

A photograph of a man sitting on a bench at night on a city street. The man is in profile, looking towards the left. The street is illuminated by streetlights, and a building with a dome is visible in the background. The sky is a deep blue, suggesting dusk or dawn. The overall mood is somber and contemplative.

At the end of the line

Restoring the integrity of the UK's asylum system



Acknowledgements

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Still Human Still Here is a coalition of 41 organisations which campaigns for an end to the destitution of refused asylum seekers in the UK.

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Contents

- 3** Executive summary and recommendations
- 8** Asylum decisions
- 29** Asylum support
- 52** Access to healthcare
- 64** Work
- 76** Conclusion
- 77** Endnotes
- 84** Case study references





Suleiman is a 31-year-old man from Darfur, Sudan. During a raid on his village in 2003 Suleiman's brother and uncle were killed. Suleiman's leg was broken and doctors had to insert a steel plate in his leg. In November 2004, he was arrested by the Sudanese security forces, questioned and tortured with electric shocks and heated steel rods which left deep scars on his back. In detention his health deteriorated and he thought he would die. He was charged, fingerprinted and released.

In early 2005, he paid an agent to help him escape to safety. He was smuggled into a container on a ship leaving from Port Sudan. He was given everything he needed for the journey and remained in the container with no idea where he was going, until the ship docked in the UK 26 days later. He arrived with \$100 in his pocket and went to the Home Office to apply for asylum.

Suleiman was unhappy with the legal advice and interpreters he received initially. The Home Office interpreter spoke broken Arabic and misinterpreted the metal plate in his leg as a bullet: he noted the mistakes when he saw the refusal letter and feels this badly damaged his case. The interpreting errors were not corrected by the lawyer before his appeal, which was rejected. In November 2005, his financial support and accommodation were cut off and he was left homeless. He made a fresh claim in December 2005 and after five months of homelessness, he started to receive Section 4 support in April 2006.

Even then he had no money to travel as his support was in the form of vouchers, making it difficult to keep in touch with friends and others from his community. He suffers from severe depression, for which he takes medication, and does not sleep for worry about his family left behind and the hopelessness of his situation.

Executive summary and recommendations

In 2008 alone, more than 10,000 asylum seekers in the UK approached the British Red Cross in need of emergency relief from destitution. The Red Cross is only one of dozens of organisations – many of whom do not have asylum seekers or refugees as the core focus of their work – that are increasingly finding themselves having to pick up the pieces of Government policies which leave asylum seekers destitute and with no means of supporting themselves.

The situation has further deteriorated during 2009. This report aims to provide a detailed overview of the human and financial costs of the current system and to propose policy solutions which are humane, efficient and effective.

Since the mid-1990s, successive governments have passed both legislation and regulations designed to reduce the number of people who come to the UK to seek sanctuary from persecution, wars and widespread human rights violations in their own countries.

These policies have included a narrower interpretation of who should qualify for protection in the UK, the reduction or removal of support from particular groups of asylum seekers, charging some refused asylum seekers for secondary healthcare and withdrawing permission to work from asylum seekers who have been waiting for more than six months for a decision on their claim.

The asylum determination system still gets a quarter of its initial decisions wrong. The success rate at appeal for asylum seekers from certain countries is even higher. For example, in 2008, more than 40 per cent of Eritreans and Somalis appealing against the refusal of asylum won their cases. While many asylum seekers will eventually be granted some form of status after a lengthy and costly appeals process, others, particularly those without good legal representation, will get to the end of the process without having their protection needs recognised and end up destitute.



This situation has come about partly because of policy decisions to set the bar for protection at the highest level permissible in law, and partly because of problems with a decision-making process that too often denies protection to individuals who are in need of it. For example, many asylum seekers have been refused protection in the UK even though it is recognised that it is too dangerous to send them back to their country of origin. Thousands of people from Zimbabwe and Sudan have been left in this position – refused asylum, destitute, prohibited from working and unable to safely return home. The policy framework is seriously flawed if it is not safe to return individuals to their countries of origin, and yet they are denied any legal status in the UK and the ability to support themselves through work.

Support for asylum seekers is currently delivered through a system that is complicated, administratively burdensome and in many ways inefficient. The Government stated in 2009 that its asylum support policy was “sufficient to meet essential living needs.”¹ However, in practice, it is leaving thousands of asylum seekers, both at the beginning and at the end of the process, to survive on little more than £5 a day. Many others are left completely destitute.

Several research reports published in 2009 have documented an increase in destitution during the course of the year, particularly among refused asylum seekers, and that they are destitute for longer.² This is having a direct and serious impact on the mental and physical health of the individuals concerned.³

Successive governments have assumed that the introduction of punitive measures, particularly around access to support, would deter asylum seekers from coming to the UK and force refused asylum seekers to return home. All of the available evidence, including from the Home Office itself, indicates that these policies have not had the intended effect. This is because asylum seekers have little choice in their destination or knowledge of UK asylum procedures before they arrive.⁴

Making living conditions more difficult for those who have been refused asylum is unlikely to encourage returns when the individuals concerned continue to have fears for their safety in their country of origin.

However, cutting off support to asylum seekers and leaving them destitute does have very significant social and financial costs as it forces them into begging or illegal working, exposes them to labour or sexual exploitation, or leaves them dependent on handouts from charities or local faith and community groups.

Destitution also undermines immigration control as it creates serious obstacles to both voluntary and forced returns. Asylum seekers without any means of support cannot focus on the voluntary returns process when they are thinking about how they are going to survive.

“Some of the circumstances that the British Red Cross have witnessed in dealing with destitution (in the UK) have shown a degree of suffering and inhumanity that if we as the world’s largest humanitarian organisation witnessed them in a different environment, such as an area of natural disaster or a conflict zone, we would be shocked into making an immediate emergency response.”

The British Red Cross, January 2009⁵



Once support is withdrawn it is also more difficult for the UK Border Agency (UKBA) to stay in touch with refused asylum seekers and to enforce removals. This is why some UKBA staff themselves proposed in 2007 that asylum seekers should be allowed to remain in their accommodation until they are actually removed from the UK.

It is essential to re-establish confidence in the asylum process both among those who use it and those who fund it. The recommendations in this report will help to establish an efficient and cost-effective asylum system which treats asylum seekers with dignity throughout the period they are in the UK. The recommendations will strengthen the integrity of the system by helping to ensure that those in need of protection in this country are properly identified as such, and that those who do not need protection do return to their own countries.

Recommendations

Asylum decisions

- ➔ Resources need to be frontloaded and focussed on getting the initial decision on an asylum application right first time.
- ➔ The Government should adopt a more inclusive approach to its assessment of who is in need of protection by recognising that country policies are sometimes unhelpfully restrictive and by granting more people asylum or humanitarian protection and considering a temporary status for others who need it.
- ➔ The provision of early legal advice, which was first piloted in Solihull in 2006-2007, should be rolled out nationally after the conclusion of the second phase pilot in 2010.
- ➔ The content and use of Operational Guidance Notes (OGNs) should be improved in a number of ways:
 - The Country of Origin information contained in the OGN should be drawn from a wider range and variety of sources and all information relied upon to form the policy conclusions should be identified within the OGN. OGNs should adopt accepted academic standards of sourcing and referencing.
 - Case owners should be better trained and monitored in their use of Country of Origin Information and should not only rely on policy guidance when making decisions on individual claims for protection.
 - The Country Specific Asylum Policy Team should be sufficiently resourced to provide timely updates to OGNs when important changes in country conditions occur.
 - OGNs should be monitored by an independent body.
- ➔ Further consideration should be given to devolving asylum decision-making in the UK to an independent body and setting up an independent documentation centre to research and publish country information.

Asylum support

- ➔ The Government should introduce a single asylum support system, which will provide cash support to all asylum seekers who would otherwise be destitute until they have been granted status in the UK, left voluntarily or been forcibly removed.
- ➔ Support levels for asylum seekers should, at a minimum, be set at 70 per cent of Income Support and should not be less than £45 a week for single adults, paid in cash. Payments should be adjusted annually in line with Income Support rates.

Healthcare

- ➔ New guidance on existing regulations needs to be well publicised and widely distributed so that frontline healthcare professionals, patients and relevant agencies and NGOs understand the existing rules and ensure that those asylum seekers in need and entitled to care do receive it.
- ➔ New regulations should be brought forward which allow all refused asylum seekers free access to secondary healthcare, as was the position prior to 2004. This is in the interests of humanity, but also efficiency as it reduces administration, additional costs in emergency care and public health risks.

Work

- ➔ If an asylum seeker's claim has not been concluded within six months through no fault of their own, they should be granted permission to work.
- ➔ Refused asylum seekers who temporarily cannot be returned to their country of origin through no fault of their own should be granted permission to work, rather than remain in a state of limbo.

| 2005 | | 2006 | | 2007 | | 2008 | |
|------------------------------|-------|-------------|-------|--|-------|-------------|-------|
| Iran | 3,150 | Eritrea | 2,585 | Afghanistan | 2,500 | Afghanistan | 3,505 |
| Somalia | 1,760 | Afghanistan | 2,400 | Iran | 2,210 | Zimbabwe | 3,165 |
| Eritrea | 1,760 | Iran | 2,375 | China | 2,100 | Iran | 2,270 |
| China | 1,730 | China | 1,945 | Iraq | 1,825 | Eritrea | 2,255 |
| Afghanistan | 1,580 | Somalia | 1,845 | Eritrea | 1,810 | Iraq | 1,850 |
| Iraq | 1,415 | Zimbabwe | 1,650 | Zimbabwe | 1,800 | Sri Lanka | 1,475 |
| Pakistan | 1,415 | Pakistan | 965 | Somalia | 1,615 | China | 1,400 |
| Democratic Republic of Congo | 1,080 | Iraq | 945 | Pakistan | 1,030 | Somalia | 1,345 |
| Zimbabwe | 1,075 | Nigeria | 790 | Sri Lanka | 990 | Pakistan | 1,230 |
| Nigeria | 1,025 | India | 680 | Other Middle Eastern & North African countries | 825 | Nigeria | 820 |

how hard life is made for them in the UK or the level of assistance offered to encourage them to return home.

Many people from these countries have well-justified grounds related to their personal safety for feeling unable to return to their country of origin. Indeed, the Government itself has suspended enforced returns of refused asylum seekers of certain nationalities because of concerns about human rights violations in the country of origin, the lack of a safe route or on-going legal action which has prevented the removal of refused asylum seekers. This has been the case for refused Zimbabweans since 2002 (with the exception of an eight month period in 2004), and Darfuris from Sudan since July 2008. Iraqis were not returned to central or southern Iraq between October 2000 and February 2003. Between December 2004 and August 2005, the Home Office accepted that there was no

safe route of return to Iraq, so destitute Iraqis automatically qualified for Section 4 support.¹⁰

In a response to a parliamentary question about Zimbabweans in 2002, the then immigration Minister, Beverley Hughes clearly implied that returns had been suspended because the situation was unsafe:

“On 15 January, we announced a temporary suspension of returns of unsuccessful asylum applicants to Zimbabwe. We will resume returns only when we are satisfied that it is safe to do so. We are monitoring events in the aftermath of the Zimbabwe presidential election and other developments in the country situation. A decision on resumption of returns will be made when we have properly assessed the risks to returnees.”¹¹



There is a serious flaw in policy if it is not safe to return individuals to their country of origin for extended periods of time and yet they are being denied any legal status in the UK and the ability to support themselves through work. Moreover, flaws in the decision making process mean that refugees are being wrongly refused asylum.

Some of these people will eventually be granted some form of status after a lengthy and costly appeals process, but others, particularly those without good legal representation, will get to the end of the process without having their protection needs recognised and end up destitute. This situation has come about partly because of policy decisions to set the bar for protection at the highest level permissible in law and partly because of problems with a decision-making process that too often denies protection to individuals who had a right to it even under existing restrictive rules.

The protection gap

In the public debate, asylum seekers whose claims are refused are often perceived as having somehow abused the system. Yet, many would have qualified for some form of protection had they applied for asylum in another country or had they applied in the UK in the past. Refused asylum seekers who have fallen through a protection gap in the UK include:

1. People who would have to return to areas of armed conflict or endemic violence;
2. People at serious risk of systematic or generalised violations of their human rights but who have not been able to establish that they, individually, are at risk;
3. Groups or nationalities that are not being removed because of concerns about human rights violations in their country of origin or where litigation is outstanding or because no safe route is available;
4. People whose countries are so unsafe that UNHCR has advised against any forced returns;
5. People whose “compelling circumstances” arising from having suffered such atrocious persecution, are such that, according to UNHCR’s Handbook, they should not be expected to return.¹²

In some circumstances such fine distinctions would not arise. In some parts of the world, predominantly in Africa, when there has been a sudden and large-scale influx of forced migrants, all those arriving from a country in the midst of armed conflict have simply been deemed to be refugees as a group, irrespective of whether some individuals might be present who would not qualify under an individual procedure. According to UNHCR’s Handbook, ‘group determination’ of refugee status entails each member of the group being regarded *prima facie* (i.e. in the absence of evidence to the contrary) as a refugee.¹³

Henry was an MDC activist in Zimbabwe who came to the UK in 2001 after facing threats of persecution relating to his political activities. His claim was considered but refused on the basis that he was not senior enough in the MDC to face persecution if he returned.

Henry was convinced that he would be in danger if he went back, and so ended up destitute and reliant on the support of friends and charity. After several months in this situation his dignity was so compromised that he chose to return and face the possibility of persecution rather than remain destitute in the UK. At least he would be able to support and feed himself in Zimbabwe, he reasoned.

When Henry returned to Zimbabwe he was immediately identified, picked up and detained by security services, and brutally beaten and tortured. Eventually he managed to escape and fled back to the UK. After a long process involving detention, a hunger strike and a fresh claim, he was granted asylum.

▲ Henry's story

A recent example of group determination was UNHCR's response to the mass exodus from Iraq to surrounding countries following the 2003 war. In 2007, the agency considered all Iraqis outside of Iraq to be 'persons of concern' in view of the objective situation of armed conflict and generalised violence in Iraq. Its strategy was to recognise all Iraqis as refugees, *prima facie*, on the grounds that across the board individual determination of asylum claims for hundreds of thousands of people was "not feasible, unnecessary, and strategically undesirable."¹⁴ In the same year the UK refused 73 per cent of Iraqi claims at the initial stage.

Some European countries grant subsidiary protection to some of the people listed above, particularly categories 1 and 2. In order to achieve some consistency, the UK and its EU neighbours have established a European minimum standard of subsidiary protection, enshrined in the Qualifications Directive.¹⁵

Early drafts would have included people in categories 1 and 2 until some Member States inserted the word 'individual' in the relevant article (Art 15c), such that the applicant had to demonstrate that they were individually threatened, even when the violence was indiscriminate.

The European Court of Justice (ECJ) has recently ruled in *Elgafaji*,¹⁶ however, that "the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that the applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstance" provided that the level of risk is so exceptionally severe that a civilian faces that threat simply because they are present in the country. While the UK had taken the view that this provision added nothing to the UK's interpretation of its international obligations, the ECJ in *Elgafaji* and the UK Court of Appeal in *QD Iraq*¹⁷ have indicated that the scope of protection should be broader.

Ahmed is an Iraqi from Mosul. He fled the Ba'ath party regime, arriving in the UK in October 2002 when the government's policy was to grant at least four years' Exceptional Leave to Remain (ELR) to Iraqis in his position. His claim for asylum was refused after one year and his appeal was unsuccessful. His asylum support was withdrawn at that point but he was given Section 4 support on the basis that the Secretary of State considered that there was no safe route of return for him. That support was withdrawn in July 2007 because the Secretary of State considered that it had become safe for him to return. Ahmed fears returning to face the civil war in Iraq. He has been destitute for over one year and has slept rough on the streets of Portsmouth.

▲ Ahmed's story

Rather than accept these decisions and grant protection to a slightly wider group than previously, the UK has chosen to incur considerable expense and delays, at great human cost to the individuals concerned, by continuing to fight its corner in the courts.

Several EU member states bridge the protection gap by offering a safety net to those who are refused refugee status or subsidiary protection. A 2006 study, updated in 2009,¹⁹ showed that several EU countries offered some form of 'category protection' based on the general situation in the country of origin, regardless of the applicant's individual circumstances. Although the criteria used differed, many of the states studied offered some form of category protection to applicants from Afghanistan, (central) Iraq, and Somalia during the period under review (2001-2005).

