



QUALITY INITIATIVE PROJECT
FIFTH REPORT TO THE MINISTER

STRICTLY CONFIDENTIAL

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

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GLOSSARY OF TERMS

ACD	Asylum Casework Directorate (pre-NAM asylum decision-making directorate of the Home Office)
AFT	Asylum Foundation Training
Asylum	“Asylum” is used in this report to refer only to the section of BIA previously referred to as “NAM”
AI	Asylum Instruction
AIU	Asylum Intake Unit
BIA	Border and Immigration Agency
CID	Case Information Database
CIU	Central Interpreters Unit
COI	Country of Origin Information
‘Convention Reason’	The five grounds for persecution identified in the Refugee Convention as Race, Religion, Nationality, Membership of a Particular Social Group and Political Opinion
CRD	Case Resolution Directorate
DFT	Detained Fast Track (accelerated refugee status determination process in place in Harmondsworth and Yarl’s Wood IRCs)
ECHR	1950 European Convention on Human Rights
FGM	Female Genital Mutilation
IFA	Internal Flight Alternative
IRC	Immigration Removal Centre
LSC	Legal Services Commission
NAM	New Asylum Model (now commonly referred to as “Asylum”)
PSG	Particular Social Group
‘The Refugee Convention’	1951 Convention relating to the Status of Refugees
RFRL	Reasons for Refusal Letter
RSD	Refugee Status Determination
QAT	Quality Audit Team
‘QI Project’	UNHCR Quality Initiative Project
SCW	Senior Case Worker
‘UNHCR Handbook’	The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (Geneva, January 1992)
UNHCR	United Nations High Commissioner for Refugees

EXECUTIVE SUMMARY

The Quality Initiative Project is based on the supervisory role of the United Nations High Commissioner for Refugees under the 1951 Convention relating to the Status of Refugees. It aims to assist the Home Office in the Refugee Status Determination process through the monitoring of both procedures and the application of the refugee criteria. This Fifth Report covers the period from February 2007 to March 2008. The report presents observations and recommendations arising from activities of the Quality Initiative Project during this period, including the results of an audit of first instance asylum decisions made in the Detained Fast Track (DFT) process at Yarl's Wood and Harmondsworth Immigration Removal Centres. The report also draws attention to certain recommendations made in previous reports where, in UNHCR's view, further work on implementation is required.

UNHCR is pleased to report on positive initiatives within the Border and Immigration Agency (BIA) which have the potential to improve the quality of first instance decision making. The Office continues to support the Solihull Pilot as a means of addressing a number of concerns from previous reports. UNHCR recommends that decision quality should remain one of the key criteria for the evaluation of the pilot. Another welcome initiative is the drafting and piloting of a decision template, which UNHCR hopes will ultimately assist Case Owners, particularly those new to Asylum, in adopting the correct structure and approach in their decisions. UNHCR is also pleased to note the creation of the Quality Audit Team as an expression of BIA's commitment to putting in place a dedicated and effective quality assurance system within Asylum. UNHCR looks forward to further close collaboration with the Quality Audit Team in the next phase of the Quality Initiative Project.

Throughout UNHCR's audit of decisions taken in the DFT, staff at Yarl's Wood and Harmondsworth 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 the DFT.

Whilst noting some examples of good practice, UNHCR reports a number of serious concerns with the quality of first-instance decision making in the DFT. In UNHCR's view, DFT decisions often fail to focus on the individual merits of the claim. Particular concerns highlighted in this report include an incorrect approach to credibility assessment, a high prevalence of speculative arguments and a lack of focus on material elements of the claim. There is also evidence that an excessively high burden of proof is being placed on applicants. Some Case Owners demonstrate a limited understanding of refugee law concepts and gender-specific issues are often not correctly assessed in decisions. The Office further notes concern regarding the assessment of claims of torture, including limited understanding of the purpose of medical evidence in decision making. Although many of these issues have been highlighted in previous Quality Initiative reports, they appear to be particularly accentuated in DFT decisions.

This report also examines the application of procedural safeguards in the DFT which aim to ensure that the speed of the DFT process does not have a detrimental impact on the quality of decisions produced. UNHCR considers that the screening of asylum applicants and procedures for the application of flexibility and the removal of unsuitable cases from the DFT are often not operating effectively to identify complex claims and vulnerable

applicants. As a result, UNHCR is concerned that inappropriate cases are being routed to and remaining within the DFT. This report draws attention to the potential detrimental impact on the quality of decisions produced in such cases.

UNHCR concludes its observations by highlighting five key areas where, in its view, further efforts should be made with respect to implementation of previous recommendations. The areas identified are: credibility assessment, workloads, targets, training and accreditation and the provision of information to applicants. These are areas that UNHCR considers a priority for implementation in the next phase of the Quality Initiative Project. UNHCR also draws attention to the progress that has been made in this reporting period with respect to implementation of some previous recommendations including those relating to gender-appropriate interviews and interpreters.

At the end of the report, UNHCR makes nine recommendations arising from involvement with the Solihull Pilot, the decision template and the Quality Audit Team. UNHCR recommends that BIA maintain the focus of these initiatives on improving decision quality. The speed of decision making and maintenance of output targets should not be pursued to the detriment of decision quality.

Fourteen further recommendations address UNHCR's concerns with decision making in the DFT. UNHCR recommends that DFT decision makers should possess the relevant experience, skills and training to produce high quality asylum decisions within an accelerated timeframe. The operation of procedural safeguards should be strengthened through clear minuting on files and proactive consideration, throughout the decision-making process, of removal of unsuitable cases from the DFT and application of the flexibility criteria. The criteria for routing applicants to the DFT should be clearly defined and all decisions to route claims to the Fast Track should be fully reasoned.

Finally, UNHCR updates a number of its previous recommendations in the five areas of credibility assessment, workloads, targets, training and accreditation and the provision of information to applicants where UNHCR considers that further efforts are needed with respect to implementation. UNHCR commends the progress that has been made with respect to implementation of a number of its previous recommendations. Taken as a whole, UNHCR continues to believe that the totality of its recommendations have the potential to make a substantial contribution to the quality of first instance asylum decision making in the United Kingdom. UNHCR looks forward to working closely with BIA in the next phase of the Quality Initiative Project to achieve this end.

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”). Its aim 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 between the said parties, 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. A working document was produced to serve as a reference point to track the progress of the project.

1.2. First, Second, Third and Fourth reports

- 1.2.1. A First Report was provided to the Minister on a confidential basis in February 2005. It set out UNHCR’s formal observations and built upon the recommendations and findings arising from the initial fact finding visits and meetings with Home Office staff as set out in the working document.
- 1.2.2. UNHCR’s Second Report was presented to the Minister in October 2005 following a wider audit during which UNHCR sampled approximately 2% of first instance decisions per month, and conducted a number of further fact finding visits and meetings. The report received a formal response from the Minister in which the majority of its recommendations were accepted.
- 1.2.3. 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. As with the Second Report, this received a formal response from the Minister in which the majority of recommendations were accepted. During this phase, an Implementation Panel was created, consisting of senior Home Office colleagues with UNHCR acting in an advisory capacity, to oversee the implementation of those recommendations that were accepted by the Minister.
- 1.2.4. Following the Third Report, UNHCR commenced an initial audit of decisions taken under the New Asylum Model (NAM). The work of this phase of the project focused on activities related to the implementation of the recommendations in UNHCR’s Second and Third Reports, where these were accepted by the Minister.

- 1.2.5. UNHCR's Fourth Report presented an overview of the progress to date in the implementation of its recommendations from UNHCR's point of view and, where appropriate, provided suggestions for the way forward. In doing so it also provided an update on the Project's main activities since March 2006. This report also focused on a particular element of its audit of decisions to date, i.e. the assessment of credibility and establishment of the facts of a claim for international protection.

1.3 The Current Report

- 1.3.1. The current report – the QI Project's fifth – outlines the observations and findings resulting from QI's various work streams. The report first provides an update on activities and developments since the project's Fourth Report. The report then sets out the findings of UNHCR's audit of decision making in the DFT. UNHCR concludes its observations by highlighting five key areas where, in its view, further efforts should be made with respect to implementation of previous recommendations as a matter of priority. The areas identified are: credibility assessment; workloads; targets; training and accreditation; and the provision of information to applicants.
- 1.3.2. Unless updated in the present report, all recommendation made by UNHCR in previous reports remain relevant and current. While those recommendations still stand, the current report will focus on reiterating recommendations where it is felt particular attention is required whilst outlining new recommendations resulting from the QI Project's activities to the present date.
- 1.3.3. Unless otherwise stated, all findings relate to Asylum (formerly NAM) rather than the Case Resolution Directorate (CRD).

2. FINDINGS AND OBSERVATIONS

2.1. Introduction to Findings and Observations

2.1.1 Since the completion of its Fourth Report in January 2007, UNHCR has completed an audit of decision quality in Harmondsworth and Yarl's Wood Immigration Removal Centres (IRCs) (as part of its audit of decisions made in the DFT) whilst continuing an audit of decisions in the Asylum regions of Solihull and Leeds as part of the evaluation of the Solihull Pilot procedures. Additionally, UNHCR has actively encouraged the development of particular initiatives (for example, the decision template and the Solihull Pilot) that have been identified by the BIA as conduits for the implementation of a number of UNHCR's previous recommendations. Finally, apart from its audits, the Office has continued to work closely with BIA colleagues in the implementation of previously accepted recommendations.

2.2 QI Activities since the Fourth Report

2.2.1 Below, UNHCR provides an update on the progression of activities and initiatives since the completion of its Fourth Report in January 2007.

Solihull Pilot

2.2.2 In its Fourth Report, UNHCR welcomed the introduction of the Solihull Pilot, a joint BIA / Legal Services Commission (LSC) initiative introduced in the Midlands Asylum Region¹. The Pilot procedures promote early access to legal advice and encourage all relevant and obtainable evidence be brought to light as early as possible before an initial decision is made.

2.2.3 Prior to the Pilot's introduction – and as a result of its prior audits – UNHCR had recommended better pre-interview preparation (including the re-introduction of the pre-interview statement of evidence) and more flexible timescales to allow for the necessary procurement of material evidence. The Office has thus welcomed the Pilot in so far as a significant number of previous recommendations are to be addressed within its framework².

2.2.4 UNCHR accepted an invitation to take part in the evaluation of the Pilot and, as per its remit under the Quality Initiative, has been assessing how Pilot procedures influence the quality of interviews and decisions. The Office presented an interim report of its findings to the Solihull Pilot Evaluation Group in September 2007. The report noted that, where adhered to, Pilot procedures have brought more evidence to light prior to the first-instance decision. The Office was also able to point to some cases where that evidence had led to better quality decisions. The Pilot period closed on 7 December 2007 and UNHCR is currently completing its audit of a sample of Pilot interviews and decisions.

