Response to the UK Border Agency "NAM+ Asylum Programme" presentation to the National Asylum Stakeholder Forum (NASF) on Thursday, 19th March 2009:

1. This presentation on 19th March 2009 was provided in order to set out the UK Border Agency's "*future priorities*"[1] in relation to asylum, and in particular the future of the New Asylum Model (NAM). Responses have been invited by 9th April 2009.

2. The presentation set out six areas concerning the registration of asylum claims and seven areas concerning the decision-making process, in which the UK Border Agency consider there to be "*tangible improvements*" that can be achieved.

3. This response offers some observations upon the 13 areas identified in the presentation. However, some of these are areas in respect of which ILPA has previously provided comments, in which case reference is made to previous submissions or other correspondence from ILPA rather than formally recapitulating the content of these. Observations on these 13 areas are set out under discrete subheadings, corresponding to the description given in the presentation.

4. This response also includes observations on matters not addressed or referenced in the presentation. These are also set out under discrete subheadings.

General:

5. We first recall the presentation by ILPA to the National Asylum Stakeholders Forum (NASF) at the meeting of 25th September 2008, and would refer you to the written presentation set out under the heading 'Item 7 – Themed Discussion – Challenges Facing ILPA Practitioners' in the Briefing document for that meeting.

6. We also note that the NASF has been meeting since July 2007; and before that, as well as the meetings of its various predecessors at which ILPA has long been represented, there were the meetings of the NAM External Stakeholders Group. ILPA has been an active participant in all of these meetings; and in several workshops arranged, particularly, although not exclusively, between November 2007 and May 2008 on screening, the Detained Fast Track (DFT), access to legal advice and section 4 support. We have also participated in other stakeholder fora, including subfora of the NASF, and in bilateral meetings; and responded to several consultations and engaged in detailed correspondence on a range of issues relevant to the presentation on 19th March 2009. While we have sought to respond positively and in detail to the opportunity to review matters at this time, we have not highlighted or repeated all the observations that we have made about the NAM. These remain relevant.

The 13 areas identified in the presentation:

Improved consistency and security of the asylum registration process

7. We highlight three matters:

[1] See Agenda for the 19th March 2009 NASF meeting

- Registration and the issue of letters and Asylum Registration Cards (ARC Cards) by the UK Border Agency using the name given to a child by his or her trafficker.

- Registration and the issue of letters and ARC Cards using the "01.01.XX" as the date of birth in cases where age is unknown or disputed.

- Registration and the issue of letters and ARC Cards using dates of birth or names that are inaccurate.

8. The first two of these points relate to practices of the UK Border Agency which may cause serious disadvantage or harm to children. The latter, in part, concerns straightforward errors, but also inflexibility, which may disadvantage or harm individuals of any age. The aims of consistency and security in relation to the asylum registration process ought not to be pursued without attention to the needs and interests of people seeking asylum. Where there is real uncertainty as to the accuracy of information, there must not be a rigid response in recording details such that these cannot later be amended. In the case of the trafficked child, it may be dangerous for the child to continue to be known and referred to by the false name given to him or her by those who have trafficked the child. As regards names generally, the scope for mistranslation or conflicting translations is significant. As regards dates of birth generally, there are times where a precise date of birth is not known, though it may be that subsequent evidence provides precise information. As for the use of "01.01.XX", we refer you to item 5.2 of the minutes of the NASF children's subgroup meeting of 5 December 2008.

Language analysis

9. As was stated at the NASF meeting, ILPA would be grateful to see any formal evaluation of language analysis used by the UK Border Agency, including of the pilot in respect of Somali and Eritrean claimants, of which we were first informed in 2007 on a visit to Liverpool Asylum Screening Unit (ASU).

10. ILPA has raised concerns with the UK Border Agency through the NASF regarding the use, in particular, of Sprakab[2], it having been reported by our members that the reports provided by Sprakab are based upon inadequate material; present opinions which are expressed in unjustifiably strident or certain terms and are not supported by adequate evidence of the expertise of the author in order to offer the opinions presented.