The Netherlands, for example, offered 'category protection' to Iraqis until October 2008 and Somalis until May 2009. Between 22 June 2004 and December 2009, all non-Arab Darfuris in Netherlands were granted a 'category protection' status²⁰ if individuals were found not to be entitled to refugee status or the equivalent of the UK's humanitarian protection.²¹

For most of this period the UK, by contrast, was refusing many Darfuris any kind of protection, on the grounds that they could safely relocate to another part of Sudan, a position the Government finally abandoned only in November 2009.

Until October 2002, the UK operated a similar 'category protection' safety net by granting Exceptional Leave to Remain (ELR) to certain nationalities or types of claimants from certain countries. In 2004, the then immigration Minister, Des Browne, listed the country policies that had previously existed.²² This list is only indicative, as the periods identified do not always accord with other Home Office statements.

For example, from June to September 1999, citizens of the Federal Republic of Yugoslavia were granted 12 months ELR, while anyone who had claimed before March 1999 was granted ELR. Neither does it include policies that applied to parts of countries, or certain groups. For example, from 20 October 2000 to 20 February 2003 the policy was to grant four years' ELR to people from government-controlled Iraq²³ who did not qualify for refugee status.



Reasons given by the Home Office for these policies included that the general situation or human rights situation in the country of origin was generally poor or that removal was unlikely.

A Home Office country expert told the High Court in 2006:

“These policies were put in place in respect of countries, such as for example Somalia, where the human rights and humanitarian situation were generally very poor and a substantial majority of claimants clearly qualified for asylum or other forms of protection.”²⁴

| Country | Period specified |
|------------------------------|---|
| Afghanistan | January 1995 - October 2002 |
| Angola | August 1998 - May 1999 |
| Burundi ¹ | January 1997 - October 2002 |
| Congo | November 1997 - August 1998 |
| Congo-Brazzaville | July 1999 - July 2000 |
| Cote d'Ivoire | October 2000 - 9 April 2001 |
| Democratic Republic of Congo | May 1997 - May 1998 August 1998 - May 1999 January 2001 - February 2001 |
| Iraq ² | January 1997 - September 2000 |
| Kosovo | June 1999 - April 2000 |
| Liberia | October 1990 - October 2002 |
| Libya | April 2000 - October 2002 |
| Rwanda ³ | January 1997 August 2002 |
| Sierra Leone | June 1999 - September 2001 |
| Somalia ⁴ | January 1997 - October 2002 |
| Turkey | July 1999 - December 2000 |
| Zimbabwe | January 2002 - 16 November 2004 |

Table 2:
ELR policies by country
Source: Hansard

- 1 Policy in place since the 1994.
- 2 Policy in place since the late 1980s.
- 3 Policy in place since 1994.
- 4 Policy in place since the late 1980s.

Similarly, “the rationale behind having the blanket ELR country policies... was that trying to distinguish a minority of cases for outright refusal would be counter-productive where there is no certainty that the refusals would survive exhaustive legal challenges and where there was even less likelihood that removal would be feasible at the end of the day. Consideration of all cases from the country in question would be slowed down and resources drained by intensive post-decision work, undermining the capacity to process other cases”.²⁵

The UK's exceptional leave policies were a humane and pragmatic response to groups of asylum seekers from countries where the general situation was such that forced return of those who did not qualify for refugee status under the 1951 Refugee Convention would be inhumane, impractical, legally fraught and costly.

Arguably they avoided the need for regularisation programmes or mechanisms that have been features of several European countries' immigration and asylum systems, (e.g. Netherlands 2007, Sweden 2005/6)²⁶ to the extent that the European Commission has proposed establishing EU rules on offering some form of status to people who cannot be removed.²⁷ However, when UK asylum applications to the UK reached their peak in 2002, reducing the number of applications

became a political imperative and all means of achieving that objective were investigated.

In its 2002 Public Service Agreement (PSA), the Home Office committed to “focus the asylum system on those genuinely fleeing persecution by taking speedy, high quality decisions and reducing significantly unfounded asylum claims”.²⁸ ELR was perceived as a ‘pull factor’ and in spring 2003 it was replaced with Humanitarian Protection (HP) and Discretionary Leave (DL).

Although the PSA target was to reduce unfounded claims, the Government's declared intention with the withdrawal of ELR was not only to reduce the overall number of asylum claims, well founded as well as unfounded, but actually to reduce the proportion of successful claims: “The government believes the new policy will reduce the rate of successful asylum applications from 25% to 10%. A Downing Street spokesman said in 1997, 3,115 people were granted ELR, but by 2001 that had risen to 20,000.”²⁹

Just as the Government had forecast, the introduction of Humanitarian Protection and Discretionary Leave was followed by an overall subsidiary protection rate of around 10 per cent. The UK's criteria for protection had narrowed, effectively barring people from protection who would previously have been granted it.

Table 3:
Breakdown of asylum decisions, 2002-2008. Source: Home Office

| Year | Decisions | HP | HP% | DL | DL% | HP + DL (+ELR) | ELR |
|------|-----------|-----|-----|-------|------|----------------|--------|
| 2002 | 83,540 | n/a | n/a | n/a | n/a | 24.0 | 20,135 |
| 2003 | 64,940 | 140 | 0.2 | 3,095 | 4.8 | 11.0 | 3,975 |
| 2004 | 46,020 | 160 | 0.3 | 3,835 | 8.0 | 8.3 | n/a |
| 2005 | 27,395 | 120 | 0.4 | 2,675 | 10.0 | 10.0 | n/a |
| 2006 | 20,930 | 55 | 0.6 | 2,245 | 10.7 | 11.3 | n/a |
| 2007 | 21,775 | 125 | 1.0 | 2,085 | 10.0 | 10.0 | n/a |
| 2008 | 19,400 | 95 | 0.5 | 2,075 | 11.5 | 11.0 | n/a |

While grants of refugee status increased to 19 per cent in 2008, only 365 adults were granted HP or DL in 2008 as compared with 20,135 individuals who got ELR in 2002 (84 per cent of all HP and DL grants in 2008 were to unaccompanied asylum seeking children).

The UK's practice in asylum determination where country policies might apply is in many cases more restrictive than other European countries receiving significant numbers of the same nationality. According to UNHCR statistics, in 2008:

- 32 per cent of Iraqi claimants received a positive decision in the UK (17 per cent were granted refugee status), while Germany gave 91 per cent refugee status and France granted 83 per cent refugee status or a subsidiary form of protection.
- 55 per cent of Afghans received a positive decision in the UK, compared to 80 per cent in Austria and 60 per cent in Germany.
- 56 per cent of Somalis found some form of protection in the UK, compared with 65 per cent in the Netherlands, 88 per cent in Germany and 70 per cent in Sweden.
- 47 per cent of Sudanese were successful in France, 76 per cent in Norway and just 34 per cent in the UK.

It is sometimes argued that the profile of applicants differs from country to country, even where they are of the same nationality, but it is more likely that the wide variations in recognition rates are a result of differences in policy and practice.³⁰ A narrow interpretation of who is entitled to protection in the UK, combined with weaknesses in the decision making process have led to the refusal of many asylum seekers in the UK who have justifiable fears of returning to their country origin.

Operational Guidance Notes (OGNs)

A crucial policy tool in the decision-making process is the Operational Guidance Notes (OGNs), the policy guidance issued by the UK Border Agency to asylum caseworkers on particular countries of origin. They set out common sorts of claim from that country and the framework within which they should be treated.

The framework includes country of origin information, the general application of legal provisions to the country situation, and any relevant case law. Importantly, almost invariably the framework demands that the applicant establish an individual risk to themselves and that they cannot usually rely on general risks in their country of origin.

For example, until recently, non-Arab Darfuris from Sudan could be refused asylum in the UK, on the grounds that they could relocate to another part of Sudan.³¹ In 2007, Greece, which did not recognise any Sudanese as being in need of protection, was the only European country with a lower recognition rate than the UK.

Numerous flaws have been identified in the content and use of OGNs,³² but the fundamental problem is an approach that attempts to define those in need of protection as restrictively as the courts permit. This creates a constant tension between the UKBA and the courts, as the agency pushes the boundary of what the courts will accept, resulting in delays in the system while the outcome of decisions is put on hold pending the conclusion of test cases.

In November 2008, for example, the Asylum and Immigration Tribunal ruled in a test case, *RN*,³³ that any Zimbabwean who could not demonstrate positive support for the ruling ZANU-PF party was at risk of persecution.

The human rights situation in Zimbabwe had severely deteriorated months before, ahead of the election in March of that year. The outdated July 2007 OGN³⁴ was left in place, and asylum seekers refused following its guidance, until after the *RN* decision. As a result, 2,015 Zimbabwean asylum seekers (76 per cent) were refused in 2008, of whom 1,235 were women.

This indicates that policy was driven not by a commitment to identify refugees in need of protection, but by other considerations, such as a fear that increased recognition rates would encourage significant numbers of Zimbabweans already in the UK to claim asylum.

The UKBA did not appeal the *RN* judgment, but rather than accept the court's decision and grant Zimbabweans a protection status, just five months later, it issued a new OGN, in which it argued that the situation had changed significantly for the better: "The evidence of the past six

months or so therefore no longer supports the contention that Zimbabweans are at risk merely because they would be unable to show support for ZANU-PF (and there have been instances where ZANU PF supporters have been harassed or hurt, especially if perceived to have 'betrayed' the regime). A grant of asylum solely on this basis will not therefore usually be appropriate."³⁵ This action resulted in continued insecurity and hardship for Zimbabweans in the UK.

The Refugee Council found that at least 8,500 Zimbabweans whose applications were being handled by the Case Resolution Directorate, were not receiving financial support from the Government and neither were they allowed to work and make a contribution in the UK.³⁶ Many had been left completely destitute.

This country policy has also led to a significant increase in legal challenges, with a large proportion of Zimbabweans winning their appeals (44 per cent in April – June 2009).

This process, which is wasting both human and material resources, appears set to continue. In October 2009, the Government announced its intention "to make changes over time to our

Anne Marie, 49, DRC



returns policy to Zimbabwe” which “reflects developments in Zimbabwe following the formation of the inclusive Government led by Prime Minister Tsvangirai.”³⁷

This announcement came the day after the UN Special Rapporteur on torture was detained and refused entry to Zimbabwe and just two weeks after Prime Minister Morgan Tsvangirai and his MDC party stopped co-operating with the unity Government.

It is clear that many refused asylum seekers have fallen through gaps that exist as a matter of policy. Thousands of people may have been denied protection and ended up destitute or on limited asylum support whose cases would have been considered sufficiently strong to warrant some form of status in other countries or in the UK at a different time.

Flaws in decision-making

In 2008, the Independent Asylum Commission found that the asylum system, “denies sanctuary to some who genuinely need it and ought to be entitled to it.” Despite the efforts being made to deal with asylum claims more effectively, it found a persistent “culture of disbelief” persists among decision-makers. Combined with a lack of access to legal advice for applicants this was leading to perverse and unjust decisions.³⁸

One clear indicator of a problem with decision-making is a high success rate at appeal. In 2008, almost a quarter of asylum seekers won their appeals. The success rate for the nationalities that make up a large proportion of destitute refused asylum seekers was especially high: 45 per cent for Eritreans, 40 per cent for Somalis and 32 per cent for Sudanese. These figures remained high in the first half of 2009: of 2,800 appeals heard in April-June 2009, 26 per cent were successful. During the same period, 46 per cent of Somalis won their appeals, 35 per cent of Sri Lankans and 39 per cent of Eritreans.³⁹

▼ Anne Marie's story

“I have constant nightmares about the women from my social group being buried alive and about my son being taken from me.”

“I lived in fear because it is dangerous to sleep outside. Every day I asked myself whether I was going to eat anything that day and where I was going to sleep that night.”

“I’ve always told the Home Office the truth about my case but for years they didn’t believe me. Not being believed is the worst thing that can happen to a person.”

Anne was detained, beaten and raped in the Democratic Republic of Congo (DRC) for condemning the forced recruitment of child soldiers like her son. She was refused asylum and spent three years living in destitution before eventually being given protection in the UK.

The success rate for Zimbabweans went up from 27 per cent in 2008 to 44 per cent in April - June 2009. During the July - September 2009 period the number of successful appeals increased still further and reached 31 per cent for all nationalities.

Refusals cause asylum seekers a great deal of anxiety and prolong the period in which they are left in limbo, unable to support themselves or make a contribution to society.

There is also a direct cost to the Home Office in supporting these asylum seekers and reviewing their cases. More accurate initial decisions would speed up decision-making throughout the asylum system bringing savings in administrative and support costs of up to £7,000 per applicant.⁴⁰

In 2008, 2,475 applicants (23 per cent) were successful in their appeals. If decisions had been more accurate, such that most of these asylum seekers were granted asylum by a caseworker and only five per cent of claimants went on to appeal successfully, the Government could have made savings of up to £13.5 million in legal, accommodation and support costs.

Putting costs to one side, improving initial decision is vital to ensuring that those in need of

protection in the UK are properly identified as such. While the appeals system helps to correct weaknesses in the initial determination process, it is not a guarantee that all those in need of sanctuary are provided it.

The success of an appeal depends greatly on whether the appellant has legal representation and on the quality of the legal advice. Compared to the 23 per cent success rate of all appellants (represented and unrepresented) before the Asylum and Immigration Tribunal, appellants with legal representation have a 51 per cent success rate.⁴¹

Cuts in legal aid have made it difficult to access good legal advice and reduced the amount of time available for legal representatives to work on an asylum claim. An asylum seeker can only get legal aid for an appeal if their legal adviser believes that they have at least a 50 per cent chance of success and public funding can be withdrawn from firms whose success rate is too low. The result is that as many as four out of five cases are wrongly refused legal aid and one third of those have a valid claim for some form of protection.⁴²

The UKBA has taken some welcome steps to improve decision-making, many of them resulting from UNHCR's Quality Initiative (QI), as well as input from NGOs. The QI initiative was launched in 2003 and involved UNHCR staff working inside UKBA and auditing the decision-making process.

The New Asylum Model (NAM) piloted in 2005 and introduced for all new asylum cases from March 2007 drew on a number of recommendations from the QI project, such as increasing the pay and grade of decision makers in order to attract higher calibre recruits and the introduction of a 55 day training course.⁴³ Each case was allocated to a single 'owner' in order to give more accountability for decisions. In 2009, the National Audit Office (NAO) welcomed

**Table: 4
Percentage of successful appeals by nationality, 2008.**

| Country | % |
|------------------------------|-----|
| Afghanistan | 29% |
| Democratic Republic of Congo | 26% |
| Eritrea | 45% |
| Iran | 21% |
| Iraq | 18% |
| Somalia | 40% |
| Sudan | 32% |
| Zimbabwe | 27% |
| Average for all countries: | 23% |

Source: Home Office

the UKBA's own new Quality Assurance Team,⁴⁴ which built on the work done by UNHCR's Quality Initiative and noted that their reports showed that quality had been improving. The NAO found, however, that lessons from their audits were not being shared with all Case Owners and that suggestions for improvements were not followed up and no attempts made to reverse incorrect decisions.

In its fifth report of the QI project, UNHCR⁴⁵ reiterated 'serious concerns' which included an incorrect approach to credibility assessment (many cases turn on whether the applicant's account should be believed and the Administrative Court has recognised the possibility of 'human errors'⁴⁶ in the credibility assessment of asylum claims), a high prevalence of speculative arguments and a lack of focus on material elements of the claim. UNHCR was worried about the excessively high burden of proof placed on applicants and some Case Owners' inadequate understanding of refugee law.

Since the UNHCR issued its fifth QI report, the Immigration Advisory Service has highlighted

problems with the quality and use of country information in asylum decisions and in OGNs.⁴⁷ Refusal letters showed inconsistency and poor practice when citing country of origin information (COI), in their use of sources and referencing, in the sufficiency and relevance of the information used and in their use of speculative argument that was not substantiated by COI. The drafters of OGNs were found in some cases to have used COI inaccurately, failed to refer to it when necessary, misused and misinterpreted it.

Given the importance of OGNs to the decision making process it is vital that they are of the highest quality and that they are used effectively by case owners. OGNs could be improved by drawing on a wider and more accurate selection of sources. Good practice guidelines in the use of COI should be developed and incorporated in the asylum policy instructions and case owners should be better trained and monitored in their use of COI. Most importantly, OGNs and the way they are used should be monitored by an independent body.