2.2.5 UNHCR remains optimistic that the Pilot procedures, as designed, have the potential to improve the decision making process and, if properly applied, can

¹ Section 4.1.4, Fourth Report.

² Minister's response to Third Report, 23 June 2006:

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/aboutus/Reports/unhcrreports/>

ultimately result in better quality decisions. As such, the Office encourages both the LSC and BIA, in their evaluation, to ensure the Pilot is measured against the initial aims and objectives outlined in the Evaluation Strategy³ of which quality of decisions is a primary focus and without undue attention on meeting early milestone (such as making a decision within 30 days) which the Pilot was not designed to facilitate.

- 2.2.6 A final report of UNHCR's findings is to be presented to the Solihull Pilot Evaluation Group in the course of 2008. Subsequently, the Evaluation Group will provide its overall evaluation of the Pilot to the Solihull Pilot Project Board which will then make a submission to Ministers on the outcome of the Pilot.

Decision Template

Development of BIA decision template

- 2.2.7 In its Fourth Report, UNHCR lent its support to the development of a decision template to assist Case Owners with the drafting of asylum decisions and the structure of interviews⁴. UNHCR has supported BIA's renewed efforts to develop a decision making template for Asylum Case Owners by providing written comments on various draft versions. Latterly, it has participated in discussions with BIA colleagues to refine the template in its final stages of drafting. A pilot of the decision template is due to commence imminently with Asylum teams in Glasgow and Leeds for a period of four months. The template will also be introduced to new Case Owners in the Asylum Foundation Training programme.
- 2.2.8 UNHCR considers that a decision template can play a significant part in addressing some of its concerns with asylum decision making highlighted in previous reports⁵. UNHCR considers that a well-drafted template can serve as a useful aide-memoir for decision makers in both the interviewing and decision-drafting stages and can assist decision makers in taking the correct approach to assessing credibility and applying the relevant elements of the Refugee Convention.
- 2.2.9 However, the decision template will not resolve all the concerns raised by UNHCR and cannot serve as a substitute for clear training and guidance on asylum decision making. In UNHCR's view, if the decision template is to succeed in its aim of improving decision quality, Case Owners must be able to understand and apply key refugee law principles correctly. Introduction of the decision template to Case Owners should therefore be accompanied by in-depth training on problematic areas of asylum decision making – in particular on the correct approach to credibility assessment and establishing the facts of an asylum claim. Such training should seek to raise awareness of the Asylum Instruction (AI) on Credibility⁶ and understanding of the concepts contained therein. Supervisory staff should provide close support to Case Owners in the initial stages of using the template.

³ "Evaluation Strategy - Early Legal Advice Pilot – Solihull" issued 13.10.2006.

⁴ Section 2.2.12, Fourth Report.

⁵ Ibid.

⁶ AI on Assessing Credibility in Asylum and Human Rights Claims.

Piloting the template

- 2.2.10 UNHCR welcomes BIA's commitment to developing and piloting a decision template. Further, it commends the fact that, prior to commencement of the pilot, the template has been introduced to Case Owners in Glasgow and Leeds by means of "workshops" which also provided training on credibility assessment. UNHCR welcomed the opportunity to participate in these workshops and felt that they provided a good opportunity for Case Owners to gain familiarity with the contents of the template and raise questions about the practicalities of using the template in decision making.
- 2.2.11 UNHCR also welcomes BIA's suggestion that new Case Owners should be introduced to the decision template in the course of their foundation training. The Office believes that the template should serve as an adjunct training tool to supplement facilitated training on drafting and structuring a decision and should help to instill the correct approach to decision making at the earliest possible stage.
- 2.2.12 UNHCR supports the creation of a BIA working group to review the decision template at regular intervals throughout the pilot. UNHCR considers that the evaluation of the pilot should focus on assessing the effectiveness of the template as a tool aimed at improving the quality of asylum decisions. Further to previous agreement⁷, UNHCR stands ready to assist BIA in this regard by assessing a sample of decisions made during the pilot and looks forward to working closely with BIA throughout the piloting and evaluation stages.

Quality Audit Team

- 2.2.13 As of September 2007, responsibility for supervising the quality and consistency of decisions within Asylum now lies with the centrally based Quality Audit Team (QAT). UNHCR understands that the QAT lies at the heart of the Asylum quality assurance process. The team has responsibility for auditing decisions and interviews, providing direct feedback to Case Owners and producing monthly reports on the outcome of its quality audits. These reports are presented to senior management based centrally and in the regions with a view to improving the quality and consistency of decision-making across Asylum.
- 2.2.14 UNHCR commends the creation of the QAT as a sign of BIA's commitment to embedding a dedicated and effective quality assurance system within Asylum. In view of the significant overlap in the work of the two teams, UNHCR welcomes the opportunity to collaborate with the QAT in order to share best practice and cooperate on joint initiatives aimed at improving decision quality within Asylum⁸.

Comments on QAT activities to date

- 2.2.15 UNHCR understands that on some occasions, QAT auditors have been unable to sample "live" asylum interviews. Interview assessments are therefore frequently conducted on the basis of the written transcript. The Office remains convinced of

⁷ Ibid.

⁸ Section 4.2.48, Fourth Report.

the importance of “live” interview sampling (including in the DFT)⁹. Whilst recognising existing operational constraints, UNHCR emphasises that ongoing efforts should be made to ensure that a minimum level of “live” interview sampling continues to take place for each Case Owner within Asylum¹⁰.

2.2.16 UNHCR understands that on some occasions, where QAT reports have highlighted a training need in a particular region, this has given rise to localised facilitated training on the topic identified with a view to rectifying the concerns expressed by the QAT. This is to be commended and UNHCR would support the formalising and strengthening of links between the QAT and central training and policy teams within Asylum. This would ensure that the provision of training and guidance is adapted to the needs of Case Owners.

UNHCR involvement with the QAT

2.2.17 To date UNHCR has been involved in initial discussions on assessment tools, informal meetings to discuss experiences in auditing of decisions and discussions as to future avenues for cooperation between UNHCR and the QAT. A peer review mechanism is currently being put in place, whereby UNHCR will periodically review QAT assessments and hold individual feedback discussions with each auditor. UNHCR sees this mechanism as an important way to initiate dialogue between the two teams and facilitate the sharing of best practice approaches to quality assurance. UNHCR remains willing to discuss involvement in other joint initiatives with the QAT to facilitate this end.

2.2.18 UNHCR emphasises the importance of BIA and UNHCR using common assessment tools to ensure a uniform approach to quality assessment and considers that any proposed amendments to assessment forms be agreed jointly by the QAT and UNHCR¹¹.

Conclusion on activities since Fourth Report

2.2.19 UNHCR remains committed to supporting BIA in the implementation of its previous recommendations with a view to improving asylum decision making and sees its engagement in the above-mentioned activities as working towards that end.

2.2.20 All parties involved in the Solihull Pilot have demonstrated great commitment to the Pilot process and UNHCR maintains the view that decision quality should remain a key focus of the Pilot evaluation.

2.2.21 Having supported the design and use of a decision template throughout the history of the QI project, UNHCR is pleased that the template is due to be piloted

⁹ UNHCR’s Procedural Standards, Section 4.2.3 recommends random monitoring of RSD interviews to ensure relevant standards of fairness and due process are met.

¹⁰ Section 2.4.71, Third Report: “Unless an assessor physically observes an interview, important elements will be missed. These include ... the interview environment, control of the interpreter.... and whether or not the verbatim transcript is an accurate record of the interview itself”. See also UNHCR Recommendations 7, 10 and 11, Third Report, which call for a minimum number of “live” interviews to be assessed per year followed by compulsory feedback sessions and for the results of those assessments to be taken into account in the decision maker’s performance review.

¹¹ Recommendation 8, Third Report.

imminently and looks forward to further involvement in an evaluation of the pilot's impact on decision quality.

2.2.22 Finally, the creation of the QAT has been a welcome development in the past year. UNHCR is encouraged by its positive experiences of working with the team to date and looks forward to developing a constructive relationship in the next phase of the project.

2.3 Detained Fast Track

Background to Audit of DFT Decisions

- 2.3.1 In late 2005, UNHCR was invited by the Minister of State for Immigration, Citizenship and Nationality to expand the QI Project's audit of first-instance decision making to the DFT¹². The audit of decisions taken within the accelerated procedures in place at Harmondsworth and Yarl's Wood IRCs began in the latter half of 2006 and concluded in December 2007. In all, 112 first-instance asylum decisions were sampled¹³. All those decisions randomly sampled by UNHCR during the course of the audit were refusals of refugee status.
- 2.3.2 During the course of the audit, members of the QI Project made a total of 10 visits to Yarl's Wood and 8 to Harmondsworth. General feedback was provided to Senior Caseworkers and Team Leaders in both locations. One-to-one feedback was also provided to individual Case Owners whose decisions had been sampled during the audit. UNHCR appreciates the high level of cooperation received from BIA staff in both IRCs and commends the spirit in which the feedback has been received.
- 2.3.3 In keeping with the remit of the QI Project, the audit was limited to the first-instance asylum decision making process. The findings from the audit, as set out in this report, focus on the application of the Refugee Convention criteria before moving to consider procedures, in as far as they may impact on the quality of the decisions made. Only decisions made within the DFT process were assessed; UNHCR did not audit those cases removed from the Fast Track before an initial decision was taken. Also, decisions taken within the "Detained Non-Suspensive Appeal" accelerated procedures in place at Oakington and Yarl's Wood IRCs did not form part of this review.

Summary Findings of Audit

- 2.3.4 All systems of Refugee Status Determination (RSD) must be able to effectively identify and respond to those individuals with protection needs. Given the inherent challenges in accurately assessing refugee claims within accelerated procedures, effective safeguards are required to ensure that all protection concerns are adequately and appropriately identified and met.
- 2.3.5 Such safeguards should include ensuring that decision makers working within accelerated procedures possess the relevant experience, skills and training to conduct accurate RSD assessments within a reduced timeframe. Also, procedures should be in place to identify and respond to those cases unsuitable for consideration within a faster process.
- 2.3.6 Whilst noting some examples of good practice, the findings from the QI audit indicate that DFT decisions often fail to engage with the individual merits of the claim. Decisions made within the DFT often incorrectly apply and inaccurately

¹² Letter from Tony McNulty, Minister of State to Bemma Donkoh, UNHCR UK Representative, 24 October 2005.

¹³ This includes 64 decisions sampled from Harmondsworth and 48 decisions sampled from Yarl's Wood.

engage with refugee law concepts and adopt an erroneous structural approach to asylum decision making. UNHCR is concerned that the speed of the DFT process may inhibit the ability of Case Owners to produce quality decisions.

