ILPA Evidence to the Home Affairs Select Committee Enquiry into Asylum

1. The Immigration Law Practitioners' Association is a member of the Refugee Children's Consortium and for specific evidence on children we refer you to the consortium's submission as well as to our evidence submitted to the Joint Committee on Human Rights for its current enquiry into refugee and migrant children.

- **The effectiveness of the UK Border Agency screening process, including the method of determining eligibility for the 'Detained Fast Track' procedure**

2. ILPA has repeatedly expressed concern to the Agency and to the European Commission about screening[1]. We are concerned about the process and effectiveness of screening; we are concerned about the way in which people are treated at screening, which all too often is without dignity, respect or kindness. See **Appendix one** for our letters to the UK Border Agency of 13 June 2011, 12 August 2011 and 22 September 2011. See also the case studies at **Appendix two**. Concerns have been reiterated by ILPA and others at meetings such as the UK Border Agency's National Asylum Stakeholder Forum. At the UK Border Agency National Asylum Stakeholder Forum on 8 October 2012, it was stated that the average time children spent at the Asylum Screening Unit was four hours 49 minutes. This was said to represent a reduction in waiting times.

3. ILPA and the AIRE centre's complaint of 13 January 2013 (see **Appendix three)** was communicated to the UK Government under the "EU Pilot."[2]

4. The new 'asylum operating model', to be implemented from April 2013, appears to build on the worst faults of the current system in that it attempts to judge and categorise cases before they have been investigated, at the screening stage. Little is known about a person at screening: their name (which may be in dispute), their nationality (which may be in dispute), their gender, their age (which may be in dispute) and how they arrived in the UK (which may be in dispute).

5. There are limited opportunities for disclosure at screening. The screening interview is not designed, and nor should it be, to investigate the substance of a claim. A person may be distressed and fearful, tired and confused. A relationship of trust and confidence is likely to need to be built before a person will describe torture, rape or other abuse or humiliation; it is unlikely to emerge at this very initial stage. This is not simply a question of the skill or training of the staff at screening. Highly trained and skilled legal representatives, of whom many persons seeking asylum may be less suspicious than they are of officials, are aware that their skills are no substitute for a relationship of trust, built up over time. Training can help staff to react to such signs as they do pick up and a change of culture might increase the chances that they would notice signs of distress, but training will not by itself produce disclosure.

[1] The Law Society has also voiced strong criticism, see, for example, *Asylum seekers 'prevented from lodging cases*, The Guardian, 29 September 2011.
[2] Reference 3909/12/HOME.

6. On 6 February 2013 ILPA wrote to the newly appointed Head of Asylum, Mr Graham Ralph, to reiterate these concerns. We highlighted a case that had occurred that day. See **Appendix four.** We forwarded the letter to the European Commission. On 22 March 2013, acknowledging receipt of that letter, the Head of Directorate B in the European Commission, Mr Mathias Oel, wrote to ILPA:

   > "I would like to emphasise that the Commission is taking your complaint very seriously. It is treated jointly with other issues which raise particularly complex legal questions, which have led to some delay in its treatment. Following an exchange with the UK authorities, we are currently assessing the possibility of taking further steps. We will make sure to inform you as soon as a decision has been reached."

7. The "asylum operating model" appears designed to channel cases into the Detained Fast-Track[3]. ILPA emphasises that the current Detained Fast-Track is very different from that found to be lawful by the European Court of Human Rights' in *Saadi v UK.*[4] Persons remain in detention for very much longer both before the asylum determination process begins and after it has finished, while the substantive parts of the process in which the claim is considered are very much accelerated. It is members' experience that those detained at screening may wait for days and weeks before the very fast Detained-Fast Track process starts, often without being allocated a legal representative until just before the process has started.

8. ILPA's March 2008 and March 2009 (the latter jointly with the Anti-Trafficking Legal Project) submissions to the Home Affairs' Committee enquiry into human trafficking set out some of our concerns about screening and the Detained Fast-Track. Those concerns persist. We also append at **Appendix five** our March 2012 letter to the Independent Chief Inspector of the UK Border Agency about the Detained Fast-Track.

9. It is ILPA's contention that the Detained Fast-Track is unjust and inefficient because it is not capable of producing sustainable fair decisions on claims. It is unjust because there is a risk of a person being returned to face persecution.

10. Where a person whose claim for asylum has been finally refused remains in the UK for many years, new risks to them as a result of changes in their country of origin or in their personal circumstances may result in their making a fresh claim for asylum. That is understandable. Where a person has a fresh claim for asylum within days of finally being refused because they have obtained evidence that they were trying to secure as their case was being rushed through the system, that is avoidable.

11. And cases are rushed through the Detained Fast-Track. The person sees a legal representative one day and has an interview the next. Following an interview there may be only half a day to provide further evidence, including expert evidence. The initial decision comes in a matter of days.

12. This is not a timescale likely to produce disclosure by applicants, especially given that levels of distrust are likely to be increased by being thrust into detention. They are unlikely easily to trust their representatives, who are allocated by the detaining authority, the UK Border Agency. They are unlikely to trust the medical staff in the detention centre.

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[3] For a description see ILPA's *The Detained Fast-Track process: a best practice guide*, 2008, available with 2010 update at http://www.ilpa.org.uk/pages/publications.html

[4] Application no. 13229/03.

13. In any event, medical screening on entry into detention is all too often, based on instructions members receive from their clients, a cursory affair. Detainees often arrive late at night. All too often professional interpreters are not used and detainees report not being aware of having been asked about, for example, torture or ill-treatment. Even where a medical report made under Rule 35 of the Detention Centre Rules gives rise to concerns about ill-treatment, all too often the contents of such a report are dismissed by the UK Border Agency. Reasons for such dismissal include that the report merely repeats a story told by the detainee, with no evidence to corroborate it and that the doctor did not diagnose torture as the cause of any injuries seen.

14. It is not a timescale likely to produce any evidence. Those in the Detained Fast-Track are detained; they are not well placed to gather evidence in support of their cases. For a legal representative, it is difficult to research a case, let alone secure original documents or expert evidence within days. In any event, it was the practice of the Legal Services Commission and we have no reason to believe that it will not equally be the practice of its successor, the Legal Aid Agency, not to authorise payment for expert evidence until a claim has been refused by the Secretary of State.

15. In theory a person only remains in detention following refusal, for the period of any appeal and afterwards, if they meet the general criteria for detention. In practice, it is not usual to see a person who has been refused within the detained track released prior to any appeal. The case is then normally dealt with under the accelerated procedure for which provision is made in the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (SI 2005/560) as amended. There are only two days in which to lodge an appeal against refusal, in which timescale the reasons for rejection of the application must be examined and evidence produced to refute them. ILPA is delighted that the Tribunal Procedure Committee in its *Consultation on the proposed Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2013 and amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008*[5] has proposed getting rid of these separate fast track procedure rules and has proposed longer timescales in which to lodge an appeal. ILPA considers that these would not only be fairer, they would be more efficient and would reduce the likelihood of 'protective' grounds of appeal being lodged because there was no time to establish whether these grounds needed to be included or not.

16. The evidence appellants provide in the form of a statement or corroborating documents and witnesses is likely to be imperfect. A legal representative has little time to carry out research, let alone instruct and obtain expert medical and country evidence. An immigration judge determines the case on the evidence presented to him/her.

17. Very many persons in the Detained Fast-Track do not have a legal representative at the appeal stage[6]. This will often be because lack of evidence means that they have been held to fail the merits test for legal aid. Uncertainty ought to weigh in the client's favour. But in practice, whether a person is judged to pass or fail the merits test too often seems to depend upon who is representing them. Work paid for by legal aid in detention centres is run on a system of exclusive contracts with just two or three providers per centre. This means that if a person is judged not to meet the merits test by one provider in a centre, s/he can turn only to the other provider in that centre for a second opinion, rather than, for example, an expert in cases from his/her country of origin, or with the particular features of his/her case. Meanwhile the latest consultation

[5] April 2013.