Pull factors

The reasons given in 2002 by the then immigration Minister, Beverley Hughes, for withdrawing country ELR policies were that they had 'encouraged abuse' and acted as a 'pull factor',⁴⁸ yet there is little evidence that this was the case.

Country ELR policies were implemented at a time when the situation in a given country was so dire that large numbers of people were fleeing and/or high proportions of claimants qualified for asylum or another form of protection.

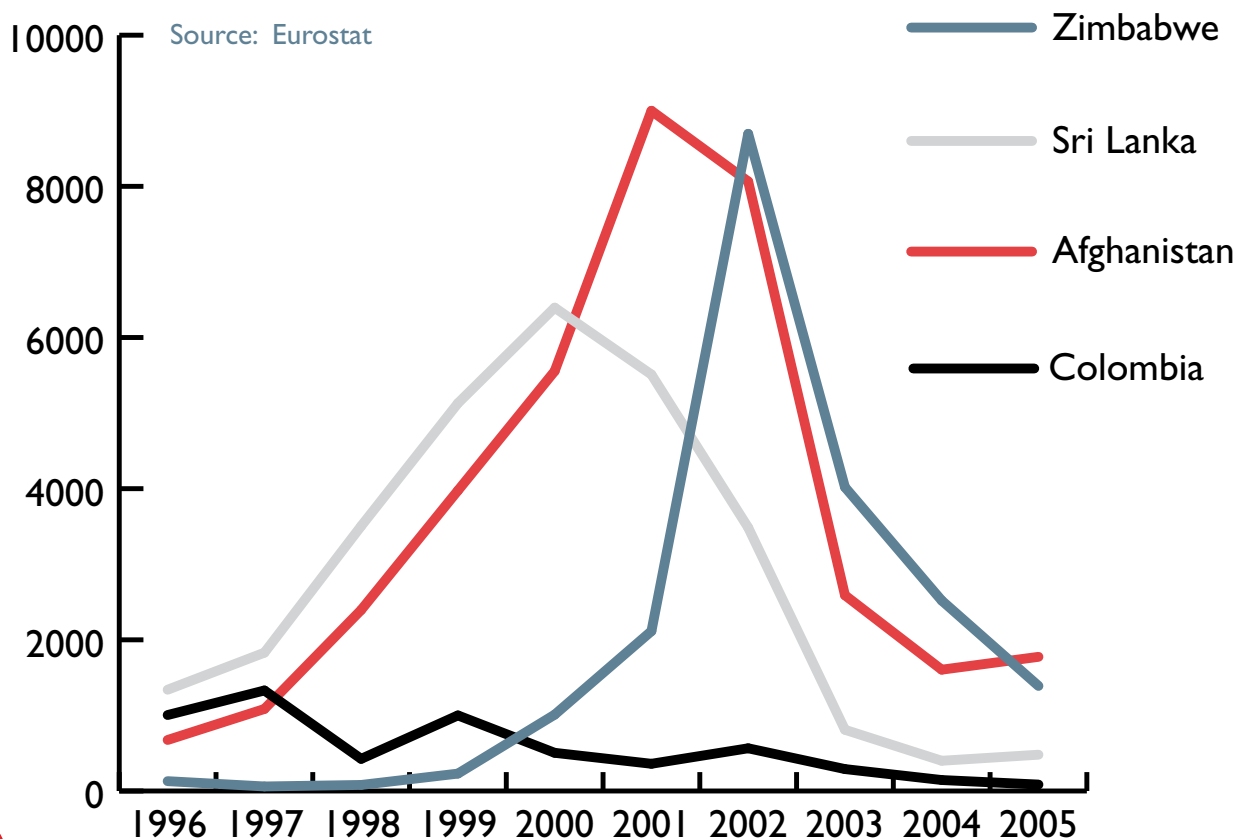
High numbers of asylum applications before and during the life a country ELR policy were most likely to do with the existence of 'push factors' in the country in question, rather than any 'pull factors' in the UK.

Several country ELR policies were stopped in October 2002 (Afghanistan, Burundi, Liberia, Libya and Somalia) and the Home Office's 2004 asylum statistics report points out that applications for asylum did indeed fall "from a high of 8,770 in October 2002 to 2,780 in December 2004".

The document, however, fails to attribute the fall in numbers either to the withdrawal of country policies or to the subsequent abolition of ELR altogether.

Neither feature on a long list of "key changes to reduce the number of asylum applications", which included non-suspensive appeals, new visa requirements, restricted access to support and fast track asylum processing and detention.⁴⁹

▼ Chart 1: Asylum applications to the UK, 1996 - 2007



At the time when the country ELR policy was withdrawn, the number of claims by Afghans, the third largest group of asylum seekers, had already started to fall from a peak of 9,000 in 2001.

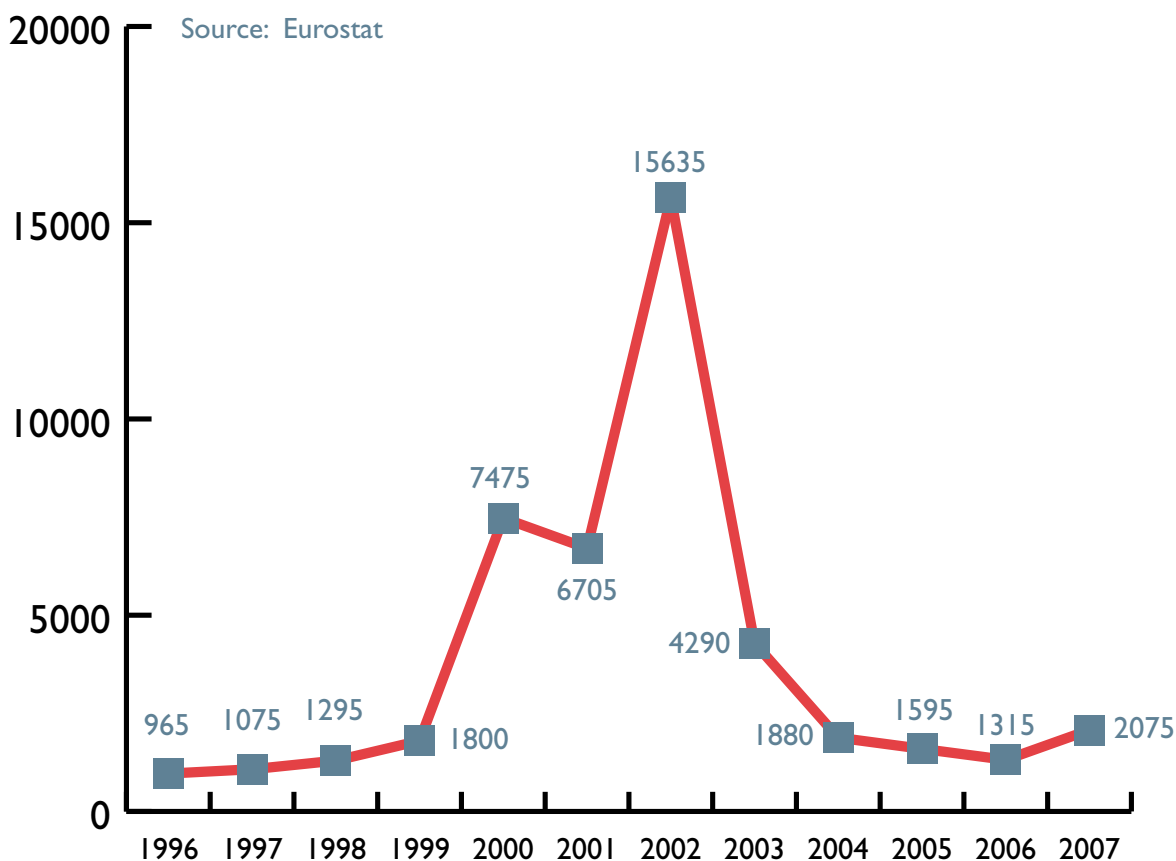
The collapse of the Taliban at the end of that year can reasonably be assumed to have been the main reason for the downward trend to a low of 2,590 in 2003 (just as applications by Sri Lankans fell following progress in the peace talks and a ceasefire in 2002 and those of Colombians were down following the commencement of peace talks in 1999).

Claims by Somalis did rise during the period of the ELR policy and then fell the following year. On the other hand, the number of applications by Liberians increased after blanket ELR was withdrawn (480 in 2002 to 780 in 2003), while Burundian claims stayed fairly static (825 in

2002, 780 in 2003), as did Libyan claims (245 in 2002, 220 in 2003). The ELR safety net was withdrawn from Iraqis in September 2000 and numbers dropped a little to 6,705, but they shot up in 2002 to 15,635. In other words, numbers rocketed even when no country ELR policy was in place.

These observations are consistent with research published in 2006 by the Dutch Advisory Committee on Aliens Affairs, which found that the “prevailing view” that the Dutch category protection policy (similar to the UK’s country policies) had an “appealing effect” could not be substantiated.⁵⁰

▼ Chart 2: UK asylum applications from Iraq, 1996 - 2007



The numbers of asylum seekers globally are primarily determined by political developments in countries of origin. Asylum seekers tend to arrive from countries characterised by general instability, war, conflict or repressive regimes.⁵¹

UNHCR has repeatedly expressed concern, however, that the protracted fall in the number of asylum applications to a 20-year low in Europe in 2006 may reflect the considerable difficulties refugees are facing accessing asylum systems in Europe in the face of more and more restrictive legislation and tighter border controls.⁵² The Refugee Council observed that the decline had not been matched by comparable falls in global conflicts and human rights abuses⁵³ and has documented a myriad of ways in which the

Government has sought to reduce the number of asylum seekers arriving in the UK. They include visa requirements, carrier sanctions, juxtaposed immigration controls in France and Belgium, new technology for searching freight at channel ports, the deployment of airline and immigration liaison officers overseas, and joint initiatives with EU and other countries to tackle irregular migration.⁵⁴

Not only do these measures fail to distinguish between refugees and migrants moving for other reasons, but they often specifically target those asylum seekers who have fled after an upsurge in violence and human rights violations.



The Government imposed visa requirements, for example, on Sri Lankans in 1987, following an increase in the arrival of Tamil asylum seekers; on Turkish nationals in 1989 following a rapid increase in the arrival of Kurds; on former Yugoslavs in 1993 and on Sierra Leoneans and Ivorians in 1994. Following the imposition of a visa requirement on Zimbabweans in 2003, applications fell from 7,655 in 2002 to 3,295 in 2003.⁵⁵

Improving the quality of decisions

The advantages of speedy decisions are obvious, both to the asylum seeker, who is not left in limbo, and to the taxpayer, who saves on accommodation and welfare support costs.⁵⁶ The Government aims to resolve 90 per cent of new applications within six months by the end of 2011. A faster process, however, should be the consequence, not the aim, of a high quality refugee determination process founded on correct decisions.

Ensuring that asylum seekers have early access to good quality legal advice is a key element to ensuring that the right decision is made on an asylum application at the first instance. The Government has recently tested the benefits of providing early access to legal advice in a pilot based in Solihull in the West Midlands.

Asylum seekers were guaranteed access to a legal representative before the first critical interview with the UKBA and these lawyers stayed with them throughout the asylum procedure. Legal representatives met UKBA case owners before and after the interview to clarify those aspects of the case they agreed on and those that would be argued.

The result was that claimants got a fairer hearing, cases were determined more speedily, and correct decisions were made at an earlier stage.⁵⁷ While a second phase of the pilot is expected to start in 2010, the benefits of the model are so clear that it should be adopted nationwide as soon as possible.



An important aspect of the Solihull pilot was that asylum seekers had more trust in the system. The Asylum Support Partnership is exploring with the UKBA whether early advice from voluntary sector staff can help build sufficient trust, so that asylum seekers will be more supported to consider their options before the point of grant or refusal, reducing the numbers who become destitute following a decision, because they did not have time to decide their next steps before support stopped.

This relies on a high quality initial decision, both so that individuals trust the asylum process and, importantly, to ensure that those with protection needs are not required by UKBA to return.

The UNHCR has also made recommendations that would balance the Government's quantitative targets, such as dealing with asylum claims within six months, with qualitative objectives in decision making. The Borders Agency's own Quality Assurance mechanisms should take a similar approach and give equal consideration to quality objectives as quantitative targets.

While the Agency has made some progress on improving training, credibility assessment and the provision of information to applicants, issues that the UNHCR has said need to be addressed "as a matter of priority" include:

- Improving credibility assessments in asylum decisions;
- Developing and improving training for asylum Case Owners;
- Introducing an accreditation system for asylum Case Owners;
- Addressing the impact of increasing workloads and targets on decision quality;
- Improving the provision of information to asylum applicants.

The primary aim of the asylum system must be to identify people who need protection efficiently and fairly. Speedy, but incorrect decisions at the initial stage simply cause delays and expense in the appeal stages. If good decisions are made, the speed and efficiency of the process will be improved.

Non-Arab Darfuris in Sudan:

A principled, pragmatic and efficient policy change



UNHCR's asylum statistics for 2007⁵⁸ show that the UK had low recognition rates for Sudanese asylum applicants compared with many other EU States. The UK granted some form of protection to 26 per cent of Sudanese asylum seekers (180 people), including 22 per cent recognised as refugees. France granted 33 per cent refugee status (320 people) and Ireland 54 per cent. Italy granted some form of protection in 89 per cent of cases decided (252 people).

In the Netherlands, since 22 June 2004, all non-Arab Darfuris have been granted a 'category protection' status if they did not qualify for refugee status or subsidiary protection based on Article 3 of the European Convention on Human Rights (ECHR). The Dutch category protection policy did not result in more Sudanese asylum applications. In 2004, there were 255 applications and the protection rate was 38 per cent, by 2007 the number of applications fell to 57 and in 2008 there were only 48 applications. Since 2006, UNHCR has advised that all asylum-seekers fleeing the conflict in Darfur are in need of international protection.⁵⁹ The UK's lower recognition rates reflect the Government's decision not to follow this guidance and to defend a narrow interpretation of who requires protection in the courts. This has resulted in a high number of Sudanese asylum claims being allowed on appeal: 39 per cent in 2007 and 32 per cent in 2008. Furthermore, there have been no returns to Sudan of non-Arab Darfuris since 9 July 2008.⁶⁰

This policy has been extremely expensive as it has forced people through the appeals system who could have been recognised as refugees at the initial stage. Other non-Arab Darfuris who have been unable to access good legal advice have lost their appeals and been left in limbo as they cannot be removed. This has caused them considerable suffering and anxiety – some have survived on vouchers worth £5 a day, others have been left entirely destitute.

On 2 November 2009, the Government amended its policy on Darfuris and released a new Operational Guidance Note on Sudan.⁶¹ This stated that "all non-Arab Darfuris, regardless of their political or other affiliations, are at real risk of persecution in Darfur and internal relocation elsewhere in Sudan is not currently to be relied upon." This removed the primary justification for refusing sanctuary to those fleeing persecution in Darfur and should result in those needing protection being granted it at the initial decision, making the system both fairer and more efficient.

Conclusions and recommendations

In 2004, the Asylum Rights Campaign issued a report which reiterated its call, first made in 1997,⁶² for “frontloading” of the asylum process: this meant directing more resources into the asylum decision-making process at an early stage to establish the facts of a case and make fair and defensible decisions. The report argued that if the Home Office got the initial decision right it would make significant savings in time and resources later in the process.⁶³ The argument for making decisions fairly and quickly is as valid now as it was then.

As the Independent Asylum Commission recommended, a ‘protection culture’ is needed in the Home Office and the UKBA. This means going back to the fundamental purpose of any asylum system, which is to identify people who need protection. The adversarial nature of the UK’s system risks creating a culture where the goal is seen as limiting the number of people who are granted protection. Errors are less likely to result in the fraudulent being recognised as refugees than in people who need protection being denied it and either being returned to a country where they are at risk or – more frequently – being left destitute in the UK. Yet a margin of error that favoured applicants in difficult and complex cases would result in a faster, fairer and more efficient process.

UK NGOs have long argued that a ‘culture of disbelief’ is almost inevitable in a body that is responsible for immigration control and enforcement. Canada recognised this some years ago and established an independent Immigration and Refugee Board (IRB). The board includes a research directorate which provides country of origin research to all parties in the refugee determination process. While the Board is not without its critics, further consideration should be given as to whether, in the longer term, asylum decision making in the UK should be devolved to an independent body.

