2). UNHCR has also made recommendations for improvements to the credibility section of the foundation training provided to new Case Owners and in the Tier 3 children's training (see 3.7.5). It is further hoped that all training on credibility assessment will raise awareness of the Credibility AI as a useful tool for Case Owners.

---

<sup>7</sup> UNHCR, Fifth Report (March, 2008) Section 2.4.40.

<sup>8</sup> UNHCR 'Fifth Report' (QI) section 2.4.44.

<sup>9</sup> See UNHCR's 'Second Report' (QI) section 2.2, 'Third Report' (QI) section 2.3, 'Fourth Report' (QI) section 2.2, 'Fifth Report' section 2.3.



## Training and Accreditation

- 2.5.4. Training development has been identified by both organisations as a key area for future joint cooperation.<sup>10</sup> During the reporting period, UNHCR observed the decision and interviewing modules of the Asylum Foundation Training Programme for new Case Owners<sup>11</sup> and provided detailed comments to UKBA personnel involved in training development. In summary, UNHCR has commended UKBA for incorporating taught sessions on the application of the Refugee Convention and credibility assessment (previously these elements were presented through self-study modules only). However, given the ongoing concerns in the area of credibility assessment, UNHCR continues to stress that trainees must be given a strong foundation in this complex and challenging aspect of decision making as early on in their training as possible. This foundation should include introduction to the correct methodology for assessing credibility as outlined in the Credibility AI. Beyond credibility assessment, UNHCR has also emphasised the importance of ensuring that key refugee law concepts are presented in a balanced and neutral manner, allowing trainees to appreciate their role as neutral fact-finders and discouraging bias against asylum seekers or any tendency to prejudge asylum claims. UNHCR has further recommended the centralised production of training notes to ensure consistent presentation of materials in all asylum regions.
- 2.5.5. In the period since UNHCR's last observation of the training, UNHCR has not had the opportunity for detailed discussions with UKBA on how to implement its recommendations. However, UNHCR is aware that UKBA has recently taken steps to expand its asylum training team with the aim of providing a specialised training facility to meet asylum training needs across the UK. UKBA is also working towards the creation of an accreditation programme for Case Owners. UNHCR will continue to assist UKBA in improving its training and accreditation programmes and looks forward to taking discussions further once the full complement of trainers is in place.

## Workloads and Targets

- 2.5.6. Further to the relevant recommendation in the Fifth Report, UNHCR is pleased to note UKBA's commitment to ensuring that qualitative targets are given equal significance by UKBA when assessing performance through the Minimum Standards on Quality Assurance agreement.<sup>12</sup> The importance of this agreement and its impact upon maintenance of quality in asylum decision-making will remain all the more relevant as UKBA continues to strive to reach its interim targets towards case conclusion within six months, which will increase from 60 per cent to 90 per cent of cases by December 2011. Indeed, the

---

<sup>10</sup> Minimum Standards Document (n 3) section D 2(viii) (Annex A).

<sup>11</sup> The decision-making module (Module 3) was observed in Central London in June 2008 and the interviewing module (Module 4) was observed in Central London in July 2008.

<sup>12</sup> Minimum Standards Document (n 3) section B, 3(iii) (Annex A)

National Audit Office has also recommended the UKBA set and publish targets to improve the quality of decisions.<sup>13</sup>

#### Detained Fast Track (DFT)

- 2.5.7. Following the indication by Minister Woolas that most, if not all, recommendations from UNHCR's Fifth Report on the quality of decision-making in the DFT can be taken forward,<sup>14</sup> UNHCR remains committed to work with UKBA on this important area. With current proposals to increase immigration detention, UNHCR believes that it is particularly crucial that UKBA make all efforts to ensure high quality decision-making in the DFT and looks forward to further engagement in the course of 2009.
- 2.5.8. UNHCR's Fifth report cited the observation of a high number of standard paragraphs and wording employed in the DFT. As such, it has been a sign of welcome progress that, in May 2008, all Senior Case Workers were asked to inform all Asylum Case Owners (including those in the DFT) of the removal of a number of incorrect standard paragraphs from the DocGen system (part of the Case Information Database or 'CID').
- 2.5.9. UNHCR's audit of the DFT had also raised concerns about the effectiveness of 'safeguards' meant to prevent those who are 'unsuitable' from entering or remaining in the DFT. It was thus a welcome development when, in early 2008, UKBA drafted a new Asylum Instruction on this matter.<sup>15</sup> UNHCR provided UKBA with written comments on the AI in March 2008 and a final version was made publicly available in July 2008. UNHCR observes that some improvements to the AI's content have been made; namely, there is now clarity with regards to the instruction's audience, there is confirmation that 'suitability' relates to both the profile of the individual and the content of their asylum claim, and there is improvement to the definition of the kinds of cases that might be considered suitable for the DFT. However, UNHCR notes that some significant gaps remain. First, it is still concerning to observe the lack of a clear definition of what might be considered a 'quick decision' and therefore more appropriate to DFT procedures. Second, guidance on whether someone should be excluded from the DFT is still very limited and protects only those whose condition fits an excessively strict 'unsuitable' definition.

#### Provision of information to asylum applicants

- 2.5.10. Further to UNHCR's previous recommendations that asylum applicants be given access to information about the asylum and interviewing process and their rights and obligations,<sup>16</sup> UKBA issued a draft 'point-of-claim' leaflet to this end in April 2008. UNHCR took up two opportunities to comment on the

---

<sup>13</sup> National Audit Office, 'The Home Office: Management of Asylum Applications by the UK Border Agency' (Report by the Comptroller and Auditor General) HC (124) (2008-2009) Recommendation 10 (vi).

<sup>14</sup> Letter from Phil Woolas MP to Jacqueline Parlevliet (Acting Representative UNHCR Representation to the UK) (15 December, 2008).

<sup>15</sup> UKBA, 'DFT & DNSA – Intake Selection (AIU Instruction)' (AI). This replaced UKBA, 'Suitability for Detained Fast Track (DFT) and Oakington processes' (AI).

<sup>16</sup> UNHCR, 'Third Report' (QI) Recommendation 41, and UNHCR, 'Fifth Report' (QI).

content of this leaflet and the most recent set of comments was provided to UKBA in late June 2008. UNHCR understands UKBA intends to make a final version of the leaflet available in the spring of 2009.

- 2.5.11. In summary, UNHCR remains committed to supporting UKBA in the implementation of its previous recommendations; particularly in those areas where UNHCR's findings continually suggest that ongoing efforts towards improvement should be made; namely, to credibility assessment, to training and accreditation, to workloads, agency targets, and the provision of information to applicants. The agency's adoption of the recommendation that quality be given equal primacy in performance assessment has been a particularly welcome development. Finally, while encouraged by the development of an asylum instruction on asylum applicants' suitability for entering into the accelerated DFT procedure, UNHCR remains of the view that considerable improvements remain to be implemented.

#### Conclusion on QI activities since the Fifth Report

- 2.5.12. The UKBA's adoption of a set of Minimum Standards for a System of Quality Assurance is a particularly welcome development which demonstrates a commitment to ensuring that quality of decisions remains a key organisational goal. UNHCR has spent the last year supporting the implementation of a number of its previous recommendations; in particular those relating to assessment of credibility, the provision of information to applicants and the accreditation of Case Owners. However, UNHCR would invite UKBA to take further action with respect to implementing recommendations and pay particular attention to taking forward those that concern training and the DFT.

### **3. AUDIT OF THE QUALITY OF DECISIONS IN CHILDREN'S CLAIMS**

#### **3.1. Introduction**

- 3.1.1. UNHCR's audit of the quality of children's asylum decisions examines the extent to which the special circumstances of asylum-seeking children are recognised and considered by UKBA in the making of asylum decisions. It is widely acknowledged that refugee status determination in children's claims should be handled in an age-sensitive manner; this encapsulates a focus on the particular needs of children and recognition that whilst asylum-seeking children suffer many of the same human rights abuses as adults they may also endure child-specific harm. As part of considering the quality of decisions of children's claims this audit also focuses on other aspects of asylum determination which impact on the quality of children's decisions; namely, interviewing, procedures and Case Owner training. In line with previous audits, this report makes recommendations to encourage a more child-sensitive approach to asylum determination within UKBA's children's asylum process.
- 3.1.2. UNHCR observes that in respect of children's refugee status determination UKBA must ensure the best interests of any asylum-seeking child are a primary consideration. Unaccompanied and Separated Children applying for asylum require special attention in identifying their best interests, given the extra vulnerability of being without parents or without an adult who, by law or custom, is responsible for their care. The 'best interests of the child' principle has been recognised by the international community as a fundamental concept linked to ensuring the full protection of the human rights of a child.<sup>17</sup> The 'best interests' principle is broad and will be affected by factors such as age, gender, cultural background and past experiences. UNHCR finds that UKBA will better meet the protection needs of asylum-seeking children by ensuring the primacy of this concept at each stage of the children's asylum process.
- 3.1.3. UNHCR notes that UKBA is currently subject to the 'Code of Practice for Keeping Children Safe from Harm'.<sup>18</sup> UNHCR further observes that UKBA will become subject to a statutory duty to 'safeguard and promote the welfare of children who are in the United Kingdom'.<sup>19</sup>

#### **3.2 Background to audit**

- 3.2.1. At the inception of the QI Project, in 2004, UNHCR's auditing activities focused exclusively on adult decisions. In early March 2007, UKBA announced details of a new process for dealing with asylum applications from children.<sup>20</sup> UKBA's new children's process encompasses the issuance of a Statement of Evidence for completion prior to interview, the interviewing of all asylum-seeking children over

---

<sup>17</sup> 1989 Convention on the Rights of the Child, Article 3 (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 ('CRC'). UNHCR observes the UK government has recently lifted its reservation to Article 22 (effected on 18 Nov 2008), see UN, Convention on the Rights of the Child (United Kingdom of Great Britain and Northern Ireland: Partial Withdrawal of Reservation) UN Doc C.N.980.2008.TREATIES (Depository Notification).

<sup>18</sup> Issued pursuant to the UK Borders Act 2007 s 21.

<sup>19</sup> Borders, Citizenship and Immigration Bill, clause 53.

<sup>20</sup> Letter from Hugh Ind to Members of the UASC and NAM Stakeholder Groups (5 March 2007).

the age of 12<sup>21</sup> and the introduction of specially trained Case Owners who see the case through from beginning to end.

- 3.2.2. Following the introduction of the new process for dealing with children's claims, UNHCR and UKBA reached agreement that UNHCR would carry out a specialist audit on the quality of decisions. This conclusion was communicated to the Minister in a letter from UNHCR dated 8 May 2008.<sup>22</sup> It was felt that this audit could provide UKBA with an objective insight into the working of the new process for handling children's asylum claims.
- 3.2.3. During the planning stages of the audit, UNHCR consulted with NGOs and civil society organisations dealing with asylum-seeking children<sup>23</sup> in order to gain a detailed understanding of the prevailing issues and concerns related to children decision-making in the UK. Meetings with relevant UKBA staff also took place in order to gain an understanding of the issues and concerns of those involved in decision-making and policy development of the children's process. These meetings have assisted UNHCR in framing the focus and methodology of the audit, discussed below.
- 3.2.4. UNHCR's audit of children's decisions commenced in the latter half of 2008. Both prior to and during the audit, UNHCR has held discussions with staff in UKBA's Asylum Design and Improvement Team and Asylum Operational Policy Unit with responsibility for quality assurance and children's policy respectively. These meetings were aimed at jointly agreeing the scope and purpose of the audit and identifying particular issues where UKBA would benefit from UNHCR's objective evaluation and advice. UNHCR is grateful to UKBA for their continued support and assistance with the practical aspects of carrying out the audit and the continued openness and transparency demonstrated in their engagement with UNHCR.

### **3.3 Methodology**

#### Sample Selection

- 3.3.1. As part of the planning of the audit, UNHCR reviewed statistical information on which asylum regions predominantly undertook children's asylum interviews and decisions. The statistics revealed that Central and West London assumed the majority of children's claims, followed by Solihull and Liverpool. UNHCR determined that the audit sample should encompass, in so far as possible, a representative ratio of cases from the above regions. At the inception of the audit, UNHCR visited these regions in order to explain the purpose of the audit and gauge an awareness of the issues affecting the quality of decisions in children's claims. In drawing cases from each of these regions, UNHCR called for a random selection of cases from a wide sample of Case Owners in order to

---

<sup>21</sup> Now incorporated into the Immigration Rules, see Immigration Rules HC (395) (as amended) para 352.

<sup>22</sup> Letter from Jacqueline Parlevliet (Acting Representative UNHCR Representation to the UK) to Minister Liam Byrne (9 May 2009).

<sup>23</sup> Namely ILPA's Children's Panel and the Children's Commissioner for England.

gain a broad picture of the way in which children's asylum claims are being processed.