[6] See *Fast Track to Despair,* Detention Action, May 2011.

on legal aid[7] proposes removing eligibility for legal aid in cases where prospects of success are only "borderline[8]:

> 389. This proposal [*to abolish the 'borderline' category* would apply equally to asylum cases assessed as having 'borderline' prospects of success. The Government recognises its responsibilities under Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. This requires the Government to provide legal assistance for those refused asylum. However article 15(3)(d) of the Directive makes clear that this obligation only extends to those appeals which are 'likely to succeed'.

18. The UK Border Agency Asylum Process Instruction[9] states at 2.2:

> Without prejudice to outcome, unless there is evidence to suggest otherwise (or the case is one already recognised as not generally being … there is a general presumption that the majority of asylum applications are ones on which a quick decision may be made.

19. However, there has long been confusion among officials as to whether the Detained-Fast Track is for cases that can be decided rapidly, as is the position taken in the UK Border Agency's Enforcement Guidance and Instructions and related official policies, or for weak cases that have no merit (i.e. cases that can be refused rapidly). In its 2008 report *Fast Track to Despair*, Detention Action highlighted a refusal rate of 99% in the Detained Fast Track compared with 70% when figures from the Detained-Fast Track were combined with those from other cases. Given the lack of information at the time of routing a case into the Detained Fast-Track and the approach that most cases are suitable for the detained fast track, it appears that a pretty random sample of cases enter the Detained Fast Track. This reflects the experience of ILPA members. That those cases do so much worse than other cases we conclude to be a result of the process itself.

20. Written confirmation of an appointment with the Medical Foundation for the Care of Victims of Torture or the Helen Bamber Foundation is likely to enable a legal representative to secure their client's case being taken out of the Detained Fast-Track. Securing such an appointment within the Detained Fast-Track timescales puts pressure on the legal representative, on those institutions and, of course, on the client. Appointments from other doctors will not be sufficient, only their reports will be, and the chances of securing a report within these timescales are almost non-existent.

21. Some of the most detailed reports about the process are by the UNHCR as part of its Quality Initiative Project. The June 2008 report[10] catalogues problems with the quality of decision-making in these cases. UNHCR expressed concerns about the cases routed into the Detained Fast-Track, and that they were remaining there instead of being identified as unsuitable and lifted out. They highlighted an incorrect approach to credibility, rejection of medical evidence, using standard wording and using it

[7] Ministry of Justice, *Transforming Legal Aid: Delivering a more credible and efficient system*, CP 14/2013, 9 April 2013.
[8] *Ibid*. at 5, paragraph 3.80ff.
[9] *Op.cit.*
[10] Quality Initiative Project, *Key Observations and Recommendations*, UNHCR Representation in London, June 2008, available at http://www.unhcr.org.uk/fileadmin/user_upload/pdf/5_QI_Key_Observations_and_Recommendations..pdf

inappropriately and the use of speculative arguments to dismiss cases based on a limited understanding of refugee law. Subsequent reports have echoed these findings [11].

- **The use of Country of Origin Information and Operational Guidance Notes in determining the outcome of asylum applications**

22. It is unclear how often country of origin information is consulted by UK Border Agency case owners. Instead it appears to be the case that Operational Guidance Notes and standard paragraphs are used, although these may be at odds with the Country of Origin information.

23. Recent examples of a failure to make proper use of country of origin information centre on Sri Lanka. ILPA has been in correspondence with the UK Border Agency for many years about the inadequacy of its country information about Sri Lanka[12]. On 23 October 2012 a charter flight left the UK carrying persons back to Sri Lanka. As usual, ILPA was copied in to a letter to the Administrative Court a few days before the flight, alerting the court that it would take place. Then, just after 11am on the day of the flight, we received another letter from Treasury Solicitors. This drew attention to errors in the country bulletin on Sri Lanka which had been relied upon in the previous letter. These errors suggest recklessness as to the accuracy of the facts that mislead the court. A number of injunctions were granted and thus some people were taken off the flight. ILPA wrote to Mr Justice Ouseley to ask that the court look into the unreliability of the information submitted to it. The Committee for the Prevention of Torture subsequently confirmed that representatives of the Committee, who were visiting the UK at the time, were on the flight. The letters are appended hereto at **Appendix six.**

24. Her Majesty's Inspectorate of Prisons personnel accompanied a charter flight to Sri Lanka on 6-7 December 2012, described below. A further charter flight to Sri Lanka was set to have taken place on 28 February 2013. The flight was scheduled during a period when a country guidance case was pending before the Upper Tribunal[13]. The Administrative Court of its own motion scheduled a hearing to deal with the question of whether it was appropriate to remove persons to Sri Lanka when a country guidance case was pending that would determine whether returnees were at risk of torture in Sri Lanka. The information that the UK Border Agency put into its letter to the Court advising the Court of the flight so that the court would be on notice should it receive applications for emergency injunctions (which was, as is standard practice, copied to ILPA), was at odds with the Home Office pleadings in the country guidance case. This, having been alerted by ILPA, the lawyers for the applicant pointed out in a letter to the Court. The court granted a stay in all the cases before it, on the basis of which others were able to achieve a stay. The letters are appended hereto as **Appendix seven.**

25. The UK Border Agency subsequently issued a new version of the country policy bulletin responding to some, but not all, of the concerns expressed by Freedom From Torture about the misrepresentation of its evidence. This was posted on the UK Border Agency

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[11] See also ILPA's *The Detained Fast Track: a best practice guide*, of 2007 and Bail for Immigration Detainees *Working against the clock: Inadequacy and injustice in the fast track system Refusal factory: Women's experiences of the DFT asylum process at Yarl's Wood Immigration Removal Centre*, September 2007, Human Rights Watch *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, February 2010 and Detention Action, Fast *Track to Despair*, May 2011.

[12] See e.g. ILPA to Head of Asylum Policy, UK Border Agency of 18 September 2009 re failed Sri Lankan asylum seekers and correspondence between ILPA and Phil Douglas, Country Analysis and Returns Strategy Team, Central Operations and Performance, UK Border Agency of 16 and 22 October 2009 re Sri Lanka: enforced returns of failed asylum seekers.

[13] The determination is awaited.

website in March 2013[14], described as a reissue of version 2 of the bulletin, rather than as a third bulletin. It cannot be reached through the Agency's *Sri Lanka: Country of Origin information* homepage[15]. Instead it appears on a page headed *Country Specific Asylum Bulletins.* On that page it continues to be described as the October 2012 bulletin. It will only be found on a determined search for evidence by those prepared to check information that appears no longer to be relevant. The Committee may wish to urge the Agency to explain why it has not made information that corrects earlier misrepresentations more prominent.