Similarly, the establishment of an independent documentation centre could improve the efficiency of the system by providing objective and independent information on the human rights situation in the relevant country to all those involved in the determination process. This should reduce the amount of time spent on disputes over conflicting assessments of conditions in countries of origin and flawed decisions based on inaccurate country information.

The asylum system would have more credibility and there would be more support for returns if the Government undertook to provide protection to all those who cannot return because it is not safe for them to do so. This could be done through a less restrictive use of refugee status and humanitarian protection or by grants of a temporary status, possibly on a group basis, to nationals of particular countries or from areas in specific countries. This would allow some of those who are currently refused asylum to contribute to rather than be a burden on society. They would not need to be supported by the taxpayer, but instead could share and build their skills, pay taxes and contribute to the economy and community.

A less restrictive approach to country policy would reduce delays and expensive litigation, as well as the human cost of people falling into the ‘protection gap’. Moreover, by not taking this pragmatic route the Government would risk contributing to backlogs developing in the system. At the end of 2007, the backlog stood at 337,000. Early in 2009, the National Audit Office reported that just over 40 per cent of the 90,000 cases resolved at this time had been granted asylum, compared to 20 per cent removed and a fifth of the remaining cases could not currently be resolved as there were external factors which prevented the Borders Agency from either removing the applicants or allowing them to stay in the UK.⁶⁴

The following recommendations will help make the system fairer, faster and more cost effective as well as allowing those in need of protection to contribute and integrate more quickly into UK society.

- ➔ Resources need to be frontloaded and focussed on getting the initial decision on an asylum application right first time.
- ➔ The Government should adopt a more inclusive approach to its assessment of who is in need of protection by recognising that country policies are sometimes unhelpfully restrictive and granting more people asylum or humanitarian protection and considering a temporary status for others who need it.
- ➔ The provision of early legal advice, which was first piloted in Solihull, should be rolled out nationally after the conclusion of the second phase pilot in 2010.
- ➔ The content and use of Operational Guidance Notes (OGNs) should be improved in a number of ways:
 - The Country of Origin information contained in the OGN should be drawn from a wider range and variety of sources and all information relied upon to form the policy conclusions should be identified within the OGN. OGNs should adopt accepted academic standards of sourcing and referencing.
 - Case owners should be better trained and monitored in their use of Country of Origin Information and should not only rely on policy guidance when making decisions on individual claims for protection.
 - The Country Specific Asylum Policy Team should be sufficiently resourced to provide timely updates to OGNs when important changes in country conditions occur.
 - OGNs should be monitored by an independent body.
- ➔ Further consideration should be given to devolving asylum decision making in the UK to an independent body and setting up of an independent documentation centre.





**"I tried to kill myself three times."
Hamid, 28, Iran.**

Asylum support

Destitution and the developing asylum support system

Arrangements for supporting refused asylum seekers have evolved piecemeal since the mid-1990s into a complex system that is inefficient, ineffective and inhumane.

Until 1996, asylum seekers were eligible for means-tested welfare benefits, including income support, (though only at 90 per cent of the standard rate) and housing benefit while their asylum application and any appeals were under consideration.

Regulations introduced in early 1996 removed any right to income support or housing under homelessness legislation for asylum seekers who did not claim asylum immediately on arrival in the UK. Benefits were also denied to those appealing a refusal of asylum.

The Court of Appeal found the Government had exceeded its powers by introducing these regulations, which Lord Justice Simon Brown said, "necessarily contemplate for some a life so destitute that, to my mind, no civilised nation can tolerate it".⁶⁵ Nevertheless, the Government immediately introduced similar provisions in the 1996 Asylum and Immigration Act.

In 1997, the Court of Appeal ruled that local authorities had a duty under long standing

homelessness legislation, the 1948 National Assistance Act, to support destitute asylum seekers. The 1999 Immigration and Asylum Act removed that obligation and created a National Asylum Support Service (NASS) that provided support to asylum seekers completely outside the mainstream benefits system. The level of support was reduced to the equivalent of 70 per cent of income support on the grounds that it was short term and asylum seekers in NASS accommodation would not be expected to pay utility bills.⁶⁶

Vouchers were issued instead of cash, despite the Home Office's own recognition that "cash based support is administratively convenient, and usually though not inevitably less expensive in terms of unit cost".⁶⁷

Tamba, 21, Liberia



The Transport and General Workers Union, Oxfam, the Refugee Council and the Asylum Rights Campaign led a campaign for vouchers to be withdrawn, on the grounds that they were bureaucratic, expensive to administer, humiliating for asylum-seekers and further impoverishing people who were already very poor.

David Blunkett, MP, then Home Secretary, announced a review of the voucher system, acknowledging that it was, “too slow, vulnerable to fraud and felt to be unfair by asylum seekers and local communities”⁶⁸ and, in 2002, vouchers were abolished for asylum seekers who had not yet received a final decision. Initially, refused asylum seekers were supported with a mixture of cash and in-kind assistance, but from April 2005, cash payments ceased and refused asylum seekers were provided with vouchers instead.

Section 55 of the 2002 Nationality, Immigration and Asylum Act 2002 stripped entitlement to support from asylum seekers who could not prove that they had applied ‘as soon as reasonably practicable’ after arrival in the UK. The idea behind this – not borne out by any evidence – was that asylum seekers with well founded cases could be expected to apply on arrival at the airport or other point of entry

into the country. In 2003, the first year it was in force, 9,410 cases (64 per cent of decisions) were deemed ineligible. A survey in early 2004 of people refused support under Section 55, found 61 per cent were sleeping rough, another eight per cent were about to become homeless and 70 per cent had great difficulty finding food every day.⁶⁹

In October 2005, the House of Lords found in the case of *Limbuela*⁷⁰ that significant delays in the provision of support to applicants who were by definition destitute, resulted in “serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life”, and was therefore incompatible with Article 3 of the European Convention on Human Rights (ECHR). Following the judgement, Section 55 was used only in limited circumstances, usually to refuse an application for subsistence only support.

▼ Tamba's story

“English people think about how they can make progress. Me, I think about where I’m going to sleep tonight. ... Sleeping outside used to make me panic but I’ve got used to it now.”

“Sometimes I eat once a day, sometimes once every two days. I survive eating cheap custard cream biscuits that cost 26p per packet.”

Tamba, a refused asylum seeker from Liberia

The current asylum support system

The UK Borders Agency has taken over responsibility for asylum support from NASS, and asylum seekers continue to be supported outside of the benefits system and largely beyond local authority provision. Under Section 95 of the 1999 Immigration and Asylum Act they receive a living allowance and a no-choice offer of accommodation outside London, or ‘subsistence only’ if they choose to stay with family or friends.

During the passage of the 1999 Bill, the Government set support rates for asylum seekers at 70 per cent of Income Support and noted that “The Government consider the link to the amount of income support benefits to be generally quite helpful.”⁷¹

Ten years later, the rationale for reduced payments of 70 per cent remained essentially unchanged, with the Home Office stating:

“The Government does not have a policy of destitution. The UK’s asylum support policy is properly balanced and sufficient to meet essential living needs. ... The levels of subsistence support reflect the temporary nature of support to an asylum seeker and the fact they have access to fully furnished, rent free accommodation with utilities and council tax included.”⁷²

However, in practice the Home Office has reduced support rates for lone parents to 66 per cent of Income Support and support for single adults aged 25 or above to just 55 per cent of Income Support. This amounts to little more than £5 a day.⁷³



Hamid, 28, Iran

▼ Hamid's story

“Sometimes I begged for £1 or £2 to buy food, but begging made me feel very ashamed... When you're sleeping outside one night feels like one year because it's so cold. I never managed to sleep for more than an hour or two and when it's raining it's hard to sleep for more than fifteen minutes at a time.”

Hamid, a refused asylum seeker from Iran, has made three suicide attempts while in the UK.

The level of welfare benefits for single adults in the general population aged 18 to 24 is lower than for people over 25 because the Government expects their families to help them. Single asylum seekers, on the other hand, do not generally have family in the UK.

The Home Office should have set the single rate for all adult asylum seekers at least at £45.01 a week, which is 70 per cent of the level of Income Support for adults over 25.

Setting support rates at well below 70 per cent of Income Support is not consistent with the Government's own logic for paying reduced rates and many asylum seekers will be unable to meet their essential living needs on weekly support rates of £35.13 or some £5 a day.

How much does an asylum seeker need to meet their essential living needs?

Section 95 of the Immigration and Asylum Act 1999 defines a person as destitute if they are homeless and/or cannot meet their 'essential living needs'. If an asylum seeker does not have sufficient money each week to meet their food, clothing, health and hygiene needs, along with a minimum amount to allow them to pursue their asylum claim (travel, postage and phone calls), it would be reasonable to say that they cannot meet their essential living needs.

Still Human has calculated the cost of meeting those needs by adapting the basket of basic goods compiled by the Joseph Rowntree Foundation in 2008 as part of their research for minimum income standards in Britain. Items that would not generally be considered essential to avoid absolute poverty were removed.⁷⁴

Accordingly, Still Human estimates that an asylum seeker in 2008 would have needed a minimum of £31.66 a week for food⁷⁵ and a further £9.70 a week to meet the costs of household cleaning items, toiletries, cold/flu remedies, paracetamol, telephone calls, stamps, clothes and travel.

Taking inflation into account, the minimum required for a single adult asylum seeker to meet their essential living needs in 2009 amounts to no less than £43.60 a week (the cost of accommodation, utility bills and council tax are not included). However, it should be stressed that the weekly costs are calculated on an annual basis, so the actual costs for most asylum seekers will be higher, as they will be in the asylum system for a limited time and will be unable to spread the costs over a year.

Single adults over 25 receive £64.30 in Income Support, in addition to housing and council tax benefit. If asylum seekers received 70 per cent of income support (20 per cent less because they do not have to pay for utilities and a further 10 per cent less because they are only supposed to be in the system temporarily), it would amount to £45.01, just enough to meet the estimated cost of their essential living needs. The majority of asylum seekers have to survive on significantly less than this.

▼ Case study

“I have had nowhere to live for three years since NASS support was pulled away. I used to sleep at a friend’s house sometimes but then he was made homeless too. I have slept at the rail station and the bus station. Sometimes behind some shops. In the winter I stayed in a night shelter sometimes. ...I was attacked last month at night – they split my head and I have 10 stitches. I’ve been beaten seven times in three years now.”

48 year old man from Sierra Leone



The support system for refused asylum seekers

If a person is refused asylum and has no further opportunities to appeal, they lose their right to accommodation and support 21 days later. As they are not allowed to work, they are very likely to be destitute. The exceptions to this include:

1. Refused asylum seeking families with children who should continue to receive support under Section 95 of the Immigration and Asylum Act 1999 until they leave the country or are removed or the youngest child turns 18. This does not apply if the child is born more than 21 days after a claim is refused.
2. Refused asylum seekers who are destitute and qualify for support under Section 4 of the Immigration and Asylum Act 1999 by showing that they are taking steps to leave the UK or are unable to do so through no fault of their own (e.g. they are too sick to travel, there is no viable return route to their country, they have a judicial review pending).
3. Refused asylum seekers who are not entitled to support under Section 95 nor under Section 4, but who may qualify for assistance

from their Local Authority under Section 21 of the National Assistance Act 1948 if they are 'destitute plus' i.e. in addition to being destitute, they need 'care and attention' because of their mental or physical ill health, disability or old age. The Slough judgement⁷⁶ limited this to people who need 'looking after', because they cannot carry out day-to-day tasks such as washing and cooking for themselves. Refused asylum seekers will be excluded if their original asylum application was made 'in country' (as most are, for a variety of reasons) and not at the airport or port of entry, or have refused to co-operate with removal directions. There may still be a duty on a local authority to provide support where failure to do so would result in a breach of their human rights.

In some regions asylum seekers are waiting months for their support to come through and even getting a final decision on their asylum application before they receive any support. In a survey of destitute asylum seekers visiting members of the Asylum Support Partnership, 54 per cent of those who had not yet had an outcome of their asylum claim were waiting for a response to an application for support.⁷⁷

▼ Case study

"I have been made homeless. I now live with anybody who can take me, on any sofas, in any space. There are other Eritreans in NASS who are not entitled to have friends to visit but they do what they can."

48 year old woman from Eritrea



Thania, 20, DRC

The problem of delays continues when a refused asylum seeker applies for Section 4 support. Refugee Action surveyed its clients in July 2009 and found that, on average, they had to wait almost a month between applying for Section 4 and being able to move into their accommodation. It took 12 calendar days for UKBA to make a decision (positive in 98 per cent of cases) and a further 17 days for the accommodation to become available.

As of 14 October 2009, any asylum seeker wishing to make further submissions in relation to their case will have to do so in person. For those who claimed asylum before 5 March 2007 this will be in Liverpool and for those after it will be at a regional reporting centre. The Home Office will not pay travel expenses, making it extremely difficult for destitute asylum seekers or those already on Section 4 to submit further information on their claim.

Previously those asylum seekers making further submissions could apply for Section 4 support while the Home Office reviewed the information being presented, but now the Home Office aims to make a decision on any further submission before making decisions on Section 4 support.

This will leave asylum seekers without any means of support while they are waiting to hear whether the Home Office accepts the fresh claim. The Home Office aims to give appointments within 10 working days and then to decide whether a submission is a fresh claim in 2-5 working days. If the application is accepted as a fresh claim there will be a further delay before support payments begin.

Destitute refused asylum seekers have often relied on other asylum seekers who are still being supported (either under Section 95 or Section 4) for help to survive: whether for a floor to sleep on, food or for other basic necessities.

The cuts to existing support rates means that asylum seekers awaiting an initial decision on their claims will be much less able to assist destitute asylum seekers, which may lead to more street homelessness.

▼ Thania's story

“The worst thing for me was living on the streets and selling sex. Men lied to me and said they were going to help me but it wasn’t true. They had sex with me then gave me no money. Sometimes I thought about killing myself. Every day I had to have sex so I could eat. I was hearing voices. I couldn’t sleep. All I could think about was hunger.”

Thania was raped by Congolese soldiers when she was 15 years old. The soldiers also killed her parents. She was refused asylum and ended up destitute, but has now been given protection in the UK.

In addition, the new policy on further submissions is likely to substantially increase the number of people who are destitute. They will include asylum seekers who are left without support while their new submissions are reviewed, those who have their submissions rejected and those who do not make a further submission because of the travel costs or other problems associated with making the submission in person.

The Government’s proposal to cut off support after three months to people who have signed up for assisted voluntary return may also increase the number of destitute people and have an adverse effect on the numbers taking up assisted voluntary return. Many reasons for delay in returning are beyond the asylum seeker’s control, such as difficulties in obtaining the relevant documentation or a serious deterioration in the human rights situation in the country of origin. Although they would be entitled to re-apply for support before the time limit expires, it would create needless bureaucracy for the UKBA, while restrictions on the right to appeal will cause extreme hardship.

Refused asylum seekers without support

| | | Country |
|---|------------------------------|---------|
| <p>Table: 5 Number of claimants excluding dependents refused asylum, humanitarian protection and discretionary leave in 2008</p> <p>Source: Home Office</p> | Afghanistan | 1,355 |
| | Democratic Republic of Congo | 185 |
| | Eritrea | 755 |
| | Iran | 1,355 |
| | Iraq | 1,080 |
| | Somalia | 550 |
| | Sudan | 140 |
| | Zimbabwe | 2,015 |
| | Total | 7,435 |
| | Total all countries | 13,505 |

In 2008, more than 55 per cent of all refused asylum seekers were from Zimbabwe, Iran, Iraq, Sudan, Afghanistan, Somalia, the Democratic Republic of Congo and Eritrea – all countries where there is conflict, generalised violence and/or well documented human rights violations.

While applicants from these countries have an average success rate at appeal of around 30 per cent, many will be unable to access good legal advice and representation which is often critical to winning an appeal.⁷⁸

Refused asylum seekers from these eight countries make up around 70 per cent of destitute refused asylum seekers.⁷⁹ These asylum seekers understandably remain frightened of returning, even if the dangers to which they would be exposed have been found not to reach the high threshold that would trigger a right to remain in the UK under the 1951 Refugee Convention or the European Convention on Human Rights.

