



QUALITY INITIATIVE PROJECT
KEY OBSERVATIONS AND RECOMMENDATIONS

April 2008 – March 2009

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

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1. INTRODUCTION

The UNHCR Representation to the United Kingdom has been working with the Home Office to improve the quality of first-instance asylum decisions since 2004 through the Quality Initiative (QI) project. To date, five confidential reports have been presented to the Minister for Borders and Immigration detailing UNHCR's observations and recommendations on how the quality of first instance decision-making could be improved in the United Kingdom. The majority of the recommendations made by UNHCR have been accepted by the Minister in a series of published responses.

This Sixth Report of the QI Project covers the period from April 2008 to March 2009. Unless otherwise stated, all findings relate to Asylum (formerly NAM) rather than the CRD. The report provides an update on the QI project's audit of asylum decisions in the regions of Solihull and Leeds as part of the evaluation of the Solihull Pilot 'front-loading' process. In addition, the report details continued work with UK Border Agency (UKBA) colleagues in the implementation of previously accepted recommendations and discusses the continued development of internal UKBA Quality Assurance mechanisms within the two UKBA units which consider asylum applications; namely, Asylum and the Casework Resolution Directorate (CRD).

The main body of the report details the findings resulting from a completed audit of first-instance asylum decisions on unaccompanied children's claims in four asylum regions: Central London, West London, Liverpool and Solihull.

The following is a summary of the main observations and recommendations flowing directly from these activities.

2. KEY OBSERVATIONS AND RECOMMENDATIONS

2.1 QI Activities since the Fifth Report

Solihull Pilot

Following completion of the Solihull 'front-loading' decision-making Pilot, UNHCR presented a final report of findings stemming from its assessment of the impact of Pilot procedures on the quality of interviews and decisions to the Solihull Pilot Evaluation Group and its independent report writer in August 2008. UNHCR's report confirmed that, in almost all Solihull Pilot decisions assessed, more evidence was available pre-decision compared with non-Pilot cases. In some instances, it was clear that the availability of such evidence had led to better quality decisions.

Quality Auditing Activities in UKBA

During the reporting period UNHCR has further developed its working relationship with the UKBA Quality Audit Team (QAT) by assisting the team to improve the assessment forms used for quality assurance, by conducting regular peer reviews of auditors' assessments of decision quality¹, and by participating in jointly-held meetings and exchanges on different aspects of quality auditing.

¹ UNHCR did not assess the quality of interview assessments.

UKBA and UNHCR have together reiterated their joint commitment to implementing and maintaining a system of quality assurance in UKBA through endorsement of a jointly agreed document on minimum standards on quality assurance.²

- **UNHCR recommends UKBA develop child-specific quality assurance tools and marking standards.**
- **All staff conducting assessments of children’s interviews and decisions should be adequately trained in how to assess a child’s claim.**
- **The Quality Assurance Team should assess a representative number of children’s interviews (live) and decisions as part of their auditing activities and work with other UKBA staff to ensure remedial action on findings.**

Decision Template

In the reporting period, UNHCR has continued to support the development of a Decision Template to assist Case Owners with the appropriate structuring of interviews and the drafting of asylum decisions. A pilot of the Template highlighted various sources of conflicting guidance on drafting a decision. UNHCR therefore commends and supports UKBA’s proposal to produce a generic decision letter to be introduced through a series of workshops, and to streamline all guidance, assessment forms and marking standards relevant to structuring a decision.

Case Resolution Directorate

UNHCR has continued to support CRD’s development of Quality Assurance mechanisms through the sharing of training materials and by providing comments on quality assurance forms to be used for cases with asylum content.

Implementation of Recommendations from Previous Reports

Given UNHCR’s ongoing concerns about the quality of credibility assessment in asylum (including children’s claims), UNHCR has suggested improvements to the credibility section of the Asylum Foundation Training Programme for new Case Owners as well as the training given to Case Owners who make decisions on children’s claims. UNHCR welcomes UKBA’s planned improvements to the Credibility Asylum Instruction and the proposal to streamline all guidance including that on credibility assessment.

With regards to training, UNHCR observed the decision and interviewing modules of the Asylum Foundation Training Programme for new Case Owners and provided detailed comments to UKBA personnel involved in training development. UNHCR commended UKBA for developing centralised training notes and for incorporating taught sessions on the application of the Refugee Convention and credibility assessment into the foundation training. However, UNHCR continues to emphasise the importance of neutral and non-biased presentation of key refugee law concepts and the need for continued improvements to training on credibility assessment.