26. As to Operational Guidance Notes, the UK Border Agency's predecessors consistently opposed these being reviewed by the Advisory Panel on Country Information on the basis that they were not country of origin information but rather policy documents and that the country of origin information in those documents was selected to support policy and did not purport to be a balanced factual assessment. It was only when the work of the Panel passed to the office of the independent Chief Inspector that Operational Guidance Notes came under scrutiny[16]. The Chief Inspector devoted Chapter 8 of his report on the use of country of origin information in decision-making [17] to the Operational Guidance Notes, saying

> *8.2 There is a concern that the inclusion of country information in OGNs means Case Owners will use information selectively in individual decisions based on an overall policy position and will also use the OGN as the primary source of country information rather than referring to the COIS report or other available sources. Many Case Owners acknowledged in our focus groups that they were often the first port of call, if not the only one. Any shortcomings in OGNs would therefore translate into shortcomings in decision making.*
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> *8.3 Our interviews with staff and managers revealed they were unclear about the purpose of OGNs and the value of having both these and COIS reports.*

27. Of the Operational Guidance Note on Afghanistan the report said:

> *8.6 Some interpretations of the case law included in the OGN were confused and at odds with the COI that was cited.*
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> *8.7 COI was not properly referenced in the OGN, citing only the general area in the COIS report where the conclusions could be found. However the references could not be located and examination of the COI in the COIS report indicated far greater weight of evidence against the conclusions drawn in the OGN than for it. Guidance in the OGNs was confusing and contradictory and would not serve to assist a Case Owner in conducting an interview or making a decision. The guidance did not seem to relate directly to any known COI.*

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[14] See http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificpolicybulletins/srilanka-polbulletin?view=Binary. *Country Policy Bulletin Sri Lanka, v.2 [sic.] (reissued March 2013)* [accessed 13 April 2013].

[15] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/srilanka12/ [accessed 13 April 2013].

[16] See ILPA's submission of 21 December 2010 to the Chief Inspector's *A thematic inspection of asylum – the use of country information in decision making* available at http://www.ilpa.org.uk/data/resources/13008/10-12-20-Chief-Inspector-COI-Consultation.pdf. The Chief Inspector's report is available at http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/Use-of-country-of-origin-information-in-deciding-asylum-applications.pdf . The UK Border Agency's June 2011 response to the report is available at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/chief-insp/a-thematic-review

[17] *Op. cit.*

28. ILPA has long expressed concerns about Operational Guidance Notes. One of the most longstanding questions in current asylum policy is the question of return to Zimbabwe. In 2008 and 2009 ILPA corresponded with the then Home Secretary, Jacqui Smith MP about Zimbabwe. That is some time ago but it remains an important illustration of the problems that Operational Guidance Notes create and there are many parallels between it and the current situation concerning Sri Lanka. The question of return to Zimbabwe remains live and is coloured and affected by what has happened to date in the country guidance litigation.

29. In a letter of 3 February 2009 the then Home Secretary told ILPA she accepted the latest country guidance, the case of *RN (Returnees) Zimbabwe* CG [2008] UKAIT 83. However, ILPA received an undated letter addressed to stakeholders from the then Chief Executive of UK Border Agency, Lin Homer, circulated by email on 24 March 2009. It was accompanied by a new Operational Guidance Note and gave notice of advice to officials no longer to comply with the new Country Guidance. The justification offered was that "the *RN* determination took place against the backdrop of widespread and indiscriminate political violence that attended the Zimbabwean presidential elections last summer" which has not been repeated since then. Yet the Tribunal in *RN* concluded in November 2008 that "there can be no doubt at all" as to the risk category identified. Its consideration of the issues included an additional hearing on 30th October 2008 to enable the Secretary of State to present her argument that the general risk was restricted to summer 2008. That argument was rejected and the Secretary of State did not appeal. No change of circumstance since November 2008 was identified which could have provided a legal basis for failing to comply with *RN*. The Home Office further represented to the Court of Appeal in January, February and March 2009 that it accepted the Country Guidance. It persuaded the Court of Appeal to reject a challenge, the then lead case of *HS*[18], to the previous 2007 Country Guidance in March 2009 without consideration of the merits based on a commitment given to the Court that the Home Office would reconsider cases in light of *RN*. That was less than a fortnight before the letter from Ms Homer. The correspondence appears at **Appendix eight.**

- **The assessment of the credibility of women, the mentally ill, victims of torture and specific nationalities within the decision-making process and whether this is reflected in appeal outcomes**

30. Problems with the assessment of credibility for specific groups arise, in ILPA's experience, from problems with the assessment of credibility in general. The dynamic at work, for example in the cases of survivors of torture and certain nationalities, is that because membership of the group may result in extra protection, recognition as a member of the group is more closely policed and claims to be belong to the group treated as lies. Children are particularly affected: their age is doubted, then that they are held to be lying about their age is treated as impugning their credibility more broadly[19]. Another example is of those claiming to be refugees on the basis of their sexual orientation. As the case law, has become more favourable to this group, so their credibility has increasingly been doubted[20].

31. We are particularly concerned at the rise of pseudo-scientific methods of trying to determine credibility, for example the use of language analysis in an attempt to

[18] *HS (returning asylum seekers) Zimbabwe* CG [2007] UKAIT 00094.
[19] See ILPA's *When is a child not a child: asylum age disputes and the process of age assessment,* Heaven Crawley for ILPA, May 2007 at page 55.
[20] As documented by the UK Lesbian and Gay Immigration Group in their report *Failing the Grade* in April 2010 and by Stonewall in its report *No going back: Lesbian and gay people and the asylum system* of May 2010.

determine nationality, the attempts to introduce x-rays to establish age[21] and DNA analysis to determine nationality[22]. Language analysis and DNA tests cannot tell you a person's nationality. The possibility of their allowing interferences to be drawn as where a person is from is considerably weakened where that person has moved about and mixed with different groups in their life, as is the case with many refugees, many of whom will have spent time in camps. Language analysis is opinion evidence. As such it is inadmissible in a higher court of law unless it falls within an exception to the ban on opinion evidence, such as expert evidence. But members' experience of cases in which language analysis is deployed, backed up by scientific papers, suggests that there is an insufficient scientific basis for language analysis in refugee cases to be regarded as expert evidence.

32. There is no scientific or other solution that will cut a swath through the difficult task of determining credibility in asylum cases. As set out in UNHCR's UN High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*[23], this involves a scrupulous application of the burden and standard of proof and an exercise of judgement. The thread that guides the decision-maker through the labyrinth is the proper application of the law.

- **The effectiveness of the 5 year review system introduced in 2005**

33. In 2005 it was determined that rather than being given indefinite leave to remain when recognised as refugees, those so recognised should instead be given five years limited leave to remain with the possibility of applying for indefinite leave at the end of the five years. At that stage the case would be subject to an "active review" to determine whether the person qualified for international protection.

34. The overwhelming majority of applications for indefinite leave to remain at the five-year stage are approved. Many people will still stand in need of international protection after five years. Those who do not, having been in the UK lawfully for at least five years and often very much longer, while their claim for asylum was determined, will have a strong case for settlement on human rights' grounds. ILPA emphasises that once a person has been recognised as a refugee then the onus is on the Home Office to demonstrate that one of the cessation criteria in the Refugee Convention is met.

35. The giving of five years' limited leave thus appears to create extra work for the Government to little purpose. It adds to the prospect of delays and backlogs in other cases because work must systematically be directed to reviewing all these cases, and in deciding these cases themselves.

36. The effects for refugees and persons with humanitarian protection can be grave. A grant of limited leave can produce a sense of insecurity, a fear that at the end of five years one will be forced to return. It is difficult to provide reassurance, especially to a person who was refused at first instance and only succeeded on appeal. A lengthy wait for resolution of an application for indefinite leave exacerbates these fears and can lead to all the practical problems associated with an uncertain status such as difficulties in obtaining or continuing in work, because current and future status appears or is uncertain.

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[21] A topic on which ILPA has recently provided evidence to the Joint Committee on Human Rights for its enquiry into the human rights of unaccompanied migrant children and young people in the UK.

[22] See the critique in Science Insider http://news.sciencemag.org/scienceinsider/2009/09/border-agencys.html

[23] December 2011, HCR/1P/4/ENG/REV. 3, available at: http://www.unhcr.org/refworld/docid/4f33c8d92.html [accessed 9 April 2013], see especially paragraph 195 onwards.