Some would not meet the criteria to qualify for Section 4 support, but many who would do not apply because they believe that they would be required to return home and are too frightened to do so. A survey by Refugee Action found that Section 4, with its perceived insistence on a commitment to return and difficult bureaucracy to negotiate, was creating untold anxiety and confusion, and may also be creating or aggravating ill health.⁸⁰

Others do not apply because there is no 'support only' option on Section 4 (they must move into Section 4 accommodation in order to receive any financial support). This means that individuals have to decide whether to forgo all support or apply and risk being sent to accommodation that may be far from family, community and other support structures.

▼ Case study

“I had no money to take a taxi to take my wife to the hospital. I have no money to take a bus ticket from the reporting centre, I have no money to take Halal food.”



Consequently, a significant and growing number of asylum seekers are being left destitute. In 2008, the Joseph Rowntree Charitable Trust carried out a survey in Leeds and found that “there has been a real and significant increase in destitution in Leeds... There has been an increase in the long-term destitution, rough sleeping and the destitution of children, older people and women.”⁸¹ In 2009, the Trust reported that the problem had worsened for refused asylum seekers and the number of street homeless had continued to rise.⁸²

During October 2008, member agencies of the Asylum Support Partnership, together with two small local organisations and several centres run by the Red Cross recorded the number of visits made to their organisations by destitute asylum seekers. Since the original ‘destitution tally’ was carried out in 2007 the percentage of visits to the centres by destitute asylum seekers had increased from 44 to 48 per cent, and the percentage of these people who were destitute refused asylum seekers had increased from 58 to 60 per cent. In short, destitution amongst refused asylum seekers is getting worse.⁸³

These findings correspond with the results of a four week survey in Leicester in February 2009 which showed an increase in the number of destitute asylum seekers compared to 2008, and a rise in the number reporting physical and mental health problems.⁸⁴

Not only are the numbers going up, but people are remaining destitute for longer, indicating that destitution is failing to promote returns: asylum seekers would rather remain destitute in the UK than return to danger.

100 of the 273 individuals surveyed in Leeds had been destitute for more than a year. The second destitution tally found that 62 per cent of visits by destitute refused asylum seekers were by people who had been destitute for more than six months. This figure rose to 70 per cent in the Leicester survey.

The destitution tally also recorded 123 visits by destitute people with dependent children and nearly 50 per cent of these were refused asylum seekers, many of whom had been destitute for over six months. This raises serious concerns regarding the welfare of these children.⁸⁵

▼ Case study

“For the healthy people Section 4 is better than detention but for someone like me whose got health problems, because of that it’s really not that much different.”



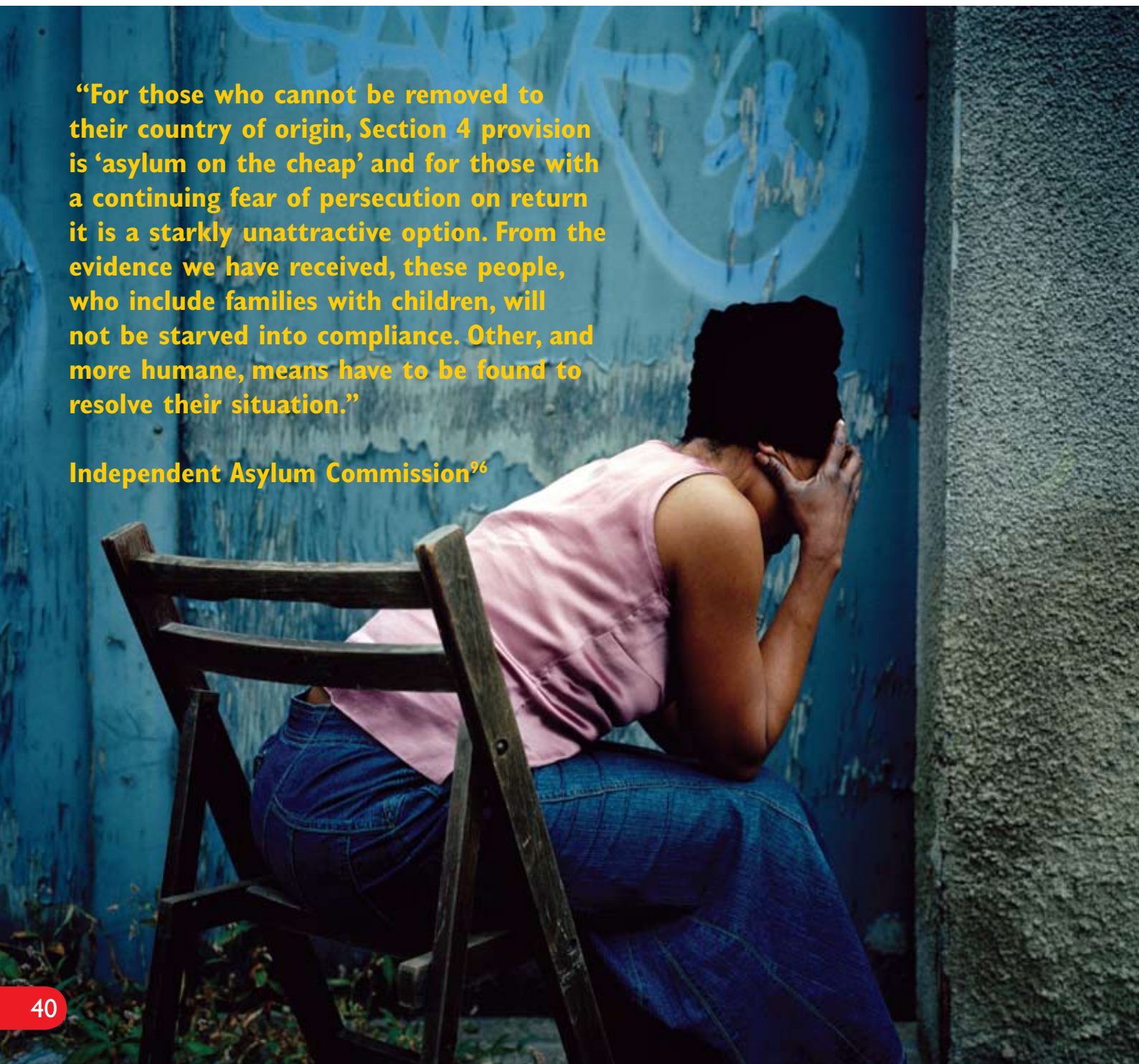
▼ Case study

“I was so desperate that I did something that I’m ashamed of. I was so hungry that I went into a police station and asked them if I could spend a night in a cell. They said no as I had not done anything wrong. They were very polite to me. I was so desperate that on the way out I deliberately smashed a police car headlight so that they would have to arrest me. I spent a week in jail. The judge at the trial was very sympathetic. I know it was wrong to do this but I was desperate. The food was actually quite good.”

Man from Zimbabwe

“For those who cannot be removed to their country of origin, Section 4 provision is ‘asylum on the cheap’ and for those with a continuing fear of persecution on return it is a starkly unattractive option. From the evidence we have received, these people, who include families with children, will not be starved into compliance. Other, and more humane, means have to be found to resolve their situation.”

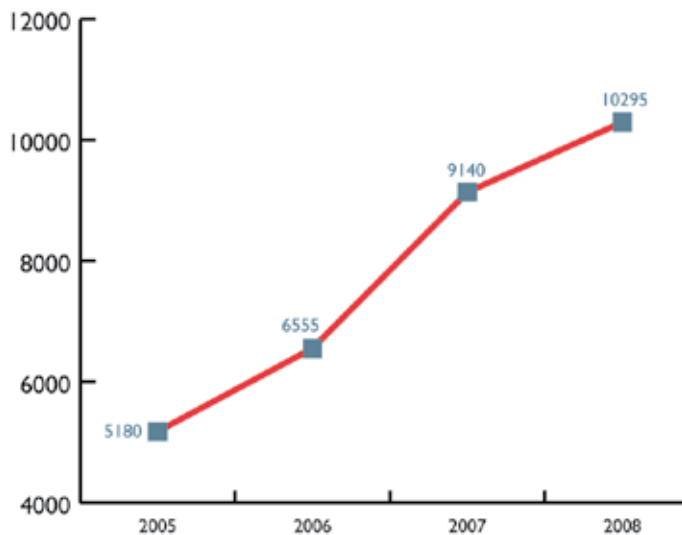
Independent Asylum Commission⁹⁶



Refused asylum seekers on Section 4 support

Chart 3:
Number of refused asylum seekers on asylum support, 2005 to 2008

Source: Home Office



The number of refused asylum seekers in receipt of Section 4 support has increased dramatically since 2003, when it stood at about 300,⁸⁶ and especially since 2005, after the Home Office published its policy on Section 4 support (then called 'hard case' support), following criticism by the High Court⁸⁷ for not informing asylum seekers of the policy.

At the end of June 2009, 11,390 applicants, excluding dependants were receiving Section 4 support.⁸⁸ As highlighted above, many other refused asylum seekers either do not claim Section 4 support or are denied it because they do not meet the narrow criteria.⁸⁹

Even those who are granted Section 4 support can remain destitute for weeks while their application is processed. For example, 33 per cent of destitute asylum seekers surveyed in Leeds in 2009 were waiting for Section 4 to begin.⁹⁰ It should be stressed that Section 4 was intended as a short-term, discretionary safety net for a very small number of cases. It is now a long term and large-scale system. Indeed, the Minister of

State reported that, as of 14 June 2009, 82 per cent of those on Section 4 (9,354 people) had been receiving it for over six months and 45 per cent (5,106 people) had been on Section 4 for over two years.⁹¹

Organisations working with asylum seekers believe that Section 4 support is simply too little to live on. Those in receipt of Section 4 get accommodation and the equivalent of £35 a week. A Refugee Council survey found that 68 per cent of respondents' clients were unable to buy sufficient food with this and 73 per cent reported their clients being hungry.⁹² The delivery of £35 a week in vouchers rather than cash has made the problem even more acute as asylum seekers cannot always buy what they need from the participating shops and cannot get best value by shopping in markets. Refused asylum seekers lose some of the value of the vouchers as they cannot get change in cash and they have no money to use laundrettes, make phone calls or use public transport. This makes it difficult to stay in touch with the Home Office.

The need for cash has led to some refused asylum seekers selling their vouchers, sometimes for as little as £25 for vouchers with a face value of £35⁹³ and to the establishment of numerous voucher exchange schemes around the country.

Vouchers are also stigmatising: more than 80 per cent of respondents to the Refugee Council's survey reported feeling embarrassment or anxiety when using vouchers. More than half reported poor treatment in shops accepting vouchers, either by staff or other shoppers.

While refused asylum seekers who have children should remain on Section 95 support, women who give birth more than 21 days after having their appeal refused are only eligible for Section 4. Pregnant women on Section 4 are entitled to additional vouchers, but these are not likely to be enough to meet their nutritional needs or enable them to buy sufficient clothing or equipment for themselves or their children.⁹⁴

In March 2007, the Joint Committee on Human Rights stated: "We consider the section 4 voucher scheme to be inhumane and inefficient. It stigmatises refused asylum seekers and does not adequately provide for basic living needs. There is no evidence that the voucher system encourages refused asylum seekers to leave the UK."⁹⁵

The Government has responded to this criticism and, in November 2009, the UKBA introduced a pre-paid payment card, the Azure card, to replace vouchers. The card is being rolled out nationally in six phases to be completed early in 2010.

The card will mean that asylum seekers will no longer lose the value of their change, but the amount of money that can be carried over from one week to the next is limited to £5 for single adults. This means that it will still be impossible for asylum seekers to save a significant proportion of the entitlement so that they can buy more expensive items such as clothes or larger quantities of food (which would allow them to get better value).

The items that can be purchased with the cards will be dependant on which retailers are signed up and what goods they sell; charity shops, a source of inexpensive clothing for example, are not participating. Although the Azure card represents some improvement on vouchers, it will not solve existing problems associated with a cashless system, including not being able to buy travel tickets or pay for a haircut.

After the cards were introduced, one asylum seeker was accused of fraud at a checkout queue because the card did not have a signature, suggesting that using pre-paid cards are also likely to be stigmatising. Furthermore, the Government is still paying the additional cost of administering a parallel support system and asylum seekers are still having to subsist on just £5 a day.

▼ Bona's story

"I still have a problem with my leg from the torture and can't walk very far. I take medication every day for the pain."

"Some days I had nothing to eat all day. I was reliant on friends to give me a few pounds a week for my survival. Whenever I think about my wife and children and the fact that I can't be with them I go crazy."

Bona, a refused asylum seeker from the Democratic Republic of Congo (DRC)

An ineffective and inefficient support system

Before the 1996 Act, all asylum seekers who were destitute were eligible for support, set at 90 per cent of Income Support levels, plus full housing benefit.

Since then, successive governments have introduced a series of measures, which have resulted in a complex system that leaves many asylum seekers destitute, supports some under one system running in parallel to mainstream benefits (where people start on Section 98 support for a short period, then transfer to different accommodation under Section 95) and others under another parallel system (Section 4). Even where asylum seekers are supported they are often forced to subsist on less than 70 per cent of Income Support, when the full rate is considered to be the minimum required to live on.

These policies are based on the mistaken assumption that the Government can reduce the number of asylum applications made in the UK and convince refused asylum seekers to return to their country of origin by making their lives here increasingly difficult. Not only is this



Bona, 42, DRC

approach unprincipled, particularly as a significant proportion of asylum seekers will go on to be recognised as refugees, but it has also proven to be remarkably ineffective:

- In 1999, a cashless support system was introduced in order to reduce applications by showing that Britain was not a 'soft touch'. Applications increased in 2000 and peaked at 84,130 in 2002. The voucher system was abandoned in 2002 and applications steadily declined to 23,430 in 2007. This shows that cash benefits were not the draw they were made out to be in the public debate.
- Section 55 of the 2002 Act was intended to encourage asylum seekers to apply at the port of entry by allowing support to be refused if applications were not made "as soon as reasonably practicable." In spite of this, port applications have steadily declined since then, from 46 per cent in 2002 to just 10 per cent in 2008, demonstrating, again, that the availability of welfare benefits is not the main driver in the minds of asylum seekers arriving in the UK.

- Section 9 of the 2004 Act allows the Government to stop all local authority support to families who are not taking “reasonable” steps to leave the UK. The risk of the children being taken into care was widely publicised. The Home Office piloted implementation of Section 9 in 2005 and found that it “did not significantly influence behaviour in favour of cooperating with removal.”⁹⁷

None of these examples should have surprised the Home Office, whose own research into why people claimed asylum in the UK showed:

- Asylum seekers have little control over their route or final destination and have little knowledge of UK immigration or asylum procedures before they arrive, nor of entitlements to benefits, the availability of work or how UK policies compare to those of other EU countries;⁹⁸

- For those that do exercise some choice, the existence of family and friends, an ability to speak English or previous links to Britain are the main motivators for coming to the UK;⁹⁹
- There is little evidence that asylum seekers are deterred by the prospect of harsh treatment in a country of asylum;¹⁰⁰
- Measures that prevent asylum seekers from reaching their destination, such as visas and other pre-entry controls, can affect numbers, though the influence is usually temporary.¹⁰¹

There is little evidence to show that measures that render asylum seekers completely destitute or living below the poverty line are effective in coercing refused asylum seekers into returning home or discouraging others from travelling to the UK. Nevertheless, in 2003 the Government described the threat of destitution as a “deterrent but also as an incentive [to return]”.¹⁰²



The Government's latest proposals to reform the asylum support system

In November 2009, the Borders Agency issued a consultation on "Reforming Asylum Support: effective support for those with protection needs". In it the Minister stated that the proposals contained in the consultation paper should ensure "...that those seeking asylum are effectively and comprehensively supported during the determination of their claim; that the system for achieving this is as simple and efficient as possible; and that it encourages the return of those who have no protection needs and who have no right to be in the UK."

The consultation paper does have some positive proposals, which include taking forward the testing of early access to legal advice for asylum seekers and repealing Sections 9 and 10 of the 2004 Act. Section 9 allows the Government to stop all local authority support to families who are not taking "reasonable" steps to leave the UK and Section 10 requires failed asylum seekers to undertake community activities as a condition of support.

However, the consultation is silent on the level of support that is to be provided to those on Section 95 and Section 4. As has been outlined above, currently the majority of asylum seekers are not "effectively and comprehensively supported during the determination of their claim".