² ‘Jointly Agreed UKBA/UNHCR Minimum Standards for a System of Quality Assurance in the UK First-Instance Asylum Decision-Making Process’ (Dec, 2008) (‘Minimum Standards Documents’).

UNHCR has been pleased to note UKBA's commitment to ensuring that qualitative targets are given equal significance by UKBA when assessing performance through its agreement to a set of Minimum Standards for a System of Quality Assurance. UNHCR notes the ongoing importance of this commitment as the agency works towards meeting increasing targets for case conclusion within six months, which will increase from 60 per cent of cases to 90 per cent of cases by December 2011.³

Further to UNHCR's prior recommendation that all asylum applicants be given access to information about the asylum and interviewing process and their rights and obligations, UNHCR commented on a draft 'point of claim' leaflet issued by UKBA in June 2008. It is understood that UKBA intends to make a final version available to applicants in mid 2009.

UNHCR has been encouraged by Ministerial commitment to implementing most, if not all, recommendations from its Fifth Report on the quality of decision-making in the DFT. With current proposals to increase immigration detention, UNHCR remains committed to work with UKBA in this important area. In the interim, it has been a sign of welcome progress that, in May 2008, all Senior Case Workers were asked to inform all Asylum Case Owners (including those in the DFT) of the removal of a number of incorrect standard paragraphs from the DocGen system (part of the Case Information Database or 'CID'). Further, given UNHCR's concerns about the effectiveness of 'safeguards' designed to prevent those who are 'unsuitable' from entering or remaining in the DFT, UNHCR was pleased to be given the opportunity in June 2008 to comment on an updated and now published Asylum Instruction on Intake Selection. UNHCR will be working to support and encourage UKBA to address significant gaps that remain in that instruction; particularly in relation to the definition of what can be considered a 'quick decision' and therefore suitable for accelerated procedures as well as in relation to guidance on when it might be appropriate to exclude certain individuals from the DFT due to their vulnerabilities or due to the complexity of their claim.

2.2 Decision-making in Unaccompanied children's claims

Following agreement with UKBA, UNHCR began an audit of the quality of decisions made on unaccompanied children in the Asylum regions of Central London, West London, Liverpool and Solihull in April 2008 which continued through to the end of January 2009. Whilst the audit has examined the quality of first-instance asylum decisions it has also extended to other aspects of the children's asylum process that impact on decision quality; namely, interviewing, procedures and training. In all, 100 first-instance decisions and 21 interviews were randomly sampled. UNHCR was also provided with the opportunity to observe the specialised five day training course referred to as 'Keeping Children Safe, Asylum Tier 3'. This observation took place in UKBA's West London office in early December 2008 and focused on the sections of the facilitated training that cover the remit of the QI project: decision-making (Day 1) and interviewing (Day 2).

Following the UK's lifting of its reservation to Article 22 of the 1989 Convention on the Rights of the Child and the forthcoming statutory duty to 'safeguard and promote the welfare of children who are in the United Kingdom', UNHCR's audit has been specifically

³ The National Audit Office has also recommended the UKBA set and publish targets to improve the quality of decisions. See National Audit Office report 'Management of Asylum Applications by the UK Border Agency' January 2009.

concerned with establishing the extent to which UKBA's children's process recognises and has regard to the special circumstances of asylum-seeking children and ensures that the best interests of the child are a primary consideration.

Decisions

UNHCR's assessments of the decisions sampled suggest not all Case Owners put into practice the particular skills required for making a decision on a child's claim. Whilst noting some good practice not all Case Owners explicitly factor the child's age and mental maturity into the credibility assessment. For example, in about half of the decisions assessed, Case Owners do not demonstrate appreciation for age-specific mitigating factors when considering the level of detail and consistency in the applicant's account. Further, Case Owners do not always demonstrate appreciation of the shared duty between decision-maker and applicant to ascertain and evaluate the facts of the asylum claim,⁴ do not pursue other sources of available evidence, and sometimes inappropriately require child applicants to 'prove' certain elements of their claim. In addition, UNHCR finds that there is limited application of the 'benefit of the doubt' principle.