37. The practice militates against fulfilment of the UK Border Agency's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to have due regard to the need to safeguard and promote the welfare of the child. A child born to a person British or settled is born a British citizen. A child born to a parent with limited leave is not. Some children born to refugees may be stateless. More will acquire the nationality of one or both parents, but in circumstances where the parent is estranged from his/her country of nationality and fears to approach the national authorities for a passport for a child.

38. While refugees are given limited leave they are also at risk of being affected by differences between the rights and entitlements of settled persons and those with limited leave and changes to those differences. That can increase feelings of insecurity.

- **Whether the system of support to asylum applicants (including section 4 support) is sufficient and effective and possible improvements**

39. As set out in the January 2013 report of the Parliamentary Enquiry into Asylum Support for Children and Young People[24], the findings of which have implications beyond this group, the system is not sufficient or effective. See, for example, the consideration of evidence linking increased infant mortality rates and deaths in pregnancy with inadequate provision of no-cash support. The current support system leaves those who try to survive within it vulnerable to physical and mental ill-health and those who attempt to supplement its meagre provision vulnerable to exploitation and abuse.

40. The level of support is inadequate to meet basic needs in the short to medium term. Problems are exacerbated when a person attempts to live on the support given in the medium to long term.

41. Support is a broader concept than that of food and shelter. For example, it is a matter of profound concern that not every separated child in the United Kingdom benefits from having anyone who has parental responsibility for him/her. In the case of children who are in care under section 31 of the Children Act 1989, a local authority automatically acquires such responsibility but the vast majority of separated children are not cared for under these provisions. Instead they are accommodated and provided with services under section 20 of the Children Act 1989 and as such do not enter the formal care proceedings process. A child is, as a matter of UK law, lacking in full capacity. If there is no one with parental responsibility for him/her then there are things for which consent cannot be given, things that cannot be done. This is not in line with Article 20 of the Convention on the Rights of the Child and the child is disadvantaged.

42. We highlight the February 2011 Education (Student Fees, Awards and Support) (Amendment) Regulations 2011 (SI 2011/87) which mean that those with Discretionary Leave to Remain in the UK, must now pay international student fees and will not be able to access student loans for a higher education course in England even if their long term future lies in the UK. It was established at the National Asylum Stakeholders Forum Children's subgroup of 8 October 2012 that the Department for Education and the Home Office had not been in consultation about this matter.

43. We are concerned that the proposals in the latest consultation on legal aid[25] will deny legal assistance to those with asylum support claims, especially claims for section 4 support for those whose applications for asylum have been rejected. The consultation paper says:

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[24] See http://www.childrenssociety.org.uk/parliamentary-inquiry-asylum-support-children . The papers at this link include ILPA's submission to the enquiry.

[25] *Op.cit.*

> 3.58 If an asylum seeker had their claim for asylum rejected and their appeal rights had been exhausted, they would cease to qualify for legal aid under the asylum seekers exception, and funding would cease. Only where they had made a 'fresh claim' for asylum would they once again benefit from the exception for asylum seekers.

44. As per the examples in **Appendix nine (below)** many persons will be unable successfully to make that fresh claim without legal assistance and may meanwhile be in very desperate circumstances indeed.

- **The prevalence of destitution amongst asylum applicants and refused asylum seekers**

45. We highlight a class not mentioned in the question, persons in need of international protection who are living underground, hand to mouth. If you anticipate that you will receive a rapid, wrongful refusal of your claim for international protection, however strong that claim is and whether your anticipation is correct or not, you may prefer not to bring yourself to the attention of the authorities by claiming asylum but instead to attempt a hidden existence, thus securing, if not protection, at least that you will not be returned to persecution, for a while. Such persons are very likely to be destitute and they are at grave risk of exploitation. Legal representatives see such people at a later stage, when they finally seek advice, or when they come to the attention of the authorities, for example in a workplace raid. .

46. Another class not contemplated in the question that may be destitute are those whose claims for asylum have succeeded, but who have not been able to make the transition to mainstream support. The case of child EG, who starved to death in this interregnum, is one example[26]. ILPA and some others have repeatedly expressed concern at the National Asylum Stakeholder Forum at the failure to address this problem and have been trying to instil a sense of urgency about so doing since at least 8 November 2012. We thought that we had finally succeeded, only to be told at the meeting in March 2013 that an end of February deadline for concrete action, imposed by a senior manager at the previous meeting on 12 January, had been unrealistic. It was suggested that the Agency had no power to do as ILPA suggested and provide support until a person succeeded in gaining access to mainstream benefits. Recent decisions of the Asylum Support Tribunal suggest that that is simply incorrect as a matter of law. These are discussed in an excellent briefing from the Asylum Support Appeals Project, appended hereto as **Appendix 10** and which ILPA sent to the responsible person in the UK Border Agency[27].

47. Section 4 support is wholly inadequate and a person cannot live with dignity on it. The principle of a card used to obtain support reflects an ideological commitment to no cash that defies all reason. A person who is considered able to leave will not qualify for section 4 support. In particular we highlight that a person is not eligible for asylum support when they have exhausted all appeal rights but are bringing a judicial review. Where a person does not qualify for asylum support, a local authority may be called upon to pick up the bill as set out in the case of *R (Clue) v Birmingham City Council [*2011] 1 WLR 99.

[26] See *the Serious Case Review of Child EG from Westminster City Council* (April 2012) http://www.westminster.gov.uk/services/healthandsocialcare/familycare/safeguardingchildren/serious-case-reviews [accessed 13 April 2013]. The case is discussed in the report of the Parliamentary Enquiry into Asylum Support, *op.cit.*

[27] ILPA email to Ms Helen Earner UK Border Agency 7 March 2013.

48. It is extremely difficult for a legal representative to ensure that a client focuses on his/her asylum case where that client is hungry and without food and shelter. It is extremely difficult for a client to trust the UK Border Agency or officials with whom they come into contact when the UK has left them without the basic necessities of life. At **Appendix nine (below)** we include a selection of those cases we made available to the Ministry of Justice on asylum support in February 2011 which set out some of the difficulties with asylum support. We highlight the following features of these cases:

    - That it is not until threatened with judicial review or until judicial review proceedings have commenced that the UK Border Agency has acted, often to make any decision at all
    - That particular difficulties arise from requiring persons who are destitute and have no means of support to travel all the way to Liverpool to lodge further submissions in person without any funding being available to defray the costs of the journey. This is pointless. Most of the time the person simply hands in the submissions; there is no interview or action of any kind.

- **Whether the UKBA or third sector organisations should be able to highlight concerns regarding legal practitioners to the Solicitors Regulatory Authority**

49. There is nothing to prevent the UK Border Agency or an organisation highlighting a concern to the Solicitors' Regulation Authority. As its website[28] says

    - We can receive reports from anyone who has concerns about a law firm or an individual that we regulate. This can include
        - members of the public, or people representing them such as relatives or Members of Parliament
        - lawyers and employees of law firms, or
        - other regulators and professional bodies.

50. As is explained there, the person providing intelligence will not be advised of any action taken on the complaint, unless they are required to provide a witness statement, etc.

51. ILPA is agreement with this approach. The Solicitors Regulation Authority should receive and weigh intelligence from the UK Border Agency and organisations that have concerns about a legal representative. It will be necessary to the weigh the information, some may be based on a misunderstanding of what the solicitor did, or should have done, and there is a risk that, for example, the UK Border Agency takes exception to a solicitor's entirely proper actions in the interests of his/her client. But the intelligence is as important part of identifying poor representatives.

52. These comments are not confined to the Solicitors Regulation Authority; they apply also to the Bar Council, the Institute of Legal Executives and the Office of the Immigration Services Commissioner.

