A place of sanctuary?

Creating a fair and efficient asylum system

Alasdair Murray

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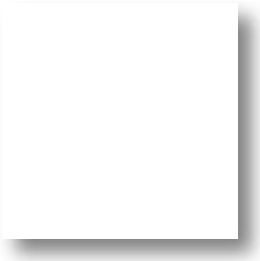

About the author

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Executive summary and recommendations

The UK's asylum system was severely tested by a surge in asylum seekers around the turn of the century. The government responded with a flurry of legislation designed to curb numbers by restricting border access for potential asylum seekers, reducing the scope for successful applications and appeals and by making living conditions more uncomfortable.

However, the political salience of the asylum debate has diminished in the last few years as the numbers have declined. While the Coalition government has introduced some important non-legislative changes with an impact on asylum, such as the abolition of the UK Borders Authority, the legislative framework has not changed substantially since 2007.

This means that the system is still set up as if to deal with a crisis caused by a huge influx of asylum seekers, when the reality is numbers have fallen back to more modest levels.

There is some evidence that policies designed to restrict access to territory and to tighten up the processing of asylum claims had a partial deterrent effect on numbers. But there is no compelling evidence that the asylum system is subject to widespread abuse or that work or welfare rights act as a major pull factor. The vast majority of asylum seekers come from countries with a clear record of human rights violations and conflict. Yet many asylum seekers are left close to destitution by very low levels of financial support and a blanket ban on work.

The asylum system, which is founded on a Cold War worldview, also appears ill-equipped to deal with the growing numbers of women and unaccompanied children seeking asylum, or the growing awareness that people can face persecution for reasons other than their political views, such as their sexuality.

Moreover, the government's overall management of the asylum system still leaves much to be desired despite the decrease in numbers. The catalogue of failures – from lost files to slow processing times and a never ending

stream of successful appeals against wrong decisions – is very long indeed. Compared with many of its peers, the British government continues to make heavy use of detention, most remarkably being able to detain failed asylum seekers indefinitely.

Public opinion remains hostile to immigration more generally. However, there remains strong support for the principle of offering sanctuary. The Coalition's decision to end child detention suggests that it is possible to reform some elements of the asylum process without undermining confidence in the system.

This paper proposes a number of reforms that the next government should explore with the aim of ensuring the asylum system functions efficiently and fairly – and is responding to today's challenges not those of the previous decade.

Recommendations

Institutional Reform:

- The government should move the case handling and determination for asylum cases from the Home Office to the Ministry of Justice (MoJ). This would have a number of beneficial effects. For example, it would increase the incentives to get the decision right first time rather than waste time and resources on the appeals system. Stripping the Home Office of case assessment would allow it to focus resources on improving enforcement and clamping down on abuse. In turn, it would leave the Ministry of Justice free to assess cases solely on their merits, seeking to apply the UK and international law surrounding asylum as fairly as possible.
- The Ministry of Justice would have the opportunity to improve the standard of decision making by creating a professional corps of asylum staff, along the lines of the US Asylum Officer Corps. The new asylum corps should offer improved training and clear career paths rather than obliging good staff to seek promotion in the wider civil service.
- The asylum service needs to place much greater focus on service levels. An increased focus on customer service should not just lead to improved efficiency but would also help break down the 'culture of disbelief'. In this context, the asylum service should build on a promising programme which gets case workers to meet with people who have gained refugee status.

- The asylum service should further explore the potential for the provision of early legal advice for asylum seekers. Early access to legal advice, if correctly applied, should help speed up the claims process and as a consequence ultimately reduce costs.
- The asylum service should ensure a formal auditing process is in place for appeals, as the Home Affairs Committee has recommended. When a decision is overturned, there should be a review of the work of the caseworker with further training offered and performance management provided to improve the quality of decisions.

Detention:

- In the long term, the UK should seek to reduce its reliance on Detained Fast Track (DFT) through the greater use of the alternatives discussed below. However, in the current political climate, the DFT continues to play a role in terms of ensuring public support for the wider asylum system.
- The Home Office has recently been forced by a High Court judgement to undertake to provide four working days between allocating a detained asylum seeker a solicitor and the interview. The Home Office should acknowledge that proper access to legal advice is a crucial element for the DFT to function effectively and keep the provision of legal advice under review.
- The government should further improve the asylum screening process and seek to ensure that trauma victims are not placed in DFT. In addition, the Home Office needs to be more flexible around taking cases out of DFT when new evidence comes to light.
- The government should implement fully the recommendation of the Home Affairs Select Committee that it properly audits its DFT performance each year. This should form part of an overall commitment to improve the transparency of the system by making available to public scrutiny full cost and operational performance.
- The government should introduce a maximum detention limit. A limit of 18 months would still be long compared with most European countries. Beyond this point there appears little likelihood of removal in any case. The government should develop alternative ways of monitoring those it perceives as a risk as it has done for terrorist suspects.
- The numbers being detained could be reduced by better guidance. At the moment, the decision to detain is based around the risks

of re-offending and/or absconding. However, there is no detailed assessment of whether it is likely to prove practical to deport a migrant within a reasonable period. Where there is no likelihood of quick return, the Home Office should seek to employ alternatives.

- The next government should undertake a well-designed pilot of community based supervision and support along the lines used successfully in Australia. If the pilot works, the Home Office should seek to make this approach available for the majority of failed asylum seekers. For more high risk cases, the Home Office should work more closely with the probation services to monitor cases and manage risk.

Destitution:

- There is no evidence that the current low levels of financial support mean refused asylum seekers are more likely to return home. The government should therefore be able to make the case for restoring the link between Section 95 (asylum seeker support) and income support. In the longer term, it would be preferable to remove the government's arbitrary control by asking an independent commission, along the line of the Migration Advisory Committee or the Low Pay Commission, to annually review Section 95 and set an appropriate level.
- There are also strong efficiency grounds for abolishing Section 4 (support for 'failed' asylum seekers). The government is operating an entire benefits system, with all the attendant bureaucracy for less than 3,000 people. Unfortunately, it will require primary legislation to abolish Section 4 so this action would probably need to await the next immigration or asylum bill. In the meantime, the government should bring Section 4 payments in line with those made under Section 95.
- The government should re-introduce a right to work for asylum seekers after six months. Six months remains the main political target for processing asylum applications. It therefore seems fair that those asylum seekers who have to wait longer should be able to improve their financial situation, and increase their chances of re-integrating into the labour market, by working.

Women and children:

- The government should commission and implement an independent review on how to deal more effectively and humanely with women's cases. In particular, it should make sure that properly trained female case workers are available to deal with female asylum seekers.
- The government should ensure that legal aid provisions work in favour of encouraging lawyers towards more complex cases, particularly those involving women.
- The Home Office should amend its guidance to ensure that pregnant women are not dispersed. The government should also review the financial provision available to pregnant asylum seekers and increase the level of that support to ensure it is adequate.
- The Home Office should seek to provide better support for deported young adults to improve the prospects for their reintegration into their old communities. While by definition much of this will be pre-return, the Home Office in partnership with the Department for International Development should seek to develop post-return support through third party organisations.
- The government should also seek to improve the experience of children when they apply for asylum. The UK should follow international best practice and appoint an independent representative to safeguard the interests of the child. This legal advocate should be one person with parental responsibility who can help children navigate the immigration system, ensure their welfare needs are met and instruct solicitors in their best interests.

Common European Asylum System:

- There is no political appetite to opt into the majority of the directives underpinning the Common European Asylum System (CEAS) any time soon. But many of the reforms recommended in this paper would have the by-product of bringing the UK's asylum system more into line with the EU rules. This would in turn make it easier for the UK's asylum system to continue to co-exist alongside CEAS and make proper use of the Dublin Convention which is designed to prevent 'asylum shopping'.

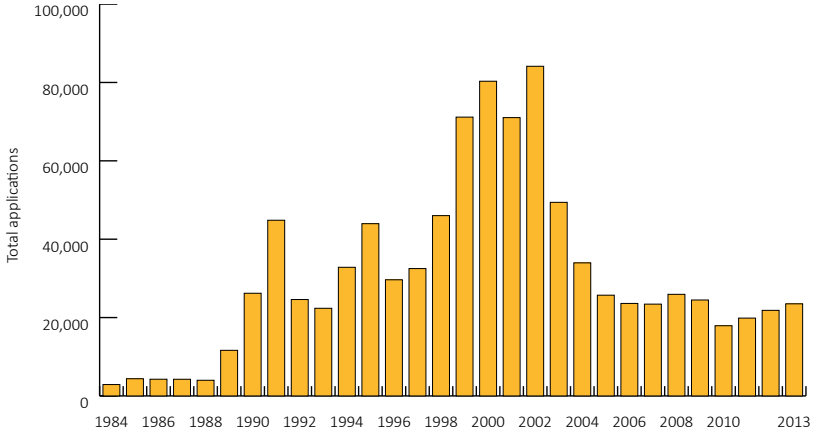
1 - Introduction

For much of the last two decades the asylum system has been a major cause of political controversy. Both Conservative and Labour governments have sought to tighten up the system in response to a surge in asylum numbers that begun in the 1990s and continued into the next decade.