- 2.3.7 Procedures implemented in order to guard against the speed of the DFT process are not always used to meet the protection needs of applicants. As a result, UNHCR is concerned that claims not suitable for accelerated RSD are being routed to, and are remaining within, the DFT. In UNHCR's view, the ability of a DFT Case Owner to make a quality decision on complex and / or vulnerable cases, which are not amenable to consideration under accelerated procedures, is severely compromised.
- 2.3.8 Based on these findings, UNHCR recommends that BIA ensure that all DFT decision makers are highly skilled and experienced in the application of refugee law concepts. All Fast Track decision makers should also receive in-depth, facilitated training on key refugee law concepts. DFT decision makers should be made aware that their role is to proactively identify those individuals in need of international protection from amongst their caseload.
- 2.3.9 UNHCR also recommends that BIA strengthen the relevant procedures to ensure that the Fast Track process is able to effectively identify and respond to those applicants with protection needs. The parameters of those cases considered suitable for the DFT should be clearly set out in guidance for all relevant BIA staff.
- 2.3.10 Currently, UNHCR is concerned that the DFT process does not always identify and respond to those applicants with protection needs.

Detailed Findings of Audit

Quality of Decision Making in DFT Claims

- 2.3.11 This section outlines some key trends in decision making in Yarl's Wood and Harmondsworth IRCs. Some of the major concerns identified here have been raised in previous reports to the Minister with respect to decisions sampled in the Asylum Casework Directorate (ACD) and, latterly, within NAM. Overall, UNHCR notes DFT decisions often fail to focus on the individual merits of the claim or engage insufficiently with refugee law concepts. These findings may, in part, be linked to the speed with which first-instance decisions are reached in the DFT.

Assessing Credibility and Establishing the Facts of the Claim

- 2.3.12 UNHCR has repeatedly highlighted concerns regarding the way in which decision makers assess credibility and establish the facts in asylum claims¹⁴. UNHCR has observed that this aspect of decision making poses a particular challenge for a majority of decision makers in Harmondsworth and Yarl's Wood. DFT decisions often do not engage with all the material facts of an individual case, nor provide clear conclusions as to whether they can be accepted or not. Without such clear conclusions, the ultimate assessment as to whether the applicant is at risk of persecution is undermined.

¹⁴ Section 2.2, Second Report; section 2.3, Third Report; section 2.2, Fourth Report.

- 2.3.13 UNHCR notes a tendency within DFT decisions to state that every aspect of an applicant's claim is disbelieved or rejected. DFT decisions may state, for example, that an asylum claim is "not credible at all". UNHCR suggests that it is rarely accurate to conclude that no aspect of a claim is accepted (for example, age and nationality are often established). Some claims are found to be rejected in their entirety on the basis of only one or two negative credibility findings, without giving anxious scrutiny to and engaging with each of the material facts of the individual asylum application.
- 2.3.14 UNHCR finds that inappropriate weight is frequently placed on less material facts when assessing credibility, for example giving considerable emphasis to aspects of the applicant's immigration history on occasions when such issues are not relevant to the claim for international protection. UNHCR acknowledges section 8 of the 2004 Act¹⁵, which places on a statutory footing the requirement to consider certain behaviours, including aspects of immigration history, as "damaging" to credibility. However, the Office considers it inappropriate to rely on adverse immigration history alone to dismiss an entire claim for a lack of credibility. Any such considerations must always be weighed against any positive credibility findings on the material facts of the claim.
- 2.3.15 Some DFT decision makers place inappropriate weight on answers provided by the applicant at the asylum screening interview. The screening interview is not designed to record the applicant's reasons for claiming asylum in any depth¹⁶ and should, in UNHCR's view, be treated with caution at the decision making stage.
- 2.3.16 A significant proportion of DFT decision makers do not appear to appreciate that credibility findings are relevant in refugee status determination only as far as they assist in establishing the facts of the claim. For example, DFT decisions often state that certain findings have "damaged" credibility without going on to explain how this finding has impacted the decision maker's ability to accept the material facts of the claim. Such an approach inhibits clear findings on the material facts of the claim, to which the refugee criteria can ultimately be applied.
- 2.3.17 UNHCR notes that the shared duty to ascertain and evaluate all the relevant facts of a refugee claim¹⁷ appears not to be fully appreciated and is therefore misapplied in a number of Fast Track decisions. For example, UNHCR observes a tendency to apply an inappropriately high burden of proof to applicants, stating for example that applicants have not provided "evidence" in support of their claims. Such an approach does not appreciate the fact that applicants will often not be able to support their statements with documentary or other proof¹⁸, nor that testimony provided at interview is, in itself, evidence to be considered when assessing claims for international protection. These issues are further considered below at 2.3.54.

¹⁵ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

¹⁶ UNHCR understands that the asylum screening interview is primarily focused on establishing identity, nationality and travel route to the UK.

¹⁷ UNHCR Handbook, paragraph 196.

¹⁸ Ibid.

2.3.18 UNHCR notes that the concept of the benefit of the doubt is rarely applied in DFT decisions. However, the UNHCR Handbook at paragraph 203 stresses that it is hardly possible for an applicant to “prove” every part of his or her case; therefore, it is frequently necessary for decision makers to apply the benefit of the doubt in the applicant’s favour. Although the AI on Credibility provides guidance on this and other issues relevant to establishing the facts of the claim, UNHCR notes from discussions between DFT Case Owners and UNHCR QI team members that a number of Fast Track decision makers do not appear to be aware of this instruction.

2.3.19 The use of speculative arguments is widespread in DFT decisions, with decision makers constructing their own theory as to how certain events “could” or “should” have unfolded. Such arguments are constructed without reliance on objective sources of information, such as Country of Origin Information (COI):

Your account of how you became involved in a homosexual group at school [when the applicant was 13 years old] is not believed. You effectively describe a situation where you were repeatedly raped and repeatedly led from your dorm room by another boy...It is considered highly unlikely that you would have allowed yourself to be repeatedly raped on approximately 20 occasions in one month without telling anyone.

2.3.20 UNHCR notes the particular prevalence of the use of inappropriate language in credibility assessments in DFT decisions. Negative credibility findings are often accompanied by unnecessary and unsupported conclusions to the effect that the applicant’s claim is wholly “invented” or “fabricated”. On some occasions, UNHCR notes a tendency to judge the personal integrity and credibility of the applicant as a witness rather than focusing on the facts of the claim:

(...) attention has also been paid to other aspects of your claim which cast doubt on your integrity as a witness.

2.3.21 The UNHCR Handbook, at paragraph 202, warns against decision makers being influenced by personal impressions of the applicant and considerations that the applicant may be an “undeserving case”. Use of inappropriate language may indicate that decision makers are straying from their role as neutral fact finders who, far from being required to pass judgment on the character of the applicant, need to use all available means at their disposal to establish the credibility of material elements of the asylum claim

2.3.22 UNHCR notes that issues of credibility are, by their nature, complex. As an inherent safeguard against the speed of the process, decision makers working within accelerated procedures need to be highly skilled and experienced in the application of refugee law concepts in order to accurately assess such issues within reduced time frames. Therefore, UNHCR considers that only more experienced Case Owners should work within the DFT. All Fast Track decision makers should also receive in-depth, facilitated training on key refugee law concepts, including the correct approach to assessing credibility.

2.3.23 Given the overwhelming proportion of refusals of refugee status produced within the Fast Track¹⁹, UNHCR is concerned that Case Owners may become “case hardened”, restricting their ability to respond to credibility and other refugee law concepts in an individualised manner. UNHCR therefore urges BIA to ensure that DFT decision makers are exposed to a wider range of asylum applications outside of the DFT in order to help guard against such possible problems. DFT decision makers should be aware that their role is to proactively identify those individuals in need of international protection from amongst their caseload.

Application of Refugee Convention Criteria

2.3.24 UNHCR has highlighted concerns about the interpretation and application of the relevant criteria under the Refugee Convention and the European Convention on Human Rights (ECHR) in its earlier reports²⁰. Through its audit of decisions taken within the DFT the Office has identified similar concerns.

2.3.25 In line with the general finding mentioned above, when assessing the application of the Refugee Convention criteria in DFT decisions, UNHCR notes a failure to focus on the individual merits of the claim alongside insufficient engagement with refugee law concepts.

Convention Reason

2.3.26 When ascertaining Convention Reason, for example, there is often insufficient consideration or application of the relevant tests. Allegations that a claim does not engage the United Kingdom’s obligations under the Refugee Convention due to the lack of a Convention Reason often lack any justifiable reasoning:

Your claim for asylum is based upon your fear that if returned you would face mistreatment due to a reason not covered by the Geneva Convention in that you fear “the Arab tribes, the Janjaweed” militia because you are from the “Fur tribe” in Sudan and they are “killing us”.

2.3.27 In other instances when reasoning is employed it is either inadequate or inappropriate. This is particularly the case when determining whether an applicant might fall within a Particular Social Group (PSG). Case Owners will, for example, recognise the possibility of a claim falling within this Convention Reason but demonstrate a misunderstanding of concepts such as ‘immutable characteristic’:

In order to form a social group you would have to demonstrate that you have immutable characteristics [sic] existing outside of persecution suffered. It is not considered in lines [sic] with of the [sic] above cases that you have not demonstrated this, as lesbians in Belarus are not solely identified by reason of the persecution you fear.

¹⁹ 99% of applications for asylum assessed at Harmondsworth and Yarl’s Wood IRCs in the 4th quarter of 2007 resulted in refusals of refugee status (statistics accessed from: <http://www.homeoffice.gov.uk/rds/pdfs08/asylumq407.pdf>).

²⁰ Section 2.2.12, Second Report.

2.3.28 Below, UNHCR further highlights how Convention Reasons are often not interpreted in a gender-sensitive manner.

Persecution

2.3.29 A number of DFT decisions demonstrate a failure to appreciate the forward-looking nature of the refugee definition. Instead, there is often an exclusive focus on past ill-treatment. For example, Case Owners will look back at past treatment, stating “[t]he harassment you claim to have suffered does not reach the level of severity so as to constitute persecution”. Without an accompanying assessment of future risk, such an approach suggests a lack of awareness that an analysis of past treatment is only relevant in so far as it informs upon the assessment of future risk.

2.3.30 When there is an analysis of the treatment feared in the future, decision makers often do not provide sufficient reasons for arguing that feared treatment does not meet the threshold of persecution. The following locally-produced standard paragraph is commonly used in Yarl’s Wood decisions and misquotes case law to suggest that social oppression can never be considered persecution:

The representative of the Secretary of State considers that although there is some evidence of discrimination against women in India, this does not amount to persecution. The case of MN UKIAT 00021 (2005) states that social oppression does not amount to persecution [the Tribunal in the case of MN in fact stated, at paragraph 29 of their judgement that "(n)ot all oppression amounts to persecution"].