11. Sprakab has been specifically considered in a reported determination of the Asylum and Immigration Tribunal (AIT)[3], where the AIT noted, in the course of finding the Secretary of State's application for reconsideration to disclose no error of law:

> "*7. The essence of the appeal is that the respondent, having found the appellant's claim to be rehearsed and fabricated on the basis of linguistic analysis, rejected the appellant's claim to be at risk of persecution if now returned to Somalia. The substance of her claim was not addressed in detail nor was any background evidence considered as two expert reports were relied upon by the*

[2] It was raised initially by ILPA by email of 17th July 2008 and formally at the 24th July 2008 NASF meeting (it was then indicated that we would receive a written response, however that response did not address the concerns expressed but merely restated the UK Border Agency commitment to continued use of language analysis with some further information about Sprakab)

[3] *FS (Treatment of Expert evidence) Somalia* [2009] UKAIT 00004

respondent in dismissing her claim to be from Afgoye and a member of the Ashraf clan.

"*8. Before the Immigration Judge were two expert reports. The first was prepared by Sprakab, a privately owned company located in Sweden which conducts linguistic analyses. They prepared a report which cast doubt on the appellant's claims to originate from Afgoye.*

"*9. Acknowledging that the appellant displayed a familiarity with the city of Afgoye the report nevertheless opined that '…her knowledge sounds rehearsed…'. There was a later reference in the report to the appellant's evidence as '…could be rehearsed…'. Examples of pronunciation of words and phrases as well as sentence construction were provided which Sprakab claimed disclosed linguistic background from northern Somalia rather than the Afgoye area as claimed by the appellant.*

"…

"*11. Sprakab's final conclusion was that the appellant spoke a variety of Somali 'with certainty in: northern Somalia' despite her familiarity with the Afgoye.*

"*12. The conversation between Sprakab and the appellant lasted about 35 minutes and was conducted over the telephone. The appellant claims that the conversation was interrupted by background noise and that she had difficulty in understanding the interviewer who did not speak with a southern dialect of Somali.*

"…

"*18. …He* [the Immigration Judge] *noted that no credentials had been given for the expert's assessment of the appellant's demeanor* [it appears from the determination that this finding was directed to the Sprakab conclusion that the appellant's evidence '*sounded rehearsed*']…

"*19. …In the light of what the Immigration Judge found to be serious omissions from the respondent's analysis* [which it appears was essentially the Sprakab analysis]*, he went on to state 'I do not find it to be an impressive piece of evidence*'."

12. In this case, the refugee and human rights grounds of appeal had been allowed by the immigration judge. That conclusion, and the reasons given by the immigration judge, was upheld by the AIT in rejecting the Secretary of State's submissions that the original determination was in error of law. The Secretary of State's submissions focused on the treatment of the Sprakab report by the Immigration Judge.

13. The AIT's determination gives examples of the complaints reported by ILPA members. The telephone interview described in the determination appears on its face inadequate whether in terms of its length, the quality of the conditions of the interview, the condition of the appellant at the time of the interview (she had complained of having a headache) and the linguistic abilities of the Sprakab interviewer. The conclusions drawn by the Sprakab report were expressed in terms that appear to express unjustifiable certainty ("*with certainty*"). The brief details in the determination raise doubts about the credentials or disclosed credentials of the author of the Sprakab report.

14. The determination raises a further concern as to the suitability or competence of Sprakab and/or the authors of its reports. It is clear from the determination that Sprakab had not merely given an opinion on its linguistic analysis during the 35 minutes telephone interview. Sprakab has also expressed an opinion about the credibility of the substance of what the appellant said during that interview, in particular her descriptions of Afgoye ("*sounded rehearsed*"). If Sprakab were, as we understand, merely being asked to provide a linguistic analysis, it appears that Sprakab here was addressing a matter that ought not to have been addressed by Sprakab. If so, that Sprakab strayed into this area both suggests a lack of competence and a lack of impartiality. If, on the other hand, Sprakab (or any other linguistic analyst instructed by the UK Border Agency) are instructed to provide wider observations on the credibility of an asylum claim, we should question the suitability or competence for them to do so; and would wish to know what material is made available to them in order for such an assessment to be made.