Asylum applications increased nearly twenty fold from 4,256 in 1987 to a peak of 84,132 in 2002. In response, the government brought forward 11 bills directly tackling asylum between 1993 and 2009. Between 2001 and 2004, the then Prime Minister Tony Blair called meetings to discuss asylum more than any other specific issue.[1]

However, since the highpoint in the early 2000s, asylum numbers have dropped substantially (See chart 1). In 2013, there were 23,507 asylum applications, an increase of eight per cent compared with 2012, but still substantially below the levels seen a decade previously.[2]

Chart 1: Asylum numbers over time



Source: Home Office

1 S Spencer, 'The Migration Debate', Policy Press, 2011.
2 O Hawkins, 'Asylum Statistics', House of Commons, 6 May 2014.

The fall in the number of asylum seekers has ensured that the issue is no longer as politically salient. Under the current government there has only been one bill – the Immigration Act passed in May 2014 that has even dealt indirectly with asylum. While the overall political debate about migration has intensified, it has focused substantially on EU and non-EU economic migration. In 2012 asylum seekers constituted 4.3 per cent of annual immigration to the UK compared with nearly 50 per cent in 2002.[3]

There have been some important non-legislative changes to the asylum system – most notably the Coalition government's commitment to end child detention. The Home Secretary's decision in 2013 to abolish the UK Borders Authority and bring responsibility for operational immigration policy, including asylum, back into the Home Office could also have longer term repercussions, although it is yet to make much visible difference. The government also in 2013 begun and then suspended an overhaul of the asylum case working system as it became apparent that the changes were causing high levels of staff turnover and a mounting backlog (see next chapter).

However, the overall framework within which the asylum system operates has not changed substantially since 2007. This means that the system is still set up as if to deal with a crisis caused by a huge influx of asylum seekers, when the reality is numbers have fallen back to more modest levels. In line with many other European countries experiencing a surge in asylum applications the UK government sought to curb numbers by restricting border access for potential asylum seekers, reducing the scope for successful applications and appeals, and by making living conditions more uncomfortable.

Hence, an act of 1993 introduced fast track procedure for applicants from "safe countries of origin" while a bill in 1996 limited the right to apply for asylum for people who had travelled through 'safe' third countries. The Labour government which took office in 1997 continued this trend: the 1999 Immigration and Asylum Act introduced dispersal and tightened border security including tougher sanctions for carriers. Finally, the 2002 Nationality, Immigration and Asylum Act abolished the right to work after six months and reduced the scope for appeals to suspend deportation.

These reforms did have some impact on numbers. One study of 19 OECD countries found that policies designed to restrict access to territory and to tighten up the processing of asylum claims had a partial deterrent effect.[4] Between 2001 and 2006, these type of measures reduced asylum applications across the 19 countries by around a third. However, policies to make living

3 O Hawkins, 'Asylum Statistics', House of Commons, 6 May 2014
4 T Hatton, 'Seeking Asylum: Trends and policies in the OECD', Centre for Economic Policy Research, 2011.

conditions less attractive had no impact. Moreover, by far the biggest reason for the decline in numbers of asylum seekers in the UK was geopolitical factors, especially the end of the conflict in the Balkans.

Public opinion

The fall in numbers and reduced political focus has not substantially changed largely hostile public opinion about asylum seekers. The media continues to portray most asylum seekers as 'bogus' seeking to gain entry by the back door. Polling data suggests that asylum seekers are the group most widely identified (negatively) as 'immigrants' and a majority would like to see their numbers curbed.[5] Undoubtedly these attitudes are reinforced by the way the government treats asylum seekers with the widespread use of detention suggesting a link with criminality while the ban on work makes them entirely reliant on government handouts.

Despite the state of public opinion, the fact that the numbers of asylum seekers has stabilised at more manageable levels, makes it a good moment for the government due to take office in May 2015 to consider how to improve both the efficiency and fairness of the current system. The asylum system is working to a design for an emergency that no longer exists. Although numbers are sharply down, the Home Office still spends far too long deciding cases and makes far too many wrong decisions. Compared with many of its peers, the British government continues to make heavy use of detention, most remarkably being able to detain failed asylum seekers indefinitely.

Furthermore, there is no compelling evidence that the asylum system is subject to widespread abuse. The vast majority of asylum seekers come from countries with a clear record of human rights violations and conflict. Yet many asylum seekers are left close to destitution by very low levels of financial support and the blanket ban on work. The asylum system, which is founded on a Cold War worldview, also appears ill-equipped to deal with the growing numbers of women and unaccompanied children seeking asylum, or the growing awareness that people can face persecution for reasons other than their political views, such as their sexuality.

There can be no illusions about the political difficulties that will face any government seeking to change the asylum system. However, there is a surprisingly strong political consensus in favour of sticking to the UK's International Treaty commitments and offering sanctuary to those in a need – a view shared even by the anti-immigration UK Independence Party

5 The Migration Observatory, 'Thinking Behind the Numbers: Understanding Public Opinion on Immigration in Britain,' October 2011.

(UKIP). The UKIP leader Nigel Farage was quoted in December 2013 as stating that: "I think refugees are a very different thing to economic migration and I think that this country should honour the spirit of the 1951 declaration on refugee status that was agreed."[6] While public opinion as shown above is generally negative about asylum seekers, there is a small majority in favour of continuing to accept refugees and nearly 70 per cent are proud of Britain's historic role as a place of sanctuary.[7] The Coalition's decision to end the detention of children shows that it is possible to take concrete steps towards making the system more humane.

Moreover, other European governments which face similar pressures have succeeded in making reforms in recent years. For example, in France, a Commission led by then Interior Minister Manuel Valls recently made a number of recommendations designed to speed up the system and improve life for those awaiting a decision, including reform of accommodation and improved allowances.

This paper seeks to outline how the next government could make the asylum system operate in both an efficient and humane fashion while maintaining public confidence. The next chapter examines the institutional structure in more detail and considers how a legacy of slow and poor decision making can be overcome. Chapter 3 considers the efficacy and fairness of the widespread use of detention within the asylum system. Chapter 4 explores the growing problem of asylum seeker destitution. Finally, chapter 5 looks at how the system handles specific 'new' groups of asylum seekers, including pregnant women and children.

6 www.theguardian.com/politics/2013/dec/29/nigel-farage-syrian-refugees-uk
7 Refugee Council/YouGov poll, June 2014 http://www.refugeeweek.org.uk/News/News/2015%E2%80%99s+First-Time+Voters+are+Generation+Welcome+New+Poll+Reveals

What is asylum?

The current UK asylum system is based on the 1951 United Nations Convention relating to the Status of Refugees to which the country is a signatory. The Convention defines a refugee as someone who:

> "Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." (Article 1)

In addition, the Convention establishes that no contracting state can expel or return a refugee to a territory:

> "Where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (Article 33, the non-refoulement clause).

These two clauses provide the foundations for the asylum policy: Article 33 obliges a state to consider an asylum seeker's status and not simply return them to their home or a third country. The subjective list in Article 1 provides the core criteria for establishing if someone qualifies for asylum. In addition, Article 31 makes clear that illegal entry or presence in the country should not prejudice admission to refugee status.

There are two further grounds for granting a leave to remain in the UK, even if an asylum seeker does not meet requirements for full refugee status, which are based on case law developed from the European Convention on Human Rights (ECHR). A person can be granted humanitarian protection if they demonstrate there is a risk of serious harm on return to their country of origin, including a threat to life from armed conflict. An individual can also apply to remain in the UK on the basis that to return would breach their human rights as defined by the Convention. Most human rights claims are based on Article 3 (prohibition on torture and inhuman or degrading treatment) or Article 8 (right to respect for family life and private life).

This expansion of the definition of those warranting protection is the cause of considerable political controversy. The protection offered by

Article 3 of the European Convention of Human Rights is absolute, unlike the UN Refugee Convention which excludes those convicted of serious non-political crimes or a threat to national security. This has resulted in a number of high profile cases, such as the radical cleric Abu Qatada who was wanted for terrorism charges in Jordan, where the UK government has faced serious obstacles to deportation. In reaction to these cases, the Conservative party is currently committed to repealing the ECHR, which was formally incorporated into UK law in 1998, and to introducing a new 'British' Bill of Rights.