2.3.31 UNHCR has expressed concern about use of incorrect standard paragraphs on numerous occasions and has called for the recommendations made by the BIA (then IND) Working Group established to identify and remove such paragraphs be implemented without delay²¹. The Working Group’s recommendations were made at the end of 2005 and have not yet been implemented. Meanwhile, paragraphs identified by the Working Group continue to be seen in DFT decisions. Inaccurate locally-produced paragraphs are often also seen. The use of both can lead to lower quality decisions.

Sufficiency of Protection

2.3.32 UNHCR commonly observes DFT Case Owners fail to appreciate or recognise which bodies or agents can provide protection from persecution. Case Owners will suggest that non-governmental organisations, for example, can provide protection without any analysis of whether the suggested organisation has any control over the State or a substantial part of the territory of the State, as required.

2.3.33 Further, Case Owners demonstrate a lack of understanding as to what can be considered sufficient protection. Often, for example, legal statutes are quoted as evidence that protection is available without any assessment of whether the state is able and willing to provide that protection and whether the applicant can access such protection.

²¹ Section 2.4.16, Second Report; section 2.1.2, Third Report; section 2.3.137, Fourth Report.

Internal Flight Alternative

- 2.3.34 The inappropriate consideration of - and inadequate engagement with – the concept of the Internal Flight Alternative (IFA) is one of the most commonly-identified problem areas in the DFT audit. One out of every two decisions sampled by UNHCR demonstrated an erroneous consideration of this concept. DFT Case Owners are therefore often not following BIA's own AI on how to assess availability of an IFA²².
- 2.3.35 Most commonly, Case Owners fail to identify suggested area(s) for return when making their arguments for the availability of an IFA, instead quoting the size of the country as justification for their position. Such an approach exacerbates additional common errors identified by UNHCR; for example, a failure to assess whether relocation would in fact remove the threat of harm for the applicant and whether it would be reasonable to expect the applicant to relocate given his or her personal circumstances. Below, UNHCR notes that decision-makers frequently do not consider gender issues when assessing the viability of an IFA.

Decision Structure

- 2.3.36 UNHCR's findings indicate Case Owners appear confused about the appropriate approach to structuring their decisions. For example, analyses of sufficiency of protection and IFA sometimes take place before the facts of the claim have been established. UNHCR considers that the inappropriate structuring of decisions can have a negative impact upon credibility analysis and indirectly cause many of the problems identified above [see above section on Credibility assessment in DFT claims, particularly 2.3.16].
- 2.3.37 Unfortunately, it appears that Case Owners are given conflicting guidance on the most appropriate structure to their decision. The Reasons for Refusal Letter (RFRL) template, available to Case Owners on the Case Information Database (CID), for example, provides a different structure to that suggested in the AI on Credibility. UNHCR believes that the introduction of the decision template (as described above) in the DFT could go some way towards addressing these problems by guiding Case Owners through the appropriate structure and approach to decision making.
- 2.3.38 DFT Case Owners very often "argue in the alternative" in an attempt to demonstrate that, even if all the facts were accepted the applicant's claim would still not fall within the Refugee definition due to, for example, the availability of an IFA. However, UNHCR's findings suggest a misunderstanding of the purpose of such an approach or a lack of clarity about how to apply it correctly. Such "alternative" arguments are commonly made without any clear findings on the key issues raised in the claim. The Office is concerned that misunderstanding and misapplication of this "arguing the claim at its highest" approach exacerbates other decision making errors and distracts DFT Case Owners from undertaking sufficient and thorough analysis of the key issues in the asylum claim.

²² "Internal Relocation" BIA Asylum Instruction, Version 3, 12 February 2007.

2.3.39 UNHCR considers that the significant use of “alternative arguments” in the DFT indicates that DFT Case Owners have particular difficulty in distinguishing between their role as an objective fact-finder (at the decision-making stage) and adversarial advocate (at the appeal stage). Given the tight timescales of the process²³, DFT Case Owners may feel a need to anticipate and refute arguments at appeal in the body of a decision. Later in this report, the Office highlights other indications of an inability to make this distinction between roles (see 2.4.26 above).

Use of Country of Origin Information

2.3.40 In a number of DFT decisions, UNHCR observes poor interpretation of the available country information by decision makers when assessing a variety of refugee law concepts. In some cases, reliance is placed on COI which does not in fact support the argument being made:

With regard to the sufficiency of protection offered by the Chinese authorities [t]he COIR...states: "...Corruption at the local level was widespread. Police officers reportedly coerced victims, took individuals into custody without just cause, arbitrarily collected fees from individuals charged with crimes and mentally and physically abused victims and perpetrators."...the representative of the Secretary of State believes that there are several avenues of address [sic] available to you in China...

2.3.41 The Office considers problematic use of COI to be indicative of a general failure of DFT decision makers to tailor information to the claim at hand.

Gender issues in DFT decision making

2.3.42 In addition to those issues identified above, UNHCR notes that some DFT decision makers may lack the necessary skills and knowledge to engage with the specific facts of an individual case and ensure that the full range of gender-related claims are recognised.

2.3.43 A number of DFT decisions fail to interpret Convention Reasons in a gender-sensitive manner:

You have stated that your problems in Namibia are because you are a lesbian and fear forced marriage. Neither of these reasons you have given for claiming a well-founded fear of persecution under the terms of the 1951 United Nations Convention relating to the Status of Refugees is not [sic] one that engages the United Kingdom's obligations under the Convention.

2.3.44 When assessing the sufficiency of protection available to female applicants, decision makers should bear in mind that, as a result of state or customary law and

²³ As appeals against an initial refusal of refugee status are usually held between days 9 to 10 of the DFT process.

practice, women may be unable to gain effective access to state protection²⁴. However, UNHCR finds that DFT decision makers rarely turn their minds explicitly to such issues.

2.3.45 When assessing issues of sufficiency of protection, any COI cited may not be correctly interpreted or not tailored to the specific circumstances of the applicant's claim. For example, although the Country of Origin Information report on Pakistan and relevant Home Office guidance²⁵ indicate that the Pakistani authorities are unable to provide sufficient protection to victims of domestic violence, UNHCR notes examples of DFT decision makers coming to the contrary finding without sufficient analysis of the available COI and the applicant's particular circumstances in order to support their conclusions.

2.3.46 Decision-makers should be aware of the importance of potential gender issues when assessing the viability of an IFA²⁶. In the case of female applicants, relocation may lead to the removal of family and community-based support structures, in certain cases removing the applicant's ability to access the means for survival. However, DFT decision makers often fail to assess the individual applicant's likely living situation on relocation in the light of any gender issues in their claim. For example, in the context of a female applicant from Kenya:

You are a reasonably healthy woman who has demonstrated her resourcefulness by living independently in Kenya for ten years. It is considered that you could return to live in Mombassa or you could of course also relocate within Kenya if you so choose, which the representative of the Secretary of State considers would neither be unduly harsh nor unreasonable.

2.3.47 The applicant had in fact previously lived independently, separated from family and community-based support structures, through working as a prostitute. The decision maker did not assess whether a return to the same means of survival would be considered unduly harsh or unreasonable, nor whether the applicant had access to other ways of supporting herself, should she relocate.

Treatment of Medical evidence in DFT

2.3.48 In roughly one in four of the cases sampled in this audit the applicant claimed to be a survivor of torture. Claims of ill-treatment not amounting to torture were made in a substantial majority of remaining claims. In none of the cases assessed by UNHCR was independent medical evidence available in support of such claims.

²⁴ UNHCR Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (May 2002).

²⁵ COIS Report Pakistan (30 April 2007) paragraph 22.21 onwards. The Pakistan Operational Guidance Note (15 March 2007) also states at paragraph 3.8.6: "...the Pakistani authorities...cannot be considered to provide sufficient protection to women in fear of domestic violence."

²⁶ "Gender Issues in the Asylum Claim", BIA Asylum Instruction.

2.3.49 The treatment of allegations of torture and ill-treatment in DFT decisions is linked to Case Owners' approaches to assessing credibility and establishing the facts of the asylum claim. It is dealt with separately here due to UNHCR's particular concerns that cases which require further medical evidence may be overlooked due to the strict timescales operating in the DFT.

Understanding of the purpose of medical evidence in decision making

2.3.50 DFT Case Owners demonstrate a limited understanding of the purpose of medical evidence in asylum decision making. This is evidenced by frequent use of standard wording to the effect that medical evidence would not assist the claimant in substantiating a claim of ill-treatment:

A medical report ... cannot normally be regarded as providing by itself a clear and independent corroboration of your account of how these injuries were sustained.

Use of the above reasoning indicates that Case Owners do not appreciate the evidential value that medical evidence can have in assessing an asylum claim.

2.3.51 UNHCR notes that current guidance to Case Owners does not make explicit the need to proactively identify those cases where medical evidence is required to decide the claim. Moreover, current advice on the treatment of requests by the applicant or legal representative for further time to commission medical reports is vague and spread across a number of different forms of guidance²⁷.

Making medical judgments

2.3.52 UNHCR has observed some cases of decision makers making medical judgments in decisions. Decision makers are not qualified to make such assessments and UNHCR considers it clearly inappropriate for them to do so:

The Secretary of State's representative cannot comment as to how you sustained your injuries; however she has noted that you only bear two very small faint scars on either side of your temple, which is inconsistent with the beatings you describe.

Another example stated:

²⁷The AI on Medical Evidence (Non-Medical Foundation Cases) refers Harmondsworth and Yarl's Wood officers to their own guidelines (UNHCR understands this refers to the DFT Flexibility guidance cited at footnote 29 below). The AI on Medical Foundation Cases indicates that "... a decision would be postponed where a pre-assessment had been confirmed by the Medical Foundation." In the AI on Rule 35 Reports of Special Illnesses and Conditions (Including Claims of Torture) the only relevant guidance indicates that, upon a request from a detainee or legal representative for removal from the DFT to obtain medical evidence "(t)he officer responsible for managing detention should consider the request in light of all the facts."

You claim that a few weeks after you arrived in the United Kingdom, you suffered a miscarriage... By the chronology of your account you would have been approximately six to eight weeks pregnant at this time. Even at this early stage a miscarriage is a serious medical event and it is not considered likely that you would have been able to keep this a secret from your brother or his family.

- 2.3.53 UNHCR also sees reasoning in some cases to the effect that scars may have arisen other than in the way described or to the effect that scarring cannot in itself corroborate the applicant's account of events:

The mere fact of the existence of scars does not, in itself, indicate that the injuries were sustained in the manner you have described. Consequently, given the lack of credibility evident in your claim overall, and in the absence of any other credible and independent evidence to support your assertions, it has been decided not to attach any weight to the presence of scars on your body.

- 2.3.54 UNHCR considers that the above examples place an excessively high burden on the applicant to "prove" an element of his claim. This is contrary to the confirmed approach under UK law which allows a positive role for uncertainty in the asylum determination process. UNHCR further notes that guidance available to decision makers does not make clear that Case Owners should refrain from making medical judgments when assessing the claim²⁸.