Furthermore, several of the proposals in the paper are likely to undermine the Government's stated intentions of reforming the support system. Firstly, the Government proposes to re-enact Section 55 of the 2002 Act which gives it the power to prevent asylum seekers from accessing support if they have not claimed asylum "as soon as reasonably practicable".

The removal of support from asylum seekers who do not apply at the port of entry or as soon as reasonably practicable has been a recurring policy since 1996, but this has not prevented applications made at the port declining from 41 per cent in 1999 to just 10 per cent in 2008.

There are many good reasons why people do not make applications immediately on arrival. They may not understand the procedure; they may be traumatised and afraid to approach figures of authority; they may wish to seek legal advice before making an application; they may have been told by their agent not to declare themselves on entering the country and threatened with retribution if they do not comply; they may not realise the severity of the situation at home when they first enter the country; they may arrive hoping that the situation will improve in their country of origin and that they will be able to return home; their circumstances may change after arriving in the UK, making them refugees *sur place*, or they may come legitimately as students or on a work visa and be forced to apply for asylum only when their visa runs out.

Requiring UKBA staff to make a judgement as to whether each asylum claim was made as soon as reasonably practicable increases administration time and cost while reducing the overall efficiency of the system.

As a proportion of those who may be left destitute by the application of Section 55 are likely to be recognised as refugees at a later date, this proposal is also likely to undermine the UKBA's stated aim of ensuring that those granted asylum integrate into their new community as effectively as possible.

For these reasons the re-enactment and implementation of Section 55 will work against the Government's ambition of a simpler and more efficient support system, as well as causing considerable hardship for the asylum seekers affected.

The consultation document also proposes a number of new powers which it considers will encourage refused asylum seekers to leave the UK. These include:

- A power to make both families and individuals reapply for support after their appeals have been turned down. The Government does not intend to make families reapply initially, but may do so in the future. Once refused, support will be provided via payment cards, not in cash. Subsistence only support will only be allowed for families, not individuals.
- A power to limit support to three months for refused asylum seekers who are taking steps to leave the UK. The fixed time limit would prevent an appeal once support is cut off, but the Borders Agency states that individuals could reapply for support before the end of the fixed period if there is a genuine barrier to their leaving.
- The Borders Agency proposes to tailor the type of accommodation and support provided and may bring refused asylum seeking families into full board accommodation to help with removal.

The Government's impact assessment makes clear that one of the key assumptions behind these measures is that limiting access to support will have a deterrence effect and thereby reduce the number of applications for asylum. There is no evidence that this will be successful. As outlined above, previous policies which left asylum seekers destitute at the end of the process or having to survive on vouchers worth just £5 a day have not resulted in people returning home.

No matter how difficult living conditions are made for asylum seekers in the UK, they are unlikely to outweigh the fear of what awaits them if they return home. Removing or limiting access to support will not constitute an effective means of encouraging people to leave the UK.

Worse, if people are left destitute or without sufficient support to meet their essential living needs, they will be less able to prepare for return.

Putting families in full board accommodation will separate them from existing support structures, and in itself is unlikely to persuade them to return to their country of origin. Only one out of 12 families placed in full board accommodation in a pilot in Ashford, Kent, took up assisted voluntary return.¹⁰³

Similarly, experience has shown that making individuals or families reapply for support after an appeal has been turned down will not encourage them to go home, but it will make the system more complicated and less efficient, as UKBA staff will have to administer each of these new applications.

In summary, Still Human Still Here believes the proposals outlined above to deny and limit support to refused asylum seekers are all likely to increase administration, make the system more complex and will have no impact on encouraging those who have been refused asylum to return home.



Alain, 34, DRC

Making the support system simpler and more efficient

The current system provides most asylum seekers with inadequate support through an inefficient system and fails to promote returns of refused asylum seekers. A simplified single system of support that continues throughout an asylum seeker's stay in the UK would deliver efficiency savings over the bureaucratic multi-track system that currently exists after an asylum seeker receives their final refusal.

The substantial savings that could be made if all refused asylum seekers were maintained on Section 95 support include:

- The cost of assessing entitlement to Section 4. If people continued to be supported on Section 95 until they were removed or were given permission to stay, there would be no need for a new assessment of entitlement to support. Nor would UKBA staff have to attend appeals against refusals of Section 4 support in front of the Asylum Support Adjudicator. This could free up more than 4,000 UKBA staff working days.¹⁰⁴
- The cost of accommodating people who are willing and able to stay with families and friends, but who are not permitted to do so under Section 4. Around 20 per cent of people on Section 95 currently receive subsistence only support. If 20 per cent of the 11,390 individuals on Section 4 at the end of June 2009 stayed with family or friends, the accommodation savings would amount to £97 per person per week,¹⁰⁵ or some £11.5 million a year;
- The cost of Section 4 appeals to the First Tier Tribunal on Asylum Support, which currently account for 85 per cent of appeals to the Asylum Support Adjudicator, at an estimated £700,000 a year;
- Administrative savings from not having to run a pre-payment card system, pay interpreters, travel costs, postage, etc;¹⁰⁶
- Savings accrued from increased voluntary returns. Maintaining people on Section 95 support means that refused asylum seekers without protection needs will have more time and stability to engage with voluntary return options which are both cheaper and more dignified than enforced removals. If 1,000 more voluntary returns were made a year this would save around £10 million a year.¹⁰⁷

▼ Alain's story

“I wake up hungry and go to sleep hungry... Last year a white man attacked me in a bar. He smashed a piece of broken glass into my eye and now I'm blind in that eye. Somebody called the police and he was arrested, charged and convicted of a racist attack on me.

As asylum seekers we have been punished twice – once back home and once here. In Kinshasa I was tortured physically and here I'm tortured mentally. I've transferred from one prison to another. I used to dream of having a good life but now that dream is gone.”

Alain, a refused asylum seeker from the Democratic Republic of Congo



Furthermore, staff time saved from not having to assess eligibility for Section 4 or attend appeals against refusals could be redeployed within the UKBA.

There will be an additional cost of supporting people under Section 95 rather than Section 4, but since October 2009, this is equal to just 13 pence a week for a single adult asylum seeker (the vast majority of those on Section 4). Maintaining an additional 11,390 people on Section 95 support rather than Section 4 would cost around £80,000 a year;¹⁰⁸ a relatively minor cost compared to the potential savings and benefits of a more streamlined asylum support system.

There will also be the additional cost of supporting people who are not currently entitled to support. However, the savings identified above alone could support an additional 3,000 single asylum seekers for a year.¹⁰⁹ Moreover, most of the refused asylum seekers who will retain their eligibility for support under an end to end support system will require support for much less than a year, as their cases will have been concluded within six months. The Borders Agency currently concludes 60 per cent of cases within six months and aims to increase this to 75 per cent by 2010 and 90 per cent by the end of December 2011.

Ensuring that destitution plays no part in the asylum process will also have a significant number of added benefits.

Firstly, local authorities would not end up having to support some refused asylum seekers who have no recourse to public funds.¹¹⁰ This is a significant financial burden on local authorities and council taxpayers for which they are not compensated by central government.

While calling for these costs to be reimbursed, local authorities have urged the Government to “recognise that removal (voluntary or enforced) is not an option in a significant number of cases and that leaving people destitute is not in the interests of broader social protection policy.”

Local authorities have also expressed concern about the impact of destitution on community cohesion. They have warned that the social impacts of destitution are: “increased poverty; street homelessness; illegal working; vulnerability to sexual exploitation; increased criminal activity; increased health risk; and increased mental health difficulties.”¹¹¹

Those left destitute have to find their own means of survival. This includes working in the informal economy, often in very exploitative conditions, prostitution and begging. All of these have a social impact as well as adding directly to policing costs. Similarly, leaving people destitute or without adequate support results in deteriorating mental and physical health with consequent implications for public health and healthcare costs (see health chapter for more details).



The current system of support for asylum seekers also undermines several of the Government's wider policy objectives, including reducing homelessness, eliminating poverty, child protection, immigration control, promoting good public health, assisting the integration of refugees into the UK and promoting good community relations.

For example, the Government has set a policy aim "for every child, whatever their background or their circumstances, to have the support they need to: be healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being."¹¹² This cannot be realised when children are on Section 4 support or left without any support at all, as happens to some families.

Another clear advantage of the proposed end to end support system is that it averts the considerable risk of asylum seekers absconding and disappearing into the irregular economy when their support is cut off and they are left destitute.

The integrity of any asylum system requires that where asylum seekers do not have a protection need they do return to their countries of origin. However, leaving asylum seekers destitute is a significant obstacle to both voluntary and forced returns.

Charities working with asylum seekers find that destitute people are too busy trying to survive to think about any decision to return.

In the words of one voluntary sector worker, "Destitution means that clients cannot properly consider how they will re-embed with their families and communities post-return as they are focused on the very immediate needs of food, shelter and health care in the UK."¹¹³

If destitution makes voluntary return less likely, it also gets in the way of enforcement. Once support is withdrawn from refused asylum seekers they have little incentive to stay in touch with the authorities, making it harder for the UK Border Agency to remove them.

This was recognised by some UKBA staff themselves who, in response to a consultation in 2007, proposed that the different types of asylum support should be simplified, Section 4 should be reviewed and asylum seekers should be allowed to remain in their accommodation until they are actually removed from the UK, as it would make it easier to maintain contact with the applicant.¹¹⁴

By continuing support, the UKBA maintains contact with refused asylum seekers and thereby ensures that it can enforce removal against individuals who do not have protection needs in the UK and do not leave voluntarily.

... 31 years old. He passed
... he was about 27 years
and tortured by soldiers
... of origin. He's scared
... form because he was
... even now. He's
... is not now...

Conclusions and recommendations

In its analysis of the asylum system, the Centre for Social Justice identified the withdrawal of support immediately post refusal as its “greatest concern” with the UK’s asylum system.¹¹⁵ The Joint Committee on Human Rights, in its review of the treatment of asylum seekers in the UK, reached the following conclusion:

“The policy of enforced destitution must cease. The system of asylum seeker support is a confusing mess. We have seen no justification for providing varying standards of support and recommend the introduction of a coherent, unified, simplified and accessible system of support for asylum seekers, from arrival until voluntary departure or compulsory removal from the UK.”¹¹⁶

This is consistent with the Government’s stated objectives in reforming the asylum support system: “[to] ensure those seeking asylum are effectively and comprehensively supported during the determination of their claim; that the system for achieving this is as simple and efficient as possible; and that it works towards the return of those who have no protection needs and who have no right to be in the United Kingdom.”¹¹⁷

The best way to achieve this goal would be to abolish Section 4 and retain all refused asylum seekers who would otherwise be destitute on a single support system which provides cash support at a level which allows them to meet their essential living needs until they are returned to their country of origin or are given a legal status in the UK.

In addition to making the system simpler and more efficient, end to end support will ensure that destitution plays no part in the asylum process and will build confidence in the integrity of the system for all stakeholders. Caseworkers will retain contact with asylum seekers throughout the process and will be in a better position to ensure that those who do not require protection in the UK do leave the country.

For these reasons Still Human Still Here recommends that:

- ➔ There should be a single system, based on Section 95, which will provide cash support to all asylum seekers who would otherwise be destitute until they have been granted status in the UK, left voluntarily or been forcibly removed.
- ➔ Support levels for asylum seekers should, at a minimum, be set at 70 per cent of Income Support and should not be less than £45 a week for single adults, paid in cash. Payments should be adjusted annually in line with Income Support rates.

Access to healthcare

The NHS was born out of a long-held ideal that good healthcare should be available to all, regardless of wealth. At its launch on 5 July 1948 by the then Minister of Health, Aneurin Bevan, it had at its heart three core principles: that it meet the needs of everyone, that it be free at the point of delivery and that it be based on clinical need, not ability to pay. These three principles have guided the development of the NHS over more than half a century.¹¹⁸

However, in 2004, the Government introduced charges for all refused asylum seekers, including pregnant women, children, cancer patients and diabetics, to access secondary healthcare. This policy has proved burdensome for healthcare professionals to administer and puts the health of asylum seekers and the wider public at risk. Charging vulnerable people to access secondary healthcare is neither humane nor efficient and runs counter to the spirit of the NHS' Constitution.¹¹⁹

Health needs of refugees and asylum seekers

The British Medical Association (BMA) has documented the specific and often acute health problems experienced by refugees and asylum seekers. These may relate to the effects of war and torture or be linked to poverty in their country of origin that makes it difficult to contain and treat diseases like tuberculosis (TB), hepatitis, HIV/AIDS and parasitic infections.¹²⁰ 17 per cent of refugees have a physical health problem severe enough to affect their life and two-thirds suffer significant anxiety or depression.¹²¹

It is estimated that between five and 30 per cent of asylum seekers have been tortured¹²² and many asylum seeking women, as well as some men, have been victims of rape. Up to half a million women were raped during the Rwandan genocide and around 50 per cent of women suffered some form of sexual violence during the conflicts in Sierra Leone and Liberia and some parts of Eastern Congo. These people have continuing physical health needs resulting from the trauma of sexual violence, including treatment for sexually transmitted infections.¹²³

Asylum seeking women may experience additional health problems in relation to maternity due to a number of factors including poor nutrition, trauma caused by rape or other forms of sexual violence or female genital mutilation (particularly women from Eritrea, Ethiopia and Somalia). As a result, asylum seeking women are seven times more likely to develop complications during pregnancy and childbirth and three times more likely to die than the general population.¹²⁴

▼ **Gealass's story**

“I appear strong but I’m very damaged by all the things that have happened to me. My dream is to have a bed of my own to sleep in, not even a room of my own, just the bed. I don’t think I’ve slept properly for a single night since I’ve been in England.

Gealass, a refused asylum seeker from Iraq



Gealass, 57, Iraq

The BMA has observed that asylum seekers suffer higher levels of mental health problems than the general population, including significant levels of anxiety or depression.

Their mental health problems may have been caused by having been imprisoned or persecuted, by the loss of family members or by experiencing or witnessing extreme violence.

While asylum seekers often have particular physical and psychological healthcare needs as a result of their experiences in their country of origin, there is also evidence that in many cases their health actually deteriorates after their arrival in the UK.

The Royal College of Psychiatrists has observed that “the psychological health of refugees and asylum seekers currently worsens on contact with the UK asylum system.”¹²⁵

The stress of the asylum process can also lead to physical ill health, including raised blood pressure, increased susceptibility to infection and gastrointestinal infections.

Children's health is particularly badly affected by asylum seekers' poor quality accommodation: respiratory conditions, asthma and skin problems are linked to damp, mouldy housing.

Unsurprisingly, refused asylum seekers who are living in destitution are likely to suffer the worst effects on their health.

Research by Refugee Action¹²⁶ found that although 80 per cent of destitute asylum seekers were relatively young, between the ages of 21 and 40, 83 per cent of those surveyed said that they had developed serious health problems since arriving in the UK. Destitution clearly had a serious impact on their physical and mental health, despite their youth.

“Restrictive policies on healthcare, education, accommodation, welfare support and employment are functioning to socially exclude and marginalise refugees and asylum-seekers, both exacerbating existing mental health problems and causing mental distress. ...immigration policy creates an environment which is having a devastating impact on the mental health, wellbeing and long-term integration prospects of refugees and asylum-seekers.”

Mind, A Civilised Society: Mental health provision for refugees and asylum-seekers in England and Wales, 2009.

Trying to adapt to life in the UK, isolated from friends and family, not speaking the language and living in poverty can cause or exacerbate existing mental health problems which may manifest themselves in anxiety attacks, extreme mood swings, violent outbursts and self harm.



“Often all I have to eat in a day is a bowl of porridge. I’m surviving on about £3 a week. I have to beg people I know for cash. They know they won’t get the money back and after a while they stay away from me...All the time I have nightmares about people coming and beating me up. In these dreams someone is holding me down and I’m getting more and more scared.”

In Zimbabwe, Geraldine was harassed and beaten because she was a member the opposition Movement for Democratic Change.

In the UK she was refused asylum and left destitute. Her health deteriorated and she was hospitalised and treated for conditions related to malnutrition. She has now been given protection in the UK.