As regards the application of the Refugee Convention criteria to a child's claim, despite some examples of good practice, UNHCR finds evidence that not all Case Owners are interpreting and applying the Refugee Convention in an appropriate and child-specific manner. For example, some Case Owners do not recognise and assess the applicable Convention Reason in the child's claim; particularly those that relate to Particular Social Group or imputed claims. Whilst some decision makers demonstrate an ability to identify child-specific forms of persecution, including forced marriage, forced underage military recruitment and heightened risk of persecution for children without family protection, UNHCR noted that in one in five of the decisions Case Owners do not recognise or analyse child-specific persecution where evident. While UNHCR recognises that UKBA have taken significant steps to identify potential trafficking concerns and refer the child on to appropriate support agencies, in some instances these child protection issues, including evidence of trafficking or mistreatment in the UK, are not considered in the decision on the asylum claim.

With respect to sufficiency of protection, UNHCR finds a few well-reasoned examples of consideration as to whether a child would have access to protection from persecution in the country of origin. However in almost half of all cases reviewed where state protection issues are addressed, Case Owners do not pay due regard to the specifics of the applicant's claim when doing so. The principle error occurs where Case Owners do not consider the potential problems a child might encounter in attempting to access adequate protection, particularly where that child would be unaccompanied on return. With respect to assessment of an internal flight alternative, lack of child-sensitive reasoning was identified.

In a quarter of the decisions assessed, the country of origin information (COI) sourced by Case Owners was not child-specific. Whilst acknowledging the occasional difficulties in accessing child-specific COI, UNHCR observes instances where Case Owners source objective information not relevant to the particular circumstances of the child's case or put excessive weight on insufficient or incomplete COI.

Interviews

⁴ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, Paragraph 196

Some Case Owners are particularly adept at creating an optimal interviewing environment for a child and questioning a child in an appropriately sensitive way so as to facilitate expression and disclosure of evidence. However, UNHCR's assessment of 21 interviews found some erroneous practices that go against the child's best interests, deny the child the opportunity to freely express their reasons for claiming asylum, or fail to ensure that any vulnerabilities or special needs of the child are taken into consideration.

Whilst Case Owners make good use of the Statement of Evidence Form (SEF) to prepare for the interview, the assessments indicated that many Case Owners do not review relevant objective country information prior to interview. A lack of focus in children's interviews was often observed and UNHCR considers that a lack of interview preparation may be a contributing factor.

As regards ensuring an appropriate child-friendly interview environment, UNHCR finds that some Case Owners are clearly attuned to the importance of doing so whilst others, however, fail to do so by, for example, allowing inappropriate seating arrangements or not enforcing breaks where appropriate. UNHCR considers that attempts to create a suitable interview environment are often thwarted by the requirement that Case Owners read out standard information that has not been not been suitably adapted to be easily understood by a child.

UNHCR's finds mixed practice in the tone and style of questioning and in the questioning (also known as 'probing') of a child in order to address inconsistencies or to obtain the child's view on evidence which suggests that they could be returned to their home country. Some concerns about tone and questioning style were exacerbated when working with interpreters not trained in working with children.

Children's Procedure

UKBA demonstrates its appreciation of the special circumstances of asylum-seeking children through provision of a distinct asylum process for children (which includes, amongst other features, a longer timescale, provision of a Statement of Evidence prior to interview and attendance of a 'responsible adult' at the substantive interview). As part of its audit, UNHCR has examined the impact of procedural features on the primacy of the consideration of the child's best interests as well as on the quality of decisions on children's claims.

UNHCR is pleased to find that consistent 'Case Ownership' occurs in the great majority of children's claims with the same individual interviewing the child and then making a decision on the child's claim. Unfortunately, opportunities to allow for rapport-building between Case Owner and child applicant prior to the substantive interview are often lost due to the fact that 'First Reporting Event' does not take place on some occasions or are handled by other (sometimes lower grade) UKBA staff members.

Whilst the findings of UNHCR's audit indicate instances of appropriate and careful consideration of the child's claim within reasonable timescales, the findings also highlight a lack of clear best-practice guidance with regards to ensuring that actual timescales are appropriate to the specifics of each child's circumstances. For example, UNHCR has observed excessively quick decision-making in cases where there are suggestions that a delay in order to gather additional evidence could lead to a better quality decision. On the

other hand, excessive delays are observed where UNHCR considers it to be in a particularly vulnerable child's best interest to expedite the claim as fast as possible.