DFT Procedures impacting on decision quality

- 2.3.55 In line with previous audits, UNHCR's audit of DFT decisions has carefully examined the impact of asylum procedures on first instance decision quality. Given the need for adequate safeguards in the context of an accelerated procedure to ensure that speed does not override quality, it was felt especially important to acknowledge and examine the particular procedural characteristics of the DFT in this regard.

- 2.3.56 Below, UNHCR examines three procedural safeguards that are already in place within the DFT: the system by which cases are identified, prior to entry, as suitable for the DFT, the flexibility criteria that allows more time when required for adequate and fair consideration of a claim, and finally removal from the DFT when a case is identified as "unsuitable" as per the DFT suitability instruction.

- 2.3.57 Unfortunately, as explained where relevant below, despite access to case files and CID, poor minuting has occasionally impaired the Office from adequately observing and assessing the application of procedural elements of the DFT.

²⁸ Note that the AI on Medical Foundation Policy, when providing guidance on how to assess a Medical Foundation Report, indicates that Case Owners should avoid making clinical judgments. However, Case Owners should be advised against making clinical judgments in asylum decisions generally – and not just when considering medical reports.

Application of flexibility criteria

- 2.3.58 DFT procedures allow Case Owners the option of exercising “flexibility” by extending the accelerated procedures timetable as per the Flexibility Guidelines²⁹. Flexibility gives DFT Case Owners the necessary time required to solicit all the evidence they feel they need to make a fair and sustainable decision.
- 2.3.59 In practice, it has been difficult for UNHCR to adequately audit the use of flexibility. Despite UNHCR’s privileged access to original case files, case notes and CID, it is rare for Case Owners to explicitly acknowledge that flexibility has been exercised or refused – and the reasons for doing so.
- 2.3.60 Of the 112 DFT decisions assessed, only in a small percentage of claims was there clear evidence of the applicant or legal representative requesting flexibility. In less than half of such cases was flexibility subsequently granted and applied. Whether granted or not, there was rarely any clear reasoning (on file or in the decision letter) to explain why the Case Owner had decided to apply flexibility or to refuse it.
- 2.3.61 Of the remaining claims where no request for flexibility was made, UNHCR identified a substantial number where it was felt there was an evident need for timescales to have been extended where they were not.
- 2.3.62 There were a number of cases, for example, where the applicant had offered material documentary evidence at interview (sometimes in their possession) to support their claim. Without exercising flexibility, a decision was made the following day in which it was explained that no weight had been put on the evidence due to lack of translation, verification or failure to disclose the original document. Had flexibility been exercised, it may have been possible for the applicant or their Legal Representative to address the Case Owner’s concerns, thereby providing further material evidence that could be taken into account when assessing the claim.
- 2.3.63 In some cases UNHCR felt there were clear indications that the claim was complex and where application of flexibility should have been considered to allow more time for careful consideration of the claim.
- 2.3.64 In one case, for example, it was evident after interview that the claim was quite complex with the applicant claiming he had been arrested on three occasions after working as a male prostitute. He further claimed to have been interrogated, beaten and subjected to sexual violence at the hands of other detainees which police did not protect him from. UNHCR’s assessment of the decision (issued the day after interview) found use of unrelated COI with no consideration of the allegations of ill treatment and sexual abuse. UNHCR considers that flexibility could have allowed for the consideration of more appropriate objective information on the treatment of male prostitutes in Uganda and / or the solicitation of a medical report to substantiate the claimed facts of mistreatment and abuse.

²⁹ Detained Fast Track Processes Operational Instruction “Flexibility in the Fast Track Process”, April 2005.

- 2.3.65 Whilst understanding that Case Owners are free to exercise flexibility at their own discretion, UNHCR is concerned, based on its findings, that flexibility is not being applied – nor considered for application – in instances where it may be appropriate and necessary in the interests of fair asylum procedure to do so.
- 2.3.66 The Office notes that Case Owners are not required to actively consider applying flexibility or demonstrate evidence of its consideration. Further, there is no requirement to minute reasons for any decision to refuse or grant flexibility.
- 2.3.67 UNHCR believes that lessons can be learned from the Solihull Pilot model whereby, when a Case Owner feels they require more evidence to make their decision, this is communicated to the applicant and legal representative so that together all parties can ascertain and identify what further evidence might be obtained and whether timescales should be extended to allow for its procurement. UNHCR suggests that such an approach would be of benefit to the DFT in the interests of ensuring that all available evidence is before the Case Owner when assessing the asylum claim, thereby improving the quality of those decisions.

Treatment of request to remove claims from the DFT

- 2.3.68 Complex and / or vulnerable cases are not amenable to accelerated procedures under the DFT. Ensuring that such cases are identified at the earliest possible opportunity and removed from the Fast Track is therefore paramount to ensuring that a quality decision is made on the claim.
- 2.3.69 UNHCR acknowledges that, due to the nature of its audit, those cases removed from the DFT prior to first instance decision making have not been examined, and this report cannot comment fully on the operation of this safeguard. However, in just over one in seven of the cases reviewed by UNHCR a request was made for removal from the DFT which was not granted. In a number of these cases, inappropriate or inadequate reasons were given for refusing a request to release the applicant from the DFT.

Lack of reasons for refusing a request for removal from the DFT

- 2.3.70 UNHCR has noticed some good practice examples where appropriate reasons for refusing a request for removal were clearly set out in the decision letter. However, in a significant proportion of other cases where a request for removal was made, there appears to be no clear indication from the file as to whether the request for removal had been considered or why it was refused.
- 2.3.71 In one case, for example, the applicant's legal representative indicated at the end of the interview that the case involved complex issues of tribal practices, some of which were not referenced in available COI, and that the case should therefore be removed from the DFT. The decision maker completed her decision the day after the interview and concluded in the decision letter that there was no evidence of the tribal practices described by the applicant in the available COI. No reasons were given for refusing the request for removal either in the decision letter or accompanying file notes.

2.3.72 In another case, a female applicant had suffered sexual assault and had not been able to fully disclose her claim in the context of a non-gender sensitive interview. The request for removal, made on the same day as the decision to refuse the asylum claim, was not dealt with in the RFRL.

2.3.73 UNHCR considers that in all cases where a request for removal from the DFT is made, reasons for accepting or rejecting the request should be explicitly noted on the file. UNHCR considers that this would add an important measure of accountability to the system and provide reassurance that sufficient scrutiny is given by Case Owners to any evidence which suggests that the claim at hand is one which cannot be decided within DFT timescales.

Inappropriate reasons for refusing a request for removal from the DFT

2.3.74 On occasions UNHCR sees inappropriate or inadequate reasons for failing to remove a case from the DFT. In some instances, decision makers rely on flawed credibility findings to argue that the case is not complex and remains suitable for the DFT.

2.3.75 One example involved an applicant from the Democratic Republic of the Congo with a complex political opinion claim. The applicant appears to have requested removal from the DFT, in part due to the complexities of the claim and the need to produce an expert report. This request was refused in the RFRL on account of credibility concerns with the applicant's claim, the decision maker having concluded that the claim was "incredible". However, on closer scrutiny, the negative credibility findings in the RFRL did not actually focus on the material elements of the claim, rather drawing on the applicant's adverse immigration history to conclude that the claim in its entirety was not believed (see concerns highlighted in the section on credibility at 2.3.13 and 2.3.14 above).

Failure to identify and remove vulnerable cases

2.3.76 UNHCR considers that factors rendering the applicant's claim complex do not just include the nature of the applicant's asylum claim but also apparent vulnerabilities of the applicant such as mental illness or trauma. Such issues, may not be sufficiently severe to engage the list of applicants unsuitable for the DFT, but may prevent the applicant from being able to put his or her claim forward within the short timescales available. In a number of cases assessed by UNHCR, there was further information available on file which indicated to the UNHCR assessor that the case might be too complex – due to such vulnerabilities – for even a flexible DFT timescale.

2.3.77 In one case following the applicant's asylum interview, the applicant's legal representative expressed concerns – supported by the applicant's apparent inability to answer questions at interview – that the applicant might be suffering from psychiatric or psychological problems. Flexibility was exercised for 24 hours to allow the applicant to attend a medical assessment the following day. However, after the applicant refused to submit to medical assessment, the legal representatives elected not to make further submissions and withdrew their representation. A decision was immediately issued. There was no apparent consideration on the file as to whether a sustainable decision could be reached

within the DFT timescales, in light of evident difficulties with communication in the asylum interview, the lack of specialised assessment of his state of mental health and the lack of legal representation.

2.3.78 UNHCR considers it imperative that where factors come to light which render it possible that a claim may not be decided quickly, Case Owners should proactively consider the removal of the claim from the DFT, irrespective of whether an express request for removal has been made. Training should be provided on the identification of particularly vulnerable claimants who may be unable to present their claim in the short timescales available in the DFT. Case Owners should be made aware that it may be necessary to grant flexibility in order to gather relevant information, such as medical evidence, to allow for an informed decision on whether removal from the DFT is warranted.

Decision to refer to DFT

2.3.79 UNHCR has noted the need to clearly define the parameters of those cases deemed suitable for accelerated refugee status determination, so that decisions involving complex substantive issues are not included³⁰. However, UNHCR suggests that unsuitable cases are being routed to the DFT procedure largely due to the lack of clear guidance as to which cases may be “decided quickly” and thereby deemed suitable for an accelerated RSD process.

Cases routed to the DFT which appeared to be “complex” at screening

2.3.80 During the course of the audit, UNHCR encountered cases which, at the point of screening, showed indications that they were cases that could not be decided quickly but were still routed to the DFT procedures.

2.3.81 In one case for example, complex issues of gender-related persecution were apparent at the point of the asylum screening interview. The applicant relayed an extensive claimed history of severe gender-related persecution at the screening interview, including Female Genital Mutilation (FGM), rape and trafficking to the UK for the purpose of prostitution. The applicant also appeared to be potentially stateless. There were no clear reasons on file in this case as to why the applicant’s claim was considered suitable for consideration within an accelerated procedure.

Cases which can be “decided quickly”

2.3.82 The fact that a case is amenable to a “quick” decision is a key criterion by which asylum claims are identified as suitable for consideration within the DFT³¹. However, UNHCR notes the current absence of guidance on the types of claim that are deemed to be amenable to being decided “quickly”.

2.3.83 UNHCR notes that BIA is presently drafting guidance for staff responsible for identifying cases suitable for the DFT procedure and welcomes the intention to

³⁰ Asylum Processes (Fair and Efficient Asylum Procedures), Global Consultations on International Protection, 31 May 2001 (EC/GC/01/12).

