



British Refugee Council, Migrant Helpline, Refugee Action, Refugee Arrivals Project, Scottish Refugee Council, Welsh Refugee Council response to:

Fair, effective, transparent and trusted – Rebuilding confidence in our immigration system

An independent and transparent assessment of immigration

February 2007

About the organisations

The British Refugee Council is the largest non governmental organisation in the UK working with asylum seekers and refugees. We not only give help and support to asylum seekers and refugees, but also work with them to ensure their needs and concerns are addressed by decision-makers. We are a membership organisation, with members ranging from Refugee Community Organisations to large international NGOs.

Migrant Helpline has a long history of working with asylum seekers, refugees and migrants in the South East. As well as providing direct services we proactively promote awareness of the issues surrounding our clients and work with host communities to assist with integration.

Refugee Action is an independent national charity that works with refugees to build new lives in the UK. With 25 years of experience in reception, resettlement, development and integration, we provide advice and support to asylum seekers and refugees in 10 regions across England.

Refugee Arrivals Project (RAP), is an independent, not-for-profit organisation that provides humanitarian assistance and support services to new applicant asylum seekers and refugees. Through its work RAP seeks to influence the development of refugee policy for all asylum seekers and refugees.

Scottish Refugee Council provides help and advice to those who have fled human rights abuses or other persecution in their homeland and now seek refuge in Scotland. We are a membership organisation that works independently and in partnership with others to provide support to refugees from arrival to settlement and integration into Scottish society. We campaign to ensure that the UK Government meets its international, legal and humanitarian obligations and to raise awareness of refugee issues.

The Welsh Refugee Council (WRC) empowers refugees and asylum seekers to rebuild their lives in Wales. It provides advice, support and information to asylum seekers and refugees and advocates and campaigns for refugee rights as enshrined in international law.

Chapter 1: The need for an independent assessment

We agree with the proposal to introduce a new body to assess IND and rationalise the existing monitoring, advisory and inspection regime.

However, we have some concerns about the process by which such a significant change will be effected and the proposals set out in the consultation document do not contain sufficient detail for us to respond as comprehensively as we would like. At present, there are significant gaps in relation to resourcing, change management processes and crucially, how the body might go about systematic monitoring in areas such as quality of decision making that do not currently fall within the remit of an existing inspectorate or body.

Further, the Immigration and Nationality Directorate has been through numerous re-organisations and fundamental change processes over recent years. At the time of writing, IND is migrating to 'shadow' agency status at the same time as attempting to roll out the New Asylum Model to cover the full asylum caseload and embedding the regional delivery structure. Introducing further change into an organisation in flux carries a risk that the work of IND will be seriously disrupted, leaving vulnerable refugees and asylum seekers without access to an effective protection system.

It is essential that any new body not disrupt the good work already being done in the existing inspectorates, and that it be developed in such a way as to become more than the sum of its parts. We strongly urge the Home Office to follow the recommendations set out in the National Audit Office's 2006 report on the creation of Ofcom, which specifically address best practice in public sector regulator mergers¹. In particular, we feel NAO's recommendations on robust financial planning, communication with stakeholders and review of the merger against the desired outcomes are of particular relevance to these proposals.

Finally, in order to ensure parity of inspection across regions, it is essential that in-depth discussions with the devolved administrations and relevant bodies in Scotland, Wales and Northern Ireland begin at the earliest opportunity. By way of example; at present, the consultation document references the work of Her Majesty's Inspectorate of Constabulary, but fails to reference the work of Her Majesty's Inspectorate of Constabulary for Scotland, responsible for inspecting the eight Scottish and four common police services.

Chapter 2: the role

Objectives of the new body

Whilst we recognise the importance of ensuring that Parliament, government, the public and those in contact with the immigration system have confidence in its operation, we are concerned that these measures are being put forward as the 'two essential objectives' for the new body. Confidence or lack thereof is not synonymous with objectively verifiable measures of effectiveness. We urge the Home Office to base the objectives for the new body on those set out by the Home Affairs Select Committee in their July 2006 report:

603 'We recommend that the Government establish an Independent Immigration Inspectorate with oversight of every stage of immigration control: overseas, at the border, in-country, enforcement (including detention) and appeals. It should be looking for high-quality decisions, active management, clear lines of responsibility and reporting, easy communication within and across authorities, meaningful statistics, effective and non-distorting targets, excellent customer service and promotion of good race relations. The Inspectorate must be independent, properly resourced and with the authority to make recommendations to which the Government has to respond'

We welcome the focus on outcomes in the consultation document, but feel it is essential that the new body also scrutinise processes when considering quality of service. Refugee status determination is itself a process, and driving up the quality of decision making can only be achieved by ensuring that case owners are implementing best practice. We urge the Home Office to build on the excellent work of UNHCR's Quality Initiative project to ensure quality decision making is at the heart of the new body's remit.

Finally, it is unclear why regionalisation and the appointment of regional directors will necessarily contribute to improved effectiveness within IND. Broad cross regional comparisons may be of limited use in a context where the local population, asylum seeking population and wider social context are radically different. Instead, the new body should ensure that regionalisation goes hand in hand with the provision of robust regional data across the full range of IND's core business in order to enhance transparency and the quality of stakeholder engagement.