The introduction of charges for secondary healthcare

In 2004, as part of the NHS (Charges to Overseas Visitors) (Amendment) Regulations, the Government introduced charges for all refused asylum seekers. The only exceptions to this rule were for emergencies, most communicable diseases (except HIV/AIDS), compulsory mental health care and family planning. In these cases treatment should be provided free of charge. Where treatment is immediately necessary “to save life or prevent a condition from becoming life-threatening” it should be provided, but then charged for later.¹²⁷

Trusts' Overseas Visitors Managers are responsible for pursuing these payments, including through issuing invoices, making demands for payment and referring debts to recovery agencies.¹²⁸

In the first two years following the introduction of the regulations, the Refugee Council worked with dozens of refused asylum seekers who had been denied or charged for the healthcare they urgently needed.¹²⁹ These cases included:

- Fifteen women and two girls who were charged more than £2,000 for maternity care and in some cases denied that care if they could not pay in advance.
- Ten people who needed operations for different medical conditions or treatment for injuries sustained in the UK or their country of origin.
- Four people with cancer who were denied treatment. One man with bowel cancer was admitted to A&E, but had an operation cancelled when they realised he could not pay for it. He was told to come back “when his condition deteriorates”.

- Two insulin-dependent diabetics who were charged for or refused treatment. One of the patients already had renal failure.

The rationale for restricting asylum seekers' access to health care was to stop “abuse of the NHS by health tourists”¹³⁰, where foreign nationals are alleged to travel to the UK for the express purpose of benefiting from free NHS healthcare. However, there is no indication that asylum seekers come to the UK to access healthcare. The Royal College of General Practitioners concluded in 2009 that there was “no evidence that asylum seekers enter the country because they wish to benefit from free healthcare.”¹³¹

This policy of denying asylum seekers free access to secondary health care was successfully challenged in April 2008 (*A v West Middlesex NHS Trust [2008]* EWHC 855). The Court ruled that refused asylum seekers should be classed as “ordinarily resident” in the UK and be entitled to free NHS treatment.

The Government successfully appealed this decision and the ruling was overturned on 30 March 2009 (*R (YA) vs Secretary of State for Health, 2009*, EWCA Civ 225). The Court of Appeal found that refused asylum seekers should not be considered ordinarily resident in the UK and are not exempt from charging, even if they have lived in the UK for a year.

The Court also found, however, that the guidance was unlawful as it failed to provide a sufficiently clear definition of treatment that should be considered “urgent” and “immediately necessary”. In response to this the Department of Health issued new interim guidance on 2 April 2009. This makes clear that:

- Immediately necessary treatment, including maternity care, must never be withheld.
- Urgent treatment for conditions such as cancer, which would deteriorate significantly if

untreated, should not be withheld or delayed if the person cannot pay and is unable to return to their country.

- Trusts should not pursue charges beyond what is reasonable and have the option to write off debts where it would be impossible or futile to pursue them.
- Non-urgent treatment, which can wait until the person returns home, should not be started until payment has been made.

Confusion around entitlement and the denial of urgent treatment

Despite this guidance, confusion about entitlement remains widespread and urgent and immediately necessary treatment, including maternity care and cancer treatment, continues to be denied to refused asylum seekers. Examples of this are listed in the box, all of which were collected after the guidance was issued in April 2009.

▼ Cases where urgent and immediately necessary treatment has been denied¹³²

▶ A Zimbabwean asylum seeker received a letter dated 30 June 2009 from solicitors instructed by a NHS Trust informing him that “ the Trust will require payment in advance for all treatment provided in future.” The patient suffers from a rare blood disorder similar to leukaemia, needs a transplant, and recently suffered a heart attack.

▶ A Congolese woman who was receiving hospital treatment for cancer as an in-patient mentioned to a nurse that she was a refused asylum seeker and would need to contact the Home Office to tell them that she would not be able to report that week due to her hospitalisation. The nurse alerted the hospital's Overseas Payment Officer, who told the woman that if she could not pay for treatment she had to leave. She was discharged and escorted from the building. She was told by hospital staff that all other hospitals and her GP would be alerted to the fact that she was not entitled to free treatment. She later went to an Accident & Emergency (A&E) department at a different hospital and was treated there.

▶ A GP called an NGO concerning a woman who had been denied maternity care at a large London teaching hospital. The hospital had informed the woman that the rules

had changed and maternity care was no longer considered to be immediately necessary.

▶ A man attended an A&E department complaining of headaches and blurred vision. He was assessed and although a scan was warranted he was asked to produce evidence that he could pay for this. He could not do so and the treatment was not provided.

A week later he returned to A&E with right-sided paralysis and was admitted with a suspected stroke. He was asked again to prove his right to free treatment or his ability to pay for it and was only scanned after a medical student argued that the stroke should be considered as urgent care. A small brain tumour was found and operated on. If the scan had taken place a week earlier the stroke would have been prevented. If the student had not intervened then treatment might have been refused again, with serious implications for his health.

▶ An African woman was receiving treatment in a London hospital for severe knee pain and a possible tumour. She needed a scan to determine whether it was malignant or not, but when the hospital found out that she was a refused asylum seeker they refused to provide her with any treatment. The patient was discharged whilst in a lot of pain.

This confusion also extends to entitlement to primary care even though there has been no change in the regulations and GPs have complete discretion as to whether to register a patient or not, regardless of their immigration status.

An analysis of policies operated by London Primary Care Trusts (PCTs) on the registration of overseas visitors with GPs found that 13 of the PCTs contacted had policies or guidance which they send to GPs detailing who should be allowed to register with a GP surgery. Of these policies, 12 state that patients are entitled to NHS treatment only if they are ordinarily resident in the UK. No distinction is made between primary and secondary care. The result is that many GPs and Practice Managers have curtailed entitlement to primary care for refused asylum seekers.¹³³ Some NGOs have reported that PCTs have prevented GPs from exercising their discretion to register such patients and UKBA has at least on one occasion in 2009 written to an asylum seeker's solicitor stating that their client is not entitled to free NHS medical treatment.

In view of the above it is not surprising that many asylum seekers find it difficult to register with GPs. Research carried out by Refugee Action found that some 40 per cent of destitute asylum seekers had problems getting to see a GP.¹³⁴

Charging as an obstacle to accessing care

Charging for healthcare, even when treatment is not delayed in order to secure payment, discourages people from seeking care because they are worried about debt and also about immigration enforcement action which they associate with debt.

The Joint Committee on Human Rights reached the same conclusion in 2009 when it found that: "The threat of incurring high charges has resulted in some people with life-threatening illnesses or disturbing mental health conditions being denied, or failing to seek, treatment."¹³⁵

On 27 July 2009, the Red Cross reported that they were approached by a refused asylum seeker from West Africa who had been in the UK for over four and a half years and was 23 weeks pregnant. She had not had any medical attention at all as she was too frightened to register with a GP or go to a hospital because of her immigration status.



The Red Cross were also in contact with a refused asylum seeker in her forties who had been in the UK since 1996. She was billed £1,300 for a smear test and did not attend the follow-up appointment because of the charge and disengaged from contact with the hospital.

This situation is made worse by the actions of some Overseas Visitors Managers who aggressively seek to recover debts owing to NHS Trusts and discourage patients from accessing treatment that they cannot pay for. Such actions are made more likely because hospitals are not reimbursed for any urgent treatment they provide to refused asylum seekers.

In one case, a client of the Refugee Council was charged for ante-natal care and contacted by the Overseas Visitors Manager by telephone, typically three to four times a day, and also when she attended appointments at the hospital. This was despite the fact that she was on Section 4 support and therefore unable to pay the bills. The Manager threatened to ensure that she was deported from the UK and was invariably rude and aggressive. This type of behaviour will intimidate the vast majority of asylum seekers and stop them from accessing services that they need.

Cost, efficiency and public health

The Royal College of General Practitioners has stressed that GPs have a “duty of care to all people seeking healthcare” and “should not be expected to police access to healthcare and turn people away when they are at their most vulnerable.”¹³⁶

The charging policy is time consuming and burdensome for healthcare professionals to operate as it requires them to assess when a patient is likely to return home and whether waiting until that time would lead to an unacceptable deterioration in the patient's condition. This is an extremely difficult task. Even immigration lawyers will often be hard pressed to say when a judicial review will be heard or when an individual may be removed from the UK.

Healthcare professionals are obviously ill equipped to make these assessments and this may lead to treatment being denied when it should not be.

For example, in 2009, a three-year old child was refused physiotherapy required to address developmental problems. The family were refused asylum seekers from Somalia and there was little chance of them returning to their country of origin in the near future, particularly as the assisted voluntary returns programme run by IOM had to be stopped in February 2009.

It is clearly unreasonable to expect healthcare professionals to be aware of this kind of information when trying to decide whether they can provide treatment.



Furthermore, treatment that prevents or cures illnesses is obviously more efficient and effective than waiting for a condition to deteriorate until it becomes an emergency or reaches the threshold of immediately necessary.

For example, a prompt referral to a medical consultant based in a hospital costs £163 per patient related hour and outpatient attendance at a hospital for a face to face meeting (non-consultant led) would cost £55 for the first attendance and £71 for follow up appointments (national averages).¹³⁷ Compare this with the cost of treating someone when a condition is allowed to deteriorate until care is immediately necessary. The average cost per journey in an emergency ambulance is £263 (or £344 in a paramedic unit). If surgery is required the cost for a doctor (surgical consultant) to perform an operation is £388 per hour operating.¹³⁸

The same is true in relation to mental health issues. Once the treatment becomes immediately necessary then costs are much higher. For example, hospital inpatient attendance for those requiring mental health services are £532 for intensive care, £268 for acute care and £257 for rehabilitation (all costs are national averages per bed day).

Compare this against the cost of NHS Trust day care for people with mental health problems which averages £65 per day (not including evenings) or weekly Cognitive Behavioural Therapy session which costs £58 per session and is generally preventative.¹³⁹

It is also worth stressing that seeking to recover the costs of treatment from refused asylum seekers through Overseas Visitors Managers is a waste of NHS resources and taxpayers' money

as the vast majority of them are destitute and do not have any means to pay these bills.

The charging policy also has important implications for public health. While refused asylum seekers should receive free treatment for communicable diseases like TB (but not HIV) many are discouraged from seeking out medical advice by the charging regime or cannot access GPs. This is particularly serious given the resurgence of TB in the UK, with 8,496 cases reported in England, Wales and Northern Ireland in 2007.¹⁴⁰ The groups who are at highest-risk are the socially excluded, including the homeless, those with HIV infections and asylum seekers. Similarly, refused asylum seekers are unlikely to come forward for screening for HIV/AIDS, when they have no right to free treatment.

That many refused asylum seekers are destitute exacerbates the problem and makes it even more difficult for the authorities and health workers to identify and treat this vulnerable group of people. The charging regime is therefore likely to compromise the effectiveness of the fight against communicable diseases.

This conclusion was also reached by a recently completed government review of health inequalities, which noted that making access to social protection difficult for asylum seekers is counterproductive and can endanger the health of the host community.¹⁴¹

As the above indicates, providing refused asylum seekers with free access to secondary healthcare will save a significant amount of healthcare professionals' time, NHS financial resources and also helps protect the wider community from public health risks.

Coherence with other policy objectives

The Royal College of Psychiatrists has recommended that the full range of social and medical care services “should be available at all times throughout the asylum process, including (for) those whose claims have failed, whilst they remain legally in the UK.”¹⁴² This is in line with the UK's international human rights commitments as well as the current health policies in Wales and Scotland and many other European countries.

Article 12 of the International Covenant on Economic, Social and Cultural Rights obliges the UK to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In May 2009, the UN Committee on Economic, Social and Cultural Rights recommended that the UK review its policy of “regulating essential services to rejected asylum-seekers, and undocumented migrants, including the availability of HIV/AIDS treatment, when necessary.”

In Wales, regulations were amended to enable failed asylum seekers to have free healthcare from 15 July 2009. The Welsh Health Minister said: “I have made clear that the aim of these changes is to ensure that people who are in need of healthcare receive it.” In Scotland, refused asylum seekers who have been and continue to be resident in Scotland receive free healthcare until arrangements for their return home can be made.

A survey by Médecins du Monde in 2009 found that Belgium, France, Italy, the Netherlands, Portugal and Spain all offered free or subsidised health care to undocumented migrants. Most relevant studies in EU member states do not distinguish refused asylum seekers from undocumented migrants.¹⁴³



The Government's current policy on charging for access to healthcare

On 20 July 2009, the Government announced that the Department of Health and Home Office joint review into the rules on charging non-UK residents for access to NHS services in England had been concluded.¹⁴⁴ The main policy recommendations from the review were as follows:

- That immediately necessary and urgent medical treatment should never be withheld and treatment in Accident & Emergency departments remains free;
- That GPs should maintain their discretion to decide whether to register a particular individual as a patient in their practice, as long as the decisions are not discriminatory;

- To maintain the system of charging non-residents for secondary care services, but to introduce a new exemption from NHS charges for unaccompanied asylum seeking children and those refused asylum seekers who are in receipt of Section 4 or Section 95 support, because they have children or face recognised barriers to return to their home countries;
- To commission additional research on HIV policy to inform whether the current policy of charging for HIV treatment after initial diagnosis should be revised.¹⁴⁵

A full public consultation on these proposals and new guidance on existing regulations will be issued in 2010.

Conclusions and recommendations

The current system of charging remains confusing and burdensome for healthcare professionals to operate and has led to asylum seekers being refused urgent treatment they need. Existing guidance needs to be amended so that it is more widely understood and easier to implement. The amended guidance should:

- ➔ State unequivocally that the decision whether to treat a patient is a clinical and not administrative one and that healthcare professionals rather than Overseas Visitor Managers should decide on when treatment is provided;
- ➔ Restate the existing situation in relation to access to primary healthcare, as this also appears to be an area of continuing confusion;
- ➔ Specify that all HIV treatment should be considered as immediately necessary, as recommended by the British HIV Association, which represents hundreds of HIV specialists around Britain.

The guidance needs to be well publicised and widely distributed, including through the BMA, the Royal Colleges, the Faculty for Public Health, the relevant trade unions, local authorities, NGOs and community organisations. However, while new guidance should improve the current situation, the inherent financial pressure for NHS Trusts to restrict the treatment of refused asylum seekers means that this vulnerable group is likely to continue to face obstacles in accessing urgent and immediately necessary treatment.

Restoring refused asylum seekers' free access to secondary healthcare will save lives, ensure efficient use of NHS resources and is consistent with both the ethos of the NHS Constitution as well as other policy objectives in relation to health, social exclusion, combating HIV/AIDS and the every child matters agenda.

This conclusion was also reached by the Joint Committee on Human Rights, when it reported on its legislative scrutiny of the Health Bill on 27 April 2009.¹⁴⁶ It recommended that all asylum seekers who are still in the UK should be provided with free access to primary and secondary healthcare in order to comply with the laws of common humanity, the UK's international human rights obligations and to protect the health of the nation.

In view of the above Still Human Still Here recommends that:

- ➔ New guidance on existing regulations needs to be well publicised and widely distributed so that frontline healthcare professionals, patients and relevant agencies and NGOs understand the existing rules and ensure that those asylum seekers in need and entitled to care do receive it.
- ➔ New regulations should be brought forward to allow all refused asylum seekers free access to secondary healthcare, as was the position prior to 2004. Not only would this be humane, but it would also increase efficiency as it reduces administration, additional costs in emergency care and public health risks.

Work

An obvious remedy to the problems of social exclusion, poverty, and destitution faced by asylum seekers is to allow them to support themselves by working if their case has not been resolved within six months.

This would be good for asylum seekers themselves (who have a higher than average level of skills and qualifications), as it would facilitate the integration of those who are eventually allowed to stay and give others the skills, financial means and confidence that would facilitate return.

However, it would also be good for the Government, as savings would be made on support costs and asylum seekers would be able to contribute to the economy through taxes.

While some people, particularly in deprived communities, see migrants as competing for scarce jobs and public services, many regard asylum seekers as 'scroungers', unaware that they are not usually allowed to work.

Surveys of public attitudes show that the majority of people think asylum seekers should be allowed to work: a survey by the Institute for Public Policy Research (IPPR) in 2005¹⁴⁷ found that 51 per cent of people thought asylum seekers should be allowed to work, with 29 per cent saying they should not.

The pollster ORB found in 2007 that 66 per cent of people would accept refused asylum seekers if they worked and paid taxes.¹⁴⁸

▼ Monique's story

“I’m very depressed and I’m scared of this country that I ran to, to find safety. ...all I want to do is be allowed to work so that I can start to feel like a human being again. I would like one day to be busy.”