³¹ BIA Asylum Processes Instruction – Suitability for Detained Fast Track (DFT) and Oakington processes (28 July 2007).

introduce instructions in this regard as one way to ensure that only suitable cases are routed to the DFT. UNHCR welcomed the opportunity to provide significant comments on a draft copy of this intended instruction and remains willing to assist in this regard.

- 2.3.84 UNHCR urges BIA to provide clearer parameters for the routing of cases into accelerated procedures in this planned guidance. Consideration should be given to including some indicatory factors in the instruction which could assist Asylum Intake Unit (AIU) staff in identifying complex claims. Without such guidance, UNHCR is concerned that the instruction will not achieve its aim; i.e. unsuitable cases will continue to be routed to the DFT.
- 2.3.85 It is clear that BIA staff responsible for identifying cases which are suitable for the DFT must have all the information required to reach that decision. At present, UNHCR understands that the decision to route cases to the DFT is taken, primarily, on the basis of information collected at the asylum screening interview. However, UNHCR doubts whether the current screening process allows for the gathering of sufficient information to ensure that unsuitable cases are not routed to the DFT³². In this regard, UNHCR notes the apparent tension between the quality of information required to reach a sustainable conclusion as to whether a case can be “decided quickly” and the amount of information that could (and should) be collected at the asylum screening stage.
- 2.3.86 It is noted that brief details of the asylum claim are sought through the asylum screening interview³³. However, UNHCR notes a lack of guidance on how to interpret the answers to such questions when deciding whether a case can be decided quickly.
- 2.3.87 Whilst UNHCR urges BIA to take into account the above issues when drafting the planned guidance, once the instruction is issued the Office considers that BIA should ensure all relevant staff are equipped with the necessary skills and provided with adequate training in order to ensure that the guidance is interpreted and applied correctly.

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

- 2.3.88 UNHCR has benefited from full access to BIA’s applicant case records during the course of the current audit. However, in the majority of cases, no explicit reasoning was found on individual files explaining why the applicant’s claim was considered to be suitable for consideration with the DFT time frames.
- 2.3.89 In some cases, an implicit suggestion could be identified (for example, the applicant originated from a country found on the DFT Suitability List). However, even in those cases, often no explicit reasoning could be found on file indicating

³² UNHCR notes, for example, the non-confidential environment in which the screening interview is conducted, the need to keep answers to questions brief and the common lack of legal advice for applicants at this stage of the asylum process.

³³ Applicants are currently asked at screening “*What was your reason for coming to the UK?*” (question 10.1) and “*BRIEFLY explain why you cannot return to your home country*” (question 10.2).

why the applicant's claim could be decided quickly. In a proportion of cases, there was neither explicit reasoning nor any indication from the individual file as to why the applicant's claim was found suitable for the DFT. This was most notably found in cases where the applicant's nationality was not on the DFT Suitability List.

Conclusion on DFT findings

- 2.3.90 UNHCR's findings draw attention to a number of concerns regarding the quality of decisions made within the DFT, including the concern that the speed of the DFT process may hinder the ability of Case Owners to produce quality decisions.
- 2.3.91 UNHCR notes some distinctive approaches to decision making which apply principally to decisions taken within the DFT, impairing the quality of the decisions made. For example, Fast Track asylum decisions often fail to focus on the individual merits of the application when assessing claims for international protection, frequently using standard wording without engaging with the specific circumstances of particular cases. Decisions frequently contain inaccurate application of, and insufficient engagement with, key refugee law concepts. Decisions often employ an inaccurate structural approach to decision-making.
- 2.3.92 The findings from the QI audit highlight concerns that procedures enacted to provide safeguards against the speed of the DFT process, such as the application of flexibility and removal of unsuitable cases from the DFT, are not operating effectively in all cases. As a result, the ability of Fast Track Case Owners to produce quality decisions on complex and / or vulnerable cases within an accelerated timeframe is compromised.
- 2.3.93 UNHCR has found that DFT referral mechanisms do not always operate effectively. As a consequence unsuitable cases are being routed to the DFT. In UNHCR's view, a number of issues, as outlined in the body of this report, can render a claim overly complex for quality consideration within the DFT timescales. Such issues may include but are not limited to: cases where the basis of the applicant's claim is not adequately covered in available COI; vulnerable applicants, for example where trauma or mental illness may inhibit the applicant's ability to put his or her claim forward within the short timescales available; claims raising complex legal issues, such as statelessness or claims requiring in-depth analysis of the Refugee Convention criteria (for example, those raising complex Convention Reasons or gender-related issues).
- 2.3.94 Given the findings outlined above, UNHCR urges BIA to put in place the necessary safeguards to ensure that all protection concerns are adequately and appropriately identified and met.
- 2.3.95 As an inherent safeguard against the speed of the process, UNHCR recommends that DFT decision makers possess the necessary skills and experience required to make quality decisions within accelerated timeframes. All Fast Track decision makers should also receive in-depth, facilitated training on key refugee law concepts. UNHCR also urges that BIA strengthen existing procedures intended to identify and respond to those cases unsuitable for consideration within an accelerated process. UNHCR looks forward to working with the Home Office in order to address the concerns outlined as a result of this audit.

2.4 Implementation of Previous Recommendations

2.4.1 Having provided both an update on its activities since the completion of its Fourth Report as well as findings from an audit of the DFT, below UNHCR draws attention to certain areas where it is felt further work is needed to implement previous recommendations. The areas identified are credibility assessment, workloads, targets, training and accreditation and the provision of information to applicants. The Office considers these to be areas of continuing concern which should be addressed by BIA as a matter of priority. The recommendations outlined at the end of this report supplement those from past UNHCR reports.

Credibility

2.4.2 Credibility assessment continues to be an area of serious concern to UNHCR and continues to be identified as problematic through its audits. UNHCR is therefore encouraged by ongoing BIA developments and initiatives aimed, in part, at addressing some of these concerns. It is hoped that the piloting of both a decision template and a procedure aimed at front-loading the assessment of necessary evidence (the Solihull Pilot) will go towards improving the quality of credibility assessments in asylum decisions. Furthermore, UNHCR is aware that the Asylum Training Team, in its revisions of training content, intends to ensure that credibility assessment receives particular attention.

2.4.3 Whilst welcoming the publication of the AI on Credibility in April 2007, through its anecdotal contact with Case Owners, UNHCR is disappointed to note limited awareness of its existence. UNHCR is of the view that without proper awareness and training in the issues that the AI outlines, its impact will remain minimal.

2.4.4 UNHCR remains solidly of the view that credibility should be a priority area for any future training for both new and existing Case Owners. It is recommended that the content of any future Foundation and Consolidation Training include a specific and well-developed section that focuses on this priority area with specific reference to the AI on Credibility.

Asylum Training and Accreditation

2.4.5 In its Fourth Report, UNHCR made a number of recommendations relating to Asylum Training, most of which arose from its observations of elements of the Asylum Foundation Training (AFT) course and the workbooks which accompany the course. UNHCR has not had the opportunity to observe further elements of the AFT or review updated versions of the workbooks since its Fourth Report and so cannot yet comment on the extent of implementation of these recommendations. UNHCR intends to observe the next round of the AFT, the relevant modules of which should commence in April 2008.

2.4.6 UNHCR has recently participated in very early discussions on revisions to the decision-making module of the AFT (Module 3) and provided written input on the same. It looks forward to receiving a draft version of Module 3 for further, more detailed comments. UNHCR welcomes the openness and transparency of the Asylum Training Team in its engagement with UNHCR on the content of the AFT.

2.4.7 BIA has recently invited UNHCR to consider taking on a more formal role in advising on the content and delivery of training within Asylum. UNHCR welcomes the opportunity to discuss this suggestion further with the Asylum Training Team in the near future.

Asylum Foundation Training

2.4.8 UNHCR considers that structured training on credibility and establishing the facts of the asylum claim should be introduced into the AFT as a matter of urgent priority³⁴. In its ongoing audits of asylum decisions, UNHCR continues to identify very serious and significant concerns with the approach to credibility assessment (see concerns highlighted with respect to credibility assessment in DFT decisions at 2.3.12 to 2.3.23 above). UNHCR therefore regards it as imperative that this key decision-making concept is adequately introduced and reinforced during the AFT. Such training should include introduction to the AI on Credibility (as highlighted at 2.4.3 above) and understanding of the concepts outlined therein. UNHCR stands willing to assist in advising and commenting on the content of such training.

2.4.9 UNHCR understands that there are plans to split delivery of the AFT course into two distinct stages. “Stage One” of the training will focus primarily on decision-making and interviewing skills. At the end of “Stage One”, trainee Case Owners will join their respective asylum teams for a period of some months and will conduct interviews and make decisions on “live” cases. “Stage Two” of the training will focus on the later stages of the asylum process, including advocacy skills.

2.4.10 UNHCR considers that the planned restructuring of the training can be of considerable benefit to trainee Case Owners. It allows trainees to consolidate their knowledge of decision making and interviewing and to put those skills into practice in a closely supervised environment prior to being introduced to later stages of the process. This approach could also be used to instill in Case Owners the distinction between their roles as decision maker and advocate at different stages of the asylum process (see concerns highlighted at 2.3.39 above).

2.4.11 However, UNHCR understands that a formal assessment of trainees’ competency will take place at the end of “Stage Two” of the AFT. In the past, the Office has raised concerns about trainees working on live cases prior to a formal assessment of their competence³⁵. UNHCR strongly believes that Case Owners should undergo a formal competency assessment on decision making and interviewing skills after “Stage One” of the AFT and prior to being exposed to live cases.

2.4.12 UNHCR welcomes the fact that trainees will remain under close supervision and mentoring by SCWs and members of the QAT prior to completion of the formal competency assessment. UNHCR considers that this “consolidation” period should be seen as part of Case Owners’ overall foundation training. In a similar vein, UNHCR suggests the use of a shadowing system as a form of best practice. Trainee Case Owners would thereby observe and participate in the work of experienced Case Owners, thus allowing trainees the opportunity to build up their

³⁴ Section 2.3.32, Fourth Report.

³⁵ Section 2.3.37, Fourth Report.

experience gradually, taking on increasing levels of responsibility for a caseload over time, whilst remaining under close supervision.

Consolidation Training

2.4.13 UNHCR considers that ongoing training is essential to maintaining and improving the quality of asylum decisions. Ongoing training helps ensure that Case Owners continue to be aware of and apply first principles and helps to counter the onset of a refusal mindset³⁶. The need for in-depth Consolidation Training adapted to Case Owner training needs becomes even more relevant in light of plans to give existing Case Owners formal responsibility for mentoring new Case Owners.

2.4.14 UNHCR also wishes to emphasise the need for the Training Team to react to concerns highlighted through quality audits. UNHCR considers that close links should be maintained between the Training Team and the QAT to ensure that quality concerns across the regions are highlighted and addressed through Consolidation Training sessions (see also 2.2.16 above).

