



**QUALITY INTEGRATION PROJECT**  
KEY OBSERVATIONS AND RECOMMENDATIONS

August 2010

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

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## 1. INTRODUCTION AND BACKGROUND TO CURRENT AUDIT

### 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 under the auspices of the Quality Initiative Project. Over a five year period through to 2009, UNHCR issued six confidential reports to the Minister for Borders and Immigration. These reports detailed UNHCR's observations and put forward recommendations as to how the quality of first instance asylum decision-making could be improved in the United Kingdom. The majority of the recommendations made were accepted by the Minister in a series of published responses. The Quality Integration Project, established in 2010 as a follow on to the Quality Initiative Project, will work to implement existing recommendations and to engage in quality assurance matters across the UK asylum process.

This report is the first report of the Quality Integration Project. It covers January to March 2010 and presents observations and recommendations arising from an audit of first instance asylum decisions made in the Detained Fast Track (DFT) process at Yarl's Wood and Harmondsworth Immigration Removal Centres. The report reflects on the findings and recommendations of UNHCR's Fifth Report of the Quality Initiative Project, which also considered asylum decisions made in the DFT Immigration Removal Centres from late 2007 to December 2008.

### Background to current audit

UNHCR has consistently reiterated the long held position that the detention of asylum seekers is inherently undesirable<sup>1</sup>, that detention should be considered only as a last resort, and that accelerated procedures should only be considered acceptable where adequate safeguards are in place to guarantee fairness of procedure and quality of decision making.<sup>2</sup>

With this position in mind, UNHCR accepted a 2005 invitation from the UK Minister of State for Immigration, Citizenship and Nationality to audit the quality of first instance decision making in the DFT. The findings and recommendations of this more than year-long audit of 112 DFT decisions were presented to the Minister in the UNHCR's Fifth Report in March 2008.<sup>3</sup>

Given the concerns raised in the report and further to the Minister's response in December 2008, UNHCR and UKBA agreed it would be beneficial to re-visit the quality of decision making in the DFT with a view to ensuring relevant implementation of recommendations.

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<sup>1</sup> See UNHCR ExCom Conclusion No. 44 (XXXVII) and UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers, February 1999.

<sup>2</sup> See for example: UNHCR 18 March 2002 Comments on "Secure Borders, Safe Haven" UK White Paper on Asylum and Immigration; UNHCR 18 September 2002 Briefing On Nationality, Immigration and Asylum Bill; UNHCR Submission to The Conservative Party National and International Security Policy Group, March 2007; UNHCR Comments to the Initial Consultation on Simplifying Immigration Law, August 2007; Improving Asylum Procedures Comparative Analysis and Recommendations for Law and Practice: A UNHCR research project on the application of key provisions of the Asylum Procedures Directive in selected Member States, March 2010.

<sup>3</sup><http://webarchive.nationalarchives.gov.uk/20100503160445/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcreports/>

Subsequently, between January and March 2010, UNHCR undertook an audit of the quality of decisions made in both Harmondsworth and Yarl's Wood Immigration Removal Centres. The audit once again examined both the quality of first-instance asylum decisions within the DFT as well as the ways in which DFT procedures impact upon quality of decision making. In all, 30 first-instance decisions were randomly sampled.

Throughout the course of the current audit, UNHCR liaised closely with the Quality Audit Team, visiting the Immigration Removal Centres together in January 2010 and sharing observations of good practice as well as areas of clear difficulty for DFT Case Owners. This was a welcome engagement that had not been possible during the previous audit when the QAT did not yet exist. UNHCR hopes to continue to work closely with the Quality Audit Team to implement the recommendations of the current audit.

## **2. QUALITY OF DECISION MAKING IN DFT CLAIMS**

UNHCR's assessment of DFT decision quality noted some areas of improvement since its previous audit. However, the greater majority of the concerns highlighted in UNHCR's Fifth Report remained prevalent.

