Working with change, meeting the challenge: an asylum policy and legislation update

Report of a conference organised by the Refugee Council and supported by the Immigration Law Practitioners' Association (ILPA)

Regent's College, London
9 March 2006

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Aims and objectives of the conference

Legislation and government policies around asylum have changed frequently in the last few years. Understanding and adapting to these changes is a huge challenge for all those working in the refugee sector. It remains a priority to understand the implications of constant revisions to policy and practice for asylum seekers and refugees in the UK. The conference aimed to highlight the main developments in current policy and legislation, supporting delegates' understanding and development of skills for working in this changing and complex environment.

The conference aimed:

- To identify the main challenges of current and proposed government policy and legislation
- To discuss the implications of changes in policy and legislation for service provision
- To relate new asylum policy and legislation to roles of statutory and other agencies
- To determine ways of improving services and integration for asylum seekers and refugees
- To demonstrate practical initiatives to develop more comprehensive and consistent support

The conference was chaired by **Maeve Sherlock**, Chief Executive, of the Refugee Council. Six speakers provided information and raised critical issues: **Heaven Crawley**, **Jawaid Luqmani**, **Tony McNulty MP**, **Bernie Goodwin**, **Tim Baster** and **Amanda Weston**. Around 300 people from a wide range of voluntary and statutory organisations attended the conference and contributed through questions to the speakers and in afternoon workshops.

Whilst the Refugee Council welcomes a diverse range of speakers and workshop leaders, the views and opinions expressed by them in the conference were not necessarily those of the Refugee Council.

The Refugee Council would like to express thanks to all speakers, workshop leaders and delegates. Particular thanks go to the Immigration Law Practitioners' Association for their support in developing the programme and promoting the conference.

Presentations

Heaven Crawley, Director, AMRE Consulting, gave the first presentation, **Setting the scene**. She specialises in asylum and immigration law, policy and practice in the UK and Europe, and has researched and written on a wide range of topics relating to forced migration. She set up a programme of asylum research at the Home Office, has been Associate Director of the Institute for Public Policy Research, and since establishing AMRE Consulting has carried out research for UNHCR, ILPA, CRE and others.

She started by outlining the international and UK policy contexts. In discussing the international context, she pointed out that most migration takes place either within countries or between developing countries. Despite the impression often given by the media, immigration controls are largely effective. However, the costs of border control measures are high in both human and financial terms. She stressed that whatever policies are implemented, increased international migration will continue to be a reality of 21st century life.

The UK policy context is complex. It includes three recent Acts dealing with asylum, immigration and nationality (1999, 2002, 2004) and a Bill currently going through Parliament; two immigration White Papers, the five-year strategy, policy papers on selective admission, refugee integration, and race equality and community cohesion. Other legislation - on human rights, race relations, anti-terrorism, crime and security – has direct effects on asylum policy and practice. There is also European legislation to be taken into account.

Drawing on Government policy statements, Heaven Crawley described what she considers the Government is trying to achieve:

- a significant reduction in 'unfounded' asylum applications
- a reduction in undocumented migration
- an increase in economic labour migrants, particularly those who are 'highly skilled'
- an increase in removals of 'failed' asylum seekers and undocumented migrants
- improved social inclusion, community cohesion and good race relations
- international development objectives such as poverty reduction.

The Home Office has recently produced figures showing a substantial reduction in the number of asylum applications. It has also produced a graphic interpretation suggesting that the decline is a direct reflection of the 'intake reduction measures'. According to the Government, the success of asylum policy has thus been demonstrated. However, Heaven Crawley stressed that in order to judge success it is crucial to go beyond numbers and examine what is happening in practice. A critical question is whether the policies have really only impacted on those with 'unfounded' asylum claims, or whether the policies have also impacted negatively on those with legitimate claims.

Despite an assertion that policies are evidence-based, there has been so much change so quickly in policy and legislation that it is impossible to determine whether certain policies have had certain consequences. Making judgements about causation is a complex matter at any time, but it becomes much more so when a new Act is implemented before there is clear information about the effects of the previous legislation.

Increasingly, restrictive conditions are being imposed on asylum seekers and on refugees, for example increased use of detention, the introduction of tagging, Section 9,

and the end of ILR for those with refugee status. It is a matter of great concern that despite attempts by the Government to reassure the public by being tough on asylum seekers, there continue to be negative public attitudes. Indeed, because of the messages the public is getting, there seems to be more negative concern than ever.

Given this situation, what principles might govern a progressive approach? The Government acknowledges the rationale for economic migration. Heaven Crawley stressed the need to return to the principles of the asylum debate and to remind the public and politicians of the reasons why we have an asylum system in the first place. The objective of the asylum system should be first and foremost to provide protection because the ability to seek protection from persecution is a fundamental human right that should be facilitated rather than prevented. The primary objectives of international co-operation on migration should be to provide protection and facilitate development, not to press for asylum seekers to be processed abroad, or to use development aid to press other countries to take back 'failed migrants'. There needs to be a substantial increase in the scale of resettlement, agreed at the EU level. People should be allowed and supported to make their new lives here. Racism must be challenged and asylum should not be allowed to become a legitimate discourse for what is really racism.