#### Final Audit Sample

- 3.3.2. The final audit sample comprised 100 decisions and 21 asylum interviews.<sup>24</sup> As regards decisions, UNHCR audited 39 decisions from Central London, 25 from West London, 21 from Liverpool and 15 from Solihull. Where available, UNHCR called for decisions made in cases in which UNHCR had observed the interview. The final sample included a range of nationalities: Afghanistan (22), Albania (3), Algeria (1), Angola (3), Bangladesh (5), Bosnia and Herzegovina (1), China (3), Eritrea (9), Guinea (1), India (2), Iran (9), Iraq (10), Ivory Coast (1), Kosovo (1), Mongolia (2), Morocco (1), Nigeria (3), Pakistan (2), Palestinian (2), Rwanda (1), Somalia (7), Sri Lanka (5), Swaziland (1), Turkey (2), Vietnam (1), Zimbabwe (1). The gender ratio was 76 male applicants and 24 female applicants. UNHCR assessed decisions from 65 different Case Owners.
- 3.3.3. As regards interviews, UNHCR audited 15 from Central London, 3 from West London and 3 from Liverpool. This sample also included a range of nationalities: Afghanistan (7), Albania (2), Bangladesh (1), Eritrea (2), Iran (1), Iraq (1), Ivory Coast (1), Kosovo (1), Mongolia (1), Pakistan (1), Turkey (1), and Uganda (1). The interview sample also included a stateless child. The gender ratio was 17 male and 4 female. UNHCR assessed interviews conducted by 20 different Case Owners.
- 3.3.4. All decisions and interviews identified were made between April 2008 and January 2009. All cases sampled were considered by UKBA to be under 18 years of age at the time the asylum decision was made. The sample also included some claims where the age of the applicant had been in dispute at some stage prior to the service of the asylum decision.
- 3.3.5. Of those decisions assessed, 18 resulted in grants of refugee status, one in a grant of humanitarian protection and 11 were outright refusals of asylum, humanitarian protection and discretionary leave. 71 cases resulted in a grant of discretionary leave. Some of these cases were granted discretionary leave on the basis of the European Convention on Human Rights (ECHR), Article 8 rights and in light of other mitigating factors which rendered return to country of origin unsuitable. The vast majority of these cases however were granted discretionary leave in accordance with UKBA's policy relating to Unaccompanied Children.<sup>25</sup>
- 3.3.6. Discretionary leave will usually be granted to children who do not qualify for asylum, humanitarian protection or discretionary leave under the standard criteria, but have no adequate reception and accommodation arrangements in the proposed country of return. In the context of the audit, UNHCR's remit does not extend to commenting on the ambit or application of UKBA's discretionary

---

<sup>24</sup> Nine of the decision assessments had also been interview assessed. In this regard, a total of 112 separate asylum cases were reviewed.

<sup>25</sup> UKBA 'Processing Asylum Applications from Children (APG) (AI). See also, UKBA 'Amendment to Discretionary Leave Policy relating to Asylum Seeking Children' (AI) (30 March 2007).

leave policy for Unaccompanied Children. UNHCR's primary focus has been to observe the quality of the asylum decision. UNHCR notes that, notwithstanding the discretionary leave policy, all aspects of a child's asylum claim must be thoroughly assessed prior to considering leave under other criteria.

### Assessment Methods

- 3.3.7. The decision assessment conducted by UNHCR as part of the children's audit involved a UNHCR team member reviewing the asylum decision in light of the case file, supporting evidence and, where relevant, specific Country of Origin Information (COI). Comments on the quality of decisions were reserved for individual feedback sessions. The interview assessment, as with previous audits, involved a UNHCR QI team member observing each 'live' interview with the informed consent of the child applicant. UNHCR was particularly concerned to ensure that the attendance of a UNHCR observer at the child's interview would not be contrary to the child's best interests. The consent of all applicants was therefore obtained formally, prior to the interview and the views of Social Services, Legal Representatives and UKBA Case Owners were solicited. All children were aware that the permission they had granted for a UNHCR observer to attend and observe live interviews could be withdrawn at any time. The UNHCR observer prepared for the interview in much the same way as Case Owners are required to do (i.e. by consulting the information contained in the applicant's file and conducting country research relevant to the child's claim).<sup>26</sup> The interview assessment form was completed post interview based on the observer's own notes and any feedback to Case Owners was reserved until after a decision had been made on the case.
- 3.3.8. In line with previous audits, UNHCR conducted the children's audit using standardised interview and decision assessment forms that had previously been agreed with UKBA.<sup>27</sup> However, recognising the special needs of asylum-seeking children, UNHCR developed specific guidance to be used in conjunction with the respective forms. This child-specific guidance was based principally on international standards relating to the determination of children's asylum claims. The child-specific decision guidance assisted the assessor to identify the special consideration that Case Owners ought to take into account when reaching a decision on a child's asylum claim. Likewise, the child-specific interview guidance was intended to assist the assessor in recognising the behaviours and skills required of a Case Owner when interviewing a child. In order to identify specific trends, UNHCR team members kept a distinct record of child-specific issues arising from the interview and decision assessment; this included any procedural matters arising. This record was periodically used to provide feedback sessions to Senior Caseworkers from the respective regions. In addition, preliminary findings were also shared throughout with the Quality Audit Team (QAT).
- 3.3.9. In assessing the quality of decisions, and in addressing aspects of interviewing, procedure and training, UNHCR has drawn from a number of legal sources outlining best practice with respect to asylum-seeking children. Reliance is made

---

<sup>26</sup> For more on UNHCR's interview methodology see, UNHCR 'Third Report' (QI) section 2.4.2.

<sup>27</sup> See UNHCR 'Second Report'.

on the UNHCR *Handbook*,<sup>28</sup> and specific UNHCR Guidelines.<sup>29</sup> In addition, UNHCR also references UKBA's own guidance on children's decision-making where this reflects UNHCR guidelines and international standards for handling children's asylum claims.

3.3.10. The following sections address UNHCR's detailed findings. Firstly, UNHCR considers the quality of decisions. Secondly, UNHCR addresses aspects of interviewing, procedures and training that impact on the quality of decisions. In keeping within the remit of the QI project, UNHCR does not address wider and more general protection concerns relating to asylum-seeking children. In presenting its findings, UNHCR aims to identify particular trends that affect the quality of decisions.

3.3.11. UNHCR would note that many of the issues identified in this audit have also been identified in UNHCR's previous audits with respect to adult claims. Whilst UNHCR notes many of the same problems occurring in children's claims, the current audit aims to highlight areas where a child-specific focus is required in considering the asylum claim.

#### **3.4 Quality of Asylum Decisions in Children's Claims**

3.4.1. Making a decision in children's asylum claims requires specialised skills involving understanding and application of child-specific concepts. This relates particularly to the assessment of credibility and establishing the facts of the claim as well as to the application of the criteria under the Refugee Convention. Through assessment in these areas, UNHCR observes some positive child-sensitive decision-making practices. However, UNHCR is concerned that not all Case Owners are sensitive to child-specific issues. Careful attention to the child-specific elements of decision-making will help to ensure that UKBA reaches a decision outcome that is in the best interests of the child. All ages cited in the decision quality section are as at the date of the decision

##### **Assessing credibility and establishing the facts in children's claims**

3.4.2. In assessing the quality of children's asylum decisions, UNHCR looks at the reasoning employed by Case Owners when considering the validity of any evidence and the credibility of the applicant's statements.

3.4.3. Children cannot be expected to give adult-like accounts of their experiences. Child applicants may only have a limited understanding of conditions in their country of origin and may be unable to explain the reasons for their persecution or what they fear.<sup>30</sup> This may be due to a number of factors including the child's

---

<sup>28</sup> UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, 1992) ('UNHCR *Handbook*').

<sup>29</sup> UNHCR 'Guidelines on Determining the Best Interests of the Child' (May, 2008) ('UNHCR Best Interest Guidelines'), and UNHCR 'Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum' (Feb, 1997) ('UNHCR Guidelines on Unaccompanied Children').

<sup>30</sup> Separated Children in Europe Programme, 'Statement of Good Practice' (3rd ed, 2004) para 12.2. See also Council Resolution 97/C 221/03 of 26 June 1997 on unaccompanied minors who are nationals of third countries, para 4(6).



age, maturity and education level. Cultural issues might also be relevant where adults in a particular society may not normally share information with children on religious, political, financial or other grounds.<sup>31</sup> Therefore it is important to ensure that the child's age and stage of development at the time that the relevant events took place, as well as at the time of the interview, are explicitly considered when assessing the asylum claim.<sup>32</sup> Further, when considering credibility issues and the significance of any inconsistencies in the claim, it will also be important to identify whether the applicant is under the influence of an adult, for example, for the purposes of producing a standardised account of past experiences.

- 3.4.4. Whilst this undoubtedly poses challenges for the decision maker, it is not appropriate to refuse asylum on the basis that the applicant is too young to manifest a subjective fear of persecution<sup>33</sup> or because they cannot provide a detailed account of their past experiences. In the credibility assessment, decision makers should consider whether lack of detail or lack of consistency could be linked to child-specific factors and they may be required to look to more objective factors and all known circumstances.<sup>34</sup> A liberal application of the benefit of the doubt may also be required.<sup>35</sup>

*Assessing consistency and level of detail in the claim in an age-sensitive manner*

- 3.4.5. In just over 1 in 10 cases assessed, UNHCR notes good practice examples where the credibility of the applicant's account is assessed in an age-sensitive manner. For example, in one decision where a Case Owner was required to examine a child's claimed religious conversion, the child's age and the nature of adult influences over him were taken into account with the Case Owner concluding:

*It is noted that his religious beliefs developed less upon some deeply held personal belief and more upon the instructive influence of his parents "It originated from my parents and I followed". In this context it is not therefore considered reasonable to expect the applicant - a minor - to have the same degree of understanding of Pentecostalism as might be expected from an adult. (Applicant aged 17)*

- 3.4.6. However, in almost a half of the decisions assessed, there is no explicit consideration of age in the credibility assessment and no attempt to consider age-specific mitigating factors when considering the level of detail and consistency in the applicant's account:

*It is not accepted that your family was threatened due to your father being a member of the Awami League as you were not able to answer*

---

<sup>31</sup> UNHCR Best Interest Guidelines (n 29) 60.

<sup>32</sup> *Ibid.*

<sup>33</sup> 'An asylum application made by a child must not be refused solely because the child is too young to understand their situation or to have formed a well-founded fear of persecution', UKBA 'Processing Asylum Applications from Children' (AI). See also UNHCR *Handbook* (n 28) paras 213 and 217

<sup>34</sup> UNHCR *Handbook* (n 28) para 219.

<sup>35</sup> *Ibid.*

*questions relating to these threats and made a number of contradictions in your own evidence ... (Applicant aged 14)*

3.4.7. In the above example, whilst a child-specific approach would not necessarily compel the Case Owner to accept the fact in question, it would be appropriate to see some acknowledgment that the applicant, as a child, might not be able to provide detailed information relating to the threats made against his family.

3.4.8. In a similar vein, UNHCR notes with concern that inappropriate weight is sometimes placed on the child's immigration history including in relation to Section 8 of the 2004 Act.<sup>36</sup> Adverse credibility findings are sometimes reached without due consideration of the applicant's age and the level of control they are able to exercise over their journey to the UK:

*It is considered that if your fear of the authorities was genuine, you would have left Angola at the earliest opportunity and the fact that you postponed your departure for seven months indicates that you were not living in fear of your life. (Applicant aged 13)*

3.4.9. In this example, the claim has not been assessed with the particular circumstances of the child in mind. The Applicant was a 13 year old child at the time of leaving her country of origin and had been dependant on adults to organise her departure.

3.4.10. In just over 1 in 10 decision sampled, UNHCR also notes that Case Owners do not always make appropriate use of information obtained at the screening stage or an earlier administrative stage of the process (for example the age assessment interview). In the majority of cases, where an inconsistency is identified between the applicant's accounts at various stages of the process, there is no evidence that the inconsistency identified has been put to the applicant at the asylum interview. Case Owners also need to demonstrate awareness that these administrative stages of the process are not designed to record the applicant's reasons for claiming asylum in any depth and should therefore be treated with caution when making the decision on the asylum claim. This is especially important in the case of children's claims as fear or distrust of authority or a lack of understanding about the process can have a greater impact on the way in which the child responds to questioning at earlier stages in the process.

#### *Burden of proof*

3.4.11. Whilst, as a general principle the burden of proof in asylum claims lies on the applicant, in practice, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner.<sup>37</sup> Indeed, in some cases, it may be for the examiner to use all means at his disposal to produce the necessary evidence in support of the application.<sup>38</sup> This can be particularly important in the

---

<sup>36</sup> Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

<sup>37</sup> UNHCR *Handbook* (n 28) para 195 is also reflected in UKBA, 'Assessing Credibility in Asylum and Human Rights Claims' (AI).