2.4.15 UNHCR would once more emphasise its ongoing interest in working with the Training Team to develop Consolidation Training. It looks forward to following up on the Training Team's invitation to observe the decision-making elements of the training when they are next delivered.

Accreditation

2.4.16 In a number of previous reports, UNHCR has highlighted the importance of putting in place an accreditation system for Case Owners³⁷. The Office understands that significant progress has been made in devising an accreditation exam. However, plans to roll out accreditation across Asylum are currently on hold. Given that a significant proportion of Asylum Case Owners have now been in post for over a year, UNHCR urges that an accreditation system be put in place as matter of priority.

2.4.17 UNHCR further believes that consideration should be given to incorporating an independent element to the marking of accreditation exams. This would lend a measure of external oversight which could, in turn, inspire greater confidence in BIA's accreditation qualification.

Workloads and Targets

2.4.18 UNHCR has recommended in previous reports that output targets and workloads be kept to a reasonable level, with a sufficient degree of flexibility built into the decision making system³⁸. Without such measures, Case Owners are constrained in their efforts to produce quality decisions through anxious scrutiny of every case.

2.4.19 UNHCR is concerned to learn of increasing workloads and production targets in some Asylum regions. UNHCR understands that NAM was originally designed to

³⁶ Section 2.5.2, Second Report.

³⁷ Recommendations 22-24, Second Report, Section 2.3.48, Fourth Report.

³⁸ Recommendation 45, Second Report.

route each Case Owner roughly 1.25 new cases per week. However, UNHCR has learnt, anecdotally, that Case Owners are in fact being routed 3 or 4 new cases per week in some regions. UNHCR is concerned that this development may have a detrimental impact on decision quality and stress levels among decision makers and may result in increased staff turnover. UNHCR believes that any such developments would be especially unwelcome from BIA's point of view in the context of Asylum, given the increased investment in staff training and the higher calibre of recruits in decision making roles.

- 2.4.20 Whilst appreciating the need to break down the single and mid-term 6 month “case completion” target into more specific milestones (for example, for the interview or service of the decision), the Office suggests that such milestones be applied flexibly. UNHCR understands that senior BIA management view one of these more specific targets, the 30-day “milestone” for the production of an asylum decision, as now of lessened importance following the full roll-out of the NAM model. However, the Office is concerned that this message has not reached some levels of BIA management, with an apparent emphasis being placed on this “milestone” by some Asylum regions. UNHCR is concerned that this emphasis on short-term “milestones” may constrain Case Owners’ ability to devote additional time to more complex cases which may require further research or evidence gathering / testing, thereby having an impact on the quality of their decisions.
- 2.4.21 QI has observed that BIA’s emphasis on performance targets seem to be increasingly measured with reference to quantitative standards, with the result that less emphasis is being given to the qualitative elements of performance indicators and targets. UNHCR reminds BIA of the importance of incorporating a measure of quality into targets for individual decision makers³⁹. In UNHCR’s view both qualitative and quantitative targets should be given equal emphasis by BIA when assessing individual and regional performance. Where qualitative targets are not achieved, adequate steps should be taken to address these concerns both at an institutional level and with respect to individual performance.
- 2.4.22 UNHCR understands that BIA intends to increase the current target of 6-month case completion for decision makers in Asylum from 40% of all cases to 60% of all cases by June 2008. This is planned to rise to 90% of all cases by 2011⁴⁰. UNHCR considers that BIA should carefully monitor the potential impact of these developments on the quality of decision making throughout Asylum. UNHCR recommends that BIA stand prepared to take appropriate remedial action should any detrimental effect on decision quality be found.
- 2.4.23 UNHCR further suggests that additional consideration be given to the previous recommendation that staff be rotated from decision making duties for a short period of time (recommendation 28, Second Report) to guard against staff “burn out”. UNHCR would encourage provision of access for decision makers to talks by external country experts to help raise interest and awareness and as one method of rotating staff off decision making duties⁴¹. The Office would advocate that Case

³⁹ Recommendation 46, Second Report. This recommendation was accepted by the Minister; however, UNHCR is not aware of significant progress in implementing this proposal.

⁴⁰ BIA New Asylum Model – “Future Targets”.

⁴¹ Recommendation 40, Second Report.

Owners are not allocated further cases whilst on rotation in order to prevent higher workloads and, as a possible result, increased stress levels on return to decision-making duties.

Case ownership

2.4.24 Related to the issues outlined above, UNHCR is concerned that workload pressures may cause the breakdown of the Asylum Case Owner model. UNHCR reiterates the importance it places on ensuring that the same interviewing officer and decision maker are responsible for an individual case. Decision “ownership” will help ensure that all feasible decision-making steps, including considering documentary and other testable evidence or requesting a medical report, take place at the initial decision making stage, which may reduce unnecessary appeals⁴².

2.4.25 UNHCR notes that, in those Asylum regions sampled to date, the majority of cases seen by the Office have been owned by the same interviewing officer and decision maker. However, UNHCR is aware of notable exceptions within some Asylum regions. UNHCR is concerned that this situation may continue to shift as workloads and targets increase, placing strain on the Case Owner model. UNHCR therefore again reiterates that workloads and targets be maintained at a reasonable level and that BIA carefully monitor any impact on the quality of decisions made in order to guard against any possible break down of the Case Owner model.

2.4.26 As noted above at 2.3.39 above, UNHCR has also noted through the course of recent audits that some Asylum decision makers do not appear to fully appreciate the distinction between their respective roles under the Case Owner model (as an objective fact finder at the decision making stage as opposed to as an advocate for the Home Office at appeal). As UNHCR has previously commented, decision makers must be able to distinguish between these roles and adapt their approach accordingly as a safeguard to help ensure decision quality⁴³.

Provision of information to asylum applicants

2.4.27 UNHCR has previously recommended that applicants have access to information about the asylum and interviewing process⁴⁴. In its Fourth Report, the Office further suggested that information on the asylum procedure is provided to applicants in a number of common languages as early as possible in the process⁴⁵.

2.4.28 Since the completion of its Fourth Report, UNHCR has become aware of a booklet that is made available to unaccompanied asylum-seeking children at the asylum screening stage⁴⁶. The booklet, developed by the BIA Children’s Champion’s Office, provides basic information on the asylum process for the child applicant. Whilst UNHCR has suggested some amendments to the content of the booklet, UNHCR welcomes the concept of an information source for applicants containing

⁴² Section 2.3.4, Second Report.

⁴³ Section 2.3.92, Fourth Report.

⁴⁴ Recommendation 41, Third Report.

⁴⁵ Section 2.3.77, Fourth Report.

⁴⁶ “Claiming Asylum in the UK – information for children and young adults”.

basic advice on the UK asylum system. UNHCR would welcome the introduction of information sources which applicants can access at all stages of the asylum process.

2.4.29 UNHCR understands that BIA is in the process of developing an information leaflet for adult applicants, to be handed out at screening. UNHCR stands ready to provide assistance in the drafting of this leaflet.

Gender-appropriate interviews

2.4.30 In its Fourth Report, UNHCR reiterated the importance it attaches to gender-appropriate interviews, not least because ensuring an interview is gender-appropriate will enhance its fact-finding potential⁴⁷. UNHCR notes that a substantial proportion of interviews conducted in Yarl's Wood during the course of the recent audit were not gender-appropriate.

2.4.31 In this context, UNHCR welcomes the introduction of a question at the asylum screening interview inviting applicants to state their gender preference as to the person who conducts their asylum interview⁴⁸. The introduction of this question has the potential to ensure that additional interviews are gender-appropriate.

2.4.32 UNHCR would advocate for all efforts to be made by BIA to accommodate a request from an applicant for an interviewer and interpreter of a particular gender. The Office would welcome further information as to how often BIA find they are able to accommodate such requests. In this context, UNHCR notes the renewed consideration currently being given to the use of video-conferencing to address possible shortages of interpreters for certain languages and, as an adjunct, facilitate further gender-appropriate interviews (see the section below for further details).

Interpreters

2.4.33 Provision of quality interpretation in the context of an asylum decision making procedure is vital to ensuring a quality decision. Further to previous recommendations, UNHCR notes a number of developments, outlined below, and encourages BIA to actively ensure continued attention is paid to interpreters' quality.

Interpreters Monitoring Form

2.4.34 After working closely with the Central Interpreters Unit (CIU) to develop a revised "interpreters monitoring form", UNHCR was pleased to note its piloting in Liverpool. The pilot allowed CIU to identify 10 poor performers and take appropriate remedial action⁴⁹.

⁴⁷ Section 2.3.67, Fourth Report. Also see Recommendations 24 & 25, Third Report.

⁴⁸ "We realise that because of the nature of their claim, some applicants may feel more comfortable talking to a man and others may feel more comfortable talking to a woman. Do you have any preference as to whether you are interviewed by a man or a woman?"

⁴⁹ UNHCR understands that remedial action can include: removal from the panel of interpreters, warning of removal, re-assessment by Institute of Linguistics, re-training or further monitoring.

- 2.4.35 UNHCR is encouraged to note that, following this initial pilot, the monitoring form was sent to all Asylum Regional Directors in November 2007. It is noted, however, that the instruction that accompanied the form explained that it need not be completed for all assignments but only when Case Owners feel the need to feedback concerns or examples of best practice to the CIU. The CIU monitors the returned forms and acts upon them when deemed necessary.
- 2.4.36 The Office looks forward to receiving feedback as to how the form has been received, how it is being used and whether it is serving the ultimate purpose of ensuring interpreter services in the BIA are of the highest standard. It is recommended that the CIU continue to monitor use of the form and ensure it is used proactively by the regions to serve the purpose of identifying problems with interpretation.

Video-conferencing

- 2.4.37 UNHCR has previously acknowledged considerations given to reliance on video-conferencing facilities as a way of addressing interpreter shortages across the various asylum regions as well as facilitating gender-appropriate interviewing⁵⁰. UNHCR understands a video-conferencing pilot is due to begin imminently in both Cardiff and Croydon. Whilst the Office looks forward to receiving information on the outcome of the pilot, it stresses the importance of putting in place adequate safeguards to ensure that video-conferencing does not have a detrimental effect on the quality of the asylum interview and resulting decision.

Awareness of Home Office standards and procedures in relation to interpreters

- 2.4.38 In previous reports, UNHCR has stressed the importance of ensuring Case Owner awareness of Home Office standards and procedures – in particular the Code of Conduct for BIA registered interpreters – on working with interpreters through the provision of guidance and training⁵¹. UNHCR is encouraged to note that the latest revisions to the AFT include reference to the Code of Conduct and the appropriate behaviours Case Owners should expect from interpreters.