15. The determination raises concerns about the competence of caseowners in using Sprakab or other such reports. The determination makes clear that, on the basis of the Sprakab report, the caseowner declined to consider for him- or herself the substance of the asylum claim. In essence, the caseowner abrogated the responsibility of determining the asylum claim to the Sprakab report and its author. This demonstrates, in the individual case, a failure to appreciate the shortcomings of Sprakab as ultimately revealed by the determination. It also demonstrates a more general failure to appreciate the role of caseowners, the role of experts and expert reports, the required approach to credibility and the standard of proof, which require that assessments are made in the round.

16. We have been referred to other cases and unreported determinations raising similar concerns. In the circumstances, and without having seen any evaluation by the UK Border Agency of the use of language analysis, it appears that in this area tangible improvement could best be achieved by the UK Border Agency ceasing use of Sprakab or indeed any other language analysis facility.

Data Matching and Exchange

17. Our key concern is that the taking and use of data should ensure that the individual has provided informed consent for this, and that his or her confidentiality is adequately protected. We would refer you to our observations in our February 2009 'Submissions to the Joint Committee on Human Rights inquiry on children's rights' in relation to tracing and contacting authorities and others in the child's country of origin. These are available in the Submissions section of our website at **www.ilpa.org.uk**

18. We would also refer you to the concerns expressed at the NASF children's subgroup regarding information exchange, which are noted below in relation to *UASC Reform Programme*.

19. We have highlighted concerns regarding the taking, retention and use, including exchange, of information and data in, for example, briefings on the UK Borders Bill and Immigration, Asylum and Nationality Bill – see respectively the June 2007 'Second Reading in the House of Lords' and February 2006 'Information – Clauses 27 to 42' briefings available in the Briefings section of our website at **www.ilpa.org.uk**

20. We note that the European Court of Human Rights has recently ruled on the human rights implications of retaining data, let alone exchanging it with other, including

foreign, authorities, in *Case of S & Marper v United Kingdom* (Applications Nos. 30562/04 & 30566/04), finding in that case there to have been a violation of the applicant's Article 8 rights to private life.

Streamlined screening process

21. We would refer you to the observations made by ILPA and others during the course of the NASF workshops in November 2007, February 2008 and May 2008 on screening, Detained Fast Track and access to legal advice.

22. An abiding concern, which long predates the New Asylum Model, is that if the screening process is to address substantive matters related to the asylum claim, and if answers at screening are to be relied upon in making asylum decisions, there ought to be access to legal advice prior to and representation during the interview (or digital recording of that interview). This is a matter for both the UK Border Agency and the Legal Services Commission; but it is unacceptable that the line continues to be that screening is not a substantive part of the process and so outwith the scope of legal aid, yet screening interviews continue to be relied upon by the UK Border Agency in refusal letters and at appeal hearings. Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, to a significant degree, embeds this irregular position.

23. In its current form, screening cannot provide the means to identify suitability or non-suitability for processes such as the Detained Fast-Track as per the ILPA responses to consultations on the Detained Fast-Track highlighted below.

24. Accordingly, changes to the screening process require there to be assessment of the legal aid impact/implications of making changes; and work with the Legal Services Commission, and representatives on these.

Screening of children/age dispute cases

25. We draw attention to the recent decision to terminate funding for the Refugee Council Children's Panel (the Panel) to assist vulnerable children who are the subject of age disputes. The following are some of the observations of peers on this news given during the Committee stage of the Borders, Citizenship and Immigration Bill on 4th March 2009, and specifically during the debate on the duty regarding the welfare of children contained in the Bill:

> "*I should be extremely grateful if* [the Minister] *would write to let me know why this money has been withdrawn and what possible alternatives are being put forward to protect the children in the way that the children's panel has been doing. The panel has been absolutely central to safeguarding and promoting the welfare of children in the United Kingdom…*" (*per* the Baroness Hanham, *Hansard* HL 4 Mar 2009 : Column 830)
>
> "*Why are we cutting off money from the children's panel at the very moment when we are ostensibly safeguarding the welfare of the children? Does that not seem extremely incongruous, and can the Minister tell us whether there is any possibility that the Government will reconsider this niggardly and untimely stinginess?*" (*per* the Lord Avebury, *Hansard* HL 4 Mar 2009 : Column 831)
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> "*However we legislate, if we do not have people on the ground with experience and expertise to inform us of what is being done, we will not get what we ultimately need. During the passage of the Children Act 2004, the noble Lord,*