2 - Institutional reform

The Home Office's management of the asylum system has faced intense parliamentary and media criticism for more than a decade. The catalogue of failures – from lost files to slow processing times and a never ending stream of successful appeals against wrong decisions – is very long indeed. Yet, as we saw in Chapter 1, these problems have continued against the backdrop of a steady decline in the number of asylum claims since 2002.

The Home Office is still clearing a backlog of cases which date back to the early part of last decade. By July 2006, the number of unresolved cases totalled around 500,000. The government set itself a target of dealing with this 'legacy' backlog within five years. However, as the House of Commons Home Affairs Committee has reported, the deadline for resolving the cases was 2011 but as of December 2013 there were still more than 28,000 under consideration.[8] At the current rate of progress it will take until 2019 to clear the backlog, which as the Home Affairs Committee notes, means staff are still being diverted from working on new cases.

At the same time, the number of new cases awaiting an initial decision is continuing to rise. There were 23,070 cases pending an initial decision in the fourth quarter of 2013, the eight successive quarter quarterly increase. There has also been a rise in the number of cases waiting for more than 6 months for an initial decision to 37 per cent of cases in Q4 2013. This rise, as the Select Committee has noted, falls a long way short of the government's target that it should conclude 90 per cent of cases within six months.

Successive home secretaries have failed to resolve these serious weaknesses via a series of institutional reforms. Most recently, the government has responded to the problems by rushing through a restructuring of the immigration section, which includes asylum processing and enforcement, and subsuming the arms-length UK Borders Authority back within the Home Office.

8 House of Commons Home Affairs Committee, 'The work of the immigration directorates, October-December 2013, 3rd report of session 2014-15', 22nd July 2014.

It is too early to make a definitive judgement about the success or failure of the latest reform to the immigration directorate. However, there appears little evidence as yet that the change has led to a major improvement in the Home Office's management of the asylum system. Indeed the current trend is one of declining performance in terms of the efficient handling of asylum claims.

Appeals

The weaknesses in the current system are perhaps best highlighted by the number of appeals against decisions. In the fourth quarter of 2013, 29 per cent of appeals against initial decisions were permitted by the First Tier Tribunal (Immigration and Asylum Chamber).[9] This number was even higher for certain groups: 52 per cent of appeals were allowed for Syrians, 41 per cent for Sri Lankans, 34 per cent for Iranians, 45 per cent for those from Eritrea and 43 per cent for those from Sudan.[10]

John Vine, the independent Chief Inspector of borders and immigration, recommended in 2009 that the then UKBA needed to analyse why it was losing so many appeals so that it could raise its standard of decision making. As the Home Affairs Select Committee has noted the recommendation was never fully implemented and there is no evidence that the government is improving the consistency of its asylum decisions.[11]

One study of asylum appeals has found that in a large majority of cases (84 per cent), the appeal was successful because the case owner had made a wrong assessment of the applicant's credibility and had not properly followed the government's own polices on assessing credibility.[12] The study noted a particular 'domino effect' where case owners focused on one part of the case they thought inconsistent or implausible and used this as a basis for undermining the whole case. Similarly, the United Nations High Commission for Refugees told the Home Affairs Select Committee that case workers applied an "inappropriately high burden of proof, resulting in every aspect of an applicant's claim being disbelieved or rejected…on the basis of only one or two negative credibility findings."[13]

9 House of Commons Home Affairs Committee, 'The Work of the immigration directorates October-December 2013, 3rd report of the sessions 2014-15', 22nd July 2014.
10 Amnesty International and Still Human Still Here, 'A question of credibility: Why so many initial asylum decisions are overturned on appeal in the UK,' April 2013.
11 House of Commons Home Affairs Committee, 'The work of the immigration directorates, April-September 201, 15th report of session 2013-14', 19th March 2014.
12 Amnesty International and Still Human Still Here, 'A question of credibility – why so many asylum cases are overturned on appeal', April 2013.
13 House of Commons Home Affairs Committee, '7th report – Asylum', 11th October 2013.

The government has responded to the high number of appeals throughout the immigration system, including asylum, by seeking to clamp down on the availability of legal aid for appeals and judicial review. However, as lawyer Julian Norman has pointed out the upsurge in judicial review cases in part reflects the fact that for many cases it is the only route to force accountability.[14] For example, for some fast track cases (see next chapter), and in cases of unlawful detention, the only route to challenge the Home Office's decisions is through judicial review.

A culture of disbelief

Critics suggest that the high level of appeals is indicative of a deeply ingrained 'culture of disbelief' within the UK asylum system. They argue that case workers focus on finding reasons to turn asylum applications down rather than impartially deciding on the merits of each application.

Research has suggested that asylum officers too readily view asylum seekers as 'liars and opportunistic cheats'.[15] In contrast, there is a belief that truthful asylum seekers would have a good recall of events and present their testimony in a consistent and unhesitating manner.

One recent study found that the majority of asylum seekers reported that they were accused at some point of providing false information.[16] A series of earlier studies found asylum officers are too willing to allow concerns in one aspect of an applicant's story, even if not integral to the case, to undermine their claim for protection.[17] The Home Affairs Select Committee has noted decision makers are: "Still prone to disbelief without foundation and to treating the asylum interview and decision making process as adversarial rather than an exercise in international protection obligation."[18]

Researchers report that asylum case workers assume that people know 'basic' information such as their date of birth or parents' date of marriage and that spellings remain consistent despite transliteration from different alphabets. Yet there are many reasons why asylum seekers forget or are simply unable to provide details that would be regarded as commonplace in the UK. In response, some asylum seekers guess or invent identifiers rather

14 J Norman, 'In immigration cases, Judicial Reviews are often used to force accountability from a decreasingly accountable UK Border Agency', The Guardian, 23 April 2013.

15 J Herlihy et al, 'What assumptions about human behaviour underlie asylum judgements', International Journal of Refugee Law 22 93), 2010.

16 M Griffiths, 'Vile liars and truth distorters: Truth, Trust and the asylum system', Anthropology Today Vol 28, 5, October 2012.

17 J Souter, 'A Culture of Disbelief or Denial? Critiquing Refugee Status Determination in the United Kingdom', Oxford Monitor of Forced Migration, 2011; H Muggeridge & C Maman, 'Unsustainable: The quality of initial decision making in women's asylum claims,' 2011.

18 House of Commons Home Affairs Committee, '7th report – Asylum', 11th October 2013.

than admit ignorance or risk producing discrepancies – which are in turn often seized upon by case workers as reason to turn down the application. Moreover, there have even been cases where a mistake in a name or a date of birth made by the asylum section has perversely been used to turn down an asylum claim.[19]

One particular area of concern has been around the treatment of those seeking asylum due to persecution for their sexuality. Up until July 2010, claims based on sexuality were refused on the grounds that the asylum seekers could use 'voluntary discretion' to prevent persecution. However, a Supreme Court ruling made clear that 'voluntary discretion' should only apply where it concerned family or societal pressure, not state persecution, and that gay people who faced a well-founded fear of persecution would be refugees.[20]

At the same time, there was broad political support for reform. The Coalition Agreement included a commitment not to remove asylum seekers who would be at risk of persecution on account of their sexual orientation. The then UKBA subsequently published guidance for case workers on how they should deal with asylum claims based on an applicant's sexual orientation.

However, there have been widespread complaints that the 'culture of disbelief' within the Home Office has led to many asylum seekers being humiliated by highly personal questioning about their sexuality. The Home Affairs Select Committee reported witnesses leaving screening interviews "feeling intimidated, rejected and though as branded a liar from the outset".[21] The campaign group Stonewall has complained of almost "systemic homophobia" in the UK's asylum system, stating the approach could be "deeply distressing" to asylum seekers.[22]

The onus increasingly is upon the asylum seeker to 'prove' that they are gay. The Law Society and the Immigration Law Practitioners Association have argued that there are "extraordinary obstacles" to establishing credibility in cases of persecution around sexuality. However, as the Home Affairs Select Committee has noted, until the removal of the voluntary discretion option, the immigration directorate had been happy to believe an individual's own assessment of their sexuality.

19 M Griffiths 'Vile liars and truth distorters: Truth, Trust and the asylum system', Anthropology Today Vot 28, 5, October 2012.
20 HJ (Iran) v Secretary of State for the Home Department and HT (Cameroon) v Secretary of State for the Home Department.
21 House of Commons Home Affairs Committee, '7th report – Asylum', 11th October 2013.
22 www.theguardian.com/uk-news/2014/feb/08/gay-asylum-seekers-humiliation-home-office

The case working system

Concerns about the negative impact of this culture of disbelief on the fair operation of the asylum system are compounded by continuing questions about the quality of the case working system.