Case Resolution Directorate

- 2.4.39 Since the completion of its Fourth Report, UNHCR has engaged in initial discussions with the CRD in order to explore possible areas of future engagement as the nature of the Directorate's caseload becomes clear.
- 2.4.40 UNHCR considers a number of previous recommendations made in the context of the QI Project are relevant to the work of the CRD, particularly in view of the specialist nature of the role, the potential of "legacy" cases to give rise to complex issues and the skills required of CRD decision makers. Following initial discussions between UNHCR and the CRD, it is evident that some of these recommendations are already being taken forward; for example, in the application of the "Case Owner" model as far as possible in the CRD context. UNHCR considers that the

⁵⁰ Sections 2.3.70 & 4.2.34, Fourth Report.

⁵¹ Sections 4.2.39 – 4.2.40, Fourth Report.

implementation of these recommendations will have a beneficial impact on the work of the CRD.

2.4.41 UNHCR has also drawn the attention of the CRD to a number of further relevant recommendations, in particular with respect to recruitment; training and accreditation; stress management and targets and country information and guidance. In this regard, UNHCR stands ready to assist the CRD in the development of training in the area of credibility assessment and also in the development of quality assurance tools. It is hoped that these measures may assist BIA's efforts to improve the overall quality and consistency of decision making across the Agency.

2.4.42 UNHCR looks forward to further discussions on the practicability of implementing these recommendations within the framework of the CRD.

Conclusion on General Implementation

2.4.43 UNHCR commends the progress that has been made to date by BIA with respect to the implementation of earlier recommendations made in previous reports of the QI Project. In UNHCR's opinion these recommendations, where implemented, will have a beneficial impact on the quality of first instance asylum decision making within BIA. UNHCR looks forward to further engagement with the CRD in the implementation of those of its recommendations which remain relevant to the Directorate.

2.4.44 Whilst this report does not seek to reiterate all previous recommendations made in the context of the QI Project, attention has been drawn to a number of key areas where UNHCR believes that further effort is required in implementation as a matter of priority. The areas identified are: credibility assessment; workloads; targets; training and accreditation and the provision of information to applicants.

3. CONCLUSION

- 3.1. UNHCR welcomes BIA'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, as acknowledged in the second half of this report. The Office continues to support BIA's work with respect to the Solihull Pilot, the decision template and the creation of the QAT and looks forward to working closely with BIA in these endeavours in the next phase of the project.
- 3.2. UNHCR would urge BIA to take note of some particularly serious concerns with the quality of decision making in the DFT. UNHCR stands ready to support BIA in the implementation of its recommendations relating to the DFT.
- 3.3. UNHCR sees the next phase of the project as a means of mainstreaming quality assurance across the asylum business. To this end it looks forward to working closely with BIA on revising and improving the quality of training provided to Case Owners. It further anticipates close collaboration with the QAT with a view to embedding the team's quality assessment function within Asylum. UNHCR also look forward to further discussions with the CRD on both training and quality assurance matters.
- 3.4. Once more, UNHCR wishes to thank and commend BIA for its high level of transparency and continued cooperation with UNHCR throughout the lifetime of the QI Project. The Office remains committed to ongoing collaboration with the Home Office to raise the quality of asylum decisions.

4. RECOMMENDATIONS

4.1. Recommendations applying across Asylum

Solihull Pilot

1. UNHCR reiterates its support for the Solihull Pilot as a vehicle for the implementation of a number of concerns identified in its previous reports and recommends that the evaluation of the Pilot place due emphasis on the quality of decision making as set out in the Solihull Pilot Evaluation Strategy.

Decision Template

2. The decision template should be introduced to new and existing Case Owners (including Case Owners in the DFT) through in-depth workshops that explain the purpose of the decision template and the RSD concepts outlined therein. In particular, introductory training on the template should include in-depth training on assessing credibility and establishing the facts of the claim.
3. Sufficient time should be dedicated to piloting and evaluating the decision template. The pilot evaluation should focus on the quality of decisions made using the template.
4. The decision template should serve as a point of reference for all other available guidance on drafting and structuring asylum decisions.

Quality Assurance

5. UNHCR peer reviews of QAT assessments should continue as a means of initiating dialogue between the two teams and facilitating the sharing of best practice approaches to quality assurance.
6. Measures should be put in place to enable effective communication between relevant training and policy units and the QAT, to ensure that quality concerns identified through the QAT's audits are addressed through the provision of training and guidance.
7. In view of the importance of the QAT – lying at the heart of the system of Quality Assurance in Asylum – it is essential that sufficient resources are allocated to enable the team to discharge its duties.
8. UNHCR recommends that any proposed amendments to assessment forms be agreed jointly by the QAT and UNHCR.
9. UNHCR recommends that ongoing efforts be made to ensure that a minimum level of “live” interview sampling continues to take place for each Case Owner.

4.2. Recommendations specific to the DFT

DFT Case Owners' Skills and Experience

10. Given the number of refusals produced within the DFT, there is a danger of Case Owners becoming “case hardened”, restricting their ability to respond to credibility and other refugee law concepts in an individualised manner. UNHCR recommends that DFT decision-makers are rotated off DFT decision-making duties in order to expose them to a fuller range of cases and other areas of the business.
11. It is considered that decision makers working within accelerated procedures need to be highly skilled in the application of refugee law concepts in order to accurately assess such issues within reduced time frames. UNHCR recommends that only more experienced decision-makers work within the DFT.

Training in the DFT

12. Given the challenges inherent in assessing claims for international protection within accelerated procedures and the findings of the DFT audit, UNHCR recommends that Case Owners working within the DFT should be highly skilled and trained in the application of refugee law concepts. UNHCR remains willing to assist in the design and content of this training and recommends that any training should include:
 - a. The correct approach to assessing credibility.
 - b. Identifying “complex” claims not suited to the DFT processes and the remedial action that should be taken by Case Owners in such cases.
 - c. Reinforcing Case Owners’ understanding of key refugee law concepts identified as problematic in UNHCR’s DFT audit.
 - d. How to correctly structure a decision and, where appropriate, argue in the alternative.
 - e. How to correctly identify and assess gender issues in asylum claims.

DFT Guidance⁵²

13. UNHCR urges the full implementation of the recommendations of the Working Group on Standard Paragraphs as a matter of priority. All Asylum decision makers should be informed of the incorrect standard paragraphs that have been removed from use. BIA should discourage the use of locally-produced standard paragraphs.
14. UNHCR recommends that guidance be produced for decision makers regarding the need to treat information obtained at screening with caution when making a decision on a claim for asylum. Such guidance would also be of benefit to decision makers working outside of the DFT.
15. Guidance should make explicit that it is not appropriate for Case Owners to make medical judgments under any circumstances.

⁵² UNHCR recommends that the introduction of any new guidance be accompanied with training for all relevant BIA staff on its content and application.

16. Guidance should make clear that it is inappropriate for Case Owners to suggest that medical reports will have no evidential value in deciding the asylum claim.
17. There should be consolidated and clear guidance to Case Owners on the circumstances in which an applicant should be given time to commission medical evidence in support of the asylum claim.
18. UNHCR recommends that the planned AI on DFT suitability set out clear parameters for those cases considered suitable for the Fast Track, including clear guidance as to those cases which are considered overly complex and not amenable to a quick decision. BIA staff responsible for routing cases to the DFT should be provided with all the information required to come to a sustainable conclusion as to whether the claim can be decided quickly. UNHCR remains willing to assist in the drafting of this guidance.
19. UNHCR recommends that, once an instruction is issued on those cases considered suitable (and unsuitable) for the DFT, BIA ensure that all relevant staff are equipped with the necessary skills and provided with adequate training to ensure that the guidance is interpreted and applied correctly.

Effective use of DFT procedures

20. UNHCR recommends that, as per the Solihull Pilot model, when a Case Owner feels that more evidence is needed to come to a decision, Case Owners should communicate this to the applicant and legal representative so that together all parties can ascertain and identify what further evidence might be obtained and whether timescales should be extended to allow for its procurement.
21. DFT Case Owners should be required to proactively consider, at regular intervals, whether fair and stringent consideration of the claim requires the exercise of flexibility or removal of the case from the DFT – particularly in the case of vulnerable applicants. Guidance should explicitly require that these safeguards be considered whether or not an express request has been made by the applicant or their legal representative.
22. When considering whether to apply flexibility or remove a case from the DFT, Case Owners should be required to clearly minute their reasoned consideration of the application of either safeguard.
23. UNHCR recommends that staff responsible for routing cases to the DFT must explicitly minute the reasons why the claim meets BIA's published DFT suitability criteria.

4.3. Recommendations relating to further implementation

Training and Accreditation

24. UNHCR strongly recommends that in-depth, facilitated training on assessing credibility should be provided to new and existing Case Owners. Such training should seek to raise awareness of the AI on Credibility and the concepts outlined therein.

25. Case Owners should be required to pass a formal competency assessment of decision making and interviewing skills at the end of the first stage of the AFT and prior to being exposed to “live” cases.
26. UNHCR reiterates the importance of effective and close monitoring and supervision of trainee Case Owners and recommends that BIA should make every effort to ensure that adequate resources be dedicated to this purpose. BIA should also ensure that measures are put in place to ensure consistency in access to and quality of supervision.
27. All initial and Consolidation Training on decision making should make appropriate reference to the decision template. Asylum Foundation Workbooks should refer to the template which should be used as a training tool for facilitated training in structuring and drafting a decision.
28. UNHCR recommends that the accreditation of existing Case Owners should be pursued as a matter of priority.
29. UNHCR recommends that consideration be given to incorporating an independent element to the marking of accreditation exams.

Workloads and Targets

30. Given UNHCR’s understanding of increasing workloads and targets, the Office reiterates its recommendation that workloads and output targets be kept to a reasonable level, with a sufficient degree of flexibility built into the decision making system, to ensure that the quality of decision making and the Case Owner model are not compromised.
31. Qualitative and quantitative targets should be given equal emphasis by BIA when assessing performance. Where qualitative targets are not achieved, adequate steps should be taken to address these concerns both at an institutional level and with individual performance.
32. UNHCR recommends that BIA carefully monitor the potential impact of developments such as increased targets and the recruitment of large numbers of new decision makers on the quality of decision making and stand prepared to take appropriate remedial action if necessary.
33. UNHCR recommends further consideration be given to the previous recommendation that decision makers should be rotated off decision making duties for a short period of time.

Case ownership

34. UNHCR recommends that the distinctions between the various Case Owner roles, i.e. as an objective fact finder at the decision-making stage as opposed to an advocate at appeal, be emphasised through training and subsequent supervision in order to prevent any negative effect on the quality of decisions.

Provision of information to asylum applicants

35. UNHCR reiterates its recommendation that information for applicants on the asylum and interviewing process be introduced. UNHCR stands ready to assist in the drafting of BIA's planned adult "point-of-claim" leaflet in this regard.

Interpreters

36. It is recommended that the CIU continue to carefully monitor regional use of the interpreters monitoring form and ensure its continued and proactive use in the identification of poor performance by interpreters.