> *Lord Laming, said again and again that the Children Act 1989 was very good but that unfortunately it was being poorly implemented. We can legislate all through the night but if we do not have people on the ground with experience and expertise, we will not get the outcomes for children that we want.*" (*per* the Earl of Listowel, *Hansard* HL 4 Mar 2009 : Column 831)
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> "*To hear that the money is being withdrawn from some of the organisations that are active in this field is not good news at all. I hope the Minister can assure us that if there is a good reason for taking away money from this group – nothing has given us reason to believe that that is so – similar sums of money will be made available to other people who will pursue those interests rather more vigorously.*" (*per* the Baroness Howe of Idlicote, *Hansard* HL 4 Mar 2009 : Column 832)
>
> "*If the local authorities are the very ones that are failing in their duties to these children, and the children's panel would have discovered these failures but the local authorities will now be judge and jury on this, there will not be the same third-party checks…*" (*per* the Baroness Miller of Chilthorne Domer, *Hansard* HL 4 Mar 2009 : Column 835)

26. The response of the Minister is that there is no longer to be funding for the Panel because the UK Border Agency will instead "*go direct to trained social workers in local authority children's services departments, and we are providing additional funding for authorities with the largest number of such cases.*" (*per* the Lord West of Spithead, *Hansard* HL 4 Mar 2009 : Column 834).

27. The Minister's response provides no comfort for the reasons expressed by the Baroness Miller. As highlighted in ILPA's 2007 report *When is a child not a child?* there is real potential for conflicts of interest to affect the decisions of both the UK Border Agency and local authorities. The Minister's response does not evidence attention to the safeguarding and promotion of the welfare of the many children whose age is wrongly disputed, or to the significant risks and harms of such disputes. Removing a vital source of independent support for the child and scrutiny of age disputes will greatly increase these risks. The funding decision should be revisited as a matter of urgency.

28. Further observations on this matter, and the related matter of screening, may be found in ILPA's March 2009 'Briefing on the Borders, Citizenship and Immigration Bill, Part 4 Clause 51 Children – age disputes', March 2009 'Briefing on the Borders, Citizenship and Immigration Bill, Part 4 Clause 51 – in the UK', February 2009 'Submissions to the Joint Committee on Human Rights inquiry on children's rights', April 2008 'Response to the Border and Immigration Agency consultation on Code of Practice for Keeping Children Safe from Harm' and October 2007 'Response to the Border and Immigration Agency consultation on Transposition of the EU Asylum Procedures Directive 2005/85/EC'. These are available in the Briefings and Submissions sections of our website at **www.ilpa.org.uk**

29. We should also refer you to our comments, provided to Justin Russell, on the draft Asylum Process Instruction on Children by letter of 16th June 2008; and our letter to Matthew Coats of 5th March 2008 regarding interviews of separated children in the NAM.

30. We should also highlight the 11 Million report *Claiming asylum at a screening unit as an unaccompanied child* of 3rd March 2008[4].

[4] The report is available at http://www.11million.org.uk/resource/gg7gu33pn2wfay6u2zjvukmi.pdf

Better identification of cases for Detained Fast Track and Third Country Unit

31. We note the recommendations about the Detained Fast-Track made by UNHCR in the 5th Quality Initiative report, which was discussed at the NASF meeting on 19th March 2009. Those recommendations have remained outstanding since, we understand, March 2008 when the report was first presented to the UK Border Agency. As stated at the NASF meeting, the DFT & DNSA – Intake Selection (AIU Instruction) does not address these recommendations.

32. As regards that policy instruction, we recall that on 23rd October 2008, Steph Hutchison Hudson wrote to us indicating that it was to be reviewed in January 2009. We are not aware that any such review has taken place, and the instruction currently available on the UK Border Agency website is that dated 21st July 2008. We would refer you to our submissions of 12th September 2008 and 29th February 2008 to Steph Hutchison Hudson and Matthew Kirk respectively. Our position has not changed, and concerns expressed in those submissions remain outstanding.