<sup>38</sup> UNHCR *Handbook* (n 28) para 196.

context of children's claims where the applicant may not be in a position to provide full details of the basis on which they are claiming asylum and the decision maker may be required to rely more heavily on objective factors.<sup>39</sup>

- 3.4.12. UNHCR notes that these key principles are not always applied by decision makers with Case Owners often requiring child applicants to 'prove' certain elements of their claim. Poor practise is sometimes identified where decision makers refuse to accept elements of the applicant's account by relying heavily on the fact that the applicant is unable to provide sufficient detail in relation to their claim:

*You have not been able to provide any further evidence which supports your claim that your father was a member of the Ba'ath Party. It is considered that you have not shown, to the standard of proof required, that your father did work for Ansar-al-Sunna. (Applicant aged 17)*

- 3.4.13. On the other hand, UNHCR has observed a small number of examples of good practice where Case Owners demonstrated willingness to look to other sources of information to inform their decision on key elements of the claim. For example, in one claim the Case Owner made clear reference to the mother's asylum claim when concluding that the applicant was a Somali member of a minority clan. Having examined the current country conditions in Somalia and concluded that documentary evidence was unlikely to be obtained, the Case Owner then accepted that the applicant was Somali and of Bravanese ethnicity.

- 3.4.14. In a quarter of the decisions assessed, UNHCR is disappointed to note that Case Owners fail to reach clear credibility findings on some or all of the material elements of the claim. It is sometimes clear that this is due to the applicant providing insufficient detail with respect to their claim, or because the Case Owner does not wish to probe in detail on certain sensitive elements of the asylum claim:

*Acknowledging the sensitive nature of the sexual and physical abuse you claim to have received and the low standard of proof, no finding is made to dispute your claim to have suffered from domestic abuse. (Applicant aged 17)*

*You were questioned at interview regarding your claim that your guardian was killed when fighting broke out in your village. You did not know how long the fighting had been going on in your village before your guardian was killed. ... Consideration has been given to your age, you were 11 years old at the time, when considering whether it would be reasonable to expect you to provide this information. Therefore a finding cannot be made as to whether this incident occurred as claimed. (Applicant aged 15 at time of the interview)*

- 3.4.15. Case Owners will always need to reach conclusions on the credibility of key elements of the claim before applying these elements in a forward looking manner to establish whether the individual has a well-founded fear of

---

<sup>39</sup> UNHCR *Handbook* (n 28) para 217.

persecution.<sup>40</sup> Whilst acknowledging the additional challenges in children's claims, a lack of clear conclusions on the applicant's account of past events can cast doubt on the decision maker's analysis of the Refugee Convention criteria.

- 3.4.16. Use of speculative arguments continues to be of concern to UNHCR in the decisions audited. Speculation occurs where a decision maker reaches subjective conclusions on how the applicant or a third party should have acted without relying on supporting evidence. As mentioned in previous UNHCR reports, speculation could be a reflection of a number of practices including a lack of appreciation of the shared burden of proof, insufficient consideration and application of objective COI or limited social and cultural understanding of the status of and conditions for children in the country of origin:

*It is considered inconsistent that, if your claim were true and the alleged explosion took place and if you were accused of anti-government activities, the authorities would have failed to keep your house under surveillance ... (Applicant aged 17)*

- 3.4.17. The above example illustrates the importance of sourcing relevant objective information in order to avoid speculation and to support the conclusions reached.

#### *Consideration of the Benefit of the Doubt*

- 3.4.18. UK case law allows a positive role for uncertainty in asylum claims.<sup>41</sup> Rather than feeling compelled to reach a finding on each element of the claim, Case Owners must be alert to the fact that where there is a lack of evidence to support the applicant's claim, but the account appears to be credible, the applicant should be given the benefit of the doubt.<sup>42</sup>

- 3.4.19. In a very small number of cases, it is positive to note that the concept of the benefit of the doubt is understood and applied by Case Owners. However, as a whole, very few decisions demonstrate understanding or application of this concept. UNHCR considers that the concept of the benefit of the doubt can be particularly useful in those children's claims where there is very limited information available relating to the core of the asylum claim, for example, when the child was too young to be interviewed about the details of their asylum claim.<sup>43</sup>

#### *Application of Refugee Convention Criteria*

- 3.4.20. UNHCR's audit of children's claims looks in detail at whether refugee law concepts are being applied in a child-sensitive manner. Application of the Refugee Convention criteria in children's claims requires particular awareness of children's rights and child-specific forms of persecution. When assessing the future risk of persecution in a child's claim it is necessary to consider factors such as the child's stage of development and their physical and psychological

---

<sup>40</sup> UKBA, 'Assessing Credibility in Asylum and Human Rights Claims' (AI).

<sup>41</sup> UNHCR, 'Second Report' (QI) section 2.2.8.

<sup>42</sup> UNHCR *Handbook* (n 28) para 203.

<sup>43</sup> *Ibid.*

vulnerability. In addition, decision makers must demonstrate awareness of the status of and conditions for children in the country of origin through consultation of child-focused objective materials.

- 3.4.21. UNHCR notes some good, child-sensitive practice with respect to assessing whether a child applicant has a well-founded fear of persecution in the country of origin. However, UNHCR is concerned that not all Case Owners are interpreting and applying the Refugee Convention in an appropriate and child-specific manner.

#### *Convention Reasons*

- 3.4.22. Where Case Owners do not identify an appropriate Convention Reason, this can have a fundamental impact on the quality of the asylum decision and can result in claims being considered under the Humanitarian Protection criteria rather than as a claim under the Refugee Convention. It is therefore important for decision makers to be aware of child-specific Convention Reasons that can arise in the context of children's asylum claims. The main child-specific Convention Reasons identified in the cases audited are the Particular Social Group (PSG) category and imputed claims.
- 3.4.23. Case Owners need to be particularly vigilant to the fact that age can amount to an immutable characteristic which can go towards identifying children or a certain category of children as a social group in a given society. Age and other characteristics may give rise to narrower social groups such as 'orphans', 'homeless children' or 'illegitimate children'. UNHCR notes that, in almost 1 in 3 of the cases reviewed, Case Owners are not identifying a potential age-related PSG. Most often, Case Owners do not identify a potential social group of 'children without family protection' where relevant. For example, this is relevant in cases when the applicant claims that they have no family in the country of origin or will be unable to re-locate their family members if returned to their country of origin.
- 3.4.24. Furthermore, decision makers need to be aware of the possibility that actors of persecution may 'impute' a particular political or religious opinion on a child. UNHCR has seen good practice on this issue with decision makers acknowledging an imputed Convention Reason and understanding that, whilst the child themselves may not hold a particular religious or political belief, they may suffer persecution on account of the religious or political activities of family members or other associates. However, some decision makers do not demonstrate full understanding of this concept. In the example below the applicant claims to be at risk, and to have been arrested and detained in his country of origin, due to their father's political activities. However, the Convention Reason of imputed political opinion is not identified:

*Your claim for asylum is based upon your fear that if returned you would face mistreatment due to your political opinion ... It is noted that you yourself have never been a member of any opposition political party and that you have not taken part in any activities ... It is not considered that you would be of any interest to the authorities in regards [sic] to political*

*activities ... the only interest you have claimed relates to your relation to your father. (Applicant aged 17)*

*Persecution*

3.4.25. Establishing a well-founded fear of persecution is an essential element of the refugee definition. Children may be subjected to persecution in ways which are linked to their age, lack of maturity and vulnerability. Persecution may also be linked to a breach of child-specific forms of human rights. Therefore it is essential that decision makers are able to identify and make reference to child-specific forms of persecution in their decisions.

3.4.26. Some decision makers are demonstrably able to identify child-specific forms of persecution including forced marriage, forced underage military recruitment and heightened risk of persecution for children without family protection. The latter two issues are acknowledged appropriately in the example below:

*For all the reasons above and in light of the objective evidence and the claimant's account, it is accepted that the claimant does face a real risk in his local area of being forced into the Taliban or being killed as a child, especially as an orphan without the protection of his family. (Applicant aged 16)*

3.4.27. However, in almost 1 in 5 decisions, UNHCR notes poor practice where evidence of child-specific persecution is not recognised or analysed appropriately:

*The reason you have given for claiming a well-founded fear of persecution ... is not one that engages the UK's obligations under the Convention. You were sent to the UK by your mother as she felt it was too dangerous for you to remain in Somalia during the war and the living conditions were extremely poor there ... (Applicant aged 2 years old at date of decision)*

3.4.28. The above example does not engage with the fact that children with no access to family protection in their country of origin may be at risk of persecution due to living conditions and lack of access to appropriate care for unaccompanied, separated or orphaned children in the country of origin. These factors are only brought into consideration when considering the applicant's eligibility for discretionary leave in accordance with UKBA's policy relating to Unaccompanied Children.

*Your claim is not based on a fear of persecution in Mongolia because of race, religion, [etc]... It is noted you have not claimed to have suffered any ill-treatment in Mongolia as a result of being a street-child, rather the ill-treatment which you state to have suffered has been of a personal nature at the hands of your adoptive father. (Applicant aged 17 at date of decision)*

3.4.29. In the absence of state protection, persecution at the hands of non-state actors can be a particularly relevant concern in children's asylum claims.<sup>44</sup> In cases illustrated by the above example, Case Owners need to recognise that such claims may engage the Refugee Convention in relevant circumstances.

3.4.30. Finally, UNHCR recognises that UKBA have taken significant steps to identify potential trafficking concerns and refer the child on to appropriate support agencies. UNHCR observes however, that child protection issues, including evidence of trafficking or mistreatment in the UK are not always considered in the asylum decision letter. Case Owners should be aware that the applicant's situation in the UK, including any trauma or mistreatment suffered, may be relevant to establishing the overall profile of the applicant when considering the risk of persecution on return to their country of origin.

#### *Sufficiency of Protection*

3.4.31. In the context of children's claims, analysis of state protection should pay due regard to the applicant's position as a child.<sup>45</sup> Decision makers need to use child-specific and, where relevant, gender specific COI to establish whether effective protection is available against the persecution feared by the applicant. The decision maker also needs to explore whether the child would have the necessary access to any available forms of protection in the country of origin.

3.4.32. UNHCR notes a few well-reasoned examples where the analysis of state protection in the decision pays due regard to the specifics of the applicant's claim. In the example set out below, it is very positive to see the Case Owner deal with the question of whether protection would be available against the specific type of harm feared by the applicant using relevant, objectively sourced material:

*Account has been taken of the level of protection available to women in Afghanistan who have been victims of abuse [quotes relevant COI] ... it is noted that steps are being taken to tackle violence against women, however the failure of the Afghan state to ensure necessary protection and justice for the said victims remains a serious problem. Further it is noted that there is a lack of operational and available avenues of complaint and redress for women who are victims of abuse [quotes relevant COI] In light of the information provided it is considered that sufficiency of protection is not available for women threatened with forced marriage ... Therefore it is considered that sufficiency of protection is not available to the applicant. (Applicant aged 15)*

3.4.33. However, in almost half of all cases reviewed where state protection issues are addressed in the decision, sufficiency of protection is examined without any child-specific analysis. The principle error occurs where Case Owners do not consider the potential problems a child might encounter in attempting to access adequate

---

<sup>44</sup> A Edwards, 'Age and Gender Dimensions in International Refugee Law', in Feller and others (eds) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, Cambridge 2003) 63.

<sup>45</sup> UNHCR EXCOM Conclusion No 107 (LVIII) 'Children at Risk' (2007).

protection, particularly where that child would be unaccompanied on return to the country of origin.

*Internal Flight Alternative*

3.4.34. The child's best interests should also be a primary consideration when considering the availability and reasonableness of an Internal Flight Alternative (IFA). The analysis should pay particular attention to the child's personal circumstances when considering whether they could live safely away from their home area; in particular the analysis should factor age, level of development and maturity, access to care arrangements and the psychological effects of past persecution.<sup>46</sup>

3.4.35. UNHCR finds that a lack of child-sensitive reasoning with respect to IFA is a particular problem. In approximately 1 in 4 of the decisions assessed, Case Owners consider whether an IFA would be available to the applicant on return to their Country of Origin. Among these cases, UNHCR has seen a small number of effectively reasoned decisions where Case Owners demonstrate a willingness to explore child-specific concerns and consider the viability of IFA on the facts of the particular case. In the example cited below, it is very positive to see a structured approach to the IFA analysis with consideration of general and child-specific COI which allowed the Case Owner to reach a well supported conclusion on the risk to the applicant in the proposed area of relocation:

*As it is not considered that the [non-state actor persecutor's] power extends beyond the local area, the matter of internal relocation must be considered to assess if there is another part of the country to where it would be safe for the claimant to return as an orphaned child.*

*[Quotes Home Office OGN on sufficiency of protection in Kabul]*

*It is considered that internal relocation to Kabul is therefore an option, where sufficiency of protection is potentially available even if the power of [the non-state agents of protection] stretched beyond his local area. However, it is considered that internal relocation to Kabul would be unduly harsh for the claimant for the following reasons.*

*The only family that the claimant has left in Afghanistan are his siblings, whose whereabouts are unknown, and his mother's cousin ... who lives in his home area. Thus, the claimant would be returned to Kabul on his own, ..., [Quotes COI to the effect that boys over the age of 15 are not admitted into orphanages in Kabul and are at risk of homelessness and exploitation]*

*It is therefore considered that as the claimant is ... uneducated and unable to relocate with family to Kabul, he would face a real risk of*

---

<sup>46</sup> UNHCR 'Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees' (23 July 2003) UN Doc HCR/GIP/03/04 para 25.