The views and experiences of migrants need to be heard and taken into account much more fully in policy development than is done in any comprehensive way at present. People migrate for a mixture of reasons and circumstances, and an approach which starts from the assumption that there is migration which is inherently 'good' and migration which is inherently 'bad' undermines progressive policy making.

Heaven Crawley stated that what is needed is strong political leadership on asylum. This needs to be at the national, regional and local levels. She suggested that the debate is now at a point where politicians can be braver in talking about asylum and the rationale behind it.

Jawaid Luqmani, Partner, Luqmani Thompson and Partners, then presented **A legislative overview**. A member of the ILPA Executive Committee for over 12 years, he is currently Treasurer of ILPA. He has provided training for the Legal Action Group, the Refugee Legal Centre, the Immigration Advisory Service and others, and co-authors updates on immigration law.

He began with a reminder that legislators and courts have different and distinct roles and responsibilities. Governments introduce legislation, but judges have the role of interpreting law to be sure it is compliant with, for example, human rights legislation and the 1951 Refugee Convention. The courts have to try to make sense of the law. In some cases this means striking down policies, or making provisions more or less unworkable, as with Section 55 of the 2002 Act.

He then outlined the legislative context, stressing its complexity. A problem for clients – and indeed for lawyers – is that the UK system tends not to repeal legislation, but to cut and paste. Thus, some sections of the Immigration Act 1971 and subsequent Acts in 1993,1996 and 1997 are still in operation, along with the 1999, 2002 and 2004 Acts mentioned by Heaven Crawley. And, as she noted, there is a further Bill going through Parliament. The concepts we're familiar with now have grown incrementally over the years, and to know what the position is on a particular aspect of immigration or asylum legal representatives have to have a grasp of some 30 years of legislation.

Turning to the subject of arrivals, Jawaid Luqmani noted that Section 2 of the 2004 Act criminalises those who arrive without a passport without a 'reasonable' excuse and, for example, it has been difficult to prove (and have accepted as 'reasonable') that traffickers have given instructions to destroy documents. According to Home Office statistics, more than 100 people were charged under Section 2 between 3 July and 9 October 2005; three quarters of these were convicted and imprisoned. The prison term is usually 2-5 months if the person pleads guilty. However, it is only after the term has been served that the person can enter the asylum determination process and the actual strength of the case for asylum can be considered. The case may then have to be pursued from detention, which means it will be harder to get legal advice; and the Section 2 prosecution has to be taken into account in determining credibility in the initial decision and any appeal.

Those who have passed through a 'safe' third country en route to the UK will be removed following a negative initial decision. Any appeal has to be mounted from abroad.

In discussing support, Jawaid Luqmani stressed the importance of differentiating support at the beginning of the asylum process such as Section 55 of the 2002 Act, and at the end of the process such as Section 9 of the 2004 Act. In the case of Section 55 judges had taken the position that it was potentially unlawful in light of human rights obligations. Section 9 has been operating on a pilot basis for the past year, with 116 families affected. The section applies to asylum seekers whose application has failed and whose appeal rights have been exhausted, where there is someone under 18 in the household, but the adults are not co-operating in arrangements for removal. There continue to be attempts to challenge the policy in the courts. However, the crucial difference from Section 55 is that Section 9 relates to the end of the process, and therefore arguments about destitution and human rights may be seen as less relevant. An amendment to the current Bill gives the Secretary of State power to remove the effect of Section 9 at some stage. This is welcome, but not the same as scrapping the section altogether.

Section 9 has proved to be quite challenging for local authorities. They have a responsibility to support the children, but not the adults, and there is understandable reluctance to take children into care. Leaving aside Section 9, a general shift in support arrangements is taking place, from local authorities to NASS in all but a very few cases.

There have been substantial changes in relation to appeals, relating both to opportunity and funding. An appellant can now raise all issues at a single one-stop procedure. A further stage is available only when there has been an arguable error in law – and it is difficult for clients, and even lawyers, to know whether there has been such an error. The intention is clearly to reduce the number of appeals going on to additional hearings. Changes to legal aid have been made, apparently with the idea of sharing the financial risk of litigation between lawyers and clients. Only the Tribunal can decide whether reconsideration of an appeal case can go ahead. Clients will want to appeal, but lawyers are unlikely to feel able to continue with cases when the prospects of receiving payment are now so limited. It is likely that clients will go ahead anyway, without legal support; if their applications fail, a self-fulfilling prophecy is achieved.

Among other important changes Jawaid Luqmani mentioned the alteration in refugee status since August 2005: rather than indefinite leave to remain, refugees will have their position reassessed after five years. This seems likely to affect government objectives

relating to resettlement and social inclusion. There are some problematic aspects of the New Asylum Model (NAM), to be discussed later in the conference, but an aspect which appears positive and encouraging is the case owner system, with one person seeing a case through from start to finish.