The then Labour government introduced the New Asylum Model in 2005 after a wide consultation. The idea was to provide 'end to end' case work so that a single officer follows the case right through until resolution.

However, asylum groups argue that the Model has been dogged by poor implementation. The government's original intent was to improve the quality of case workers raising the status of the position from graduate equivalent level to a Higher Executive Office. However, the service was ultimately unable to meet the increased cost of more experienced staff. The initial case officer's status was then reduced to that of a non-graduate level executive officer.

Asylum groups state that new case workers were subject to just six days training before being able to take decisions on many complex and sensitive asylum cases. The service also continued to suffer from high staff turnover rates. The Independent Chief Inspector for Borders and Immigration found that in one asylum case working site, Cardiff, 43 per cent of staff had departed following the introduction of "a poorly managed change programme" including "proposals to replace asylum case-owners, responsible for all aspects of a case, with staff at a generally more junior grade."[23] The Independent Chief Inspector concluded that the proposed reforms were a direct cause of the rising backlog in asylum cases.

Sarah Rapson, Director General of UK Visas and Immigration Directorate, admitted that staff problems were a key reason for the ongoing poor performance telling the Home Affairs Select Committee that:

"Our capacity to be able to deal with these cases quickly has been reduced as a consequence of a restructuring that was announced by UKBA, as was, which basically was intended to re-grade case workers, which has had a very negative impact on the numbers of people we have making these decisions. A restructure—I have to tell you—that we stopped last summer and our plans now are about bringing more people in, training them, and we have plans to bring that back into service standard…over the next year."[24]

Moreover, the government has now moved away from the original objective of having one case worker follow a case to its duration. In April 2013, with no prior consultation, it introduced a new 'triage' system with the aim of

23 icinspector.independent.gov.uk/wp-content/uploads/2014/07/Cardiff-Report-FINAL-WEB.pdf
24 Home Affairs Committee, 'The work of the immigration directorate, October – December 2013', 3rd report of the session 2013-14, 22nd July 2014.

improving the speed and consistency of decisions. Cases are triaged – divided into three broad groups – at the screening interview stage and allocated to 'decision pathways' which are based on an assessment of how long the case is likely to be resolved and the chances of it being granted or refused.

Those cases which are deemed suitable for fast track detention or entail removing the asylum seeker to another European country are separated from the main case group. The remaining cases are then divided into green, red or amber pathways with green being the most likely to be resolved. The decision of which pathway to use is based on an assessment of age, gender and country profile. To be Green, the case must be judged to have at least a 47 per cent chance of a successful outcome or a high chance of refusal.

The main criticism about the new system is it is heavily reliant on a judgement about the merits of a case based only on a screening interview. Yet screening interviews provide only limited information about the asylum seeker beyond their name, nationality, gender, age and how they arrived in the UK. There are few opportunities for further disclosure and even the basic information provided may be in dispute. As the Immigration Practitioners Legal Association points out this also means the Home Office is assessing the prospects of success on checklists drawn up on the basis of previous cases.[25] Yet it is questionable whether broad Home Office advice keeps pace with geopolitical realities as the high rate of permissible appeals for asylum seekers from countries such as Syria demonstrates. Critics also point out that the government used this approach prior to the introduction of the New Asylum Model with no greater success in ensuring the quality and speed of decisions.

Reforming the asylum system

The government's decision to abolish UKBA and bring asylum and immigration back under direct Home Office control appears highly unlikely to improve substantially the quality of asylum decisions – no matter what managerial reforms are adopted. At the heart of the problem is the conflict of interest between the Home Office's role as neutral adjudicator of asylum claims and as the body responsible for enforcement, which involves both discouraging asylum claims and removing failed asylum seekers. In addition, the Home Office must try to fulfil these two roles within the context of a political commitment to reduce overall net migration that clearly leads to pressure to minimise the number of asylum seekers gaining longer term residency. We have previously argued in favour of removing the case handling and determination for asylum cases from the Home Office and moving it to the

25 Immigration Practitioners Legal Association, 'Asylum Operating Model Information Sheet,' May 2013.

Ministry of Justice (MoJ) where the appeal process resides.[26] This would have a number of beneficial effects, for example, it would increase the incentives to get the decision right first time rather than waste time and resources on the appeals system. At the moment, the costs of appeals are borne by the Ministry of Justice even though many of the cases stem from mistakes made by the Home Office.

But more importantly it would provide an opportunity to break free from the 'culture of disbelief' described above. Stripping the Home Office of case assessment would allow it to focus resources on improving enforcement and clamping down on abuse. In this context, it would be a natural evolution from the recent restructuring of the immigration directorate which split the former UKBA along enforcement and case handling lines.

In turn, it would leave the Ministry of Justice free to assess cases solely on their merits, seeking to apply the UK and international law surrounding asylum as fairly as possible. While it would be difficult for the MoJ to entirely ignore the wider political concerns about migration rates, the pressure to find ways to reduce numbers would be much less than in the Home Office which has overall responsibility for the net migration policy. The MoJ would also have the opportunity to improve the standard of decision making by creating a professional corps of asylum staff, along the lines of the US Asylum Officer Corps. The new asylum corps should offer improved training and clear career paths rather than obliging good staff to seek promotion in the wider civil service.

A wide ranging institutional reform such as that outlined above will not be sufficient in itself to ensure the asylum system becomes more efficient and fair. The transfer of the asylum service to the Ministry of Justice needs to be supported by a series of practical measures which can increase efficiency, improve the quality of decision making and reduce the number of appeals:

- The asylum service needs to place much greater focus on service levels. The Independent Chief Inspector has criticised the government for giving a low priority across the immigration directorate to customer service, commenting that he found it "astonishing that there is such a little focus on the customer for such a large government department."[27] As the government has admitted this is especially true of asylum. Sarah Rapson, Director General of UK Visas and Immigration, told the Home Affairs Select Committee: "It must be right that the same way that we would treat customers

26 A Murray, 'Migration: a liberal challenge', CentreForum, 2013.
27 House of Commons Home Affairs Committee, 'Asylum: 7th Report of Session 2013-13. Vol.1, Report- Oral Evidence: Home Affairs Committee. (16 April 2013)', 2013.

who apply through us through different routes should be applied to asylum seekers. Possibly more so, because they are some of the most vulnerable people that we deal with, who probably do not complain."[28]

An increased focus on customer service should not just lead to improved efficiency but could also help break down the culture of disbelief among case workers. In this context, the asylum service should build on a promising programme which gets case workers to meet with people who have gained refugee status. This would ensure that case workers benefit from direct customer feedback. But it would also mean that case workers meet those who have gained leave to remain, rather than only experiencing asylum seekers. This should help break down pre-conceptions about the latter.

- The asylum service should continue to explore the potential for greater provision of early legal advice for asylum seekers. Campaign groups such as the Immigration Lawyers Practitioners Association and the Refugee Council have argued that early access to legal advice would help speed up the claims process and improve initial decisions, ultimately reducing costs.

  However, a pilot project conducted by the Home Office found that the costs of providing early legal advice exceeded the savings from reduced appeals.[29] On the other hand, the project evaluation concluded that there was improved decision making in complex cases and increased confidence in initial decisions among the case workers, asylum seekers and legal representatives. Moreover, the evaluation found that to be effective, evidence needed to be available before the substantive asylum interview but this occurred in only 20 per cent of cases examined.

  Early legal advice therefore does offer promise if applied correctly. The asylum service should commission a further pilot and roll out the system across the service if this proves effective.

- The asylum service should ensure a formal auditing process is in place for appeals, as the Home Affairs Select Committee has recommended. When a decision is overturned, there should be a review of the work of the caseworker with further training offered and performance management provided to improve the quality of decisions.

28 House of Commons Home Affairs Committee, 'The work of the UK Visas and Immigration Section, HC 232-i', June 2013.
29 M Lane et al, 'Evaluation of the Early Legal Advice Project Final Report,' Home Office, May 2013.

The UK and the EU's Common European Asylum System

One aspect of asylum policy that currently receives little political attention is how the UK's approach interacts with the EU's ambition of establishing a Common European Asylum System (CEAS). For the past 15 years, the EU has sought to make it easier for member states to burden share the often large number of asylum seekers entering Europe.

The UK participated in the first round of asylum related directives which established minimum standards for the treatment of asylum seekers and the processing of claims. However, the Coalition government chose not to opt into the majority of a second phase of the CEAS. This phase 'recast' the directives, tightening a number of standards following concerns that many member states had failed to implement fully the original rules.