33. In connection with the Third Country Unit (TCU), we take this opportunity to reiterate concerns explained in meetings with what was the Immigration and Nationality Directorate prior to the introduction in March 2007 of changes to what is now chapter 60 of the Enforcement Instructions and Guidance, in particular the second bullet in paragraph 60.6 of that policy instruction, which purports to negate the requirement to give 72 hours notice of removal in "*the best interests*" of a separated child facing a TCU removal. The best interests of a child in this position require that he or she should have proper opportunity to take legal advice and, if appropriate, bring a judicial review against the removal. The policy instruction should be revisited and revised.

34. Further concerns arise in relation to both DFT and TCU processes in connection with victims of trafficking. Significant observations relevant here are set out in ILPA's March 2009 submission to the Home Affairs Select Committee inquiry into human trafficking and our May 2008 paper on Trafficking and National Referral Mechanisms following the UK Border Agency workshop on 12th May 2008. Both are available in the Submissions section of our website at **www.ilpa.org.uk**

Digital recording of asylum interviews

35. Our key concern is that recording of asylum interviews should be applied consistently in all cases. The UK Border Agency's written record needs to be made available immediately and disclosure of any transcript being used by the UK Border Agency needs to be made at the earliest possible opportunity. As regards recording of asylum interviews, there will be a need for representatives to obtain transcripts in individual cases whether or not the UK Border Agency has obtained a transcript; and this is a matter which the Legal Services Commission needs to ensure is adequately funded.

36. Our letter of 5th March 2008 to Matthew Coats (referred to above in relation to *Screening of children/age dispute cases*) is also relevant.

Faster processing of Asylum Appeals through new Unified Tribunal

37. At the time of writing the UK Border Agency has still not given a formal response to its consultation *Immigration Appeals: fair decisions, faster justice*, which proposes the movement of the Asylum and Immigration Tribunal (AIT) into the new Tribunal

established by the Tribunals, Courts and Enforcement Act 2007. It says much for the meaningfulness of formal consultation that while the UK Border Agency is yet to give its formal response, last month's presentation to NASF clearly indicates that decisions have been taken that the AIT should be moved into the new Tribunal.

38. Our October 2008 response to the consultation and March 2009 and February 2009 briefings on the Borders, Citizenship and Immigration Bill, transfer of judicial review (formerly clauses 50, then 52) are available in the Submissions and Briefings section of our website at **www.ilpa.org.uk**

39. We would also refer you to our letter of 29th May 2008 to Keith Lambert concerning the role of Presenting Officers at appeals, and letter of 1st April 2009 to Julian Smith on the same topic.

40. We note, in particular, the substantial burden imposed upon the appeals and reconsideration process by the failure of the UK Border Agency and its predecessors to respond proactively to the situation of asylum-seekers from Zimbabwe over a period of many years. The UK Border Agency has last month revised its Operational Guidance Note (OGN) on Zimbabwe, so as to dispute the continued application of the current country guidance given by the AIT in *RN (Returnees) Zimbabwe CG* [2008] UKAIT 00083. We are writing to Jacqui Smith MP, Home Secretary, regarding the revision of the OGN which is unjustified and flies in the face of recent statements to ILPA, other stakeholders and courts that the UK Border Agency accepts the guidance in *RN (Zimbabwe)*. The revision of the OGN constitutes a further refusal on the part of the UK Border Agency to face up to its responsibilities in respect of asylum-seekers from Zimbabwe, with the prospect of further burdens being place on the appeals and reconsideration process; and prolonged hardship and misery for Zimbabwean refugees.

41. We will also be writing to Lin Homer regarding judicial reviews and removal decisions.

Solihull Pilot – early access legal advice

42. We emphasise, as has been stated at the NASF meetings on more than one occasion that the timing of decisions in respect of any further piloting of early access to legal advice (Solihull Pilot) cannot be delayed beyond or taken in isolation from steps to be taken by the Legal Services Commission in relation to the future of provision of legal aid funding for immigration and asylum cases.

43. Phil Woolas MP, Minister of State for Borders and Immigration, made clear at the NASF meeting on 19th March 2009 that he welcomed the opportunity to pursue this pilot further. We strongly support the concept of early access to properly resourced (both in terms of time and money) legal advice and representation. But without adequate funding and provision of time for legal advice and representation, the concept will not prove meaningful in practice.