The number of asylum seekers has declined - so is it necessary to have yet another Act, when there are still provisions of the 2002 and 2004 acts unimplemented? The Bill in Parliament has new provisions relating to security: co-operation between immigration, police and intelligence, and provision for some situations in which asylum applications can be dealt with by the Special Immigration Appeals Commission; in such cases applicants may not even be told why they are under suspicion.

Jawaid Luqmani concluded by saying he had been able to present only a small view of a very large topic. The Government claims there had been many 'improvements' in asylum policy such as speeding up the process, removing appeal rights, cutting support for those who were destitute, reducing the certainty of refugee status, cutting legal aid, locking up those travelling here whether their cases are good or bad. Are these improvements? Are they just and fair? Many may applaud such changes. Others, like himself, consider that if you stack the odds so highly against the individual it is amazing that anyone gets through at all.

The next speaker was **Tony McNulty MP**, Minister of State (Immigration, Citizenship and Nationality), Home Office, who spoke on **The Government's five-year strategy for asylum and immigration**. In introducing him, Maeve Sherlock expressed her appreciation that he had come to the conference in time to hear the first two speakers.

The Minister began by saying that he viewed the Refugee Council as a partner, 'a very, very professional outfit' and 'one which helps us do our job'. There isn't always agreement, of course, but he values relationships involving open discussion of views, resulting in greater understanding of each other's position.

He reflected on how much change had taken place since the election in May 2005. During the campaign, much of the discussion of asylum had been 'an absolute disgrace'. But perhaps it is recognition of that which has led to the present climate, where there appears to be an opportunity for open and mature debate – as could be seen in media and other reactions to the new proposals for a managed migration points-based system.

He said he agreed with Heaven Crawley's stress on the importance of political leadership. In the last 20, 30 or 40 years politicians of all parties have sought to run away from showing leadership on these issues. He disagreed, though, with what she had said about the Government using the concept of 'good' migration and 'bad' migration. It is simplistic to discuss a points-based system in this way: the basis for such a system is recognition that immigration is good. The UK economy cannot do what it wants to do without immigration. However, the 'progressive deal' must also include tackling illegal working, and in relation to asylum it cannot include 'a complete open door', which would totally undermine the 1951 Convention.

He agreed with Jawaid Luqmani about the complex legislative context. He would very much like to take through Parliament a consolidated Bill on asylum and the same for immigration. The way forward for asylum now, though, is the New Asylum Model (NAM). The starting premise is that every case is dealt with on its own terms, its own merits. He

stated that it is not possible to have a system which goes to determination but leaves things there: attention must be paid both to integration of those awarded refugee status, and removal of those who are refused. There also needs to be greater speed in the process. It can't be right for people to be in the system for five or six years.

He described as 'stunning' and 'radical' the new arrangements for case ownership – having one caseworker throughout. He agrees that the integrity of the initial decision is central, and the Home Office has taken on board UNHCR's quality initiative process. Also, ILPA and others argue that asylum seekers should have legal support in telling their story, and the Home Office is in discussion with the Legal Services Commission about how this might be developed.

Robust removal arrangements must be part of a just asylum process; it is far better if these can be carried out in a humane, sensitive way on a voluntary basis if possible. He recognises that NAM must take into consideration what can be done in situations where people can't go back.

He described himself as lucky to have taken on his ministerial responsibilities at a time when the asylum system was in a reasonably stable condition, now able to deal with varying numbers of asylum applications. Attention could thus be focused on the quality of decisions.

The Government is encouraging more discussion of settlement. He is a strong supporter of the Gateway scheme. Paying tribute to the six local authorities which have participated in the scheme so far, he said it looked like the target of 500 people might just be met. The UK should, however, be taking in substantially more people through this arrangement with UNHCR. Local authorities have a very important role to play in relation to asylum and settlement, and he expects NASS's new contracts to be based on much closer relations with them.

As a matter of public policy Tony McNulty wants people to have confidence in the asylum system. This includes returning people to their country of origin if they have come to the end of the asylum process without a positive decision. It is also important to encourage positive, productive images of those who have refugee status.

In conclusion the Minister said there is now a collective opportunity for 'a mature and reflective debate' on what we are doing and how we can do it better - 'that would be a mighty long road travelled.'

Among the issues raised in the **question period** were the implications of the cutbacks in legal aid, the destitution endured by those awaiting delayed decisions from the Home Office, concern about the removal of ILR and the position of unsuccessful asylum seekers unable to return home. Other issued raised included: the use of vouchers rather than cash in Section 4 cases; the apparent contradiction between managed migration and removing unaccompanied children when they reach18; and the plight of those who have technically reached the end of the road but are unwilling to agree to Section 4 because they are still hoping for legal representation for an appeal.

One delegate deplored the emphasis on numbers and said it would have been good to hear the Minister use words such as 'fair, just, effective'. In response, **Tony McNulty** agreed that these concepts must be at the heart of the system. It couldn't just be about

speed and numbers. For example, the integrity of the initial decision-making is key so the necessary time must be allowed; and he recognises the sense in getting legal intervention in early. He said he has increased confidence 'about the way forward' for new applicants, but there are huge complexities about older cases. The Minister asserted that in new policy interventions, the failures of the past should not be repeated.