*homelessness and exploitation and it would therefore be unduly harsh for him to relocate to Kabul. (Applicant aged 16 at date of the decision)*

- 3.4.36. However, in the majority of decisions sampled where IFA is argued, UNHCR notes a poor approach to assessing IFA which does not take account of child-specific elements of the applicant's claim. For example, where a child will be unaccompanied on return to the country of origin, analysis of available care facilities in the proposed area of relocation is required. With a few well-reasoned exceptions, this issue is not normally analysed in a balanced fashion with reference to all available objective information.
- 3.4.37. Where a decision maker wishes to argue that the child will be able to relocate with family members, the circumstances of the family and their ability to travel to and survive in the proposed area of relocation also requires careful consideration. This is not always effectively done. For example, in one case the Case Owner argued that the applicant and his family could avail themselves of an available IFA in Kabul without due regard to whether the applicant's family would be able to travel to Kabul from their home area and subsist. In this case the applicant's mother was a lone female head of household who relied in part on financial assistance from her male relatives in the home area.

#### *Use of Country of Origin Information*

- 3.4.38. As identified above, the applicant may not know the reasons for their persecution and may not be able to articulate what might happen to them on return. It is therefore vital for the decision maker to use and analyse relevant Country of Origin information (COI) in assessing the claim.<sup>47</sup> Decision makers should also be sensitive to the need to source information that reflects the experiences of children in the country of origin, which can be quite distinct from information relating to adults.
- 3.4.39. In one quarter of the cases assessed, UNHCR has found that COI cited is not child-specific, but rather focuses on the experiences of adults in the Country of Origin. UNHCR acknowledges that in certain instances there may be difficulty with accessing child-specific COI. However, Case Owners are nonetheless required to ensure that objective information cited in support of their claim is relevant to the particular circumstances of the applicant's case. Case Owners need to identify where the existing Country Information is inadequate and address this by either making a request from the Country of Origin Information Service (COIS) and/or acknowledging the limits of the available information in the decision letter and placing appropriate weight on that information accordingly.

### **3.5 Interview Quality**

- 3.5.1. To make a good quality asylum decision requires the collection of relevant and meaningful evidence. In this regard, the substantive interview of the applicant is often a vital component. UNHCR's Third Report outlines in detail the importance of the interview to the decision-making process.<sup>48</sup> To provide an asylum-seeking

---

<sup>47</sup> UNHCR *Handbook* (n 28) para 217.

<sup>48</sup> UNHCR 'Third Report' (QI) section 2.4.

child an opportunity to express the reasons for claiming asylum is to provide for the right to express their views freely.<sup>49</sup> To interview an asylum-seeking child requires special skills that allow for the child's expression while ensuring that any vulnerabilities or special needs of the child are accounted for.<sup>50</sup> This also ensures that the child's best interests remain a primary consideration.

- 3.5.2. In this section, UNHCR outlines the findings of the audit of the quality of child interviews in light of the above considerations. All ages cited in this section are as at the date of the interview. UNHCR examines the preparation for interview, the interview environment, the questioning focus, the methods for testing inconsistencies, the questioning of the child and the role of interpreters. Whilst examples of good practice are observed, UNHCR is concerned that not all Case Owners are sensitive to the particular needs of children when interviewing and identifying and obtaining appropriate evidence. Further, UNHCR has noted the limited amount of guidance available to Case Owners on how to interview children.

#### Preparing the interview

- 3.5.3. The substantive asylum interview is a key fact-finding stage of the decision-making process. Not only does it provide the child with the opportunity to set out their claim, but it gives the Case Owner the opportunity to examine any details that they consider necessary and thereby establish the material facts.
- 3.5.4. Given the importance of the interview, it is vital that the Case Owner prepare beforehand by becoming familiar with the information available on the child's file, the child's claim as laid out in the statement and any relevant available COI.<sup>51</sup> This will allow the Case Owner to ask pertinent questions at interview and thereby elicit necessary or missing evidence.<sup>52</sup> Indeed, lack of preparation can contribute to a lack of focus in children's interviews, discussed below (3.5.15 – 3.5.19).
- 3.5.5. UKBA's own guidance to Case Owners acknowledges the importance of preparing adequately for the substantive asylum interview and makes clear that where a statement is available prior to interview, as will be the case in children's claims, this should be used as a basis for planning the focus of the interview.<sup>53</sup>
- 3.5.6. Of the interviews assessed by UNHCR, it is pleasing to observe that the great majority of Case Owners review all relevant subjective evidence on the file before interview. However, in more than a quarter of interviews observed there are indications that thorough consideration of relevant objective information, such as the COIS report and the Operational Guidance Note (OGN), did not take place.

---

<sup>49</sup> 1989 Convention on the Rights of the Child, Article 12 (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 ('CRC').

<sup>50</sup> UNHCR Guidelines on Unaccompanied Children (n 29) section 8.4.

<sup>51</sup> UNHCR 'Third Report' (QI) section 2.4.8.

<sup>52</sup> UNHCR 'Procedural Standards for Refugee Status Determination under UNHCR's Mandate' (1 September 2005) section 4.3.2.

<sup>53</sup> UKBA, 'Conducting the Asylum Interview' (AI) see section *Preparing the interview*, and UKBA 'Considering the Asylum Claim' (AI) see section *Gathering evidence and preparing for an interview*.

This appears to be exacerbated in some regions by workflow delays that cause Case Owners to receive some files on the day of interview leaving them with little time to review the file and prepare.

- 3.5.7. In one claim, the Case Owner questioned the child on his nationality, his area of origin, possible internal relocation alternatives and whether protection might be available. However, no reference was made to objective information. UNHCR's later review of the decision found objective information that could have been put to the applicant at interview and would have been clearly related to the claim as presented in the applicant's statement. Prior consultation of objective information relevant to these matters would have allowed for briefer, more focused and relevant questioning and would have allowed the child the opportunity to address any inconsistencies between his testimony and the objective information.

#### Creating an appropriate interview environment

- 3.5.8. Some children, due to their age and immaturity, may not understand the purpose of the substantive asylum interview or may find the experience intimidating or frightening.<sup>54</sup> To make the child comfortable, the interview should be carried out in a child-friendly manner<sup>55</sup> and in an environment of confidence, trust and understanding that makes the child comfortable and thereby more inclined to impart information relevant to the asylum claim.
- 3.5.9. As the individual in control of the interview, it is the Case Owner's responsibility to ensure the maintenance of the interview environment. There are various ways in which this can be achieved; for example, the Case Owner can build up a friendly rapport with the child prior to or at the start of interview, arrange a seating plan that is not intimidating, and provide breaks at regular intervals.<sup>56</sup>
- 3.5.10. In the UK context, management of the interview environment in a child's claim can be particularly challenging due to the additional number of individuals present; namely, the legal representative, the representative's interpreter, a responsible adult, a foster carer, etc. Whilst it is the responsibility of each individual present to fulfil the role expected of them, it nevertheless remains for the Case Owner to ensure the maintenance of the proper environment.
- 3.5.11. UKBA Case Owners receive training on how to create a child-friendly environment.<sup>57</sup> Indeed, of the interviews observed by UNHCR, it is evident that some Case Owners are clearly attuned to the importance of a child-friendly interview environment and make appropriate efforts to this end. There are some practices, however, that caused a child to be interviewed in an atmosphere that UNHCR considers inappropriate.

---

<sup>54</sup> UNHCR 'Refugee Children: Guidelines on Protection and Care' (1 Jan 1994) 101.

<sup>55</sup> Separated Children in Europe Programme, 'Statement of Good Practice' (3rd ed, 2004) section 12.1.3, and UNHCR 'Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum' (Feb, 1997) section 4.2.

<sup>56</sup> UNHCR 'RLD4 - Interviewing Applicants for Refugee Status' (Training Module) (1 Jan 1995), available <http://www.unhcr.org/publ/PUBL/3ae6bd670.pdf>

<sup>57</sup> UNHCR 'Observation of Tier 3 "Safeguarding Children"' (Training - West London) (Dec, 2008).

- 3.5.12. In a quarter of the interviews observed, for example, UNHCR considers the seating arrangement to be potentially intimidating to the child; most notably when the responsible adult is seated at a far distance from the child, rather than in a position of support. With regards to breaks, UNHCR observes that their provision occurs inconsistently. Whilst some Case Owners are pro-active about offering or enforcing breaks, others do so more rarely and sometimes allow the child to decline a break when UNHCR considers it would be appropriate to enforce one. Whilst UKBA policy allows break provision to be at the discretion of the Case Owner,<sup>58</sup> UNHCR's experience suggests children benefit from regular intervals in interviews. Other more rare occurrences suggest Case Owners are not always attuned to their own responsibility to ensure a child-friendly interview environment; for example, when a responsible adult attending the interview falls asleep.
- 3.5.13. Of those interviews observed, it is clear that attempts to create a suitable interview environment are often thwarted by the requirement that Case Owners read out standard information that has not been adapted to be understood by a child. Children are asked, for example, if they 'are content with the person acting as the responsible adult'. They are also given a credibility warning at the start of the interview.<sup>59</sup> Whilst much of the information is important, there are indications that, as phrased, it causes confusion for the child. Indeed, UNHCR has observed instances where, when asked, the child explains that they do not understand this information. Case Owners have also commented to UNHCR that they find themselves re-phrasing the text to make it more child-friendly.
- 3.5.14. UNHCR has previously suggested that, in order to establish the optimum interview environment for any asylum applicant, the National Insurance application, which is dealt with at the beginning of the interview, should be moved to a more appropriate stage of the decision-making process.<sup>60</sup> In this regard, while it is positive to note UKBA's policy that this application should not be completed for children under the age of 16, it was particularly concerning to observe two instances where the Case Owner completed these sections for younger children, thereby unduly increasing the length of the interview.

#### Focusing the interview

- 3.5.15. As discussed above, good interview preparation allows for well-structured interviews that focus on assessing eligibility for refugee status or subsidiary protection.<sup>61</sup> Indeed, preparation and focus are all the more relevant when undertaking a child's interview due to the desire to ensure the child is not overwhelmed by an excessively lengthy interview.

---

<sup>58</sup> UKBA 'Conducting the Asylum Interview' (AI) see *'The use of breaks during interview'*.

<sup>59</sup> Statement of Evidence (SEF) Combined Interview and NINO Application – Children: 'Credibility (Section 8) Warning: Your actions since leaving [insert country] will be taken into account when your claim is considered. If I think that anything you have done makes it hard to believe your claim for asylum, I will give you the chance to explain. It may harm your asylum application if you cannot provide a reasonable explanation for your actions.'

<sup>60</sup> UNHCR 'Third Report' (QI) Recommendation 17.

<sup>61</sup> UNHCR 'Third Report' (QI) section 2.4.8.

- 3.5.16. In the UKBA's children's process, the child is requested to provide a Statement of Evidence (SEF) prior to interview giving the Case Owner more material with which to prepare. UKBA's guidance on interviewing makes clear to Case Owners that, where information provided in the statement is complete and not in dispute, there should be no need to question on those areas at interview. Instead, the Case Owner should question the applicant on matters for which it is felt there is insufficient or contradictory evidence.<sup>62</sup>
- 3.5.17. Through the interview observations UNHCR notes that many Case Owners demonstrate skill at structuring an interview by grouping questions into themes and by introducing the child to each new area of questioning in turn (also known as 'signposting'). This practice is to be commended as it assists a child's understanding of the interview process and encourages disclosure of evidence.
- 3.5.18. It is less encouraging to find that, in just under half of the interviews observed, lines of questioning focus on matters that are not evidently material to the claim or that do not appear to be in dispute. Sometimes questioning on these immaterial or non-disputed points results in a lack of information gathering on areas and facts that do require exploration. In one such case, an Afghani child had been living in Iran since the age of 5. He had left Afghanistan as a result of mistreatment. At interview, the Case Owner focused almost all of the questions on the applicant's past experiences in Iran. Only one question sought to explore why the applicant felt he could not return to Afghanistan.
- 3.5.19. Neglecting to question the applicant on matters relevant to the decision is even more concerning and demonstrates the Case Owners' lack of appreciation of their own responsibility to elicit all relevant evidence where possible (see 3.6.14). Neglecting to question the child on relevant matters also places an inappropriately high burden on the child to 'prove' their claim as is evident in some decisions (see 3.4.12).