The Home Office justified its decision not to participate on the basis that it would weaken the UK asylum system, introduce delays to decision making and increase unfounded claims.[30] Among other reasons, the government expressed concerns that the directives would allow asylum seekers to work after 9 months, limit detention powers and raise the level of benefits.

The political reasoning for not participating in the follow up directives is easily understandable given the toxicity of the current debate over both Europe and immigration. However, as the government has subsequently acknowledged the opt out from phase two of CEAS does not mean that the original directives no longer apply to the UK.

Moreover, the government chose to opt in to the recast Dublin Regulation which seeks to prevent 'asylum shopping' between member states. The Dublin Convention allocates responsibility for processing asylum claims around the basic principles that this should take place in the member state where the asylum seeker sought to enter the EU. The UK's participation in the Convention and access to Eurodac – the EU's asylum database – enables the UK to return around 100 asylum seekers a month to other EU countries. Further confusing the UK's relationship with CEAS, it is important to note that the latest Dublin Regulation makes reference to the other parts of the recast legislation. This has created something of a legal morass about which parts should be applied in the UK that awaits testing in the courts.

30 HM Government, 'Review of the balance of Competences between United Kingdom and the European Union: Asylum and non-EU migration', February 2014.

There is no political appetite to opt into the non-Dublin directives any time soon. But in many cases this pamphlet argues in favour of the UK making its own reforms which would have the by-product of bringing the UK's asylum system more into line with the EU rules. For example, the government's assertion that a limited right to work would encourage 'bogus' asylum claims is not supported by the evidence (see chapter 4). This would in turn make it easier for the UK's asylum system to continue to co-exist alongside CEAS and make proper use of the Dublin Convention. The EU is now focused on a round of practical co-operation initiatives designed to ensure that all member states are equipped to deal fairly with asylum. It is clearly in the UK's interest that Romania and Greece for example, which are on the front line of the current wave of refugees, are capable of dealing with the challenge.

3 - Detention

The issue that is arguably the greatest point of contention in the current UK asylum system is the widespread use of detention. Critics point out that detention is unique within the legal system: it is an administrative detention which does not require any judicial involvement. In fact, the decision on whether to detain an asylum seeker is commonly taken by a relatively low level case office and is not subject to any independent evaluation.

The then Labour government introduced detention in 2000 as part of its overhaul of asylum rules. Since then, its use has grown substantially despite repeated criticism. After Greece, the UK makes the highest use of detention in Europe: in 2013, more than 30,000 asylum seekers spent some time in detention during the year with 2,796 detained as at the 31st December (see Table 2).[31]

Table 2: People entering, leaving and in detention, soley under Immigration Act powers

Year	Entering detention	Leaving detention	Number in detention on 31/12
2010	25,904	25,959	2,525
2011	27,089	27,181	2,419
2012	28,905	28,575	2,685
2013	30,423	30,036	2,796
Change: latest year	+1,518	+1,461	+111
% change: latest year	+5%	+5%	+4%

Source: Home Office

31 Home Office, 'Immigration Statistics October to December 2013,' February 2014.

One notable feature of the UK system is there is no time limit on how long an individual can be detained. The New Asylum Model introduced in 2007 stipulates only that "detention must be used sparingly and for the shortest period necessary". In contrast, there is a limit of just 45 days in France, eight months in Belgium and 18 months in Hungary, for example. Most EU member states have signed up to the recast Returns Directive which sets a ceiling of 18 months for detention but the UK is opted out (see previous chapter).

According to the most recent statistics in the year ending March 2014, 2,275 people had spent more than four months in detention.[32] Of these 214 had been detained for more than a year including 39 who had spent more than two years in detention (the total number of long term detainees is even higher as these figures exclude migration cases detained in prison).

Detention is used in two main ways within the asylum system. First, asylum seekers who have had their application for refugee status refused can be detained subject to removal. An asylum seeker can be detained even when the appeals process is still ongoing which can result in a considerable period of detainment.

Second, the government uses a Detained Fast Track (DFT) route. This is supposed to be for straightforward cases where a decision can be made 'quickly', although the Home Office is no longer committed to a 21 day target. The refusal rate for those who go through DFT is 99 per cent as opposed to 72 per cent for normal asylum routes.

The next section considers these two forms of detention in more detail.

Detained Fast Track

The Detained Fast Track system was first introduced in 2003 for male asylum seekers and extended to women in 2005. DFT has faced particular criticism because it is used to detain asylum seekers whose cases have yet to be determined. This can include individuals who have suffered torture or abuse even though this runs counter to international best practice guidelines.

For example, in 2012, John Vine, the Independent Chief Inspector of Borders and Immigration, criticised the detention of victims of torture and other vulnerable asylum seekers through DFT, along with the amount of time asylum seekers were spending in detention.[33] Vine found that nearly a third of cases he inspected were wrongly allocated to DFT and the detainees

32 Home Office, 'Immigration statistics, January to March 2014,' 22 May 2014
33 Independent Chief Inspector of Borders and Immigration, 'Asylum: A thematic inspection of the detained fast track', February 2012.

subsequently released. The United Nations High Commissioner for Refugees (UNHCR) has also stated that "inappropriate cases are being routed to and remaining within the Detained Fast Track" and criticised the short time frame for gathering evidence on a claim.[34] The UNHCR found of those cases released from DFT the majority were referred to organisations caring for victims of torture.[35]

In his report, the Independent Chief Inspector of Borders and Immigration pointed to the reliance on the initial screening process to determine whether an asylum seeker should be detained as a flaw in the system. Screening is not tailored to capture information that could fully determine whether someone was suitable for DFT. While safeguards were in place once people had been detained, there remained a particular risk that the victims of torture or trafficking could be allocated to DFT contrary to the government's own policy.

Most asylum seekers on DFT are detained before they have had a chance to seek legal advice and prepare their case. Many asylum claims are complex and require time to gather evidence. But asylum seekers who have had traumatic experiences – and those suffering from mental health issues in particular – may need time to establish trust and confidence. In addition, detained asylum seekers do not have the right to choose their legal representation but are allocated a duty representative by the Home Office.

The fast pace of DFT limits the ability of asylum seekers to prepare their evidence. The campaign group Detention Action found that until recently many asylum seekers only meet their legal representative on the day of their hearing itself. This clearly makes preparation difficult and there is little opportunity to build trust between the asylum seekers and their representative. There is also a lack of legal advice available for appeals: according to Detention Action, in 2012, 59 per cent of asylum seekers in Harmondsworth, the main male DFT centre, were unrepresented at the first appeal.[36] Only one per cent of these asylum seekers won their appeals, compared to 20 per cent of those who had legal representation.

The government in July 2014 suffered a substantial defeat in the High Court around the provision of legal advice. The Courts ruled that "the DFT as operated carries an unacceptably high risk of unfairness" and was on the verge of being unlawful because of the lack of time available for lawyers to properly prepare with their clients.[37] The Judge also criticised other aspects

34 United Nations High Commission for Refugees, 'Quality Initiative project: fifth report to the Minister', March 2008.
35 R Shilling, 'Your asylum procedure is too fast and not fair', Open Democracy, 23rd February 2012.
36 E Keytsman (ed), 'Fact Sheet: The Detention of Migrants in the UK,' European Programme for Integration and Migration (EPIM), January 2014.
37 www.detentionaction.org.uk/wordpress/wp-content/uploads/2014/07/Detention-Action-DFT-Full-Judgement.pdf

of the system, for example that the protections afforded victims of rape or torture are insufficient, but made clear that the proper availability of legal advice should help remedy these problems in the future.

There is no doubt that DFT is a crude and – for some asylum seekers at least – potentially unfair mechanism. However, in the current political climate, DFT continues to play a role in terms of ensuring public support for the wider asylum system. Moreover, as the Independent Chief Inspector has found the overall quality of decision making is high with 93 per cent of the DFT decisions to refuse he examined upheld by the courts.

In the long term, the UK should seek to reduce its reliance on DFT through the greater use of the alternatives discussed below. But the number of DFT cases is likely to remain significant in the near term. In this context, there are a number of ways that the government can seek to make the DFT system fairer and more humane:

- The Home Office has responded to the High Court judgement by undertaking to provide four working days between allocating a detained asylum seeker a solicitor and the interview. Campaign groups report that at present this commitment is being fulfilled. The Home Office should acknowledge that proper access to legal advice is a crucial element for the DFT to function effectively and keep the provision of legal advice under review.
- Improve the screening process and seek to ensure that trauma victims are not placed in DFT. In addition, the Home Office needs to be more flexible around taking cases out of DFT when new evidence comes to light.
- Implement fully the recommendation of the Home Affairs Committee that the government fully audits its DFT performance each year. This should form part of an overall commitment to improve the transparency of the system by making available to public scrutiny full cost and operational performance data.