He said that some of the words that had been used by participants were unhelpful. The word 'illegal' is not pejorative - an illegal status is a matter of fact. Similarly, it is a government's responsibility to make appropriate use of public funds, and disallowing recourse is not an issue of dignity. But of course, individuals should be treated with dignity throughout the process.

In relation to vouchers in Section 4 cases, he pointed out that the Bill refers to use of cash as well as vouchers. He agreed that there was an issue about treatment of those people with no prospects of return and said that there needs to be a debate on the matter, exploring possible courses of action; he also expressed some sympathy for those hoping to obtain legal representation for an appeal. He stressed that the managed migration and asylum processes are, and must remain, entirely separate, not least because the former is not governed by the 1951 Convention.

In response to questions **Jawaid Luqmani** said that he was glad to hear that the Minister was in favour of pre-decision legal intervention; he urged close attention not just to the availability of such intervention but its quality. **Heaven Crawley** said she recognised that there had been policy after policy intended to improve initial decision-making. However, both her past and present research looking at how policy is working in practice suggests that 'on the ground' there continues to be many administrative and other problems with the quality of interviews and initial decision-making. She had continuing concerns, too, about the situation of unaccompanied minors, with age disputes, removals at 18, and problems about the level of local authority support. They are seen first and foremost as migrants, not as children, and thus marginalised from the provisions of the Children Act.

After a break for refreshments, **Bernie Goodwin** spoke on **The New Asylum Model: Liverpool update**. He is Deputy Manager of Refugee Action's Wrap-Around Service in Liverpool. He previously led teams supporting asylum seekers in Australia (in and outside detention) and has extensive experience building community support for asylum seekers.

One aspect of the Government's New Asylum Model (NAM), introduced in 2005, is 'segmentation'. During initial screening, asylum seekers are assigned to one of nine asylum processes, called segments; the segment to which the person is assigned will determine speed of processing, accommodation and reporting requirements. Segment 3 is 'potential non-suspensive appeal' – largely people from one of the Home Office's 'White List' countries. Segment 4 is 'late and opportunistic, low barriers to removal' – those who applied for asylum later than five days after arrival, or who entered the UK on some kind of visa and at a later date applied for asylum. People assigned to either of these two segments are currently going through the asylum process in Liverpool, a process closely managed to a tight timeframe of five days to the substantive interview, 11 days to a decision, and 14 days to removal. The contractual arrangements involve NASS, an accommodation supplier and Refugee Action, with functions very clearly defined.

Since 1 November, the Refugee Action team has been providing support on the site where the asylum seekers are accommodated. Five caseworkers with 1.5 administrative staff fulfil specific tasks required within the NAM process, such as orientation sessions on the first day. They also provide more general advice and information, and make arrangements for legal and service provision. As people's wellbeing can deteriorate sharply in the highly dense living conditions, voluntary groups have been set up for families and for people who are 16-21 years old.

Bernie Goodwin gave some details about the 61 currently active cases. They include people of 26 nationalities, with 21 families and 40 singles. For the 61 cases, average length of stay in the accommodation is 97 days and the maximum stay is 232 days. Outcome data as at 22 February shows that of 32 cases there have been 16 in which leave to remain has been granted (8 on decision, 8 on appeal), 7 who left the accommodation early (and hence are destitute) and 9 who are being detained.

Sixteen cases given leave to remain seems encouragingly high, given the assumptions inherent in the segment definitions. However, this may be because other segments have not yet been defined: current allocation to segments 3 and 4 may be wider than will subsequently be the case. In fact, it is difficult to draw any firm conclusions from the data thus far, partly because the numbers are low but also because of particular circumstances. For example, because of the type of accommodation there is a relatively high proportion of families.

Drawing on practical experience of NAM thus far, he identified three issues in addition to the basic ones about segments and their definitions. These three are timings in the first five days, legal representation and provision of local services.

The first five days are extremely busy ones for the asylum seekers – and hence for the Refugee Action staff. There are two NAM interviews, two accommodation supplier interviews, daily reporting to a centre three miles away; there may be age assessment or community care assessment, as well as time required for religious worship. For example. Legal representation is through a rota of two Liverpool firms; there have been problems in this which he hopes have now been overcome. Within the first five days, so much must be done by so many people at high speed and with great flexibility.

It has been good to find that the NAM case owner arrangements seem to be working well in Liverpool. The case owner is responsible for an asylum seeker throughout the whole process. Refugee Action staff have found the case owners very approachable, and the asylum seekers know who their case owner is.

Bernie Goodwin regretted that he could give only limited advice to those in Leeds and Solihull who would soon be involved in the NAM process. Liverpool has been relatively straightforward, dealing only with two segments and involving one local authority, one accommodation provider and one voluntary organisation. There is certainly a need for better information flows before 100 per cent roll-out of the system by the end of 2006.