#### Testing inconsistencies and putting evidence to the applicant

- 3.5.20. Both UKBA's own asylum guidance and UNHCR's procedural standards require that Case Owners provide the applicant the opportunity at interview to clarify and explain any apparent incomplete or contradictory facts or statements within their own evidence or in relation to objective country information.<sup>63</sup>
- 3.5.21. In addressing how to handle discrepancies in a child's claim, UKBA guidance advises that the 'Case Owner will need to decide to what extent it is reasonable to expect the child to be able to explain these discrepancies and how far these should be pursued during the interview'.<sup>64</sup> Interview training on handling children's claims states that to ask a child a question that begins with 'why' is inappropriate because it may be interpreted as asking the child to make a value

---

<sup>62</sup> UKBA 'Conducting the Asylum Interview' (AI).

<sup>63</sup> UKBA 'Assessing Credibility in Asylum and Human Rights Claims (AI), and UNHCR *Handbook* (n 28) para 199, and UNHCR 'Procedural Standards for Refugee Status Determination Under UNHCR's Mandate' (1 Sept 2005) para 4.3.7.

<sup>64</sup> UKBA 'Processing Asylum Applications from Children' (AI).

judgement.<sup>65</sup> Unfortunately, the findings below suggest that this training has implications for the willingness of Case Owners to question a child and may be having a detrimental impact on the quality of decisions in such claims.

- 3.5.22. UNHCR's assessments suggest Case Owners vary in their confidence and ability to identify and address apparent inconsistencies or to obtain the child's views on evidence that might suggest that they could be returned to their home country. It is positive to observe that where Case Owners do put discrepancies to a child, they often do so in a non-judgemental, non-threatening and age-appropriate manner. The credibility findings in the resulting decisions are often more robust as a result.
- 3.5.23. In an instance of good practice, the Case Owner put all obvious discrepancies to the 15-year-old Albanian applicant at interview in a child-appropriate manner. In the decision, inconsistencies on material facts were outlined clearly with the questions and answers cited in the decision. An explanation was then provided as to why it was felt the applicant's explanations were not reasonable and the facts were not accepted.
- 3.5.24. Whilst it is positive to note that some Case Owners are comfortable in testing inconsistencies in a child's claim, in half of interviews assessed, Case Owners failed to put inconsistencies to the child or neglected to probe further when the child's response was vague, confusing or inconsistent with other subjective or objective evidence.
- 3.5.25. In one instance, a 16-year-old applicant explained in her statement that she had entered into a relationship with a man by whom she later fell pregnant and had fled to the UK after being disowned by her family. In the letter refusing asylum, speculative reasons were then given for not accepting the existence of the relationship between the applicant and her partner based on inconsistencies in the account that were not put to her at interview.
- 3.5.26. On other occasions Case Owners did not make proper use of objective information to question the child and elicit relevant evidence. In such a case, a 17-year-old Mongolian claimed in his statement to have become a street child and to have run away from his abusive father. Whilst the Case Owner demonstrated knowledge of available COI suggesting some non-governmental services are available to street children, this information was not discussed with the child at the relevant point of interview and the child was not given the opportunity to comment on objective evidence that was later used in the decision.
- 3.5.27. Overall, UNHCR's findings suggest that some Case Owners are reluctant to question a child where sometimes necessary in order to address inconsistencies or to obtain the child's view on evidence which suggests that they could be returned to their home country. Whilst it is clear that this reluctance may stem from a desire to avoid questioning a child inappropriately, there is a risk that failing to question a child in a manner appropriate to their age may have a detrimental impact on the quality of the interview and, subsequently, the quality

---

<sup>65</sup> UKBA 'Keeping Children Safe, Asylum Tier Three, Day 2 – Interviewing Children' (Training Notes) Part One.

of the decision taken on a child's claim. There is indeed a tendency for some Case Owners to conclude in their decision that the child failed to 'prove' their claim when the child was not questioned on such matters at interview (see 3.4.12). The lack of appropriate questioning can also lead to reliance on speculative arguments in decisions when assessing the credibility of an applicant's statements (see 3.4.16). Indeed, the link between lack of questioning at interview and speculative reasoning in a decision has been highlighted in previous UNHCR Reports.<sup>66</sup>

#### Questioning in an appropriate style and tone

- 3.5.28. To assist in gaining the confidence of a child applicant in an interview situation and therefore maximise disclosure, the Case Owner should adopt a tone appropriate to the child's profile. Simultaneously, the questioning-style should encourage the child's disclosure and avoid barriers to communication.<sup>67</sup>
- 3.5.29. UNHCR has found, in the context of the current audit, that Case Owner's employment of the above relevant skills is varied. It is encouraging to observe that many Case Owners are adept at adapting their tone depending on the child's individual circumstances and profile. Case Owners often also use an effective balance of open and closed questions which encourage the child to feel at ease, to expand on the basis of claim in detail where necessary, and to address any areas of doubt or concern. Further, there are examples of good use of child-friendly words and references, for example, in one case, in order to determine the size of a particular area, the Case Owner asked the child if his father's land was bigger than a football pitch.
- 3.5.30. However, of the cases examined, there are an equal number of instances of problematic questioning. For example, while some Case Owners phrase questions about the actions or beliefs of third parties in a way that acknowledges the child may have limited knowledge of the subject ('Do you know why your cousins did not apply for asylum?'), others phrased the question in a way that might suggest the child should know the answer ('Why did they arrest everyone except you?'). There were also occasions when language that might not be understood by a child was used such as "Did you fly direct?" or "Was your education funded?". In a particularly concerning example, a 13-year-old child was asked 'why are you claiming asylum in the UK?'. When the child demonstrated he had not understood the question, the interpreter was asked to explain the concept of asylum to the child in order to elicit an answer.
- 3.5.31. The mixed ability amongst Case Owners to question a child appropriately and effectively at interview suggests a need for more thorough training and guidance in this area. Indeed, UNHCR's observation of the Tier 3 training identifies that this area is not covered in sufficient detail and UNHCR has recommended to the Operational Policy and Process Improvement (OPPI) that written guidance to Case Owners on interviewing children be improved.

---

<sup>66</sup> UNHCR 'Third Report' (QI) Section 2.4.53.

<sup>67</sup> UKBA 'Processing Asylum Claims from Children' (AI).

### The role of the interpreter in children's interviews

3.5.32. The role of the interpreter in any asylum interview is pivotal to eliciting information on the facts of an asylum applicant's claim.<sup>68</sup> When interviewing a child an age-appropriate tone and questioning style can only be achieved when the interpreter facilitates communication.

3.5.33. In more than a quarter of the interviews observed, there have been concerns about problematic interpreting. For example, concerns arise where exchanges are not interpreted, where the Case Owner addresses the interpreter rather than the applicant, or where there is an unsatisfactory standard of English. These concerns all impact unfavourably on the interview environment and the child's ability to disclose information.

3.5.34. UNHCR has recommended to UKBA that the training Case Owners receive on interviewing children include a specific and dedicated section on working with interpreters. Guidance to Case Owners on these matters would also be of benefit. UNHCR also suggests that interpreters working with children would benefit from specific training in this delicate area.<sup>69</sup>

## 3.6 Procedures

### Introduction

3.6.1. Given the unique features of UKBA's children's process, and UNHCR's experience that asylum procedures can impact upon the quality of decisions, UNHCR's current audit has examined, in so far as possible, procedural aspects with a view to commenting on effects on the quality of children's asylum decisions.

3.6.2. UNHCR is pleased to observe that UKBA acknowledges the special circumstances of asylum-seeking children through a distinct asylum process which differs from the adult asylum process in a number of ways:

- The target timescale for making a decision on an adult claim is between 15 – 30 days while in a child's claim it is slightly longer at 31 – 35 days.<sup>70</sup>
- Children are provided the opportunity to state their claim in writing through completion of a Statement of Evidence (SEF) prior to interview.
- At interview, the child must be accompanied by a 'responsible adult'.
- The Refugee Council's Panel of Advisers must be notified of a child who has made an application for asylum, including those whose age has been disputed.<sup>71</sup>
- Children who are in a 'private fostering arrangement' (e.g. living with extended family or family friend) must be referred to the local authority.

---

<sup>68</sup> CRC (n 17) arts 12 and 13, and the International Convention on Civil and Political Rights (adopted 16 December 1996, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19.

<sup>69</sup> UNHCR Guidelines on Unaccompanied Children (n 29) section 5.13.

<sup>70</sup> UKBA 'Processing Asylum Applications from Children' (AI), and UKBA 'Asylum High Level End-to-End Process Map'.

<sup>71</sup> UKBA 'Processing Asylum Applications from Children' (AI).



### Case Ownership in Children's Asylum Claims

- 3.6.3. With the creation of the New Asylum Model (NAM) in May 2007, UNHCR welcomed the UKBA 'Case Ownership' model whereby one staff member at Higher Executive Officer level remains responsible for processing an asylum claim from start to finish.<sup>72</sup> This model provides a single point of contact for both the applicant and all other parties to the claim and is all the more relevant for a child's claim due to the greater number of individuals who have an interest in the claim; namely the legal representative, responsible adult, foster carer and social services, amongst others. Such an arrangement also provides consistency and thereby assists in generating the rapport often necessary to encourage the child's willingness and ability to express their views.<sup>73</sup>
- 3.6.4. UKBA's children's procedure includes a First Reporting Event (FRE) scheduled to occur 10 days after the application for asylum but 15 days before the substantive interview. As outlined in the UKBA guidance, '[t]he purpose of this event is for the Case Owner to establish contact with the child, to explain the asylum process, to check on progress in completing the SEF, to ensure the applicant has legal representation, and to issue any relevant paperwork'.<sup>74</sup>
- 3.6.5. For the purposes of the current audit, only in half of all claims assessed was it possible for UNHCR to ascertain from the physical file or CID whether an FRE had taken place and/or who it was performed by. Of those claims where this information was available and where an interview later took place, only half of children had had the same Case Owner both at the FRE and at the substantive interview. In 12 instances no FRE had taken place. These findings lead to concerns about consistency of contact between UKBA and child applicants as well as opportunities for rapport-building prior to interview.
- 3.6.6. UNHCR understands that, from contact with UKBA work flow managers and Case Owners, the current UKBA administrative arrangements do not aim to ensure the same Case Owner performs both the FRE and substantive interview. Indeed, on some occasions the FRE is delegated to lower-grade or administrative staff. As the FRE provides an opportunity for rapport-building, UNHCR suggests that all efforts should be made to ensure that this is performed by the Case Owner who interviews the child. However, with respect to continuity as between the interviewing and decision-making stages of the process, it is positive to note that in 80 per cent of those claims where an interview took place the decision was taken by the same Case Owner.
- 3.6.7. UNHCR's is concerned by the observation that some children's interviews and decisions are being undertaken by Executive Officer level staff. UNHCR's understanding is that most of this staff have received both asylum and children's training prior to undertaking this work and have been assisting with children's claims as a temporary measure. Nevertheless, UNHCR remains of the view that only Case Owners who are sufficiently experienced and trained should be given

---

<sup>72</sup> UNHCR Fourth Report (QI) section 2.3.4.

<sup>73</sup> CRC (n 17) art 12.

<sup>74</sup> UKBA 'Processing Asylum Applications from Children' (AI).

responsibility for assessing children's claims. Bearing in mind the importance of ensuring procedures are undertaken in best interests of the child, UNHCR suggests that the Case Ownership concept is all the more relevant to children's claims.