53. With immigration matters (which include matters such as applications for refugee family reunion or applications by persons to remain on human rights grounds) no longer qualifying for legal aid significant numbers of persons who have little or no money will be looking for free legal advice that they are unable to find, or seeking to negotiate terms with someone who will expect to be paid in the end. Many of these persons will be isolated and alone, with little understanding of UK systems and procedures and no one to ask. Backlogs and confusion in the UK Border Agency can make it difficult even for a person who has some grasp of what should happen to ascertain whether their legal representative is doing a good job or not. This leaves people extremely vulnerable to

[28] See http://www.sra.org.uk/consumers/problems/report-solicitor/providing-information.page

exploitation by unscrupulous so called advisors and representatives, some of whom who may be giving immigration advice unlawfully without being regulated at all. The need for all regulators to ensure that advice and representation is of the highest standard has never been more pressing.

54. We are also concerned that the legal aid tender for contracts from 2013 did not include criteria that differentiated between applicant organisations on the grounds of quality. The result is that excellent representatives, to whom may people would wish to go have a very limited number of case ("matter") starts, for example just 100 per firm in London and Manchester, the same number as firms who do not provide such a high quality of service.

- **Whether the media is balanced in their reporting of asylum issues**

55. The approach of the Home Office and UK Border Agency determines much of the media reporting. We deplore the making of major announcements on immigration not to parliament but to weekend television programmes or early morning radio. This is all the more surprising giving that we are repeatedly told that proposals cannot be discussed or described in formal or bilateral meetings with officials, even when we understand perfectly well that they are just proposals because they have not been signed off by Ministers or announced. For our part, we have repeatedly asked the UK Border Agency that as "corporate partners" we get news releases at the same time as journalists even if we cannot see them before. This has not happened. We have to rely on journalists for them. The result is that the Government's line may go unchallenged, or cannot be challenged from the best informed perspective.

56. Whether those in need of international protection get as much coverage as those who are not is a question we are not in a position to answer. What we can identify is that reporting of asylum is not always accurate and that the stories covered in the media are not always news. The former is not necessarily a surprise; the law, policy and procedures are complicated and Government statements can create as much confusion as they dispel. The latter is more disappointing. One possible cause is most stories stemming from UK Border Agency news releases rather than independent reporting. If one examines the UK Border Agency website news pages it will be seen that among the unrelenting diet of articles about immigration offenders there is scarce anything about international protection[29].

57. As to accuracy, levels of support for indigent persons seeking asylum is an area where it appears to us that there is considerable inaccuracy in reporting, leaving many members of the public believing that those in receipt of asylum support get very much more than is the case.

58. There is also much confusion about whether a person seeking asylum is lawfully in the UK. A person who claims asylum at port of entry and is given temporary admission is not an illegal entrant.

59. Inaccurate reporting of "tough" talk on the part of Ministers and officials may leave persons seeking asylum and those may be considering seeking asylum confused as to their rights and entitlements. In the case of those who have yet to claim asylum, this may result in their not coming forward and making themselves known. In the case of those who have claimed asylum it may result in their not seeking assistance for themselves or their children, or medical care or not participating in volunteering and other useful activities that are open to them.

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[29] See http://www.ukba.homeoffice.gov.uk/news-and-updates/?area=allNews

- **The prevalence of refused asylum seekers who are tortured upon return to their country of origin and how the UK Government can monitor this**

60. If a person is wrongly refused asylum then, by definition, they will face persecution on return. This may take the form of torture, of killing, of inhuman or degrading treatment or punishment, etc. It is difficult to extrapolate from this to estimate prevalence. States are unlikely to publicise their unlawful actions and persons may disappear or die under torture.

61. The UK Government has access to the range of human rights reports and to expert evidence. As per the Sri Lanka example cited above, it does not always make best use of the evidence it has. The UK Government rarely instructs experts in asylum cases, instead waiting for applicants to proffer expert evidence and then taking issue with this evidence.

62. Her Majesty's Inspectorate of Prisons personnel accompanied a charter flight to Sri Lanka on 6-7 December 2012[30]. The inspectors reported that that, despite representations from the UK Border Agency, "For reasons that were not made clear, the Sri Lankan authorities would not allow inspectors to see the handover process on arrival in Colombo." They also recorded:

    "5.6 Staff were unsure what to do if they had concerns about the behaviour of receiving officials.

    They were unaware of any mechanism to report unacceptable behaviour by receiving countries should they witness it on arrival.

63. The Committee could usefully pursue the recommendations made in the report.

64. The evidence in *CM (EM country guidance; disclosure) Zimbabwe CG* [2013] UKUT 00059(IAC) was that:

    "Returnees are observed "airside" at Harare Airport by a Migrations Delivery Officer (MDO), who makes contact with the leader of the escort group once the returnees have disembarked but who then withdraws whilst the returnees go through immigration control. Usually, the MDO is able to observe the returnee through the open door of the immigration interview room. Once "landside" the MDO observes the progress of the returnees from interview room to immigration desk and then on to baggage reclaim. The MDO then observes the returnee leave the airport terminal building. The whole process takes about 40 to 60 minutes."

65. The Court in *CM* highlighted that the Home Office evidence ended where the returnee left the airport terminal[31]. There is always very real concern that attempts at monitoring might increase risk, both to those returned and those trying to support them. We have seen attempts at monitoring flounder because individuals have not kept in touch, which may be to avoid drawing attention to themselves.

66. We highlight into particular our concerns about the effects of the clause *Restriction on right of appeal from within the United Kingdom* of the Crime and Courts Bill on refugees. This is designed to reverse the effect of the judgment of the Court of Appeal in *Secretary of State for the Home Department v MK (Tunisia)* [2011] EWCA Civ 333.[32] MK is a

[30] Detainees *under Escort: inspection of Escort and Removals to Sri Lanka, 6-7 December 2012* by HM Chief Inspector of Prisons.
[31] Paragraph 202 of the judgment.
[32] ILPA provided further detail of *MK*'s case in submissions to the Joint Committee on Human Rights.

refugee from Tunisia, who had been living in Manchester for several years with his wife and daughters. He was extradited to Italy in 2008, further to a European arrest warrant. While out of the UK, his leave was cancelled. He was acquitted of all charges in Italy save one, possession of a false document. Nonetheless, the Secretary of State sought to block his return to the UK. The Court of Appeal held that an appeal could be exercised in-country if the person returns to the UK within the short time-limit (10 days) for lodging an appeal in-country and opportunity should have been given to MK to do so. Meanwhile MK was facing onward *refoulement* from Italy to Tunisia, something the UK courts, in allowing his extradition to Italy had identified would not happen, which was significant in their decision to permit extradition in the first place as they had determined that if returned to Tunisia, MK would face torture. The Crime and Courts Bill will reverse the effect of the Court of Appeal's decision leaving refugees stranded outside the UK vulnerable to return to the country in which they were persecuted.[33]

67. We welcome the Home Affairs Select Committee's decision to monitor the number of individuals granted asylum after having previously had an application refused with a particular focus on individuals who have been returned to Sri Lanka[34]. We urge the Committee, where such cases occur, to look at the person's account of what happened to the person on return and what the UK Border Agency, or any successor, made of this.

Adrian Berry
Chair
ILPA
15 April 2013

[33] For further information see, for example, the debates at 12 December 2012, col 1109 and see ILPA's evidence to the Joint Committee on Human Rights Enquiry into Extradition Policy of 21 January 2011, available at http://www.ilpa.org.uk/data/resources/14418/11.01.21-ILPA-to-JCHR-re-extradition.pdf

[34] Home Affairs Committee, Eighth Report of Session 2012-2013, HC 603, *The Work of the UK Border Agency (April–June 2012)*, paragraph 66.

Appendices

Appendices two and nine appear below. The rest are attached as separate documents.