The NAM system is intended to be 'an adaptive system'. One of the reasons Refugee Action decided to become involved was on the assumption that they would be able to make suggestions about the process and hence contribute to improving it. He hopes that will prove to be the case.

[Note: An 8-page Refugee Council's briefing, *New Asylum Model* (March 2006), was included in delegates' packs. This briefing, regularly updated, is available on the Refugee Council website, www.refugeecouncil.org.uk]

Tim Baster, Director, Bail for Immigration Detainees (BID), presented **An update on detention**. He has been Director of BID since its inception in 1998. The organisation campaigns for legal representation for detainees, provides a free dedicated bail service for detainees who make contact, and helps detainees prepare and present their own bail application in the absence of legal representation.

Tim Baster said that it is important in the context of detention to talk about the human suffering involved: 12 detainees have killed themselves in the past five years. Home Office officials to whom BID speaks on a regular basis believe that the death toll will increase as current government policies on detention and removals are carried out. His own view, looking at the detention estate and what goes on within it, is that the characteristics of government policies at present are 'violence and impunity'.

In 1998, the UN's Working Party on Arbitrary Detention visited the UK to look at the conditions for detainees. Among their recommendations was that details of the reasons for detention should be provided to people detained. Nevertheless, last year Alvaro Gil-Robles, the Council of Europe's Human Rights Commissioner, found that at Dungaval many of the detainees appeared to have no idea at all about the reasons for their detention. Another of the UN's recommendations was that each decision to detain should be reviewed as to its necessity, and there should be a prompt oral hearing by a court or competent impartial review with legal aid. Six years later Gil-Robles still had to press for automatic judicial review. Access to legal aid is problematic, because of the implications of the 5-hour limit and the merits test required for further representation or appeal. Access to legal support is important at all stages of the asylum process but especially when deprivation of liberty is concerned. The UN Working Party also argued that it was 'inherently unjust' to remove people who had overstayed and been in the UK many years. Yet now the immigration service with the police carry out sweeps through markets, tube stations and elsewhere to pick up overstayers for detention and deportation.

At the end of 1998, at the time of the UN visit, there were 742 people in detention; at the end of 2005 there were 1950, including 30 children. During the previous quarter 455 children left detention.

The 2002 Act repealed the right to automatic bail which had been put into the 1999 Act. As many detainees have no access to legal help, they cannot access the 'elective bail' procedure. It is BID's understanding that currently half of those going through the new fast track procedures have no legal representation when they arrive in court for their appeal. During 2005, the Chief Inspector of Prisons strongly criticised lack of legal representation. In her May report on Haslar, she noted that half of the detainees had no legal help, and for those who did the standard was sometimes 'questionable'. In has also drawn attention to lack of adequate legal representation at Campsfield.

This is the reality of what is going on inside the detention estate: this is the 'robust' part of the procedure to which the Minister referred. Of course the Nationality and Immigration Directorate have to follow instructions, but it can't be right that they never face a challenge in court, that detainees don't get a copy of the detention document (the IS93E form) and that the decision to detain is not subject to scrutiny.

Critical issues have arisen since the introduction in 2003 of 'super fast track' procedures at Harmondsworth and Yarl's Wood involving detention on arrival (with no justification required) and an accelerated appeal procedure. There is supposed to be flexibility for someone to be taken out of the fast track, and there is supposed to be legal representation. By October 2005, 2929 people had gone through super fast track at Harmondsworth of whom 2424 had been refused and about 1500 removed. The average length of detention was 53 days. Eleven had been granted asylum and 67 had successfully sought bail. The rest were passed through an unjust system at speed and released. However, their appeal rights were already exhausted.

There are no automatic bail procedures for families, and it is estimated that 2000 children are detained each year. Often this is as a result of early morning swoops with no warning, and then detention for indefinite periods. The Children's Commissioner, Al Aynsley-Green, was horrified by his visit to Yarl's Wood last year and made a series of detailed recommendations for improvement in conditions. Although recognising both the Commissioner's excellent intentions and the sensitivity of his position, Tim Baster said there should actually have been just one recommendation: that the detention of children should stop immediately. BID is joining the Refugee Council and Save the Children in a campaign against the detention of children. [Campaign website: www.noplaceforachild.org.uk This site includes the report: *An Announced Visit to Yarl's Wood Immigration Removal Centre 31st October 2005*.]

In terms of the future, it is important to attack the 'grotesquely unjust' fast track procedures, and to press for proper and effective legal representation and judicial scrutiny. There are wider issues of concern, too, about human rights and the extent to which our traditions and values are being affected by increasing controls and surveillance.

Amanda Weston, Barrister, Tooks Chambers, spoke on **An update on decision making and returns**. She had agreed to speak at very short notice when the arranged speaker was unable to attend because of involvement in a case.

She said she was speaking as a lawyer, not a campaigner. She represents people at the sharp end. Although asked to talk about decision-making, usually she doesn't see a decision until it has gone very wrong indeed. Similarly with removals: her experience is of difficulties in communication with the Home Office. The IND website has information about removal procedures; legal representatives follow the terms of the guidance – and in a number of cases it then disappears from the website, leaving representatives unable to advise clients or communicate effectively with the enforcement directorate.