¹ Comptroller and Auditor General, The creation of Ofcom: Wider Lessons for public sector mergers of regulatory agencies, NAO, 2006. A copy of the Executive Summary is attached to this response for ease of reference.

Intervention in individual cases

We note that the new body will not be considering intervention in individual cases, and agree that to do so might risk overwhelming the new body with casework. However, it is essential that consideration is given to the urgent need to ensure effective redress for individual claimants, and to the duties of the new body to refer on cases where manifest injustices or abuses have taken place.

The existing system cannot be seen as in any way satisfactory, as the following evidence provided to the Home Affairs Select Committee by the IND Complaints Audit Committee attests:

*'IND is exercising significant new powers which have an impact on the lives and personal safety of thousands of asylum seekers. Enforcement, removals and detention involve police-like powers of entry to premises, restraint of persons, detention in holding centres and forceable removal. These powers are exercised over people who are often both vulnerable and desperate. If the UK asylum system is to work properly, it must protect those whom society may least wish to protect. In this regard an effective complaints system is vital to expose and redress misconduct, malpractice and unlawful violence. **The current system patently fails to do this.**'²*

Whilst it is true that individuals may complain to their MP, or via their MP to the Parliamentary and Health Service Ombudsman, the gap between the level of dissatisfaction and serious malpractice identified by the IND Complaints Audit Committee and the number of complaints reaching the Ombudsman is clear evidence that this system is not working. The Audit Committee reports an estimated 26,000 written complaints per annum, where *'one third of complaints against individuals are so serious that they should be investigated by a small group of properly-trained investigators working to proper standards and guidance to ensure a thorough investigation which would withstand independent scrutiny'*³. In sharp contrast, during 2005/6 only 95 complaints against IND were accepted for investigation by the Parliamentary and Health Service Ombudsman (of those determined in the timescale, 88% were upheld in full or part)⁴.

Framework for the Role

We agree that the new body should be placed on a statutory footing, and should be able to lay reports before Parliament.

We believe that in addition to the duty to provide annual reports to Parliament, and to respond to requests from the Secretary of State or Director General/Chief Executive of IND the new body must also have the power to itself initiate investigations into specific areas of IND's business or undertake thematic reviews across the Directorate.

We are very concerned at the assertion that *'the new body should discharge its responsibilities in a manner supportive of government policy'*, which clearly conflicts with any notion of objectivity or independence. The new body should not be reduced to a regulator of management information and customer services, but should have a clear focus on human rights standards. The importance of the rights and principles involved in refugee status determination make it essential that the body is grounded in these, and that it possesses sufficient independence to act as a meaningful safeguard for vulnerable asylum seekers and refugees.

² Memorandum from IND Complaints Audit Committee to Home Affairs Select Committee, July 2006.

³ Ibid.

⁴ Annual Report 2005/2006, Parliamentary and Health Service Ombudsman.

Other Refugee Council publications are available at www.refugeecouncil.org.uk

Chapter 3: The relationship with existing immigration monitoring, advisory and inspection bodies

Complaints Audit Committee

We agree that the work of the Complaints Audit Committee should be placed within the remit of the new body.

Certification Monitor

We agree that the remit of the Certification Monitor should be placed within the role of the new body.

However, it is essential that any amalgamation does not dilute the focus of the work done by the Monitor. The role was created as a guarantor that the NSA system would not function to the detriment of refugee protection, and was a critical factor in parliamentary debates on the introduction of the NSA regime.

Monitor of Accommodation Centres

We agree that the remit of the Monitor of Accommodation Centres be placed within the new body.

The Race Monitor

We agree that the role of the Race Monitor, appropriately extended, should be placed within the new body.

However, as with the Certification Monitor, we are concerned that this not lead to any dilution of focus on the issue of race, and that the wider work on equalities be properly resourced as a separate workstream within the new body.

The Advisory Panel on Country Information

We believe that APCI should remain a separate independent body, reporting as present, with appropriate links to the new body designed to facilitate a co-ordinated approach to quality. In particular, we feel that in order to best support the work of the new body, APCI should develop its work on country information to include Operational Guidance Notes and other documentation comprising country information.

The Advisory Board on Naturalisation and Integration

We believe that the Advisory Board on Naturalisation and Integration should not be considered as part of this review, but rather as part of the broader review of non-departmental public bodies.

Her Majesty's Inspectorate of Prisons

We strongly agree with the proposal that HMCIP retain her role in respect of immigration detention facilities, with a duty being placed on the new body to have regard to her reports when undertaking its work.

The Prisons and Probation Ombudsman

We agree with the proposal that the role of the Prisons and Probations Ombudsman should remain unchanged.

Overall, we urge the Home Office to consider carefully the process by which the new body will be created, having particular regard to the impact of the broader organisational change agenda within IND. In our view resourcing will be crucial, as many of the existing bodies are already stretched beyond capacity, and the far broader remit of the new body will require significant investment in personnel and organisational infrastructure. Many of the existing bodies enjoy a high level of ministerial access, and it is essential that this level of influence be built into the work of the new body, rather than watered down in its creation. Finally, the new body must have a clear commitment to human rights standards, with the independence and powers necessary to achieve positive change across IND and ensure that the Home Office provides protection to all those who need it.

We look forward to working with you on more detailed plans when these become available.

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