### **Assessing Credibility and Establishing the Facts of the Claim**

While it was positive to observe DFT Case Owners engage more closely with the individual material elements of asylum claims, the appropriate methodology for assessing the credibility of each material fact in turn was still not always followed. Particularly concerning is DFT Case Owners' increasing emphasis and stress on factors UNHCR does not consider relevant to the assessment of credibility. These factors are often given excessive or inappropriate emphasis, demonstrated in particular through the inappropriate use of Section 8 behaviours to back up findings that an applicant's credibility had been 'damaged'.<sup>4</sup> The audit also highlights instances of DFT Case Owners putting an inappropriately heavy burden onto DFT applicants to prove their claim, by for example, failing to appreciate the burden on them as the decision maker to pursue and evaluate evidence. Decisions also record reasoning that suggests unreasonable expectations of evidence provision given the lower standard of proof in asylum claims; a particularly concerning observation for a caseload of individuals who are required to put forward their claims in a detained and accelerated decision making environment.

### **Application of Refugee Convention Criteria**

When applying Refugee Convention criteria and interpreting refugee law concepts, there were some observations of improvement, for example fewer Case Owners fail to appreciate or recognise which bodies or agents can provide protection from persecution. There was also improved consideration of the concept of Internal Flight Alternative in so far as a greater proportion of DFT Case Owners appreciated the need to identify a suggested area of relocation in order to make a proper analysis.

However, for the most part, concerns with the application of Refugee Convention criteria remain. In its report, UNHCR highlights that over half of the decisions reviewed employed what UKBA refers to as 'in the alternative' arguments, also known as considering the claim 'at its highest'. This approach to reasoning is adopted when the Case Owner rejects the

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<sup>4</sup> Asylum and Immigration (Treatment of Claimants, etc) Act 2004

credibility of the applicant's claim but goes on to argue that the overall claim would not engage the Refugee Convention even if accepted as true. UNHCR observes this approach to be employed in a fashion that leads to unwieldy and lengthy 'alternative' arguments that do not focus on, or engage sufficiently with, the case-specific facts when analysing Convention criteria.

UNHCR continued to observe poor consideration of whether a claim engages a Convention Reason or problematic reasoning when doing so. This was particularly accentuated in women's claims and in relation to the identification of the Convention Reason of Particular Social Group. When assessing Case Owners' analysis of 'reasonable likelihood of persecution', UNHCR observed a fundamental lack of analysis as to whether the harm feared constitutes persecution. Further, there were indications of a lack of understanding of the concept of subjective fear and how it should be assessed in relation to objective country information. A variety of common errors in the consideration and assessment of the concept of 'sufficient protection' indicate a general lack of understanding of what can constitute sufficient protection. This was most often due to insufficient engagement with the individual characteristics and circumstances of the applicant, selective use of objective country information, or the quoting of country information that does not back up the reasoning provided to make the finding reached. Errors in analysis of any possible Internal Flight Alternative were similar in that they indicated a failure to assess whether relocation would remove the specific threat of harm for the particular applicant or whether it would be reasonable to expect the applicant to relocate given his or her personal circumstances (an observation particularly concerning in women's claims). UNHCR considers these to be fundamental errors.

While UNHCR observed overall improvements to the structure of decisions (with material facts being established before Convention criteria), more nuanced structural concerns, such as the skipping over of the assessment of whether the harm feared constitutes persecution, suggests Case Owners would benefit from assistance with structural matters.