Amanda Weston said she had been very interested in what the Minister had said about speed and numbers not being everything. Such statements are, however, meaningful only if the cases which come before the decision-makers and the Asylum and Immigration Tribunal have been given time to prepare adequately. Increasingly, that's not the case.

Heaven Crawley had mentioned problems in decision-making in her talk. Two interesting and important reports on the subject were published in 2004: Amnesty International's *Getting it Right* [www.amnesty.org.uk] and *Right First Time?* by the Medical Foundation for the Care of Victims of Torture [www.torturecare.org.uk]. UNHCR has seconded advisers to caseworkers in IND to help improve the way facts are established in

interviews. In her own experience that hasn't thus far made a great deal of difference to how decisions are made. Problems are still arising because of the speed of decision making, and not only in fast tracked cases.

It is important to consider the purpose of an interview. Is it to confirm the prejudices of the interviewer, or is it to establish the facts of the case? A constant and persistent feature of decision-making, in her experience, has been refusal to believe what the applicant says. Sometimes this is on extraordinary grounds: that what might be called a 'reasonable persecutor' would not have behaved in the way described, but would have done X rather than Y.

Another aspect of decision-making giving cause for concern is in relation to unaccompanied minors. One would expect that the system put in place to protect minors would, in fact, do so. Unfortunately, things don't necessarily work that way. If an interview is not carried out because the asylum seeker is a minor, the first opportunity to state their case in detail may be under cross-examination in an appeal. In such circumstances, the true facts of the case may never come to light at all.

There continue to be issues – particularly during fast-tracking - about the use of the 'White List' of countries deemed not to give rise to persecution. Countries are assessed by the Tribunal in general terms, and if placed on the list subsequent determinations are based on this. Unfortunately, reassessment may not be frequent enough to take account of changed circumstances in the country; Sri Lanka provides a good example of the problems this can cause. What then happens is a number of judicial review challenges until the list catches up with the actual situation on the ground. Individual legal representatives may not always have the opportunity to seek more up-to-date information themselves, given fast track timescales.

Paradoxically, the very speed of decision-making actually can make the asylum process longer. The cases she sees are those where people have been through the appeal process once, yet there has been no proper investigation of the circumstances which gave rise to the claim. It may be only at the point of removal that an experienced legal representative can get an injunction to stop removal, so that there can be such proper investigation. Of particular concern are late disclosures of rape. There are many reasons why women might not feel able to reveal this sooner, yet Section 8 of the 2004 Act provides for late disclosure giving rise to a presumption that the person isn't telling the truth.

Those being removed at short notice are sometimes hindered or prevented from contacting their legal representatives, resulting in unwarranted removals. Referring to such cases as 'regrettable mistakes' (an expression used by counsel for the Home Office) is insufficient. If the Secretary of State's view is that people shouldn't have legal representation at this stage he should say so. Certainly the High Court has expressed profound concern at the situation. Legal representation is a fundamental democratic right.

In the **question period**, a lawyer pointed to the need for asylum seekers to satisfy two different government departments. The asylum decision is made by the Home Office, but the Legal Services Commission (LSC) decides whether legal representation will be made available for appeals. At present, an asylum seeker gets a lawyer 'for a bit' but then it is up to the LSC to decide if there is more than 50 per cent chance of success on appeal

and hence whether legal representation is warranted. In 2004/5 there were 4879 asylum seekers who requested representation for appeal and who were turned down. The basic principle should be that applicants have legal representation from the beginning of their case to the end of it, and he asked whether a campaign to attain this might be mounted.

Another delegate drew attention to the potential impact of the recent decision in AW v. Croydon, a judicial review of local authorities duty to provide support to unsuccessful asylum seekers. [You can view this decision at: www.bailii.org/ew/cases/EWHC/QB/2005/2950.html]

In response to a question about the underlying reasons for detaining children, Tim Baster noted that in evidence to a House of Lords Committee in late 2005, Jeremy Oppenheim, Director of NASS, had indicated that Home Office policy was to cut the bill for NASS accommodation and that this would be achieved more easily if families rather than single people were targeted for detention and removal. Might this be a motivation?

As this was the last plenary session of the conference, **Maeve Sherlock** drew together a few themes. It is valuable to be reminded of the global context, how similar issues are in other countries to those in the UK, and the connections between events elsewhere and why refugees flee. It is important not to forget about those people who may have a very strong claim but never get to a place of safety to put forward their claim; of the Refugee Council plans to keep on pressing Government about this.

The cumulative effect of 'legislative hyperactivity' is 'permanent revolution' which makes improving practice very difficult. In that context, it was interesting to hear what the Minister said about wanting to bring forward consolidating legislation.

When she started at the Refugee Council she asked to 'walk through' some of the asylum procedures in Croydon. It was clear at that point that responsibilities were so fragmented that there were no mechanisms through which lessons could be learned from experience. Case ownership in the New Asylum Model is therefore to be welcomed in principle. However, it is not yet clear how much resemblance there will be between the pilot and what is rolled out, so the welcome is cautious for the moment.