FrontRunner projects relating to asylum performance and process improvement

44. We are not in a position to comment upon FrontRunner projects, as we do not know of any.

Response to NAO report on asylum (covering use of Initial Accommodation, screening process, quality checks on asylum cases, First Reporting Events, introduction of Active Reviews for refugees after 5 years etc)

45. A strong theme underpinning the National Audit Office (NAO) findings was a failure to provide a systematic and responsive quality control for asylum decision-making. As explained in the report, this needs not only to provide for quality checks but also to provide the means for decisions to be reviewed, for findings to be recorded and for training and ongoing supervision to be responsive to those findings. We are particularly concerned that where it is revealed that a person seeking asylum has been refused asylum for plainly inadequate reasons, or following plainly inadequate consideration, that the UK Border Agency should not abrogate responsibility for reviewing the decision to the appeal process.

46. The NAO did not recommend the introduction of active reviews for refugees after 5 years. The NAO recommendation on this was clearly founded upon a misunderstanding of the current Refugee Leave asylum policy instruction. At paragraph 2.38 of the report, it is stated:

> "*Since 2005, a grant of refugee status is for five years, not indefinitely. This means that after five years, refugee status will be re-examined and could be revoked…*"

Whereas it is correct that refugee status is now only granted for five years, it is not correct that this means that after that period the status *will* be re-examined. The asylum policy instruction makes clear that where indefinite leave to remain has been applied for before expiry of the five years, an in-depth review should normally not be carried out. We note that this is a matter to be discussed at a forthcoming NASF meeting, but at this time point out the misunderstanding that has informed the comments of the NAO. The NAO has not recommended that active review of refugee status or humanitarian protection is a necessary or desirable step, simply that if that is the policy intention there needs to be a clearly establish process for doing so.

47. We share the concerns expressed in the NAO report about the need for attention to those cases which do not fall within the, now, 75% six months completion target. We recall the Immigration and Nationality Directorate's record of prioritising cases within targets and all but forgetting other cases as, for example, led to the circumstances addressed in *R(S) v Secretary of State for the Home Department* [2007] EWCA Civ 546; and which has been one significant factor in the build up of the legacy now being addressed by the Case Resolution Directorate.

48. Avoiding the substantial problems, including the human misery, inherent in such backlogs, requires that the UK Border Agency should ensure that it addresses the need to resolve all cases in the New Asylum Model. The Visa Services Directorate, following a suggestion from ILPA, has produced target times that include 100% target times, so that no case is forgotten. Consideration should be given to doing this in targets for all cases.

49. The UK Border Agency should address the point made by Jan Shaw, Amnesty International representative, at the most recent NASF meeting, that whereas the success rates on asylum appeals remain generally significant, in relation to particularly countries these are very high indeed, indicating a systemic failure by the UK Border Agency to recognise refugees or others with protection needs in particular countries. It was highlighted that the relevant countries were also those where there were both difficulties in removal and pressing concerns as to the general level of instability or human rights violations in the country. In response, Phil

Woolas clearly indicated that this was a matter deserving of attention and he described it as "worrying".

50. The implication is that caseowners are not properly considering the protection needs of people seeking asylum from some of the most generally dangerous countries; and that decision-making is effectively being abrogated to the appeal process. We fear that this, with the risk of inattention to cases that fall outside the target, will contribute to continued and significant backlogs, with all the attendant pressures upon legal aid, access to legal advice, courts, charities, NGOs and others providing support, local authorities and others, and the UK Border Agency; and causing more human misery for those unfortunate enough to find themselves in these backlogs.

51. We highlight the recommendation, at paragraph 10viii) of the summary to the NAO report, on service of determinations upon asylum appellants. We remain opposed to the current regime whereby one party to the appeal is served with the determination, and left to serve the determination on the other party. This is one clear example of inequality in the appeal process, which undermines confidence in the independence of decision-making on appeals. However, while that regime remains in place, we wish to hear what progress has been made towards meeting the UK Border Agency's aim, as reported by the NAO at paragraph 6k) of the summary to the report, of serving appeal determinations within 48 hours.

Accreditation of case owners

52. This issue has been outstanding since before the establishment of NASF. Indeed, at the very first NASF meeting, Matthew Coats agreed to consider accreditation for Criminal Casework Directorate caseowners[5], there having been a general agreement previous to this that there should be accreditation for NAM caseowners.