Monique was detained and tortured when she attended a student demonstration opposing President Kabila in the DRC. She was initially refused asylum and left destitute, but has now been given protection in the UK.



Current UK policy on granting permission to work

Up until 2002, asylum seekers in the UK were entitled to ask for permission to work if they had not received an initial decision on their asylum claim within six months. The employment 'concession', as it was described by the Government, was introduced in 1986. Only the main applicant was eligible and dependants were not allowed to work.

The reasons given by the then immigration Minister, Beverley Hughes¹⁴⁹ for the withdrawal of the concession were firstly, that it was becoming "increasingly irrelevant", because there were no longer lengthy delays in decision making (the majority of decisions were made within six months) and secondly, in order to prevent "abuse" of the asylum system by people who were not refugees and wanted to come to the UK to work.

At the time it withdrew the work concession, the UK was taking part in negotiations on an EU Directive that set minimum standards for reception conditions for asylum seekers.

The objective was, in part at least, to discourage asylum seekers from moving from one Member State to another in the hope of finding better conditions.

The European Commission had proposed that asylum seekers be allowed access to the labour market after six months, as they were in the UK. Rather than defend its policy as a suitable EU minimum standard, the UK withdrew the employment concession. The compromise eventually agreed by EU Member States was that asylum seekers could be excluded from the labour market for no more than a year.¹⁵⁰

The EU adopted the Reception Directive¹⁵¹ on 27 January 2003 and it was implemented by the UK in February 2005. Consequently, the Home Office, will usually grant permission to work if an applicant has not had an initial decision within 12 months of their asylum claim, providing the applicant was not responsible for the delay. Permission to work does not extend to being self employed or running a business.

The UK's current policy has been subject to several legal challenges, two of which have recently been successful. In the case of *Tekle*,¹⁵² the High Court ruled in December 2008 that the denial of permission to work to Dawit Tekle, an Eritrean, who had first applied for asylum in 2001 and who had not had a decision on a fresh claim for four and a half years, was "unlawfully overbroad and unjustifiably detrimental to claimants who have had to wait as long as this claimant has".

In May 2009, the Court of Appeal also ruled in *ZO (Somalia)* and *MM (Burma)*¹⁵³ that fresh claims for asylum were covered by the Reception Directive. As a result, an asylum seeker who had not had a decision within a year of a fresh claim could apply for permission to work. The Home Office asked the House of Lords for leave to appeal against this judgement.

What are the benefits of allowing asylum seekers to work

Asylum seekers themselves would clearly benefit from being given permission to work in the UK as the vast majority are frustrated at being forced to remain idle: a 2009 survey of Zimbabwean asylum seekers¹⁵⁴ found that 88 per cent wanted to work. The majority were highly qualified and had held specialist or skilled jobs before they left Zimbabwe. In another survey, 96 per cent of asylum seekers indicated their desire to work and 60 per cent expressed an interest in job based training and development.¹⁵⁵

Granting asylum seekers permission to work gives them a route out of poverty and destitution and an opportunity to restore their dignity and self esteem by providing for themselves and their families, rather than being dependant on handouts from the Government or charities and community groups. It also means that they will not have to engage in irregular work and can avoid the risks associated with this, including extreme exploitation and potential prosecution by the authorities.

Employment is also widely recognised as the most important single factor in assisting asylum seekers to adjust to life in the UK and refugees to integrate into the wider community.

▼ B's story

B came to the UK from Liberia in 2003 and claimed asylum at the airport. He joined his wife who had already claimed asylum. They had two children together while in the UK. In 2007, B's wife and son were granted Leave to Remain and have since become UK citizens, but their daughter was missed off the UKBA papers. Despite representations from their solicitor they have still not received papers for her. B's application and appeal were refused. He made fresh submissions in November 2008 and is still awaiting a response. B's wife suffers from quite serious mental health problems and regularly sees the local community mental health team and a psychologist. B is her carer and the main carer of the two children. If B were not present there are questions about whether his wife would be able to look after the children on her own. B's wife receives state support for herself and her son, but not for her unregistered daughter or her husband. B has been told that he would be eligible for Section 4 assistance, but would have to separate from his family in London.

To help support himself and his family, B began working in a local restaurant, for less than the minimum wage. He was caught during a raid and prosecuted for working illegally. In October 2008, he was sentenced to 28 weeks' imprisonment suspended for 12 months and to a supervision requirement for 12 months. B has now completed his probation order, despite the travel cost involved in reporting. B's family are in arrears with utility bills. They are struggling to feed and clothe themselves and their children. B now has a criminal conviction and neither he nor his daughter have had their status regularised in the UK.

“Employment increases both economic and social integration and, for refugees, offers the opportunity to gain self-esteem, to facilitate new social contacts, and to learn or improve English language skills.”¹⁵⁶

The UK has a declared “ongoing commitment to be fair to refugees and support their integration and resettlement”.¹⁵⁷ The process of integration – for better or worse - begins the day a person arrives in a country, not at the point when a government chooses to recognise them as a refugee and give them permission to stay.

An extended period outside the labour market from the outset can have a long term impact on refugees’ ability to obtain work. The intervening period can be crucial to their eventual integration: the longer they are prevented from using their skills, the more those skills are lost.

This was also recognised in December 2008 by the European Commission when it published its proposal to amend the Reception Directive and recommended that asylum seeker should be allowed to access the labour market after six months. It emphasised the benefits to the host country as well as asylum seekers:

“Studies have pointed to the negative impact that unemployment, exclusion and the lack of personal autonomy have on physical and mental health.”

The unemployed and socially excluded have a lower life expectancy, resulting from a number of interconnected factors including loneliness, boredom, social isolation, loss of self esteem, anxiety and depression. For asylum seekers this may exacerbate their already vulnerable position.

▼ Geraldine's story

“I know hundreds of other people in the same situation as me. Some of them take great risks by using false papers so that they can work. It’s the only way they can survive. Not being able to work and provide for myself the way that I did back home is terrible. I need to send money to Zimbabwe to feed my children but I have nothing. I have to beg people I know for cash. Sometimes I pretend to people I meet that I’m working or studying because I’m ashamed to tell them the truth.”

Geraldine, a refused asylum seeker from Zimbabwe, was left destitute but later given protection in the UK.

▼ Case study

“Maybe I have to work illegally just to survive. I need some good food and warmth. Maybe I have to accept that I will go to prison for working. I cannot rob anyone.”

36 year old man from the Democratic Republic of Congo

Easier access to employment for asylum seekers could prevent exclusion from the host society, and thus facilitate integration. It would also promote self-sufficiency among asylum seekers. Mandatory unemployment on the other hand imposes costs on the State through unnecessary social welfare payments.

Finally it should be noted that, as stated in the Commission Communication on the 'Links between legal and illegal migration', labour market restrictions could encourage illegal working."¹⁵⁸

As this analysis indicates, there are many benefits for the UK economy and society in allowing asylum seekers to work. These include the financial savings made from not having to provide housing and benefits to those who are willing and able to support themselves, increased tax revenues and filling skills shortages in the labour market.¹⁵⁹

In addition this policy is likely to be supported by the general public and could play a positive role in promoting community cohesion and undermining hostility towards asylum seekers.



What are the arguments against granting asylum seekers permission to work?

Faster decisions

The assertion made by Beverley Hughes in 2002 that the work concession was increasingly irrelevant as a result of more rapid decisions was premature.

Seven years later, less than three quarters of decisions were fully concluded within six months.¹⁶⁰ A significant number of cases are still taking longer than six months while tens of thousands of people in the legacy caseload have been in the system for several years.

The Border Agency's Public Service Agreement states that by 2011, 90 per cent of cases will be completed within six months¹⁶¹ and the National Audit Office described this target as "clear and

well understood."¹⁶² In this light, it is reasonable to expect the UKBA, in cases where it fails to meet that target, to grant the asylum seeker permission to work, providing that the applicant is not responsible for the delay.

This is particularly important given that current support levels leave the majority of asylum seekers living well below the poverty line (see support chapter) and the reduced rates are specifically justified on the basis that asylum seekers will only be on it temporarily.

Where a case has not been resolved within six months it is in the interests of fairness and efficiency that those asylum seekers be given the opportunity to support themselves, even if this will only affect a small percentage of those who apply for asylum.

| | Year | Refused | % of initial decisions |
|--|------|---------|------------------------|
| Table: 6 UK asylum refusals, 2001 to 2008 Source: Home Office | 2001 | 89,310 | 72% |
| | 2002 | 55,130 | 64% |
| | 2003 | 53,865 | 83% |
| | 2004 | 40,465 | 88% |
| | 2005 | 22,655 | 82% |
| | 2006 | 16,459 | 79% |
| | 2007 | 16,030 | 74% |
| | 2008 | 13,505 | 70% |

A pull factor?

An important element in the Government's strategy to reduce the number of unfounded asylum claims – or indeed, simply to bring down the total number of asylum claims – is the idea that the UK can be made a less attractive destination by reducing access to welfare benefits and the labour market. Consequently, the Government takes the view that asylum seekers should not be allowed to work in order to discourage those that are motivated by the possibility of finding work, rather than seeking protection.

There is little evidence to substantiate the core premise. Indeed, in 2002, research commissioned by the Home Office specifically noted that “in the majority of cases, employment did not play a dominant role in the decision to emigrate from the country of origin or the choice of the UK as a destination.”¹⁶³

The Home Office also published studies which concluded that asylum seekers lacked detailed knowledge of the UK immigration or asylum procedures, entitlements to benefits in the UK, or

the availability of work in the UK¹⁶⁴ and that there was no evidence to assess whether employment entitlements had had an impact on asylum seeking, although states that withdrew or reduced entitlements in the 1980s, such as Germany, continued to experience increases in asylum applications into the 1990s.¹⁶⁵

Subsequent quantitative research found that asylum destination choice was affected above all by 'structural' factors (e.g. the presence of relatives or friends; their belief that the UK was a safe, tolerant and democratic country; previous links between their own country and the UK, including colonialism, and their ability to speak English or a desire to learn it) and that deterrence measures only have a very limited influence on the number of asylum applications a country receives.¹⁶⁶

It is worth noting that the proportion of asylum claims refused by the UK rose following the withdrawal of the work concession in 2002, when they could have been expected to fall, if it had had the intended effect of discouraging applications for asylum by people wanting only to work (see table 6 on page 70).



“The government has suggested that offering work will be a pull factor for migrants. There is no evidence to support this. Right now, no one benefits. Allowing refused asylum seekers to work - with conditions - will benefit the government, the tax payer, and local communities.”¹⁷⁸

Baroness Warsi, Shadow Minister for Community Cohesion and Social Action

The proportion of refusals rose from 64 per cent of initial decisions in 2002 to 83 per cent in 2003, falling gradually to 70 per cent in 2008, still above the 2002 level.¹⁶⁷

Granting permission to work will not act as a magnet for economic migrants to come to the UK and make asylum applications because, by the Government's own admission, only a small percentage would be in the asylum system long enough to be considered. Crucially, the Government would retain its discretion on whether permission would be granted to an individual: it would still have the power to refuse permission to work to anyone found to be responsible for the delay in the decision on their claim.

Perhaps the best evidence that granting permission to work to asylum seekers does not act as a pull factor is that several other EU countries allow asylum seekers to work after they have been in the country for six months or less.

According to the European Commission, just under half of all EU countries permit asylum seekers greater access to the labour market than the UK: Greece allows asylum seekers to work as soon as they make their application, Portugal after 20 days, Austria and Finland after three

months, Sweden after four months, Italy, Spain, Netherlands and Cyprus after six months and Luxembourg after nine months.¹⁶⁸

None of these countries receives more asylum seekers than the UK, according to UNHCR figures for 2008.

Furthermore, if the UK granted permission to work to asylum seekers whose claims were not decided within six months, it would be in line with the EU standard put forward by the European Commission in its proposed revision of the Reception Conditions Directive.¹⁶⁹

Asylum seekers would have the same or better opportunities in all other EU countries.¹⁷⁰

▼ Case study



“ I would like to start my life because up until now I am just someone who has come to a point in my life where there is a full stop... I'd like to try to do as much as I can to help the country as a whole...I really want to be useful.”

Refused asylum seekers

The Government is concerned that refused asylum seekers will be less inclined to return voluntarily if they are able to work in the UK. Once again, research published by the Home Office concluded that this assumption is not borne out by the evidence: “The study does not support the notion that restricting employment of asylum seekers in the UK increases the likelihood of return, nor does it indicate that granting permanent status in the UK reduces the likelihood of return.”¹⁷¹

On the contrary, charities working with refused asylum seekers find that people who are destitute are forced into the underground economy and are too concerned with surviving to engage with the idea of returning.¹⁷²

The contribution they could make to the reconstruction of their countries is also hindered by the prohibition on work, as they have no chance to develop new or pre-existing skills, their confidence is damaged and they will have, or feel they have, little to contribute on their return.¹⁷³

In Canada, refused asylum seekers from countries where there is a moratorium on removals are entitled to a work permit.¹⁷⁴

Moratoria on removals are issued because of insecurity in an asylum seeker's country of origin. As of August 2009, those countries were: Afghanistan, Democratic Republic of Congo, Haiti, Iraq and Zimbabwe.

In 2001, a UNHCR meeting of representatives of European governments from central, eastern and south-eastern European countries, concluded that “those unsuccessful asylum seekers who cannot be returned through no fault of their own should have timely access to some form of lawful residence and legal status.”¹⁷⁵ The European Council on Refugees and Exiles has recommended giving a legal status to refused asylum seekers who cannot be returned for reasons beyond their control, in order to stop the growth of “a growing segment of vulnerable, poor and marginalised people in European societies.”¹⁷⁶

In 2006, the UK Government itself considered allowing access to employment to refused asylum seekers who could not be removed. It was reported that the then immigration Minister, Tony McNulty, said at a public meeting that, “failed asylum seekers who cannot be sent back to countries such as Somalia and Zimbabwe may be allowed to work in Britain on a temporary basis.”¹⁷⁷ Why the Government decided not to proceed with the policy remains unclear.

Conclusions and recommendations



Many refugees arrive in the UK highly skilled, but are forced to survive for long periods either on minimal state support, near or below the poverty line, or utterly destitute. This leaves many socially marginalised, depressed, de-skilled and dependent.

Allowing asylum seekers to work, for which there is broad public support, would reduce destitution, benefit the economy, benefit communities, and re-skill refugees for a better future, whether that is integration in the UK or sustainable return to their country of origin.

The scale of the benefit to the economy is difficult to gauge, given the difficulty of estimating the number of asylum seekers who would succeed in finding work, but this policy would inevitably have a positive financial impact through lower asylum support bills and increased tax revenue.

For these reasons Still Human Still Here proposes the following policy changes:

- ➔ If an asylum seeker's claim has not been concluded within six months through no fault of their own, they should be granted permission to work.
- ➔ Refused asylum seekers who temporarily cannot be returned to their country of origin through no fault of their own should be granted permission to work, rather than remain in a state of limbo.



Conclusion

The number and frequency of asylum and immigration acts which have been passed by Parliament in the last 15 years is testimony to the reactive and ineffective nature of asylum policy during this time.

Successive governments have held on to the belief that limiting access to support will reduce the number of asylum applications made in the UK and encourage refused asylum seekers to leave, even when the evidence of previous policies has shown that this is not the case.

This report has underlined the consequences of leaving many thousands of asylum seekers with either no support at all or having to survive on just five pounds a day.

This causes serious hardship and suffering for the individuals affected, but destitution also has very significant social and financial costs for wider society and negatively impacts on a range of policy objectives including immigration control, promoting public health, reducing homelessness, eliminating poverty, ensuring child protection and fostering good community cohesion.

The Government has recognised the problems with its existing policy and published another draft Immigration Bill in November 2009 through which it intends to overhaul and simplify 11 previous asylum and immigration Acts. However, once again the policies put forward in the new Bill are strikingly similar to those that have failed in the past.

The small number of specific policy recommendations proposed in this report would help to establish a simple, humane, efficient and cost effective asylum system which the Government, the general public and asylum seekers themselves could have confidence in.

The 41 organisations that are members of Still Human Still Here urge the Government to implement these recommendations as soon as possible.



Endnotes

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Destitution should play no part in the asylum process.

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