Other aspects of the Model give cause for concern, especially as they affect children. Destitution is a major issue; the Refugee Council will certainly be following up the Minister's willingness to debate support at the end of the process.

Ending on a positive note, **Maeve Sherlock** pointed to the Government's increased focus on integration, and the push behind the Gateway programme of resettlement. The tone of the debate does seem to have changed. She is not making any predictions that the better climate will necessarily last, but it does seem as though bit by bit understanding is growing. In the end British people are very rational and decent. She stressed that is very important that they are told the truth.

In conclusion, she warmly thanked the speakers, those who would be leading the afternoon workshops, those who had planned the conference, those who were helping during the day, and all those attending.

Workshops

Eight topics were addressed during the afternoon workshops. Each workshop was held twice, so delegates had the opportunity to attend two different ones. The following brief reports summarise ideas and information drawn from both sessions.

The international context of UK asylum policy

Leaders: **Gemma Juma**, Refugee Council, and **Clara Odofin**, Oxfam

The workshop focused on the UK approach to asylum beyond the borders of the UK. According to UNHCR, the number of refugees worldwide is at its lowest level for many years: according to the Home Office, asylum applications in the UK are the lowest in a decade. Asylum applications are also falling elsewhere in Europe. The reasons for the decline include returns to countries such as Afghanistan and the former Yugoslavia, and a slight reduction in armed conflict worldwide. In the UK, asylum strategy functions as a barrier to protection. The strategy includes border controls, including strong European borders and preventing people travelling through neighbouring countries to get to Europe. It also includes visa controls, new detection technology, and many other measures. It is now much more difficult to leave your country of origin and enter other countries for safety.

The critical question is one mentioned by Maeve Sherlock earlier in the day: what is happening to those people who need protection but are unable to enter the EU legally? The workshop discussed ways in which the present situation might be eased but all the suggestions seemed to have grave difficulties. Regional Protection Programmes (RPP), a European initiative, may produce some positive results; RPPs will include improved reception conditions for refugees, training for officials, improved status determination procedures. Pilots are to take place in Tanzania, Ukraine, Belarus and Bulgaria. However, many questions remain.
(Notetakers: Laura Evans and Tina Puryear)

Destitution of asylum seekers and asylum seeking families and the impact on local services

Leaders: **Renaé Mann**, Inter Agency Partnership and **Lisa Woodall**, Asylum Support Appeals Project

The workshop presenters discussed the government policies currently resulting in destitution, their impact on asylum seekers in the short and longer term, and their effects on localities and local services. Among the topics covered were Section 55, new procedural barriers, the Section 9 pilot and Section 4 'hard cases' access and arrangements. Renaé Mann described the kinds of support which Refugee Action and the Refugee Council have been providing for the 116 end-process families affected by the Section 9 pilot. [See *Inhumane and Ineffective – Section 9 in Practice*, www.refugeecouncil.org.uk] Lisa Woodall explained how the Asylum Support Appeals Project (ASAP) works, providing free and confidential legal advice and representation at the Asylum Support Appeals Tribunal and also a telephone helpline and training for RCOs and others trying to avoid destitution for their clients. [See www.asaproject.org.uk] Key concerns of all those working in the area is that the withdrawal of support is an ineffective policy, and because destitution is increasing, clearly it is an unacceptable policy.

The workshop then split into three groups, one focusing on unaccompanied children, one on legal issues and one on local effects and the local authority role. Participants exchanged experience and concerns relating to destitution, and suggested both practical priorities for action and ways in which improvements might be made in the longer-term.
(Notetakers: Jessica Ritchie and Tina Puryear)

The impact of the New Asylum Model
Leader: **Bernie Goodwin**, Refugee Action

This workshop provided the opportunity for a more detailed exploration of the New Asylum Model (NAM) than had been possible in the plenary session. Bernie Goodwin explained NAM's allocation of asylum seekers to 'segments', and why people were allocated to segments 3 and 4. He described the structure of NAM arrangements in Liverpool, and how it is working in practice. His impression is that implementation is smoother in Liverpool than in Croydon, perhaps because of the concentration of asylum seekers, Refugee Action caseworkers and Home Office case owners on the same site, and because the timeframe for segments 3 and 4 is the same. NAM, NASS, social services and Refugee Action are having to work together very closely.

Among the topics raised in the discussion were the questionable accuracy of segment decisions, access to legal advice, the need for intensive support at the beginning of the NAM process, and problems in the integration of NAM with essential local services due to the speed at which asylum decisions are being made. Such speed also has implications for age disputed cases.
(Notetakers: Laura Evans and Saoirse Kerrigan)

Health and mental health issues at the end of the asylum process
Leader: **Helen Murshali**, Refugee Council

Asylum seekers at the end of the asylum process are those whose initial applications have been refused, and then all appeals rejected. They are expected to make arrangements for their return voluntarily. They are not entitled to standard NASS support but if they satisfy certain conditions can apply for support under Section 4 of the 1999 Act. A combination of new NHS regulations and immigration and asylum legislation means that there are increasingly severe restrictions on their health care entitlements. Nevertheless, there are still some entitlements, for example to accident and emergency treatment and (at least for the present) to primary health services. But a perception that they will be denied health care or will be asked to pay for health care often deters people from attempting to access it until their situation is dire. There are also issues about the health care available to those detained, and communication between detention staff and previous health care providers.