- **UNHCR reiterates recommendations 10 and 11 of its Fifth Report; that only skilled and experienced Case Owners should work within the DFT and that DFT Case Owners should be rotated off decision-making duties in order to expose them to a fuller range of cases and other areas of the 'Asylum business'.**
- **UNHCR reiterates recommendation 12 of its Fifth Report and calls for the NAM+ Quality and Learning Team to ensure that auditing and training of DFT Case Owners continues to address both previous and current DFT findings, including:**
  - **Inappropriate consideration and application of section 8 of the 2004 Act**
  - **An understanding of the appropriate burden of proof in an asylum claim alongside a clearer understanding of the purpose and use of any and all types of evidence put forward by an asylum applicant**
  - **Appropriate and pro-active use of country of origin information**

#### **Treatment of medical evidence in DFT**

UNHCR's report highlights the positive finding that, of the 30 cases examined for the current audit, there were no examples of Case Owners making explicit medical judgements they are not qualified to make. However, there are still examples of reasoning

that demonstrate Case Owner have a limited understanding of how medical evidence can and should be used when assessing an asylum claim. For example, medical evidence is often considered as ‘stand alone’ and not factored alongside all other pieces of evidence that go towards establishing a material fact.

### 3. DFT PROCEDURES IMPACTING ON DECISION QUALITY

As with UNHCR’s Fifth Report, the current audit also examines the use of procedural safeguards in the DFT. These safeguards, including the screening and routing of asylum applicants into the DFT and procedures for flexible timescales and the removal of unsuitable cases from the DFT, aim to ensure that the speed of the DFT process does not negatively impact on the quality of decisions. The audit, unfortunately, highlights continued concerns that these safeguards do not always operate effectively enough to identify complex claims and vulnerable applicants not suitable for a detained accelerated decision-making procedure.

- **UNHCR reiterates recommendations 20, 21, 22 and 23 of its Fifth Report, that lessons can be gained from the ‘early and interactive legal advice’ models being piloted in the Midlands region of the UK, that guidance should explicitly require pro-active consideration of DFT procedural safeguards (flexibility and removal) designed to ensure fair and stringent consideration of the claim, and that all staff who make decisions about who enters or is removed from the DFT must explicitly minute their reasons for making such a decision and base their reasoning on the more substantive guidance recommended below.**

#### **Decision to refer to the DFT**

Despite UKBA’s drafting of updated guidance on selection of cases for the DFT since UNHCR’s Fifth Report<sup>5</sup>, the report’s findings suggest that front-end screening and routing procedures are still not sufficient to adequately assess whether a case is complex or an applicant is vulnerable. The audit records examples of complex cases that entered and remained within the DFT. UNHCR observed evidence of individuals being routed into DFT based on reasoning to suggest that the case ‘could be decided quickly’ (the key criteria for a case to enter the DFT) without any clear indication of this criteria being assessed against the particular characteristics of the claim. Documentation of the routing criteria remains lacking and UNHCR recommends that, to ensure safeguards are being applied appropriately, files should be minuted carefully.

- **UNHCR reiterates recommendations 18 and 19 of its Fifth Report and further recommends that all efforts by UKBA to improve the design and function of screening and routing include, as a primary aim, the need to ensure that unsuitable claims and vulnerable individuals are not routed in to the DFT.**

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<sup>5</sup> UKBA Asylum Process Guidance: DFT & DNSA – Intake Selection (AIU Instruction) Version 2.0 (15/04/2009).

- **UNHCR considers that grounds for accelerating an examination should be clearly and exhaustively defined.<sup>6</sup> As such, it is recommended that the DFT / DNSA Intake Instruction be further improved to provide clearer and more substantive guidance to UKBA staff involved in referring to and selecting cases for the DFT so that they can better identify both cases that cannot be ‘decided quickly’ and claimants who may be vulnerable.**

### **Application of flexibility criteria**

UNHCR reiterates that it considers the option of exercising ‘flexibility’ by extending DFT timescales as per the UKBA Flexibility Guidelines to be a vital safeguard to ensure quality decision making and fair asylum procedure.<sup>7</sup> It was positive to observe some DFT Case Owners pro-actively extending timescales where clearly necessary for fair and full consideration of the claim. Nevertheless, the report points to some concerning instances where flexibility was requested by the legal representative but refused for reasons which did not appear justified by the final decision (for example, where the final decision indicated that more time might have allowed for more relevant evidence missing in decision and thereby impacting upon its quality). UNHCR’s audit recorded that the large majority of requests for extension of timescales came from the applicants’ legal representatives and not from the applicant him/herself. UNHCR suggests this finding could indicate that asylum applicants within the DFT are not fully aware of the possibility of extending the timescale of the procedure where necessary in order to present their claim. UNHCR remains of the view that individuals going through an accelerated asylum procedure should be informed of their rights and obligations whilst going through an accelerated procedure and should have the time to exercise those rights.<sup>8</sup> This applies equally to any right to request removal from the DFT procedure (bail or otherwise).