Removals detention

The government has been able to detain failed asylum seekers (and migrants more widely) since the 1971 Immigration Act. The circumstances in which they can be detained are now framed within a large body of case law.[38] The Home Office states that detention should only be used where there is a reasonable prospect of removal, alongside the commitment outlined at the beginning of

38 For example, the Hardial Singh principles sets out the accepted common law limitations on the power of detention

this chapter to use detention for the shortest period necessary. [39]

However, there is frequent criticism that the Home Office uses detention as the default option in removals cases. For example, the Independent Chief Inspector observed (for ex-offenders) in October 2011 that, despite the presumption of liberty written into policy guidelines, the then UKBA was operating as though "a decision to deport equals a decision to detain." He added that: "The default position is to identify factors that justify detention rather than considering each case in accordance with the published policy."[40]

Once detained, asylum seekers have only a limited ability to appeal. They can apply for bail to the First Tier Tribunal of the Immigration and Asylum Chamber which considers whether detention is reasonable, but does not review whether it is lawful. This hearing must be arranged within a few days of the application for bail. In addition, an application can be made to the High Court that detention is unlawful, a process which can take many months and normally the applicant will remain in detention during this period.

Critics argue that the UK's wide use of removals detention is counter-productive. The UK has one of the lowest rates of assisted return in Europe at just 16 per cent, despite offering various incentives to depart voluntarily including money. In contrast, where migrants are provided with welfare support and legal advice on the limited options available, more choose to return. In Sweden, for example, over 80 per cent of failed asylum seekers return independently.[41]

The likelihood of removal also declines over time. One report into long term detainees found that only a third ultimately were deported.[42] Between 2007 and 2010, the overall number of enforced removals and notified voluntary returns declined by six per cent while the number of migrants detained at any one time increased by 38 per cent. This trend appears to have continued: the latest figures show that in the year ending March 2014 there were 4,416 enforced removals of people who had sought asylum at some stage, down 12 per cent from the previous year (5,011).[43] However, as Table 2 on page 25 shows, the numbers entering detention have continued to rise.

The widespread use of detention also comes at considerable cost. The average cost per person per night in detention is around £130, or over £47,000 per year. The Home Office paid out £12 million in 2009-10 in compensation and

39 pointofnoreturn.eu/wp-content/uploads/2013/12/PONR_Factsheet_UK_HR.pdf
40 Independent Chief Inspector of UKBA, 'A thematic inspection of how the UK Border Agency manages foreign national prisoners', 2011.
41 J Phelps, 'Is there an alternative to locking up migrants in the UK', Open Democracy, 15th April 2013.
42 Detention Action, 'No Return No Release No Reason', September 2010.
43 O Hawkins, 'Asylum Statistics', House of Commons, 6 May 2014.

legal costs arising from unlawful detention actions.[44] Overall, an analysis by Matrix Evidence suggests the use of detention for those migrants who are ultimately released costs around £75 million a year.[45]

Some recourse to detention is always going to be necessary in high risk cases. However, the government is employing detention too widely and in some cases for too long. The Coalition government has taken one major step away from the blanket use of detention through its commitment to end detention for children. The next government should seek to build on this achievement by further reducing its use.

First, the government should introduce a maximum detention limit. A limit of 18 months would still be long compared with most European countries. Beyond this point there appears little likelihood of removal in any case. The reluctance to introduce a time limit appears in part due to concern about releasing convicted foreign criminals into the community at the end of their sentences. The government should work towards employing alternative ways of monitoring those it perceives as a risk, as it has done for some terrorist suspects.

Second, the numbers being detained could be reduced by better guidance. At the moment, the decision to detain is based around the risks of re-offending and/or absconding. However, there is no detailed assessment of whether it is likely to prove practical to deport a migrant within a reasonable period.[46] Where there is no likelihood of quick return, the Home Office should seek to employ alternatives.

Alternatives to detention

To successfully reduce detention rates, the government needs to explore alternatives in more detail. At the moment, the Home Office appears resistant to non-detaining methods of monitoring failed asylum seekers (and other migrants) before removal due to concerns over abscondment rates. There is a lack of reliable data on actual rates with the Home Office's own research suggesting that rates even among those considered high risk could be low at around just ten per cent.[47]

In addition, the UK has so far had an unhappy experience of trialling community-based alternatives to detention. There have been two failed pilots targeted at families – in Millbank, Kent and Glasgow – which were

44 Detention Action, 'Parliamentary Briefing: Indefinite Detention – a Waste of Lives and Money', 2011.
45 Matrix Evidence, 'An economic analysis of alternatives to long term detention', September 2012.
46 Detention Action, 'The Financial Waste of Long-term Detention – Briefing', 2013.
47 Bail for Immigration Detainees, 'The liberty deficit: Long term detention and bail decision making', 2012.

abandoned with low success rates. However, the core of the problem appears to have been in the design and management of the projects rather than any inherent flaw with non-detaining alternatives. In particular, the Millbank project included families which could not be deported, hence undermining the overall rate of return.[48]

Moreover, there are many examples elsewhere of countries successfully reducing reliance on detention. In particular, since 2006, the Australian government – building on an approach developed in Sweden – moved away from mandatory detention to a community based case management system for all irregular migrants.[49] Asylum seekers are released into the community where they receive legal advice, welfare support, housing and the time to consider a full array of options for their future. One major assessment found that less than six per cent absconded from the programme.[50] More than two-thirds of those who did not receive permission to stay voluntarily departed. Overall, the new programme is estimated to have saved nearly 70 per cent compared to detention and a similar amount in reduced cost of removals.

Other countries have adopted a similar approach. For example, Belgium has ended detention for families, housing those facing deportation in 'returns houses' with access to advice on welfare needs and returns options. Hong Kong has begun releasing vulnerable migrants including torture survivors and asylum seekers to the care of a case management system managed by a state funded NGO. These countries have reported high levels of compliance. Hong Kong, for example, achieves a 97 per cent compliance rate with asylum seekers or torture claimants in the community, and in Belgium, the pilot working with families facing removal had an 82 per cent compliance rate.

The next government should undertake a well-designed pilot of community based supervision and support along the lines of the Australian example. If successful, the Home Office should seek to make this approach available for the majority of failed asylum seekers. For more high risk cases, the Home Office should work more closely with the probation services to monitor cases and manage risk.

48 Children's Society, 'Alternative to detention project a missed opportunity', 2009.
49 The current government is making greater use of detention but also continues to employ programmes such as Community Detention. https://www.immi.gov.au/media/fact-sheets/83acommunity-detention.htm#care
50 International Detention Coalition, 'Case management as an alternative to immigration: The Australian experience', 2009.

The 'unreturnables'

One specific challenge is those failed asylum seekers who cannot be returned to their home country. The government may be unable to return failed asylum seekers (and migrants more widely) for a number of reasons. These range from the refusal of the destination to provide travel and identity documents to safety concerns. For example, there is currently no Iranian embassy in London to provide documents and that country has in any case routinely refused to provide papers. Many other countries will not accept forced removals. Similarly, the UK will not return failed asylum seekers to Syria at present due to the risk to personal safety in that country.

While there has been no systematic survey of 'unreturnables' in the UK, it appears they make up a significant number of long term detainees. For example, the Independent Chief Inspector of Borders and Immigration recently examined a group of 27 foreign offenders finding they had been detained for an average of 18 months beyond the end of their sentence and in one case for three and a half years.[51] The Independent Chief Inspector has called for an urgent review of all detainee cases where travel documents are a barrier to returns, noting that the Home Office has no idea of the scale of the problem.

Even if they are not in detention, this effectively stateless existence still poses great difficulties for the failed asylum seeker as they have virtually no rights. The UK has in the past sought to deal with this problem by granting individuals temporary leave to remain which can be revoked if the situation preventing return changes. There are currently an estimated 3,000 failed asylum seekers who cannot be returned home.[52] This group is unable to work subsisting only on the very low Section 4 benefit (see next chapter). In 2013, however, the government introduced a stateless determination procedure. Successful applicants are granted 30 months' leave to remain with the right to claim benefits, access the labour market and receive NHS care. They become eligible for indefinite leave to remain after 5 years. Thereafter they should be eligible to apply for naturalisation as British citizens thereby providing a final route out of statelessness.[53]

51 A Travis, 'Illegal immigrants and foreign offenders 'left in detention for years', The Guardian, 27th March 2014.
52 Lord Roberts of Llandudno commenting during the Immigration Bill Committee (5th Day), March, 2014.
53 www.asylumaid.org.uk/wp-content/uploads/2013/08/STATELESSNESS_BRIEF.pdf

4 – Destitution and work

One of the government's main responses to the surge of asylum seekers in the 1990s was steadily to reduce financial support for new arrivals and increase control over their living conditions. To paraphrase Theresa May (who was speaking about illegal migrants), the government has sought to create a 'hostile environment' for asylum seekers to discourage a flood of new applicants.