Participants were divided into three groups to discuss case studies of asylum seekers at the end of the asylum process, considering physical and mental health issues, the health or social care services which might be available, and what practical steps might be taken to improve the situation of the person involved.
(Notetakers: Catharine Osbourn and Jessica Ritchie)

The impact of asylum policy on services for children

Leaders: **Jane Dykins** and **Aida Diop**, Refugee Council

The workshop began with participants sharing thoughts on the range of services intended to be available to all children, before considering the opportunities and constraints for asylum seeking children in particular situations. A key issue is that of age disputes: an asylum seeker claims to be a child, but this is not accepted by the immigration officer. Except in borderline cases, the person will be treated as an adult until the matter is resolved. In 2004, almost half those claiming to be children were age-disputed; Refugee Council research suggests that almost half of the age-disputed are later accepted as children. Another important issue for children is the policy shift to limited leave. Refugee status no longer means indefinite leave to remain, but five years temporary leave; when separated children reach 18 the assumption is that they will return to their country of origin.

Participants discussed case studies relating to these two issues. The first considered the impact of age dispute on the services and support likely to be available to siblings of 9 and 16 years old. The other considered the possible impact of limited leave on education, social services support, language acquisition and mental wellbeing.
(Notetakers: Julie Frazier and Jess Oldershaw)

Resettlement: new challenges

Leaders: **Rachael Thompson** and **Hussein Mahamed**, Refugee Council

Under the UK Gateway Protection Programme, people from refugee camps are resettled in the UK. The Programme is managed by the Social Policy Unit of the Home Office, and relies on the willingness of individual local authorities to offer accommodation and support. Six local authorities have thus far taken in groups of refugees – the annual quota is 500 people. The Refugee Council has been working with groups who have come to Sheffield (73 Liberians and 51 Burmese/Karen) and has just started working with the new arrivals in Hull (60 Congolese from DRC). Rachael Thompson described the way the resettlement programmes are structured, the agencies involved, and the support which is offered at various stages in the first 12 months after arrival. She stressed the need to build relationships with local agencies which would be providing support for effective integration after the initial support is withdrawn.

Workshop participants considered the challenges and benefits of a resettlement programme. Among the challenges identified were managing expectations (of both refugees and agencies), accessing appropriate housing, education and employment, ensuring a favourable local climate; and effective communication among all the agencies involved. Among the benefits identified were provision of intensive support at a crucial time, a positive model for integration, and potential for generating positive media coverage.
(Notetakers: Maryla Kaminska and Hugo Tristram)

Supporting asylum seekers in accessing legal advice

Leader: **Matthew Davies**, Wilson & Co.

The aims of the workshop were to increase understanding of how the legal system works, and to help participants to access and maintain legal advice for clients. Matthew

Davies explained the difference which good quality legal advice can make to individual asylum seekers, the limited legal advice which is available, and the critical role of the Legal Services Commission (LSC). He discussed points to consider about legal support at each stage of the asylum process, including what sort of service an asylum seeker can expect and how to complain if things go wrong. He stressed the importance of establishing and fostering relationships with the providers of good quality legal advice.

Four case studies provided the opportunity to consider issues about obtaining an appropriate legal advisor, judging the adequacy of steps taken by an advisor in particular circumstances, access to legal aid, and the reasons why solicitors might refuse to take or continue a case. Participants also raised and discussed specific questions relating to their own experiences of supporting asylum seekers in accessing legal advice.
(Notetakers: Maryla Kaminska and Blanka Stevenson)

Practical tools for challenging detention of asylum seekers
Leader: **Tim Baster**, Bail for Immigration Detainees

Bail for Immigration Detainees (BID) is an independent charity set up in 1998 to challenge immigration detention, and to work with asylum seekers and migrants in removal centres and prisons to secure their release from detention. [See www.biduk.org] Tim Baster explained the background to BID and the role it plays, and went on to discuss the impact of detention, current government policy and practice, and possible steps to challenge detention of individual asylum seekers. He drew attention to the Chief Adjudicator's guidelines on the standard of proof which should be required before detaining someone; these guidelines will shortly be published. Workshop participants considered case studies which raised issues about stages in detention and bail applications.

Among the many issues discussed in the workshop were the position of young people in detention, treatment of detainees in Yarl's Wood, health services in detention, the role of solicitors at detention centres, tagging as an alternative to detention, and the concept of 'reasonableness'. Tim Baster set out in detail the components of a strategy for obtaining bail.
(Notetakers: Jess Oldershaw and Hugo Tristram)

The Refugee Council is very grateful for help in preparing this report from Refugee Council volunteer, Naomi Connelly.