### **Treatment of request to remove claims from the DFT**

Comparing the current findings to the Fifth Report, UNHCR was pleased to record a higher proportion of instances where Case Owners explicitly considered requests for removal. However, the audit once again identifies insufficient or inappropriate reasoning for refusing these requests and points to examples of complex claims unsuitable for a detained and accelerated procedure suggesting that DFT Case Owners are not consistently reviewing the suitability criteria as the case proceeds through the DFT. Examples included cases where flexibility was exercised, but where UNHCR considered the case should have been removed from the DFT altogether.

Particularly concerning is the observation of frequently cited tautological reasoning to justify a claim remaining within the DFT, such as: *“Subject remains within the fast track process and therefore detention remains appropriate”*.

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<sup>6</sup> Section 9 (Prioritized and accelerated examination of applications) of Annex to UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations, March 2010.

<sup>7</sup> Detained Fast Track Processes Operational Instruction “Flexibility in the Fast Track Process”, April 2005.

<sup>8</sup> UNHCR Statement to the European Court of Justice on the right to an effective remedy in relation to accelerated asylum procedures, 21 May 2010, paragraph 12 available at: <http://www.unhcr.org/refworld/docid/4bf67fa12.html>

The report points to examples of claims where reasoning such as the above provides the only explanation for why the Case Owner has decided the applicant should remain within the DFT procedure, with no obvious consideration of UKBA's own 'suitability' criteria, i.e. the 'can be decided quickly' criteria.

- **Training for DFT Case Owners should ensure that Case Owners are made aware that where a request for removal from the DFT is refused the Case Owner must pro-actively consider whether, in lieu of removal, it would be appropriate to grant an extension to the decision-making timescale (as per the Flexibility Guidelines).**
- **All guidance aimed at DFT Case Owners should ensure they regularly and pro-actively apply the same standards for suitability for referral into the DFT (as per the 'Intake' instruction) to cases that are already within the DFT.**
- **UKBA should ensure that asylum applicants within the DFT are promptly and fully informed of their right to request additional time to present their claim as per the Flexibility Guidelines and of their right to request removal from the DFT process based on the Suitability 'Inclusion' and 'Exclusion' Criteria set out in the 'DFT & DNSA – Intake Selection (AIU Instruction)'.<sup>9</sup>**
- **UKBA should ensure that all legal representatives with clients in the DFT are explicitly and pro-actively reminded of their client's right to request flexibility to timescales or to request removal from the DFT and upon which criteria these requests are granted or refused.**

#### **4. CONCLUSION**

UNHCR welcomes and supports UKBA's clear commitment to improving asylum decision making. This is in large part demonstrated by the existence of the Quality and Learning Team within NAM+ and their wide scope of work. Whilst acknowledging the focus of the QAT on the quality of decisions in the DFT, UNHCR observes a lack of audit mechanisms to ensure that attention is paid to how DFT procedures might impact upon quality.

- **The QADT should include within its auditing remit examination of the ways in which DFT procedures and safeguards impact upon the quality of decision making within the DFT. DFT-specific quality assurance tools should be developed in this regard. UNHCR offers its support in the development of such tools.**

With two UNHCR reports now highlighting some of the same concerns about the quality of decision making in the DFT and the impact of procedures on quality, there is a clear need for UKBA to focus on decision making in the DFT.

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<sup>9</sup> This should include all mechanisms for applying for release from detention including Temporary Admission, Chief Immigration Officer Bail, Bail from an Immigration Judge and by the High Court.