#### Expediency in processing children's claims

- 3.6.8. Given their vulnerabilities and special needs, children's claims should be identified and prioritised with every effort made to reach a decision promptly and fairly.<sup>75</sup> There may be circumstances, however, where in the best interests of the child the handling of the claim should be delayed. Delay may be appropriate, for example, where the child has suffered trauma and is having difficulty putting forward their evidence, where the claim is complex and requires further research, or where statements of relatives or their files need to be consulted.
- 3.6.9. UKBA aims to make a decision on children's claims between 35 to 37 days after the application for asylum.<sup>76</sup> This time-frame recognises the need to expedite children's claims whilst allowing for time to put forward the claim in writing before the interview and to consider the merits of the case. In practice, UNHCR's audit finds that in the significant majority of the children's claims assessed the Agency does not meet this timescale. UNHCR observes however that the reasons for delay in reaching a decision in a child's claim are varied and sometimes there is sound reasoning for not adhering to the requisite time-scale.
- 3.6.10. UNHCR observes some clear and encouraging examples of Case Owners acting flexibly in relation to the time-frame for reaching a decision in a way that was evidently in the child's best interests; for example, by allowing additional time for legal representatives to complete a SEF with their client, by waiting for legal submissions, or by allowing time for a medical report. There were also some clear instances of Case Owners taking extra time to carefully consider a complex claim, consult their Senior Case Worker (SCW) on particular matters or check files of relatives. In other instances, delays were caused by matters outside the Case Owner's control; for example, because of the resolution of an age dispute by social services, because of the provision of evidence by other government bodies, or due to the cancellation of interviews as a result of non-attendance by an outside party or interpreter.
- 3.6.11. In many cases it was difficult to ascertain from the case file or CID why delay had occurred. In some of these cases the child's case required expedient resolution. UNHCR notes the example of a case where the child had experienced severe torture at the hands of non-state agents. In this case, the applicant was interviewed one month after submitting a claim for asylum. At the interview he submitted both a medical report and photographs as evidence of the severe torture he claimed to have received. A month after the interview, UKBA wrote to the child's legal representative requesting further information on a particular element of the claim. This evidence was submitted within two weeks. Two months later the representative wrote to UKBA noting his client's concern at a

---

<sup>75</sup> UNHCR Guidelines on Unaccompanied Children (n 29) section 8.1, and Separated Children in Europe Programme, 'Statement of Good Practice' (3rd ed, 2004) para 12.1.1.

<sup>76</sup> UKBA 'Processing Asylum Applications from Children' (AI).

lack of decision. The decision was finally served six months after the initial application.

- 3.6.12. The section below on gathering evidence outlines instances where UNHCR considered that the claim may have been decided too quickly due to indications that further evidence would have assisted in assessing the claim.
- 3.6.13. The findings of this audit indicate that, whilst it is important to aim to process a child's claim expediently, Case Owners should consider the child's best interests in determining the necessary time-frame for reaching a decision. It may indeed be in the child's best interests to permit more time for the child and the legal representative to collect necessary evidence, to take the time to consult requisite objective information, or to discuss relevant elements of the claim with a SCW. Equally, depending on the child's personal characteristics and circumstances, as well as the details of the claim, it may be in the child's best interests for UKBA to make all efforts to reach a decision on the claim as fast as possible.

#### Gathering evidence

- 3.6.14. It is acknowledged that children may be unable, due to their age and maturity, to provide subjective or other supporting evidence in support of their asylum application. As noted above (3.4.11), in practice the duty to ascertain and evaluate all relevant facts is shared between the applicant and the examiner and thus it may be for the examiner to use all means at their disposal to produce the necessary evidence in support of the application. Supporting evidence might include medical and/or psychological reports, country of origin information, in addition to statements from family members, members of the child's community, guardians, social workers, teachers, community workers and other persons dealing with asylum-seeking children. UNHCR observes that as part of the asylum process it is important for Case Owners to gather all available evidence, where appropriate, before interview and/or decision stage, notwithstanding that this may affect UKBA's timescales for reaching decisions.
- 3.6.15. In the audit UNHCR finds that whilst there were example of effective evidence gathering in a small number of cases, in approximately 1 in 3 cases Case Owners could have sought further evidence at some point in the pre-decision stage to support or more appropriately inform their findings but did not go on to do so.
- 3.6.16. In the cases identified, UNHCR has observed that, where relevant, Case Owners are not requesting supporting medical evidence. In a case concerning a 14 year old applicant, the Case Owner uses the absence of a medical report to make an adverse credibility finding:

*... it is significant to note that although you have told your family about [a sexual assault], you have not been to a doctor to be examined nor have you been examined by a doctor in the UK. In the absence of medical evidence to substantiate your claim, it is doubted that this incident took place as claimed.*

- 3.6.17. UNHCR observes that at no point had the child nor his legal representative been told that medical evidence might assist the Case Owner to make a finding on this element of the child's claim.
- 3.6.18. UNHCR observes that UKBA's Instructions on Processing Asylum Applications from Children stipulates that it is good practice, where relevant, for Case Owners to call for files of family members and/or consider whether other agencies involved with a child may have information that they are able to share and that may be relevant to the application. In the cases identified, UNHCR notes that Case Owners are, where relevant, not making reference to family files or not interviewing or obtaining statements from family members in order to elicit relevant information. For example, in a case concerning a 17 year old applicant, the Case Owner disputes nationality without reference to, or seeking to obtain evidence from, the applicant's maternal uncle now living in the United Kingdom.
- 3.6.19. UNHCR also notes a tendency for Case Owners not to make requests for relevant information from the COIS. For example, in one particular case involving an 11 year old unaccompanied child, the Case Owner relies on a report referring to research of 2001 that favourably discusses orphanages in the child's country of origin. UNHCR finds no evidence that the Case Owner had requested more up-to-date information from the COIS.
- 3.6.20. In practice, UNHCR's findings suggest that some Case Owner's do not appreciate the duty to gather supporting evidence.

#### The decision to interview

- 3.6.21. Pursuant to the Immigration Rules and UKBA policy, Case Owners interview all asylum-seeking children over the age of 12 unless the child is unfit or unable to be interviewed<sup>77</sup> or if any of the conditions under the immigration rules permit the substantive interview to be omitted.<sup>78</sup> This policy provides the child with the opportunity to express themselves whilst protecting those that maybe more vulnerable.
- 3.6.22. In almost all of the claims assessed by UNHCR, children above the age of 12 were interviewed for the purposes of their asylum claim. However, there are a small number of instances where UNHCR has concerns about a Case Owner's decision to interview or not interview the child.
- 3.6.23. The below examples demonstrate that there is a lack of formal procedure for assessing whether obtaining evidence from an asylum-seeking child above the age of 12 through interview may or may not be in the child's best interests. As a result, some children who are unfit or unable to provide evidence in an interview setting may be required to do so while others may be denied the opportunity to put forward their own views in the context of their asylum claim.

---

<sup>77</sup> Immigration Rules HC (395) (as amended) para 352, and UKBA 'Processing Asylum Applications from Children' (AI).

<sup>78</sup> Immigration Rules HC (395) (as amended) para 339NA.

3.6.24. In one case, the Case Owner explains in the refusal letter:

*As a consequence [of provision of a witness statement], the decision has been taken not to interview you concerning your claim. This is because it is believed that you have provided a detailed account of your reasons for claiming asylum and that, taking into account your age and other factors, no further benefit would be derived from conducting an interview in the particular circumstances of this case. (Applicant aged 14)*

3.6.25. UNHCR's review of the file and CID could find no further reasoning for the decision not to interview the applicant. As a result, a child, that was neither unfit nor unable to be interviewed and whose claim did not fall under the omission categories of the Immigration Rules, was not afforded the opportunity to express themselves beyond a written statement.

3.6.26. In an equally small number of claims, UNHCR observed that there were indications that an interview may not have been in the best interests of the child. In one claim, for example, a 14-year-old explained in her statement that, after having been the victim of rape, a state of shock had led to her not speaking for four months. UNHCR was disappointed to note that there was no indication from the information available to UNHCR that consideration had been given to the fact that she had suffered trauma and that this may have impacted upon her ability to provide evidence via interview.

The 'responsible adult'

3.6.27. Pursuant to the Immigration Rules and UKBA policy, when an asylum-seeking child's interview takes place 'it shall be conducted in the presence of a parent, guardian, representative or another adult independent of the Secretary of State who has responsibility for the child'. This is a person who, according to UKBA, 'is not a constable, immigration officer or an officer of the Secretary of State ... [and] ... someone the child trusts ... [and] ... will usually be a social worker or other member of staff of a Local Authority or voluntary sector organisation, a legal guardian, a legal representative or a foster carer.'<sup>79</sup>

3.6.28. The findings from UNHCR's audit suggest that the benefits to be derived from having a 'responsible adult' present at interview are sometimes lost in practice. There are indications which suggest that the lack of a formal training requirement for the individual who acts as the 'responsible adult', as well as a potential conflict of roles, may be undermining the usefulness of the presence of such an individual.

3.6.29. Of the interviews UNHCR observed, there were two separate circumstances where it was felt both a lack of formal training and a conflict of roles impacted detrimentally upon the interview environment. In one case, the applicant's uncle, acting as the responsible adult, felt inclined to answer questions on behalf of the child. In another case, the legal representative, also acting as the child's

---

<sup>79</sup> Immigration Rules HC (395) (as amended) para 352, and UKBA 'Processing Asylum Applications from Children' (AI).

responsible adult, expressed frustration towards the child when he was not able to recall having completed his statement.

- 3.6.30. The above examples demonstrate concerns regarding the role of the ‘responsible adult’ in children’s asylum claims in the UK and indicate that this individual may not always act in the child’s best interests. UNHCR is concerned that, when an individual does not have the time or skills required to protect the best interests of the child, or when this responsibility conflicts with another, problems such as those demonstrated above may continue to occur.
- 3.6.31. UNHCR recommends that, once an asylum-seeking child has been identified, a ‘guardian’ or ‘advisor’ from an officially recognised organisation independent of the immigration authorities be appointed to the child. This individual will be responsible for ensuring that the child’s best interests are fully considered and represented throughout the process.<sup>80</sup> This person will also ensure that the child’s legal, social, medical and psychological needs are appropriately considered during the decision-making procedure and until a durable solution is found for the child.<sup>81</sup> The Committee on the Rights of the Child recommends that Separated or Unaccompanied asylum-seeking Children should be provided with a guardian in addition to a legal representative.<sup>82</sup>

#### Age disputes

- 3.6.32. As noted in the methodology, the final audit sample included cases where the age of the applicant had been in dispute at some stage prior to the service of the asylum decision. UNHCR is aware that the issue of identifying age dispute cases and age assessment itself has generated concern and best practice has been under review by UKBA in consultation with external stakeholders.<sup>83</sup> In the context of the audit, UNHCR’s remit is limited to considering how age disputes impact on the quality of the asylum decision.
- 3.6.33. Information received from the Asylum Operational Policy Unit<sup>84</sup> indicates that if at any point in the claim the age is disputed, this should be noted in the decision letter next to the date of birth (‘age dispute’) and the way it was resolved (or not) should be addressed in the body of the letter.<sup>85</sup> UNHCR notes however that where the age of the applicant had been in dispute at some stage prior to the service of the asylum decision, Case Owners did not, as a matter of course, record that there is an age dispute issue or address how this issue has been resolved. UNHCR considers that this may be caused by a lack of clear guidance in the Age Dispute

---

<sup>80</sup> International Committee of the Red Cross, UNHCR and others, ‘Inter-agency Guiding Principles on Unaccompanied and Separated Children’ (January 2004) para 4(e).

<sup>81</sup> UNHCR Guidelines on Unaccompanied Children (n 29) para 5.7.

<sup>82</sup> Committee on the Rights of the Child, ‘Treatment of Unaccompanied and Separated Children Outside their Country of Origin’ General Comment No. 6 (2005) para 21.

<sup>83</sup> See UKBA ‘Better Outcomes: The Way Forward. Improving the care of unaccompanied asylum seeking children’ (Jan, 2008). UNHCR notes that the existence of a working group aimed at ‘putting in place better procedures to assess age in order to ensure children and adults are not accommodated together’.

<sup>84</sup> Now OPPI.

<sup>85</sup> Email communication from Susan Betts, Process Manager, Asylum Operational Policy Unit (2 May 2008).

AI as to how age disputes should be dealt with in the decision letter.<sup>86</sup> Age Dispute Guidance does not stipulate that Case Owners ought to indicate that there has been (or indeed is) an age dispute issue and how this has (or has not) been resolved. Further, the RFRL Guidance only specifies that Case Owners should include a standard paragraph where there is no satisfactory evidence to suggest that the applicant is a child and has in fact been treated as an adult. UNHCR observes the need for clear process guidance instructions.

### **3.7 Details and Findings of Training Observation**

3.7.1. UKBA Case Owners who interview and/or make decisions on children's asylum claims must undertake a specialised five day training course referred to as 'Keeping Children Safe, Asylum Tier 3'. The third tier reflects the higher level of training in child protection concerns that those Case Owners receive.

3.7.2. On the first day of the training the aims and objectives are presented as follows:

- *To explain the end-to-end asylum process concerning children.*
- *To deliver end-to-end management of minors to case completion within the asylum process.*
- *To understand the contact management process for children and know how to apply this.<sup>87</sup>*

The course also includes two days of interview training.