Appendix 1 ILPA letters to the UK Border Agency of 13 June 2011 (Doc 1), 12 August 2011 (Doc 2) and 22 September 2011 (Doc 3) re screening

Appendix 2 Screening Cases (see below)

Appendix 3 ILPA & AIRE centre complaint to European Commission re screening, 13 January 2012 (Doc 1) and Commission letter of 28 August 2012 (Doc 2).

Appendix 4 ILPA to UK Border Agency Head of Asylum, Mr Graham Ralph, re the Asylum Operating Model (also forwarded to the European Commission

Appendix 5 ILPA to the Independent Chief Inspector of the UK Border Agency about the Detained Fast-Track, March 2012.

Appendix 6 letters pertaining to October 2010 charter flights to Sri Lanka

Appendix 7 Letters pertaining to the charter flight to Sri Lanka scheduled for 28 February 2013

Appendix 8 Correspondence pertaining to operational guidance on Zimbabwe

Appendix 9 Asylum support cases (see below – includes examples of attending to provide further submissions in person)

Appendix 10 Asylum support Appeals Project Bulletin re termination of support, 7 March 2013

Appendix 2 Screening Cases

E-mail - 23/05/2011

I had an urgent case in terms of accessing support; she has a baby and her social service accommodation was due to terminate last week. I called the appointments line for her around 15 times last Wednesday (18th); I reached a slight variety of recorded messages telling me that all the operators were busy.

Email January 2012

In August 2011 three minor female clients wished to lodge asylum claims in their own right. They were not unaccompanied minors. They lived in ***. The representative requested that they be allowed to lodge their claims at Dallas Court or with the Liverpool Asylum Team, so that they would not face the disruption and expense of a trip to the Croydon Asylum Screening Unit. The representative attempted to follow up the request a few times but no response was received from the UK Border Agency.

Eventually the representative managed to get through by telephone and was told that the clients had to travel to Croydon to lodge their asylum claims and be screened. The representative telephoned the Asylum Screening Unit appointment line with the girls present, and was again told that they would not be given appointments in Croydon Asylum Screening Unit, but that they should just attend there without appointments any day and they could lodge their claims and have screening interviews.

On 11 November 2011 the girls travelled to Croydon with the assistance of a community organisation in ***. They were accompanied by their mother and by a member of the community organisation. The representative had sent a letter to Croydon Asylum Screening Unit a week beforehand to advise the UK Border Agency that the girls would be there that day, and that the UK Border Agency should get in touch with the representative with any questions.

On 12 November 2011 the girls attended the representative's office without Screening Interview records. They only had blank Statement of Evidence Forms. No case owner was indicated on the forms. The representative posted the forms to the Liverpool Asylum Team with a covering letter.

About a week later one of the girls came to the representative confused because she'd received a letter from Dallas Court asking that she come in for a screening interview. She had received the letter directly, no copy had been sent to the legal representative. The legal representative telephoned Dallas Court to say that the girls had already been to Croydon.

The legal representative was told that they had been refused screening interviews at Croydon "because they arrived without an appointment" and "they arrived around lunch time and it was a very busy day." When the legal representative asked why no one from the UK Border Agency had telephoned the representative that day or afterwards the person on the telephone from the UK Border Agency had no answer.

Fax sent by a lawyer - 13/09/2011

Ms A attended Lunar House on 31/08/11 to claim asylum. She was given the 'red' letter with the telephone number to call to claim asylum. She has been ringing this

number constantly since this date but it is constantly engaged. On 05/09/11 she returned to Lunar House being unable to make an appointment to claim asylum by telephone. The UKBA officer she spoke to took Ms A's mobile telephone number and said that she would call her.

To date our client has not received a call from the UKBA to enable her to claim asylum. Ms A was told to leave Lunar House otherwise security would be called. Ms A and her 11 year old son are destitute and have been staying with people they have met and for two nights slept rough."

E-mail - 25/05/2011

I have had a recent unpleasant experience at the ASU attending in person with a minor client who is a victim of trafficking for domestic servitude. She was taken to the ASU by social services on 22/2/11 but was turned away as they were too busy, and given an appointment to return on 28/2/11. She duly returned with a social worker on that date.

From the general ASU she was sent to the children's ASU where she was appallingly treated by an I[mmigration] O[fficer] who accused her of lying about her age and identity because the Home Office had a copy of the documents on which she entered (or rather was trafficked!) into the UK and these made her 25 with a different name. They lodged her claim in the false identity instead of her correct identity and told her that they would contact her traffickers to check up on her. No screening interview was conducted and she was given a further appointment to return on 11/3/11. On 11/3/11 I attended the adult ASU with the client and her foster mother. The appointment was for 8.30am. I had an age assessment from social services confirming client's age as 15 which I handed in. We stayed there until 3.30pm when we were told that no screening interview would take place that day.

E-mail - 25/05/2011

A senior lady (60+) attended ASU having caught bus at 3.30am to be there for 8.30ish a few weeks ago. She was about fifth in queue, but told on the standard letter she was too late to be seen that day.

Appendix 9 Asylum Support Cases (adapted from February 2011 submission to the Ministry of Justice on legal aid)

C

C is a single mother. Her 17 year-old son suffers from epilepsy and has regular seizures. They are both failed asylum seekers. They applied for section 4 support on the grounds that he would be unable to leave the UK because of his medical condition. She provided letters from her son's doctors in support of their application. The UK Border Agency refused them support because the medical evidence had not been submitted in the form of the UK Border Agency's own medical declaration. They sought advice from a firm of solicitors, who advised them to appeal the decision. Their solicitors assisted in preparing additional medical evidence and legal submissions to the effect that there is no formal requirement that evidence be submitted in the form of a medical declaration. They also referred his case to the Asylum Support Appeals Project for representation on the day of the hearing. They won their appeal.

A

A was a failed asylum seeker with physical and mental health problems. His eye sight was very poor as a result of having been tortured. He was destitute and living on the streets. A Law Centre advised him to submit further representations regarding his asylum claim by post as he was unable to travel by person to the Further Submission Unit in Liverpool. They also helped him apply for support. The UK Border Agency refused him support on the grounds that he had not attended the Liverpool Further Submissions Unit in person, as required by their policy. They made no mention of his postal submissions nor did they address his request to submit them by post for medical reasons. They also failed to abide by their own policy of returning all postal submissions to the sender.

B

B was an asylum seeker who had been in the UK for 15 years, and had an outstanding claim for leave to remain in the UK under Article 8 of the European Convention on Human Rights. He had been street homeless for four years and had recently been admitted to hospital for a month, which included spending a week in the intensive care unit due to acute renal failure and respiratory failure. The hospital mistakenly believed he was not entitled to any help with housing and discharged him back to sleeping on the street. Five days later, legal aid lawyers were instructed and advised him to apply for section 4 support, and submitted an urgent application to the UK Border Agency. However, the UK Border Agency said that they would not be able to process the application for 14 days. The following day the lawyers sent the UK Border Agency letter before claim threatening judicial review due to the delay in making a decision on B's section 4 application and B was provided with section 4 accommodation that day.

P

P was an asylum seeker in receipt of section 4 support, which was a room in a shared house. She spoke little English and suffered from mental health problems. She had asked the accommodation manager to move her to a different room as her room was extremely small, but she had been told this was not possible. Lawyers advised that her room was smaller than the statutory minimum requirement and contacted the UK Border Agency. Their Contract Compliance Team investigated this matter and moved her to a room that meet legal standards.