There are currently two kinds of financial support provided to asylum seekers. Section 95 is available for those pursuing a claim, while Section 4 is paid to those who have exhausted a claim or as an emergency payment for people granted leave to remain while their details, such as national insurance numbers, are being processed.

Section 95 is set at a lower level than standard welfare payments. It was introduced in the 1999 Immigration and Asylum Act by the then Labour Government. Up until that point, asylum applicants received mainstream benefits at 90 per cent of the standard rate. The Act reduced that level to 70 per cent. The Home Office justified the reduction by saying it took into account the fact that asylum applicants have access to fully furnished and rent-free accommodation with utilities (such as electricity, gas and water) included.

Since 2008, however, the link with income support has been broken entirely and Section 95 is now set annually at an 'appropriate level' by the Home Office. This has led to a position where the government has chosen not to increase the level of benefits for three years. Announcing the freeze in June 2013, the then immigration minister Mark Harper insisted that: "Those rates of financial support are adequate for the purpose set by Parliament, which is to meet the essential living needs of those asylum seekers and their dependants who would otherwise be destitute."[54]

It should be noted, however, that income support is supposed to reference

54 M Harper MP, 'Written Statement to Parliament – Rates of Asylum Support', June 2013.

the basic needs of an individual. Its level has received substantial increases in recent years, for example rising 5.2 per cent in 2012-23. As a result, Section 95 has fallen further behind and now stands at just 50 per cent of the level of income support for a lone parent (£43.94 a week), 52 per cent for a single person with no dependants (£36.62) and 65 per cent for a couple (£75.52). The government's justification for such low rates feels especially thin when the quality of asylum seekers accommodation has come under intense criticism from the National Audit Office.[55]

To put this in context, Section 95 is now paid at a level of around 30 per cent of male median earnings, which is half the 60 per cent level normally used as a marker of poverty. Surveys of those on section 95 support, have found that half had experienced hunger as a result of the low levels of support; 70 per cent were unable to buy essential toiletries and 94 per cent were unable to buy clothing.[56]

Section 4 support

Section 4 support is even more miserly. The benefit is both cashless and set at a lower rate than Section 95 – a single adult receives just £35.39 per week. A lone parent receives a sum equivalent to just 40 per cent of income support, while the figure is 51 per cent for pregnant women. This sum is loaded on to a pre-paid 'Azure' card which can only be used in designated shops. Recipients are only allowed to carry over £5 to the following week making it impossible to save for more expensive items such as clothes and shoes.

The items that the card can be used to buy are also heavily restricted with witnesses telling the Home Affairs Committee that they had been prevented from purchasing socks, toiletries, orange juice, a lavatory brush and even condoms.[57] Section 4 recipients are unable to pay for most repairs, travel via public transport or purchase food in markets. Refugee Action found that 82 per cent of Section 4 recipients were unable to buy fresh fruit and vegetables and more than 90 per cent regularly missed a meal.[58]

The government has justified the separate Section 4 system on the basis that it meets essential living needs and will only be provided for a short time as it is intended either for those about to be deported or as an emergency payment. However, as the Children's Society has shown, over half of section 4 support

55 R Syal, 'G4S and Serco failing to house asylum seekers properly, says watchdog', The Guardian, 9th January 2014.
56 www.childrenssociety.org.uk/sites/default/files/tcs/Policy/asylum-inquiry/still_human_still_here.pdf
57 House of Commons Home Affairs Committee, 'Asylum 7th report of the session, 2013 – 14, Vol 1', October 2013.
58 Refugee Action, 'Liberal Democrat Policy Consultation: Immigration, Asylum and Identity Consultation Paper 115 - Refugee Action Response', October 2013.

recipients have been receiving it for more than two years.[59]

But the level of support is not the only problem facing asylum seekers. As the Home Affairs Committee reported, administrative failings meant that it was taking six to eight weeks and sometimes up to four months, rather the guideline of four weeks, to move into the mainstream benefits system leaving many destitute. The British Red Cross, has reported that they assisted around 6,000 destitute clients a year with more than half seeking help due to administrative failings or delays within the asylum system

Reforming support

The political difficulties that the government would face in changing this system should not be underestimated. As we have already seen, asylum seekers are widely distrusted by the public. Any government that moved to make the support system more generous would risk criticism for apparently making it more attractive for 'bogus' asylum seekers to come to Britain. In early 2014 the Daily Mail, for example, wrote a highly negative article claiming the government was spending £100,000 a day on support for failed asylum seekers while they waited to leave the country.[60]

However, there is no evidence that the current low levels of financial support mean refused asylum seekers are more likely to return home. Home Office research found that asylum seekers have limited control of where they apply for asylum and little knowledge of welfare entitlements.[61] Similarly, an OECD review concluded that policies on support levels, access to work and healthcare, did not materially affect the choice of where to apply for asylum (although it did find that policies to restrict access to territory did have some impact).[62] In the UK, asylum applications actually rose following the introduction of the new system.

Moreover, the Home Office recently suffered a judicial defeat over its decision to freeze support levels. The Judge, Justice Popplewell, ruled the Home Office had "failed to take reasonable steps to gather sufficient information to enable her to make a rational judgment in setting the asylum support rates for 2013-2014," and ordered a new rate to be agreed by August 2014.[63]

The government should therefore be able to make the case for restoring the link between Section 95 and income support. The fact that the level of

59 House of Commons Home Affairs Committee, 'Asylum 7th report of the session, 2013 – 14, Vol 1', October 2013.
60 www.dailymail.co.uk/news/article-2539082/Asylum-seekers-cost-taxpayer-100-000-DAY-2-000-refugees-no-right-remain-Britain-claiming-handouts-free-housing-year.html
61 V Robinson, 'Understanding the decision making of asylum seekers', University of Wales, July 2002
62 T Hatton, 'Seeking Asylum: Trends and policies in the OECD', Centre for Economic Policy Research, 2011.
63 www.theguardian.com/politics/2014/apr/09/asylum-seeker-subsistence-payments-defeat-government-theresa-may

Section 95 is solely at the discretion of the Home Office makes it politically easier to take this action as it does not require finding space in the busy legislative calendar. In the longer term, it would be preferable to remove the government's arbitrary control by asking an independent commission, along the line of the Migration Advisory Committee or the Low Pay Commission, to annually review Section 95 and set it at an appropriate level.

There are also strong efficiency grounds for abolishing Section 4. The government is operating an entire benefits system, with all the attendant bureaucracy for less than 3,000 people. The campaign group Still Human, Still Here has estimated that the government could save up to £4 million by abolishing Section 4 and moving recipients onto section 95.[64] Unfortunately, it will require primary legislation to abolish Section 4 so this action would probably need to await the next immigration or asylum bill. In the meantime, the government should bring Section 4 payments in line with those made under Section 95.

Work

The vast majority of asylum seekers are unable to improve their financial position by finding work. Asylum applicants who have been waiting for a decision for over 12 months can apply for a Work Permit. However, the employment opportunities are restricted and include recognised areas where workers are in 'short supply' and mostly require a degree level qualification.

The government justified curtailing the right to work because of the supposed pull factor for asylum claims. However, there is little evidence that work rights have any impact on the level of asylum claims. Eleven European countries allow asylum seekers to work six months or less after making their asylum application. But only Sweden among this group receives a higher number of asylum applications than the UK. In Austria, Greece, Portugal, Finland and Sweden asylum seekers are permitted to work after four months while Italy, Spain, Netherlands, and Cyprus grant a work permit after six months. A number of European countries appear to be moving in the direction of permitting asylum seekers to work. Denmark, for examples, has recently announced that it will allow asylum seekers to work after six months and Germany is proposing reducing the time limit to three months.

There are obvious short run fiscal benefits in ensuring asylum seekers are working rather than receiving benefits. However, it is the longer term impact that is likely to be more significant. Work is key to economic and social

64 House of Commons Home Affairs Committee, '7th report – Asylum', 11th October 2013.

integration. The longer that a person is out of the labour market, the harder it is to get back in. An extended period outside the labour market can lead to de-skilling as well as bring on mental and sometimes physical illnesses. It makes it much more likely that the approximately 50 per cent of asylum seekers who are permitted to stay in some form (including those granted Leave to Remain as well as refugee status) will become reliant on benefits in the future.