As mentioned above, Case Owners do not always demonstrate appreciation of the shared duty between decision-maker and applicant to ascertain and evaluate the facts of the asylum claim and to pursue other sources of evidence in this regard. This ultimately places an excessively high burden on the child to 'prove' his or her claim. UNHCR observes many instances where it is felt the Case Owner could seek further evidence (e.g. a request for further COI to the COI Service, medical evidence or evidence from family members) to support or more appropriately inform their findings, but do not go on to do so.

UNHCR's audit finds evidence of a lack of formal procedure for assessing whether obtaining evidence from an asylum-seeking child above the age of 12 through interview may or may not be in the child's best interests. As a result, some children who are unfit or unable to provide evidence in an interview setting may be required to do so while others may be denied the opportunity to put forward their own views in the context of their asylum claim.

UNHCR's observation of interviews demonstrates occasions where a lack of formal training for the 'responsible adult' in how to represent the child's best interests combined with instances of a conflict of interest where the same individual performs two separate roles at interview can impact detrimentally upon the interview environment.

Finally, UNHCR's audit highlights a lack of clear guidance to Case Owners as to how and when to record in the decision whether or how an age dispute had been resolved whenever age had been in dispute at some stage prior to the service of the decision.

- 1. UNHCR recommends that UKBA institute a systematic and ongoing procedure to assess and consider the best interests of each asylum-seeking child at all stages of the decision-making process where an action taken by UKBA affects the child.**
- 2. It is recommended UKBA support the development of a 'guardianship' system, independent of UKBA whereby, upon identification, any Unaccompanied or Separated asylum-seeking child is assigned a qualified guardian whose interests are not potentially in conflict with those of the child's and who will ensure the child's best interests are fully represented at all stages of the decision-making process.**

Training

UNHCR's observation of the specialised five day training course provided to Case Owners before they begin assessing children's claims found an encouraging emphasis on wider child protection concerns. However, it was observed that the training currently places great emphasis on procedural matters when handling children's claims with minimal focus on decision-making. Given the findings of the current audit, UNHCR considers that Case Owners would benefit from more thorough training. Improvements would include more thorough explanations of how to make a decision using techniques that incorporate a child's individual characteristics (e.g. age and maturity) into the assessment of the claim. It would also include more explanation and practical application of refugee law concepts where child-specific considerations must be taken into account.

- **UNHCR recommends specific improvements to both the training and guidance provided to Case Owners who assess children’s claims. This training and guidance should include a more thorough explanation in how to best assess both credibility and refugee law concepts in a child-sensitive manner, should put more emphasis on the shared burden between Case Owner and asylum applicant to ascertain and evaluate the evidence, should encourage Case Owners to plan focused interviews using subjective and objective evidence, should teach a Case Owner to appropriately and sensitively question on key elements of the claim, and should teach and guide Case Owners in how to incorporate trafficking concerns into assessment of the claim.**
- **UNHCR recommends that the introductory and mandatory text on the children’s interview form should be reviewed and improved to make it more child-friendly and comprehensible to a child.**
- **UNHCR recommends that interpreters should be specially trained in how to interpret in children’s cases.**

3. CONCLUSION

UNHCR welcomes UKBA’s continued commitment to improving the quality of first-instance asylum decisions demonstrated both through ongoing progress in implementing previous recommendations as well as through the integration of quality assurance mechanisms into the asylum system. However, UNHCR notes that ongoing efforts are still required towards implementation of a number of key recommendations from previous reports.

UNHCR calls on UKBA to act on the concerns raised in the Fifth UNHCR Report with the quality of decision making in the DFT and looks forward to supporting UKBA in this regard.

UNHCR is encouraged by examples of good practice in handling unaccompanied children’s claims and looks forward to working with UKBA to improve the children’s asylum process and ensure good practice is demonstrated across the business.

In the next phase of the project, UNHCR looks forward to further developing methods of cooperation to achieve and support the aims identified in the ‘Minimum Standards Document’.

As always, UNHCR wishes to thank and commend UKBA for its high level of transparency and continued cooperation with UNHCR throughout the lifetime of the QI Project. The Office remains committed to ongoing collaboration with the Home Office to raise the quality of asylum decisions in the United Kingdom.