3.7.3 UNHCR is aware that since February 2008 the Tier 3 training has been passed from the central training team to the Asylum regions for delivery. Based on enquiries with some of the individual regions it is understood that some of the content of this training has been adapted to each region's particular training needs (for example, in some regions there is more content on age dispute matters). Nevertheless, all the regions confirm that they use the same PowerPoint presentation on Day 1 to cover the area of decision-making.

3.7.4 UNHCR was kindly provided the opportunity to observe the provision of this training in UKBA's West London office in early December 2008. The team chose not to observe the full five day training but focused on the sections of the facilitated training that cover the remit of the QI project: decision-making (Day 1) and interviewing (Day 2).

3.7.5 UNHCR's observation of the training finds that it currently places great emphasis on procedural matters when handling children's claims while minimal focus is placed on decision-making. Given the findings of the current audit, UNHCR considers that Case Owners would benefit from more thorough and practical training. Improvements would include more thorough explanations of how to make a decision using techniques that incorporate a child's individual characteristics (e.g. age and maturity) into the assessment of the claim. It would also include more explanation and practical application of refugee law concepts where child-specific considerations must be taken into account.

---

<sup>86</sup> UKBA 'Age Dispute Cases' (AI).

<sup>87</sup> UKBA 'Keeping Children Safe, Asylum Tier Three – Day One' (Training).

- 3.7.6 Nonetheless, it was very encouraging to note a strong focus on wider child protection concerns throughout the training. The locally-based SCWs and Case Owners who presented the training were evidently experienced in handling children's claims and stressed a focus on the child's best interests throughout.
- 3.7.7 UNHCR has presented UKBA's training team with the detailed findings and recommendations stemming from the above-mentioned observation and would welcome the opportunity to support all initiatives by UKBA to improve the children's training that Case Owners receive. Given that the Asylum regions may need to adapt the content of the training to their particular needs, it will be vital that the centrally-based training team retain oversight of the core content to allow for consistency and required levels of quality across the Asylum regions.

### **3.8. Summary of Findings**

- 3.8.1. UNHCR's audit of the quality of children's decisions has sought to examine the extent to which UKBA's children's process recognises and has regard to the special circumstances of asylum-seeking children and the ways in which it ensures that the best interests of the child are a primary consideration. As part of examining the quality of decisions, UNHCR has also considered interview quality, aspects of procedure and Case Owner training.
- 3.8.2. The determination of children's asylum claims requires due regard to the special circumstances of asylum-seeking children. UNHCR observes that throughout the children's decision-making process the best interests of the child must be a primary consideration. The identification of the best interests of Unaccompanied and Separated Children requires that special attention be given to the vulnerability of being without parents or without an adult who, by law or custom, is responsible for their care. With these considerations, UNHCR observes that decision-making should be handled in an age-sensitive manner; this encapsulates both a focus on the particular needs of children and the recognition of child-specific harm. Further, the interviewing of asylum-seeking children requires special skills that allow for the child's expression, whilst ensuring that any vulnerabilities or special needs of the child are accounted for. In addition, procedures must focus on facilitating the best interests of the child principle and training should centre on the specific skills and knowledge required for interviewing or making decisions on children's asylum claims.
- 3.8.3. In relation to decisions, whilst noting positive practice, UNHCR considers that many Case Owners could improve their decisions with more explicit consideration of age-specific mitigating factors in the assessment of credibility. In addition, the audit finds that Case Owners need to better recognise their own duties to ascertain and gather evidence in support of a child's application and better recognise when it may be appropriate to grant a child the benefit of the doubt. In relation to the application of the Refugee Convention criteria, UNHCR's audit suggests Case Owners will benefit from raised awareness of children's rights and child-specific forms of persecution. As regards interviewing, UNHCR finds that Case Owners will benefit from improved understanding of the particular needs of children; particularly in relation to preparing for interview, testing inconsistencies, and focusing their questioning.



- 3.8.4. In relation to procedure, UNHCR is pleased to note that, on the whole, there is consistent Case Ownership in children's claims which provides a single point of contact for both the applicant and all other parties involved in ensuring the best interests of the child. UNHCR also observes some instances where children's claims are prioritised and where there is flexibility in relation to timescales where necessary. However, UNHCR observes that in some cases delays occur which are neither explicable nor in the best interests of the child. In relation to other aspects of procedure UNHCR has also found specific concerns. UNHCR observes insufficient evidence gathering, a lack of adequate reasoning with respect to decisions to interview children, weaknesses with the role of the responsible adult, and a failure to acknowledge age disputes in decision letters.
- 3.8.5. In relation to the Case Owner specialist mandatory training for Case Owners who interview and/or make decisions on children's asylum claims, UNHCR observes that the training will benefit from more focus on the specific skills and sensitivities required for interviewing or making decisions on children's asylum claims.
- 3.8.6. Overall, UNHCR has observed positive practice in respect of decision-making and in relation to other aspects of the children's asylum process. However, the findings from the QI audit indicate that UKBA's children's asylum process requires improvement in order to facilitate the best interests of the child principle and the quality of decisions in children's asylum claims. UNHCR is concerned that there is neither a formal procedure for identifying the best interests of each child nor an identified group of individuals dedicated to assessing best interests. UNHCR observes that UKBA will become subject to a statutory duty to 'safeguard and promote the welfare of children who are in the United Kingdom',<sup>88</sup> which follows from UK's lifting of the reservation to Article 22 of the 1989 Convention on the Rights of the Child.

---

<sup>88</sup> Borders, Citizenship and Immigration Bill, clause 53.



## 4. CONCLUSION

- 4.1. In this report, UNHCR has addressed activities conducted in the past year through the QI Project, with particular focus on its recent audit of children's asylum decisions. Including the current report, QI has submitted six reports on the quality of asylum decision-making within the UK asylum system. Over the course of the QI project, UNHCR has been pleased to observe UKBA's ongoing organisational commitment to quality assurance; demonstrated principally by the creation of a centralised team dedicated to Quality Assurance and Process Improvement and the creation of the Quality Audit Team in mid-2007. Further, UNHCR recognises that the Minister for Borders and Immigration has accepted the majority of recommendations from previous UNHCR QI reports and that the ongoing challenge for UKBA rests in implementing and mainstreaming the principle of quality decision-making across asylum.
- 4.2. In light of the developments highlighted above, UKBA and UNHCR have commenced discussions with a view to UNHCR looking towards providing a supervisory and oversight component within UKBA's developing quality assurance system. UNHCR and UKBA consider that the best way to ensure lasting and sustainable improvements to the quality of decision-making is through the developing and mainstreaming of a system of quality assurance. Such a system should be built around a set of quality standards and targets together with mechanisms to monitor, maintain and improve the quality of asylum decision-making.
- 4.3. To this end, UNHCR and UKBA have together drafted a set of 'Jointly Agreed Minimum Standards for a System of Quality Assurance in the UK First-Instance Asylum Decision-Making Process' ('Minimum Standards Document').<sup>89</sup> This document has received the endorsement of senior managers within UNHCR and UKBA<sup>90</sup> and represents a set of baseline standards which should act as a blueprint for future joint cooperation between UNHCR and UKBA on quality assurance. UNHCR commends these joint efforts to identify and agree on the fundamental elements of a quality assurance system and looks forward to further developing methods of cooperation to achieve and support the aims identified in that document.
- 4.4. UNHCR welcomes UKBA's continued commitment to improving the quality of first-instance asylum decisions. This has been demonstrated by ongoing progress in implementing a number of previous recommendations. UNHCR calls on UKBA to take forward the serious concerns raised in the Fifth UNHCR Report with the quality of decision making in the DFT.
- 4.5. UNHCR stands ready to support UKBA in the implementation of its recommendations relating to the quality of children's asylum decisions. Further, UNHCR looks forward to continued close collaboration with UKBA both in developing and mainstreaming a sustainable system of quality assurance within the asylum system.

---

<sup>89</sup> Contained at Annex A.

<sup>90</sup> This endorsement took place at a UKBA/UNHCR Bilateral Meeting on 15<sup>th</sup> December 2008.

- 4.6. Once more, UNHCR wishes to thank and commend UKBA for its high level of transparency and continued cooperation with UNHCR throughout the lifetime of the QI Project. UNHCR remains committed to ongoing collaboration with the UKBA to continually improve the quality of asylum decisions.

## 5. RECOMMENDATIONS

### General children’s asylum process recommendations

1. In all elements of its asylum decision-making process for children, UKBA should give primary consideration to the best interests of the child. An assessment and consideration of each child’s best interests should take place in a systematic manner for any action by UKBA that affects the children under its remit.
2. It is recommended UKBA support the development of a ‘guardianship’ system, independent of UKBA whereby, upon identification, any Unaccompanied or Separated asylum-seeking child is assigned a qualified guardian whose interests are not potentially in conflict with those of the child’s and who will ensure the child’s best interests are fully represented at all stages of the decision-making process.

### Training

3. The training for Case Owners should focus more thoroughly on specific skills and knowledge required for interviewing or making decisions on children’s asylum claims. Training should include more explanation and practical application of refugee law concepts where child-specific considerations should be taken into account, including:
  - Child-sensitive approach to credibility assessment
  - Child-sensitive interpretation of refugee law concepts
  - Emphasis on the shared burden between Case Owner and asylum applicant to ascertain and evaluate the evidence
  - How to plan a focused interview using subjective and objective evidence
  - How to appropriately and sensitively question on key elements of the claim

### Guidance

4. UNHCR recommends significant improvements to the Asylum Instruction on ‘Processing Asylum Applications from Children’ including more guidance on:
  - Interviewing children
  - The shared burden to ascertain and evaluate all necessary evidence
  - Gathering medical evidence
  - Making requests for objective information to the COI unit
  - How to address age disputes in a decision letter
  - How to incorporate trafficking concerns into assessment of the claim
  - Assessing credibility in a child-sensitive manner
  - Assessing refugee law concepts in a child-sensitive manner

### Interviewing

5. Files should be assigned and handed to the relevant Case Owner a reasonable number of days prior to the interview.

6. Case Owners should make all efforts to ensure an appropriate interview environment that facilitates the child's disclosure of evidence, including through:
  - Better rapport-building with the child
  - Attention to appropriate seating arrangements
  - Ensuring the child has a sufficient number of breaks during the interview
7. Introductory and mandatory text on the children's interview form should be reviewed and improved to make it more child-friendly and comprehensible to a child.
8. Interpreters should be specially trained in how to interpret in children's cases.

### **Children's procedures**

9. UNHCR recommends that UKBA institute a systematic and ongoing procedure to assess and consider the best interests of each asylum-seeking child at all stages of the decision-making process where an action taken by UKBA affects the child. The best interests assessment should:
  - be undertaken by staff with the requisite skills and knowledge
  - be documented
  - include consideration of the views of the child and the views of the child's assigned guardian

Amongst other instances, the best interests assessment should be conducted when:

- determining an appropriate timescale for considering the child's particular claim
- deciding which sources of evidence can and should be pursued
- deciding whether it is appropriate to interview the child

### **Quality Assurance**

10. Child-specific quality assurance tools and marking standards should be developed.
11. All staff conducting assessments of children's interviews and decisions should be adequately trained in how to assess a child's claim.
12. The QAT should assess a representative number of children's interviews (live) and decisions as part of their auditing activities and work with other UKBA staff to ensure remedial action on findings.

## 6. ANNEX A

### **Jointly agreed UKBA/UNHCR minimum standards for a system of Quality Assurance in the UK First-Instance asylum decision-making process**

*Note: ‘Asylum decision-making’ is used in this document to encompass all elements of the first instance decision-making process – including but not limited to the substantive asylum interview and first-instance asylum decision.*

#### **Introduction**

1. Both organisations recognise the importance of quality asylum decision-making as an organisational goal. They consider that a reliable and sustainable system of quality assurance can help achieve a number of important objectives including:
  - i. fair and well-reasoned decision-making, leading to early identification of individuals in need of international protection,
  - ii. increased efficiency in processing and active review of claims, leading to reduced costs and delay,
  - iii. ensuring regional consistency in decision-making outcomes,
  - iv. more structured and predictable handling of cases leading to increased confidence in the UK’s asylum system.
2. Both organisations recognise the progress that has been made by UKBA with respect to quality assurance in the field of asylum. They remain committed to promoting best practice elements of the UK’s quality assurance system within the EU Common European Asylum System.
3. UNHCR remains committed to providing continuing support to UKBA in designing and implementing a system of quality assurance - both in view of its supervisory mandate under the 1951 Refugee Convention and its 1967 Protocol<sup>91</sup> and its expertise in the field of refugee protection.
4. In view of the above, and the ongoing discussions between UKBA and UNHCR about the activities of the joint Home Office/ UNHCR Quality Initiative (QI) Project post 2009, both organisations wish to reach consensus on a set of minimum standards for a system of quality assurance in asylum decision-making in the UK. These common denominators will form the basis for future collaboration between both organisations on quality assurance matters.
5. Both organisations acknowledge that many of the elements mentioned in this document already exist within the UK model. This document therefore represents a commitment to maintaining those elements of a sustainable quality assurance system in the future.

