



# Home Office

Home Secretary

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Sarah Woodhouse  
Certification Monitor

I am grateful for your 2<sup>nd</sup> annual report and for all the work that you have undertaken over the past two years. You have fulfilled the role of Certification Monitor in a conscientious and professional manner.

I am pleased to note that you have made a number of positive comments in your report. These are a reflection of our commitment to ensuring that the non-suspensive appeals (NSA) process operates fairly and effectively.

The NSA process continues to be a key element of the Government's asylum policy. It has played a crucial role in our ongoing initiatives to reform the asylum system, and has contributed significantly to the successes that we have achieved in recent years.

In particular the NSA process has played an important part in the following achievements:

**1. Asylum applications down by 73% since their peak in 2002**

The importance of the NSA process in contributing to this success is demonstrated by the large falls in asylum applications from countries which have been designated under section 94 of the Nationality, Immigration and Asylum Act 2002. These reductions have exceeded the overall falls in asylum applications.

**2. Asylum decisions now made much more quickly – around 80% of new substantive applications now decided within two months**

At the end of September 2005, 4,656 asylum applications had been certified as clearly unfounded. In a significant proportion of these cases the decision was made within 14 days of the application being lodged.

**3. Increase in asylum removals – 15,055<sup>1</sup> removals in 2005, 4% more than in 2004.**

At the end of September 2005, 1,984 asylum applicants (excluding dependants) whose claims had been certified as clearly unfounded had been removed from the UK.

The success of the NSA process is also demonstrated by the very low rate of allowed NSA appeals - to the end of September 2005 less than 2% of NSA appeals determined were allowed - and by the fact that we have lost only five Judicial Review cases against our certification of cases as being clearly unfounded.

You identify a number of areas in which there have been positive developments. I am particularly pleased to note that you make a number of positive comments about the guidance that is issued to NSA caseworkers. You single out recent guidance issued in relation to Article 8 of the European Convention on Human Rights (ECHR)<sup>2</sup> for particular praise. We regularly review our guidance to determine where updates can be made, and we will always respond where there are developments in policy or case law to ensure that caseworkers have the most up to date information on which to base their decisions.

You welcome the involvement of the Advisory Panel on Country Information (APCI) in the production of country reports and the involvement of the UNHCR in the Operational Guidance Notes (OGNs)<sup>3</sup>. We are committed to ensuring the completeness and objectivity of the information on which decisions to certify are made and we are pleased that you have acknowledged our efforts in this area.

You note the large amount of time that caseworkers allocate to the decision-making process<sup>4</sup>. This is further evidence of our commitment to ensuring that the right decision is made on cases which are in the NSA process. You also acknowledge the good standard of asylum interviews in cases that you reviewed<sup>5</sup>.

I have always stressed our commitment to ensuring a rigorous process is in place for decisions which involve the certification of claims. I believe that your assessment of case files shows that we take due care in processing these claims.

You have made a number of recommendations, some of which are helpful and constructive and which we will be implementing. The responses to each of the recommendations can be found at Annex A.

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<sup>1</sup> Including dependants

<sup>2</sup> The Monitor's report paragraph 157

<sup>3</sup> Paragraphs 142-143

<sup>4</sup> Paragraph 82

<sup>5</sup> Paragraph 69

However, I must make it clear that I strongly reject your suggestion that there are barriers which prevent claimants in the NSA process from making Judicial Review applications.

The number of applications for Judicial Review of decisions to certify indicates that where someone feels they have an arguable case against the certificate they can and do challenge it before removal.

There is no sound basis, in my view, to the assertions attributed to the Immigration Advisory Service (IAS) and the Refugee Legal Centre (RLC) that they have difficulty in locating legal representatives of sufficient quality to take on these cases. There are more than 120 suppliers with devolved powers who are more than capable of taking on this type of work and making decisions on funding themselves within the short period of time available. The Legal Services Commission (LSC) is satisfied that this is sufficient, but where any specific shortages are identified the LSC can and will take action. Where the IAS or RLC are responsible for a case, it is their responsibility to ensure that their client has access to the necessary level of legal advice even if they cannot provide it themselves. As above, the LSC are satisfied that there are in fact sufficient suppliers capable of taking on this work.

Nor do I accept your comments with regard to claimants being deterred from bringing Judicial Review applications because it will result in extended spells in detention. Where an application for Judicial Review is lodged, we will take a decision with regard to continued detention taking into account whether or not the case could be expedited and whether or not removal is likely to remain imminent. The decision to detain is kept under frequent review and if it is the case that removal is not imminent, consideration will always be given to release. In the Government's view there is no substance to the suggestion that making a Judicial Review application will result in a lengthy spell in detention or that claimants are being deterred from bringing Judicial Reviews.

I must also state that I cannot agree with the conclusion in the report that the NSA process does not provide sufficient safeguards to prevent inaccurate decision-making, as evidenced by the 181 certificates that have been withdrawn. In the Government's view this conclusion is not borne out by the facts or the evidence.

You acknowledge that we have strengthened our procedures for the monitoring of cases where the certificate is withdrawn, and welcome this development. You recognise the important role that the NSA casework forum has played in ensuring issues relating to Judicial Review cases are discussed in depth and guidance issued accordingly<sup>6</sup>. Further, you welcomes the formal process that we introduced to analyse all cases where a certificate is withdrawn<sup>7</sup>. We share your view that it is vital that lessons are learnt where mistakes are made, and we will continue to work to ensure that this is the case.

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<sup>6</sup> Paragraph 164

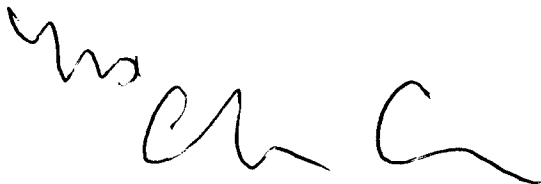
<sup>7</sup> Paragraph 164

At the same time it remains the case that we do not accept that the number of withdrawn certificates indicates the safeguards in the NSA system are ineffective.

The result of the system we have in place is that in only four cases has a person successfully appealed against the refusal of their asylum or human rights claim from abroad. In such cases, the individuals concerned have been returned safely to the United Kingdom without any harm coming to them. Of course, any case where a person is removed and subsequently found by the appellate bodies to have a well founded claim is a concern and we take each case seriously. But when seen against the backdrop of 4,656 certified claims up to the end of September 2005 and 1,984 removals of those with certified claims during the same period, this hardly indicates a system with inadequate safeguards.

Further, there will often be good reasons for withdrawing a certificate. For example, new information which was not available at the time the decision was made may be provided by the applicant after the decision is served that means that it would not be appropriate to maintain the certificate. Alternatively, there might be a change in country conditions or case law which means that the case is no longer clearly unfounded and the certificate ought to be withdrawn.

The NSA process will continue to be a central part of this Government's initiatives to reform the asylum system. We are determined to ensure that those with a well founded fear of persecution or treatment contrary to the ECHR receive the protection that they need, while at the same time eliminating abuse of the asylum system by those who are not in need of our protection.

A handwritten signature in black ink, appearing to read 'Charles Clarke', with a stylized flourish above the first part of the name.

**Charles Clarke**