N

N was seven months pregnant and had been street homeless and sleeping inside a church and on a park bench for two months. She was an asylum seeker, waiting for the UK Border

Agency's decision on her fresh claim for asylum. She had become street homeless after the person with whom she had been living had asked her to leave. A voluntary sector organisation had assisted her to apply for section 4 support. At the time when she saw legal aid lawyers, the application had been outstanding for 14 days, during which time N continued to be sleeping in the church and outside. The UK Border Agency refused to say when a decision would be made and therefore the voluntary sector organisation referred her to legal aid lawyers. The lawyers sent the UK Border Agency a letter before claim threatening judicial review due to the delay in making a decision on N's section 4 application. She was provided with section 4 accommodation that day.

B

B was an asylum seeker whose case was being considered under the UK Border Agency's Case Resolution ('legacy') caseload. He was in receipt of section 4 support but was given one weeks' notice by the accommodation manager that this support would terminate on the basis that it should have ended two years previously as it was alleged that B had breached the conditions of his support at that time. This was not something that had previously been put to B and he denied the allegation of a breach in any event. A voluntary sector organisation assisted B to make a new application for section 4 support, and asked that this be treated as urgent due to his imminent homelessness and because he has a disability; his leg has been amputated and he wears a prosthetic limb. However, the UK Border Agency refused to give B's application any priority or provide him with accommodation before his current accommodation was due to end. The voluntary sector organisation referred B to the legal aid lawyers as they considered that B would be street homeless unless legal action was taken. B instructed lawyers two days before his accommodation was going to end. The lawyers sent the UK Border Agency a letter before claim threatening judicial review and he was provided with accommodation the following day.

Q

A voluntary sector organisation Q to apply for section 4 support. The UK Border Agency determined that decided that she was eligible for this support, as she was destitute and had an outstanding fresh asylum claim, but would only offer her dispersal accommodation outside of London. Q felt unable to accept this offer, as she suffered from severe depression and without the specialist counselling she received from the Medical Foundation for the Care of Victims of Torture (now Freedom from Torture), and the emotional support she received from members of her church and her daughter in London she was worried that she would not be able to cope. Legal aid lawyers sent the UK Border Agency a letter before claim threatening judicial review due to their failure to follow their own policy on dispersal. Following this, the UK Border Agency provided Q with section 4 support in London.

D

D with the help of a voluntary sector organisation, had applied for section 4 support as he, his wife and his children (aged three, four, and seven) had been told to leave their relative's accommodation and they had nowhere else to go. The UK Border Agency refused this application as D was not treated as having made a fresh claim for asylum as he had not submitted this in person at the Liverpool, as the Agency's policy requires people to do. D had not done so because he could not afford to pay for himself and his family (who are required to attend) to travel to Liverpool. A duty barrister from the Asylum Support Appeals Project, acting pro bono, represented D at his appeal to the First-tier Tribunal (Asylum Support), but the appeal was refused, although it was accepted that D was destitute. D was referred to legal aid lawyers for advice about challenging that decision (there is no appeal from the First Tier Tribunal (Asylum Support) to the Upper Tribunal) and they assisted him to apply for section 95 support, which is paid to persons who have an outstanding, unresolved claim for asylum. D was provided with emergency accommodation (available in these circumstances

but not in cases of section 4 support) within two days and subsequently went on to receive section 95 support.

B

B was homeless and had spent several nights sleeping on the street. He also suffered from mental health problems and attended the Medical Foundation for the Care of Victims of Torture for specialist counselling. A voluntary sector organisation assisted him to apply for section 4 support. That organisation, and the Medical Foundation, made repeated requests to the UK Border Agency that B's application to be treated as urgent because of their concerns about his health. However, he had been waiting for over six weeks for the application to be processed and the UK Border Agency refused to say when this would happen. Legal aid lawyers were instructed under the Legal Help Scheme. They got in touch with the UK Border Agency and explained that they were instructed to commence judicial review proceedings. They started to draft a letter before claim that day but before the day was out the UK Border Agency got in touch with the lawyers to advise that they had now granted B section 4 support.

N

N had recently arrived in the UK and claimed asylum. His wife, who was already in the UK, was in receipt of section 4 support, and living in a female-only shared house in London. N had nowhere to live and asked to be accommodated with his wife. They both suffered from mental health problems following torture in their country of origin and were desperate to be living together again. With the assistance of a voluntary sector organisation N applied for emergency accommodation, which can be provided while a decision on support is made. The UK Border Agency offered accommodation in Liverpool and would not allow his wife to be accommodated there with him. N was referred to legal aid lawyers. The UK Border Agency confirmed that emergency accommodation would only be provided to N and not to his wife, and that his application for section 95 support, which would cover both of them, would take six weeks to process. The lawyers sent a letter challenging this, requiring the Agency to provide emergency accommodation to N with his wife within seven days. This condition was met, and their section 95 application was processed within four weeks.

T

A voluntary sector organisation assisted T to apply for section 4 support, and asked for this application to be treated as urgent as T was homeless and HIV positive. The organisation tried several times to get in touch with the UK Border Agency over an eight-day period to chase the progress of this application but received no response. They referred T to legal aid lawyers due to the delay and because they considered that the application would not be processed unless legal action was taken. The lawyers sent a letter before claim threatening judicial review due to the delay, and asked for a response within five days, as T had been able to secure accommodation with a friend until then. The UK Border Agency granted T section 4 support within this timeframe.

N

N's section 4 support was terminated as her fresh asylum claim was refused. A voluntary sector organisation assisted her to appeal this decision and to make a new application for section 4 support because she had made an appointment to submit another fresh asylum claim. However, the UK Border Agency refused to process this section 4 application or continue to provide N with section 4 support pending her appeal of the decision to withdraw her previous support, which meant she was going to be destitute for an unknown period, until her appeal was heard. At that time the First-tier Tribunal (Asylum Support) were experiencing substantial delays in dealing with appeals. Legal aid lawyers were instructed. They got in touch with the UK Border Agency, who advised that they had now refused the

new section 4 application as N had not yet submitted her fresh claim in person in Liverpool. The lawyers sent the UK Border Agency a letter before claim challenging the failure to provide N with accommodation pending her appeal. Following this, the UK Border Agency agreed to continue N's section 4 support pending the appeal. Before the appeal was heard, N submitted her fresh asylum claim in person, and the lawyers advised her to apply for section 95 support. The application was refused but before the hearing the UK Border Agency recorded N's fresh asylum claim and granted her section 4 support, so the appeal was withdrawn as the issue became academic.

A

A had been provided with accommodation and financial support under the Children Act 1989, from the local authority. The local authority had given A notice that this support was going to be withdrawn. A applied for section 4 support from the UK Border Agency but they told her they would not be able to assess her application before the local authority support was due to end. A's case was complicated because her three children had British citizenship and she wanted to be accommodated in London so that they could continue to have contact with their father, from whom she was separated. Legal aid lawyers were instructed. A significant amount of negotiation with the UK Border Agency took place regarding A's section 4 application, as they considered that section 4 support could not be provided in respect of British children. The lawyers also had to negotiate with the local authority to get them to agree to extend A's support pending the UK Border Agency's decision, which they agreed to do. Before they decided the application for section 4 support, the UK Border Agency granted A indefinite leave to remain in the UK.

G

Gs asylum claim had been refused because she did not reply to the UK Border Agency's request for further information. However, as this request had been sent to an incorrect address she had asked for this decision to be withdrawn and was waiting for a decision from the UK Border Agency. She had also made a fresh asylum claim. G had recently given birth and because she did not have any accommodation the local authority agreed to provide temporary support. She was receiving a total of £18 per week for her and her baby. However, this was being withdrawn. A voluntary sector organisation had assisted G to apply for section 4 support but this was refused as the UK Border Agency considered that she was eligible for section 95 support. The UK Border Agency then changed its mind and told G to reapply for section 4 support. She went back to the voluntary organisation and spent all day in their offices but they were too busy to help her. Legal aid lawyers were instructed. They negotiated with the UK Border Agency and were able to obtain section 4 accommodation for G the following day, preventing her and her baby from becoming homeless.