#### **Setting of Quality Standards**

1. Objective standards for measuring the quality of asylum decision-making are an essential tool for quality control. To date, UKBA and UNHCR have used a jointly agreed quality assessment form as a tool for recording these Quality Standards and assessing Case Owner performance.

---

<sup>91</sup> Article 35 of the 1951 Convention relating to the Status of Refugees (as amended by the 1967 Protocol relating to the Status of Refugees).

2. The Quality Standards should include, as a minimum, the issues identified in the annexed list.<sup>92</sup>
3. UNHCR remains committed to assisting UKBA in the ongoing design of Quality Standards and remains willing to advise on any proposed amendments to the Quality Standards.

### **Essential Elements of a Quality Assurance System**

Both organisations acknowledge the need for mechanisms to monitor and maintain the quality of decisions. The following are agreed key components of a quality assurance system designed to ensure that Quality Standards are adhered to and, where performance falls short of those standards, that remedial action is taken.

#### **A. Quality Auditing**

1. Quality auditing is an important way of supervising and evaluating the quality and consistency of decision-making. Regular auditing of a meaningful sample of asylum decisions and interviews allows for an assessment of whether the Quality Standards are being met across asylum regions and assists in identifying training needs and gaps in policy and guidance for Case Owners.
2. Both organisations agree to the following minimum standards for quality auditing:
  - i. A meaningful statistical sample<sup>93</sup> of asylum decisions made and interviews conducted should be audited within each asylum region on a regular basis. Adequate resources should be allocated to auditing activities to ensure a regular and sufficient level of sampling can take place.
  - ii. Auditors should use the objective Quality Standards to assess Case Owner performance.
  - iii. Systems should be put in place to ensure Quality Standards are interpreted consistently by all auditors (e.g. through agreeing marking standards, conducting regular peer reviews of auditor's assessments).
  - iv. UNHCR remains committed to providing ongoing support to UKBA's auditing activities, to the extent of its available resources, including through conduct of snap shot audits and peer reviews of UKBA audits.

#### **B. Identifying and acting on concerns raised through Quality Auditing**

1. Quality auditing provides valuable information as to the status of quality within the organisation at any one point in time. The results of the quality audits should be regularly analysed and discussed. Quality targets should be set with the aim of achieving continuous improvement in the quality of asylum decision-making. Results

---

<sup>92</sup> See annexed list of key criteria for assessing asylum decisions and interviews. Note that all these criteria are full covered in current draft version of the assessment forms discussed by UNHCR/ UKBA on 24 September 2008.

<sup>93</sup> "Meaningful statistical sample" means that the sample should consist of a representative portion of decision made in each asylum region. The proportion of decisions/interviews sampled should be sufficient to allow for general conclusions to be reached about the quality of decision-making in each region.



of quality audits should identify both the average quality scores for decisions/ interviews sampled in each region and the proportion of decision-makers reaching the quality target.

2. Poor performance at the individual or regional level should be identified and addressed. Good performance should be identified and shared across the organisation.
3. Both organisations agree to the following minimum standards for acting on concerns:
  - i. There should be formal links between auditing, training and operational policy functions within the system. Where audits identify gaps in training, guidance or policy, there should be mechanisms in place to communicate these findings and ensure that appropriate changes are made.
  - ii. Targets on quality should be created and achievement of these targets should be periodically monitored through the quality audits.
  - iii. Qualitative and quantitative targets should be given equal emphasis when assessing individual and institutional performance.
  - iv. Both individual Case Owners and managers at the regional level should be responsible for ensuring that quality targets are met and exceeded.
  - v. Where quality targets are not met there should be predefined mechanisms in place to ensure that appropriate remedial action is taken to improve quality at both the individual and regional levels (this could include the use of action plans, individual mentoring and supervision, increased regional sampling, mandatory response from senior management in the region etc).
  - vi. Staff resource allocation to first instance asylum decision making should be designed to give Case Owners sufficient time to make high quality decisions while meeting realistic quantitative targets.<sup>94</sup>

### **C. Objective oversight of the Quality Assurance System**

1. Both organisations recognise the importance of some measure of objective oversight to ensure that the quality assurance system functions appropriately and to track adherence to the Quality Standards.
2. Both organisations agree that an appropriate support structure needs to be implemented that reports up to Senior Directors. This structure should include an assurance role, reporting mechanism and the consideration of the role of the Quality champion.

### **D. Asylum training and accreditation**

1. As a highly specialised area of work, good quality, continuous training for asylum decision makers is an indispensable tool for providing and developing the skills and knowledge that are required to make sustainable first instance decisions.
2. Both organisations agree to the following minimum standards for a programme of initial and continuous training:

---

<sup>94</sup> See Minister's response to recommendation 45, Second Report.

- i. All trainers should have current experience of refugee status determination procedures and relevant training as trainers<sup>95</sup>.
- ii. There should be systems in place to ensure parity of training provided in each asylum region<sup>96</sup>.
- iii. Training materials should be regularly reviewed and updated to take account of legal and policy developments.
- iv. New Case Owners should be required to take a compulsory competency assessment at the end of their initial training.<sup>97</sup>
- v. There should be a regular programme of ongoing training to refresh skills and knowledge and provide updates on recent developments.<sup>98</sup> Regular quality auditing should be used as a means of identifying individual and collective training needs and the results of quality audits should inform the content of the ongoing training programme.
- vi. All Case Owners should be accredited in accordance with an accreditation scheme that is designed to test their competencies, knowledge, skills and analytical abilities to an appropriate level.<sup>99</sup>
- vii. Mentoring and supervision are an integral part of the training process. All new decision-makers should be subject to an established programme of mentoring until such time as the mentor is satisfied that good quality decisions are being achieved.
- viii. There is joint agreement that UNHCR should maintain ongoing involvement in the development of asylum training.

## **E. Access to information and guidance**

### Asylum Policy and Guidance

1. Both organisations agree on the importance of ensuring that guidance and policy relating to asylum decision-making is kept up to date and relevant to purpose. Where quality auditing identifies gaps in guidance or policy, this should be addressed by relevant policy teams and those changes communicated to the regions through existing mechanisms such as the Senior Case Owner Forum.

### Country of Origin Information

2. Access to good quality objective country of origin information together with the knowledge of how to apply such information to the asylum claim, are key elements of good quality decision making. Country information and guidance should be regularly updated and easily accessible by Case Owners.<sup>100</sup> Issues identified through quality auditing will continue to feed into the development of Country Information and Guidance products through existing mechanisms such as the COIS User Group.

## **F. Retaining institutional memory from the UK Quality Initiative Project**

<sup>95</sup> Recommendation 13, Second QI Report – Accepted by Minister

<sup>96</sup> Recommendation 15, Second QI Report – Accepted by Minister

<sup>97</sup> Recommendation 5, Second QI Report – Accepted by Minister

<sup>98</sup> Recommendation 12, Second QI Report – Accepted by Minister

<sup>99</sup> Recommendation 22, Second QI Report – Under Consideration by Minister and currently being taken forward in Asylum. See also Minister's response to recommendations 1-6 and 36-38, Third QI Report.

<sup>100</sup> Second Report, Recommendation 35 – Accepted by Minister.

1. Both organisations acknowledge the utility of the joint Quality Initiative Project in highlighting key concerns with respect to quality of decision making, proposing solutions and allowing UNHCR and UKBA to work together to address those concerns.
2. Both organisations recognise the importance of retaining the institutional memory of UKBA and UNHCR's joint work in the course of the QI project and agree to take the following action:
  - i. Joint production of a toolkit on Quality Assurance

Both organisations agree to work towards the production of a joint toolkit on quality assurance - collating good practice and useful documentation on quality assurance and combining the knowledge and expertise of both organisations. The toolkit would serve as a point of reference for both organisations in future quality assurance activities in the UK.

- ii. Ongoing follow-up on previous QI recommendations

Acknowledging the progress that has been made to date with respect to implementing recommendations from UNHCR's previous reports, both organisations remain committed to ensuring ongoing and effective implementation of all outstanding recommendations accepted by the Minister for Borders and Immigration.

Implementation activities will focus on the following areas, as a priority, (1) recommendations highlighted as priority areas in UNHCR's Fifth QI report to the minister<sup>101</sup> (2) those new recommendations arising from UNHCR's Fifth Report which are accepted by the Minister for Borders and Immigration, (3) Accepted recommendations arising from subsequent QI reports including recommendations arising from QI's audit of children's decisions.

*Presented at UKBA/UNHCR Bilateral Retreat on 15 December 2008 and endorsed by both UKBA and UNHCR participants at the Retreat.*

---

<sup>101</sup>The recommendations identified as priorities for implementation in the Fifth QI report are: (1) Developing and improving training for asylum Case Owners, (2) introducing and accreditation system for asylum Case Owners, (3) improving credibility assessment in asylum decisions, (4) addressing the impact of increasing workloads and targets on decision quality and supporting the mainstreaming of quality assurance across the asylum business, (5) improving provision of information to asylum applicants.

## **Annex One**

### **Key criteria for assessing the quality of asylum decisions**

1. **Correctly identifies material elements of the claim** (including detailed basis of claim).
2. **Assesses credibility of material facts using appropriate methodology and reaches clear conclusions on the credibility of each material fact.** Examines internal and external credibility of the claim, applying relevant and up to date objective information. Where appropriate considers whether to apply the benefit of the doubt (paras.196 and 203 UNHCR Handbook).
3. **Adopts the correct burden of proof** – i.e. does not place unreasonable expectations on applicant to “prove” his claim and shows an awareness of the shared duty to ascertain and evaluate the facts of the claim (para 196 UNHCR Handbook).
4. **Demonstrates appropriate consideration of all evidence adduced** in support of the claim, including all evidence obtained at the asylum interview. Weighs all the evidence appropriately when reaching conclusions on credibility/ well founded fear of persecution.
5. **Demonstrates correct understanding of key refugee legal concepts** (including convention reason, concepts of persecution, state protection and internal relocation, exclusion from protection under Article 1F of the Refugee Convention). Reaches clear conclusion on applicant’s eligibility for refugee status based on accepted past facts, accepted profile of the applicant and all available evidence.
6. **Applies the correct standard of proof** - reasonable degree of likelihood with respect to future risk.
7. **Uses sourced, up to date and relevant objective country information** and applies that information appropriately to support conclusions reached.
8. **If any standard wording is used in the decision, it should be relevant** and appropriately tailored to the facts of the claim.
9. **Correctly identifies ECHR articles applicable to the claim** and makes well-reasoned conclusions on eligibility for humanitarian protection and discretionary leave.

## Annex Two

### **Key criteria for assessing the quality of asylum interviews**

1. **Demonstrates conduct of appropriate pre-interview research** including examining available subjective evidence relating to the applicant's claim and objective country research.
2. **Examines any material inconsistencies in the claim and allows claimant to offer an explanation for any potential or actual inconsistencies.** This includes inconsistencies within the claimant's account and inconsistencies between the claimant's account and available objective information which it was reasonable to expect the Case Owner to have consulted prior to or during the interview.<sup>102</sup>
3. **Focuses questioning on material elements of the claim** relevant to establishing whether the claimant falls within the Article 1A2 of the Refugee Convention.
4. **Explores all material elements of the claim thoroughly.**
5. **Identifies and explores issues relevant to application of the Refugee Convention including:**
  - a. **Convention Reason**
  - b. **Harm/ persecution feared on return to country of origin**
  - c. **Availability of State Protection on return to the country of origin**
  - d. **Relevance and reasonableness of an internal relocation alternative on return to the country of origin.**
6. **Asks relevant and appropriate questions** – avoids leading questions and uses both open and closed questions to assist the applicant in recounting his claim.
7. **Uses appropriate tone and language throughout the interview** (having regard to the claimant's profile and the nature of the claim).
8. **Questions follow a logical structure.**
9. **Maintains control of the interpreter throughout the interview.** This including identifying instances of poor interpretation/ failure to abide by UKBA interpreter's code of conduct.
10. **Asks if applicant has any further evidence to submit in support of the claim** and, if so, establishes the relevance of the evidence and offers a reasonable period for its production.

---

<sup>102</sup> In exceptional cases – where major discrepancies are only identified after the interview, it may be necessary to use the option of a further interview to put these discrepancies to the applicant. (See Recommendation 35, Third QI Report, Accepted by Minister).

- 11. Follows all relevant interviewing guidance** including gender-specific guidance and guidance on interviewing victims of gender-specific violence, traumatised applicants and victims of torture.
- 12. Produces an accurate and legible transcript of interview.**
- 13. Offers breaks as appropriate**