UASC Reform Programme

53. We would refer you to the documents to which we have referred above in relation to *Screening of children/age dispute cases*.

54. We also highlight, as has been noted at the first two meetings of the NASF children's subgroup in December 2008 and February 2009, there are unresolved concerns as to the intention to forcibly return separated children; and as to information exchange, in particular, between the UK Border Agency and local authorities.

Integrated Case Work System

55. The NAO report recorded observations (see paragraph 6r) of the summary), of caseworking systems which are far from integrated.

56. A key concern is that caseownership has not successfully bedded-in across the New Asylum Model. There have been repeated expressions of concern at NASF meetings, and we have noted the difficulties faced by the UK Border Agency in recruitment and, in particular, retention of staff.

57. The NAO recommended (at paragraph 10viii of its report), that the first reporting event be scrapped in its current form. This was raised with the then Border and Immigration Agency at the screening workshop on 6th November 2007. At that

[5] See Action 1.5, minutes of 12th July 2007 NASF meeting

workshop, the point made was that, if the UK Border Agency was not capable of meeting its commitment to first reporting events as set out in the New Asylum Model process, it was better that it abandoned these altogether or in their current form rather than holding out that people seeking asylum would meet their caseowner at the event and then failing to ensure that this happened. Such failures undermine confidence in the process. Generally, ILPA considers that caseownership is a critical element in NAM (and also for other UK Border Agency casework). Establishing and maintaining a single caseowner model, where that person is readily contactable by representatives and trained, resourced and empowered to be able to conduct and be responsible for a case from first to last (including through the appeal process), ought to be seen as a priority.

Areas not identified in the presentation:

Legal Aid impact assessments

58. This is a matter that was highlighted in the ILPA presentation to NASF on 25th September 2008. However, it is an issue that has needed to be returned to repeatedly over several months, not only through NASF. We reiterate that changes to UK Border Agency practice and policy, as well as changes to primary or subsidiary legislation and the Rules, may have profound impacts upon legal aid. This needs to be assessed in each case.

Policy instructions and guidance

59. There are two distinct issues we wish to highlight, both of which were highlighted in the ILPA presentation to NASF on 25th September 2008. Policy instructions and guidance need to be tracked and an archive maintained. It is necessary to be able to consider previous policy that may have applied at the time of a relevant decision (or when a decision should have been taken); and to be able to see and consider the current policy despite its being under review.

60. Further, policy instructions and guidance, those currently in use and the archive, must be publicly available. We note that on at least two occasions in the last six months the UK Border Agency has been found to have acted unlawfully by acting on policies that have not been made publicly available, and indeed in some cases not been disclosed to litigants or courts[6]. On both occasions the judges have, on sight of the particular policies, either declared their substance also to be unlawful or cast serious doubt on their lawfulness. Acting on secret policies lacks transparency and impedes or precludes accountability. In the cases mentioned here, which relate to decisions to detain and remove without notifying legal representatives, there was a flagrant abuse of power by the UK Border Agency, which must cease.

61. There is a continued failure on the part of the UK Border Agency to make all Detention Service Orders publicly available on the UK Border Agency website. This is despite the fact that requests for this to be done have been made repeatedly over several months at the Detention Users Group.

Criminal Casework Directorate

[6] *R(Abdi & Ors) v Secretary of State for the Home Department* [2008] EWHC 3166 (Admin); and *R(X) v Secretary of State for the Home Department*, judgment given orally on 18th February 2009 by Sir George Newman in the Administrative Court in relation to DSO 07/2008 (judgment as yet unreported)

62. Concerns regarding cases handled by the Criminal Casework Directorate (CCD), in particular the lack of caseownership in that part of the UK Border Agency, were also among those highlighted in our presentation to NASF on 25th September 2008; and these are matters that we have raised directly with CCD.

Conclusion:

63. This response provides no more than a review of some of our key concerns in relation to matters highlighted and not highlighted by the presentation given at the NASF meeting on 19th March 2009. It is not, and does not purport to be, a comprehensive statement of outstanding concerns in relation to the NAM and its future.

Immigration Law Practitioners' Association