S

S had been refused section 95 support because the UK Border Agency considered that section 55 of the Nationality, Immigration and Asylum Act 2002 was applicable in his case, whereby support is refused those the Agency considers have not claimed asylum as soon as reasonably practicable. His immigration solicitors referred him to specialist asylum support lawyers for advice about judicially reviewing this decision; there is no right of appeal attached to a section 55 decision. A letter before claim was sent to the UK Border Agency threatening judicial review unless they granted S section 95 support. The UK Border Agency maintained their decision. ST was then assisted under the Legal Aid Scheme. A claim for judicial review was issued and the UK Border Agency then granted S section 95 support.

G

G had been told that he had to leave his relative's home. He was mentally unwell and had a history of five suicide attempts. A voluntary organisation assisted G to apply for section 4

support, but he had been waiting for two months for a decision on this application, despite the organisation getting in touch with the UK Border Agency several times, explaining the urgency and asking for the application to be treated as a priority. In the meantime, G had been street homeless for two weeks when the voluntary organisation referred him to legal aid lawyers for emergency assistance. The UK Border Agency had by then granted section 4 support, but told him he would have to wait another five days for accommodation to be provided and that he could not access any emergency accommodation. The lawyers sent a letter before claim to the UK Border Agency threatening judicial review unless G was provided with accommodation the following day. Following this, the UK Border Agency provided G with section 4 accommodation the next day, ending his destitution.

M

M had been accommodated by the local authority but this support was being terminated. She went to a voluntary sector organisation three times to try and apply for section 95 support but they said that they were unable to help her with this application as the UK Border Agency had told them that she was not eligible for this support. Legal aid lawyers communicated with the voluntary sector organisation and explained M's immigration status, and that the UK Border Agency had made a mistake. The voluntary sector organisation then agreed to assist M with her section 95 application. Legal aid lawyers also assisted M to obtain relevant medical evidence in support of her application.

Z

Z had been refused section 95 support under section 55 of the Nationality, Immigration and Asylum Act 2002, as the UK Border Agency considered that she had not claimed asylum as soon as reasonably practicable. A voluntary organisation referred her to legal aid lawyers for specialist advice about judicially reviewing this decision; there is no right of appeal attached to a section 55 decision. The lawyers were instructed under the Legal Help Scheme. They sent a letter before claim to the UK Border Agency threatening judicial review. Following this, the UK Border Agency reconsidered their decision in Z's favour and granted her section 95 support.

X

Z is from Zimbabwe. He submitted a fresh claim for asylum in 2005. Further representations have been made since; the most recent substantive expert evidence was submitted 2009, to which no reference was made in a decision more than six months later. X lived with a friend until summer 2010 but that friend could no longer support him and he became homeless and destitute. He lodged an application for section 4 support by himself, which was refused. His appeal was dismissed on the basis that he was an asylum- seeker as he had further representations outstanding (the Secretary of State had not dealt with the most recent representations in her most recent decision). He came to a legal representative who applied for section 95 support, support for persons with an outstanding application. This was refused as the Home Office records were incorrect, showing no further representations outstanding. The representative gave notice that a judicial review of the refusal would be sought. The Home Office then considered the application properly and granted section 95 support.

M

M is from Zimbabwe. She came to the UK as a visitor. She was able to stay with her aunt on the understanding that she would cook and look after her Aunt's children on her behalf as her aunt worked. Her aunt confiscated her passport and she was treated effectively as a prisoner during this time. It was not until after the six months visit visa had expired that she was able secretly to take back her passport and escape.

She found an agency that said it had extended her visa for around two years enabling to her to work. She slept on friends' floors and sofas. When she applied for a provisional driving licence in 2003 confiscated her passport as the visa was forged. M claimed asylum as soon as she learned that she had no leave to be in the UK. The application was refused as was her subsequent appeal. She continued to reside with friends who are able to provide food and accommodation on the understanding she would regularly move around her church group so as not to put too much pressure on one person at any one time.

She made further representations to the UK Border Agency as she was able to get fresh evidence that had not been considered at the time her initial asylum claim. The UK Border Agency sent a standard that her claim would be treated as a legacy case and it would be decided within five years of the date of this letter.

M attended the Home Office in October 2009 however there were no records of her further representations potentially amounting to a fresh claim for asylum. An uncle paid for M to live rent accommodation and sponsored her to go to university, while friends continued to provide some support with food etc., but her uncle's his health deteriorated and thus his ability to work and earn money was reduced. M had to leave her accommodation. By this time M had exhausted previous support due to the amount of time she had been supported and the number of people she had relied upon. M was unable to stay with her aunt and uncle as her aunt was a foster mother looking after between three to four children at any one time. M went to university and was in her final year of a degree. She was able to defer the third year's payment until after she would graduate.

M made an application for section 4 support. This was refused but M did not know on what grounds, as the voluntary sector organisation that had made the application had lost her file. The UK Border Agency then advised that M had stayed at a different address to the one on the application form; therefore it was not considered she was destitute at that time of applying for the section 4 support.

M was prevented from accessing main stream welfare benefits and prohibited from taking up employment and housing due to her immigration status. Legal aid lawyers applied for section 4 support to be provided for her near her university but could not obtain supporting evidence from her uncle as he feared that to say he had supported M would compromise him in his job as a civil servant. The UK Border Agency refused the application on the basis that she was able to access support through other means or that she was and destitute and had failed to explain how she could pay for her course. Her lawyers prepared her appeal and she was successful in arguing that not to provide support and accommodation would lead to a breach of Human Rights under Article 3 of the European Convention on Human Rights.

L

L had been separated from her children in her country of origin. The children had entered the UK as unaccompanied minors and had subsequently been granted leave to remain in the UK. They were accommodated by social services.

L claimed asylum on arrival. Social Services reunited L with her children and agreed that L could live with her children; however they have no basis on which to provide support to L. L had no financial support and the accommodation that has been provided to L's children and L was soon to cease as the landlord is of the property is not willing to renew the lease with Social Services department. L's asylum claim was refused with no in-country right of appeal. She had sought permission for judicial review of that decision and a consent order had been agreed between her representatives and the Home Office that the Home Office would reconsider its decision to deny her an in-country right of appeal.

L applied for support but this was refused. A voluntary sector agency assisted her to enquire as to the reason for this and the response was that there was no record of an outstanding claim for asylum. Further documentation was provided by L including a letter from social services. The application was reconsidered, but with the same result.

Legal aid lawyers assisted L to prepare an appeal to the Asylum Support Tribunal to challenge the refusal, supplying in evidence a Court consent order demonstrating that L's asylum application is being reconsidered by the Home Office. The lawyers argued that L should be accommodated with her children and further that this should be near where her children had been living so that their education was not disrupted. They made detailed submissions on the relevant Home Office policy.
L's appeal was successful and the family were provided with support, all together and in a location where the children were able to continue their education.

C
C sought asylum as an unaccompanied child in the UK having fled rape and torture inflicted during the civil war in her country. Her application for asylum was refused but she was granted discretionary leave to age 18. When this was coming to an end she applied to extend it but this was refused and her appeal dismissed. C had no legal representative at the time and was unaware that her application had been refused.

C has multiple health problems, both mental and physical, as a result of the treatment she has suffered. Legal aid lawyers have assisted her to make a fresh application for asylum which included evidence from the Medical Foundation for the Care of Victims of Torture.

C was held not to satisfy the test for social services support as she was found not to be in need of care and attention within the meaning of the definition. She was refused asylum support. Legal aid lawyers assisted her to appeal the refusal. Following receipt of the appeal against refusal of support, the UK Border Agency granted C exceptional leave to remain in the UK.