The government should re-introduce a right to work for asylum seekers after six months. Six months remains the main political target for processing asylum applications. It therefore seems fair that those asylum seekers who have to wait longer should be able to improve their financial situation by working. Given the six month processing target, it appears highly unlikely that such a reform would lead to an increase in asylum applications, especially as many neighbouring countries continue to offer more generous access to the labour market.

5 – Women and children

As we saw in Chapter 1, the foundations of the asylum system can be found in the immediate aftermath of the Second World War. In countries such as the UK, the main focus of the evolving asylum policy was male political activists facing state persecution. To the extent that women and children were covered by the Conventions, they were viewed as passive dependents.

Yet in recent decades an increasing number of women, and indeed unaccompanied children, have sought asylum. While some are seeking to escape state oppression or conflict, others are fleeing family or community persecution, for example in the form of forced marriage or trafficking. Women asylum seekers are also much more likely to have endured rape or other forms of sexual violence.

The evidence suggests that the UK's asylum system is as yet ill-equipped to deal with female claims for asylum. UK Courts have interpreted 'persecution' as the combination of serious harm to the applicant with the failure of state protection. This means claims of asylum based on persecution by non-state actors are more difficult to establish as they require the claimant to prove both tests separately. Case handlers sometimes struggle to gather the necessary information for family or community persecution cases.

Campaign groups also point to a frequent problem that many women fail to mention rape or other abuse in their initial interview out of fear or embarrassment.[65] This failure is often subsequently used to discredit the asylum case. In addition, the legal aid system is structured so that it does not encourage lawyers to take up the most complex cases, which disproportionately impacts female asylum seekers.

This is borne out in the statistics. The Scottish Refugee Council (SRC) found that 49 per cent of women had waited more than two years for a decision compared to 22 per cent of men.[66] The SRC cited a number of reasons for this disparity including poor quality decision making, weak credibility assessments

65 www.newstatesman.com/politics/2012/10/out-frying-pan-how-britain-lets-down-its-most-vulnerable-migrants
66 House of Commons Home Affairs Committee, 'Asylum, 7th report of the session 2013-14', 8th October 2013.

and lengthy appeals processes in women's cases. Campaign group Asylum Aid also found that nearly half of the initial refusals of asylum it examined were successfully appealed by female applicants.[67] According to Home Office Statistics, in 2013 27 per cent of appeals from female asylum seekers were allowed compared with 23 per cent for men.[68]

The immigration directorate has had guidelines since 2004 which are supposed to take into account the particular needs and complexities of female asylum cases. However, the fact that successful appeals continue to run at a higher rate for women suggest further improvement needs to be made. The asylum section should therefore:

- Commission and implement an independent review on how to deal more effectively and humanely with women's cases. In particular, it should make sure that properly trained female case workers are available to deal with female asylum seekers.
- Ensure that the legal aid provisions work in favour of encouraging lawyers towards more complex cases, especially women.

Pregnancy

Campaign groups have also highlighted problems with the treatment of pregnant women. As a recent report pointed out, the government has only acknowledged pregnancy as a limited health need unless there are major complications.[69] As a consequence, the Home Office makes little allowance for pregnancy when dispersing pregnant asylum seekers.

Until 2012, there was no specified time limit for dispersal during pregnancy and women could be moved just two weeks after giving birth. This approach has now been modified so that women are not supposed to be dispersed for four weeks either side of delivery. The new guidance also notes that dispersal should not result in disruption to ante- and post-natal tests.

However, the Home Office has made no formal commitment not to disperse pregnant women and new mothers. Furthermore, this improved guidance still falls short of the six weeks of post-natal care and tests that are standard medical practice. It also makes no reference to mental or physical health issues that can arise during pregnancy, let alone the need for social support through pregnancy and labour. In addition, there is only limited extra financial allowance made in terms of meeting nutritional and other needs, such as extra transport provision for medical appointments.

67 Asylum Aid: 'Unsustainable: The quality of initial decision making in women's asylum claims', 2011.
68 Home Office, 'Immigration statistics: October to December 2013'.
69 R Feldman, 'When Maternity doesn't matter: Dispersing pregnant women seeking asylum', Refugee Council, January 2013.

The Home Office should amend its guidance to ensure that pregnant women are not dispersed. While there will be some additional costs to the Home Office, the numbers of pregnant women in the asylum system are small. One estimate is that in 2011 there were around 500 pregnant women seeking asylum and a further 125 failed asylum seekers continuing to receive Section 4 support.[70] In addition, there may actually be wider savings across public services since dispersal can result in disrupted maternity services leading to repeated tests. The reduced well-being of dispersed women may also lead to higher health costs. Pregnant asylum seekers should continue to reside where they have access to their GP and maternity services and, hopefully, a social support network. The government should also review the financial provision available to pregnant asylum seekers and increase the level of that support to ensure it is adequate.

Child asylum seekers

The original refugee convention did not foresee substantial numbers of unaccompanied minors claiming asylum. For example, in 2013 there were 1,174 asylum applications from unaccompanied children child asylum seekers while there were a further 324 arrivals whose age was in dispute.[71] At the end of March 2013, there were 1,860 unaccompanied asylum children in care, according to the Department of Education. This represents close to ten per cent of all children in care in the UK with the majority coming from Afghanistan, Iran, Eritrea or Somalia.[72]

In 2013, some 29 per cent of unaccompanied children were granted refugee status compared with 32 per cent of adults. [73] In total there were 825 initial decisions on asylum claims for unaccompanied minors aged 17 or under. Of these, 177 were refused, 238 were granted refugee status and four received Humanitarian Protection. The remainder, 388, were granted Discretionary Leave to Remain (DLR).

International and domestic law prevents the UK from returning children to countries of origin if there are not adequate reception facilities. However, this requirement does not apply once the child reaches adult age. The widespread employment of DLR is, therefore, designed to leave the status of child asylum seekers in doubt until they reach an age at which they can be deported.

DLR lasts for three years, or until the child reaches 17 and a half. When it

70 R Feldman, 'When Maternity Doesn't Matter: Dispersing Pregnant Women Seeking Asylum', Refugee Council, January 2013.
71 Home Office, 'Immigration statistics, October-December 2013', February 2014.
72 L Brownlees and N Finch, 'Levelling the playing field', UNICEF, 2010
73 Home Office, 'Immigration statistics, October-December 2013', February 2014.

expires, there is a right to apply for an extension. However, in practice this is rarely granted – between 2005 and 2010 just three per cent of applications were successful.[74] Hence, the overwhelming majority of those granted DLR face the possibility of deportation once they reach 18 to communities that they have not seen for many years, and in many cases were seeking to escape from.

There were 100 former unaccompanied minors who were forcibly removed from the UK in 2011. The UK authorities do not monitor the experience of these young adults when they are removed. A recent research project into Afghan returnees found that many did not find safety on their return.[75] Others faced difficulties reintegrating, including suffering low levels of employment and poor mental health. Not surprisingly, many seek to leave their country of return.

The Home Office should seek to provide better support for deported young adults to improve their prospects for reintegration into their old communities. While by definition much of this will be pre-return, the Home Office in partnership with the Department for International Development should seek to develop post-return support through third party organisations. This two pronged approach would give the greatest chance of success and reduce the chances that young adult deportees will seek to leave their home country again.

The government should also seek to improve the experience of children when they apply for asylum. The UK has made some attempts to make the asylum system child friendly. For example, it takes a different approach to processing applications for unaccompanied children who are dealt with by specialist case workers. However, campaign groups argue that Home Office policy and procedures do not take sufficient account of children's unique needs. As the Children's Society states: "Their fundamental difference to adults should make a major, not token, difference to how they are treated within the asylum process. Far more needs to be done to embed an understanding of children and young people's developmental stages into the current process."[76]

The UN convention on the rights of the child recommends specific help for children in the system through a policy of statutory guardianship. The UK should follow the lead of a number of countries including Canada, Finland, Norway, France, Switzerland, and the Netherlands and set up a system of independent representation to safeguard interests of the child. Scotland has

74 Refugee Children's Consortium, 'Briefing on Access to Higher Education for those with DLR', 2011.
75 C Gladwell and H Elwyn, 'Broken futures: Young Afghans asylum seekers in the UK and their country of origin', 2012.
76 Children's Society, 'Into the unknown: Children's journeys through the asylum process', 2012.

run a pilot project, the Scottish Guardianship Service, along these lines.[77] This legal advocate should be one person with parental responsibility who can help children navigate the immigration system, ensure their welfare needs are met and instruct solicitors in their best interests.

77 H Carwiley and R Kohti, 'She endures with me: An evaluation of the Scottish Guardianship Pilot, Scottish Refugee Council/ Aberlour Childcrea Trust', April 2013.