

Briefing for the Second Reading of the Immigration Bill, 13 October 2015

Still Human Still Here is a coalition of nearly 80 organisations that are concerned about the destitution of refused asylum seekers in the UK.¹ Consequently, this briefing focuses on Clause 34 (introducing Schedule 6), the key provisions of which will:

- Leave refused asylum seeking families and their children without any access to support
- Remove a right of appeal against a Home Office decision to refuse or discontinue support from refused asylum seekers who face a genuine obstacle to leaving the UK.

Stopping support to asylum seeking families with children

Under Clause 34, support for asylum seeking families with children (made available through section 95 of the Immigration and Asylum Act 1999) will be stopped once they have been refused and any appeal rejected. The Government's stated policy intention is to ensure "the departure from the UK of refused asylum seekers with no lawful basis to remain in the UK."

However, leaving asylum seeking families who are appeal rights exhausted destitute will not result in their leaving the UK. This is because where parents, rightly or wrongly, think that their children's lives will be at risk if they return home, they will generally consider that becoming destitute in the UK is the better option available to them.

This was shown to be the case during a pilot that the Government ran between December 2004 and December 2005 in which families who were appeal rights exhausted had all their support removed if they failed to take "reasonable steps" to leave the UK (implementing Section 9 of the Asylum and Immigration Act 2004). The Home Office's own evaluation of the Section 9 pilot (which involved a cohort of 116 families) concluded that:

- Nearly a third of the families disappeared in order to avoid being returned to their country of origin. The rate of absconding was 39% for those in the Section 9 pilot, but only 21% in the comparable control group who remained supported.
- Only one family in the pilot was successfully removed, as compared to nine successful removals in the control group and "there was no significant increase in the number of voluntary returns" of unsuccessful asylum seeking families.²

Irrespective of whether families should or should not go home, the children of asylum seeking families are children first and foremost, and UK asylum policy should make the protection of their welfare its priority.

¹ Still Human includes nine City Councils, Doctors of the World, the British Red Cross, Crisis, Homeless Link, OXFAM, Mind, National Aids Trust, the Children's Society, Citizens Advice Bureau, a range of faith based organisations and all the leading agencies working with asylum seekers and refugees.

² Home Office, *Family Asylum Policy – The Section 9 Implementation Project*, pages 3 and 7.

However, the Government's proposal is designed to prevent statutory services assisting children who become destitute and/or street homeless when their parent's application has been refused and the Home Office believes there is no obstacle to prevent the family returning home. This policy will leave families vulnerable to abuse and exploitation and may cause long term harm to the children affected. It is also incompatible with promoting the best interests of the child and the principles set out in the Children's Act 1989 and other national guidance, including *Every Child Matters*.

The consequences of withdrawing all statutory support from vulnerable families should not be underestimated. A 2011 Serious Case Review involving Child Z, noted that the circumstances of the child's mother - a refused asylum seeker facing removal, with a life threatening illness, and caring for a young child with few support networks - "would challenge any individual's coping strategies." It stressed the "need for high levels of support for someone with such vulnerabilities was clear" and the absence of this support was a major factor leading to the woman's death and her child needing to be looked after.

A separate 2012 Serious Case Review looked at the case of an asylum seeker who developed a brain infection and could not look after her child, EG. The boy starved to death and the mother died two days later. The family became destitute during the transition from asylum to mainstream support, leaving the family "dependent upon ad hoc payments by local agencies." The review expressed "concern about the adverse consequences on vulnerable children and the resulting additional pressure on local professional agencies" when support was cut off.

Both these cases highlight the consequences of leaving vulnerable families without any support (although in the latter case the family was actually entitled to benefits, but could not access them) and the complex health needs of many asylum seekers. When refused asylum seekers have their support cut off this both causes illness and complicates existing health problems. The deterioration in their health will be quicker and more pronounced than in the general population because of their vulnerability and due to the fact that they have already been living well below the poverty line (on just over £5 a day) for many months while waiting for their case to be decided.

This was also evidenced in the Section 9 pilot. The Refugee Council and Refugee Action outreach teams found that most of the 35 families they worked with during the pilot had physical and/or mental health problems which were made worse by Section 9: 80% of parents had mental health problems ranging from depression to self-harming and some had been diagnosed with post-traumatic stress disorder; and 36% of parents had significant health conditions which included heart disease, sickle cell anaemia and asthma.³

The Immigration Bill envisages no safety net or support for refused asylum seeking families, thereby greatly increasing the risk of the children and their parents coming to harm, both through destitution and through the undertaking other survival strategies (e.g. illegal and exploitative work, abusive transactional relationships, prostitution, etc.).

Ian Johnson, the Director of the British Association of Social Workers, noted that the section 9 pilot "*places social workers and their employers in an insidious position ... If this is a civilised country we live in, then there is no place for that kind of treatment of families.*"⁴

³ Refugee Council and Refugee Action, *Inhumane and Ineffective - Section 9 in Practice*, 2006, page 5.

⁴ Barnardos, *The End of the Road*, 2005, page 6.

Research carried out at that time also found that all 33 local authorities interviewed believed that section 9 ran counter to their established welfare duties and practices under the Children Act 1989.⁵ Local authority staff also expressed concerns over:

- The resource implications of section 9, and whether or how the Home Office would reimburse costs arising from assessments and support of families.
- Undertaking assessments of whether a failure to support might lead to a breach of fundamental rights under the Human Right Act 1998 or the Children Act 1989.
- The risk that they were leaving themselves open to judicial review.

All of these concerns are equally relevant to Clause 34 of the Bill. Furthermore, while the Government has stated that it is not its intention to place new burdens on local authorities, excluding refused asylum seeking families and their children from support will have exactly this effect.

During the section 9 pilot, the Home Office itself acknowledged that the “pilot placed significant demands upon local authority resources”⁶ and its own impact assessment for the current Bill estimates that supporting families with an outstanding Article 8 claim alone will cost local authorities some £32 million over 10 years. This is likely to dramatically underestimate the total costs to local authorities as it does not take into account:

- Their duty under the Children’s Act to prevent any child from being left destitute.⁷
- The substantial resources needed to screen and undertake statutory assessments of refused asylum seeking families who request assistance from local authorities.
- The indirect financial costs arising from destitution (e.g. healthcare and legal costs).

No right of appeal against a decision to refuse or discontinue support

The Government states that it will continue to provide support to refused asylum seekers in cases where there is a genuine obstacle to departure or in which a further submission has been lodged. While this is welcome, this provision is currently implemented under section 4 in a very restrictive way so that individuals who are clearly unable to return home are still denied any form of support. For example, even when the Iranian Embassy to the UK was closed and there was no way an individual could obtain the documentation needed to return, the Home Office still refused Section 4 support to many destitute Iranian asylum seekers. The Bill leaves the detail of what will be considered a genuine obstacle to return to be determined by the Home Office in future regulations.

Furthermore, where an individual makes an application for support to be extended on the grounds that they cannot return (e.g. because they cannot obtain travel documents or that they are too sick to travel) and it is refused by the Home Office, the Government intends that there should be no appeal against this decision.

This is of great concern as the Home Office’s decision making on support applications is of a very poor quality. This is reflected in the fact that between 1 September 2014 and 28

⁵ Barnardos, *The End of the Road*, 2005, page 27.

⁶ Home Office, *Family Asylum Policy – The Section 9 Implementation Project*, page 3.

⁷ The average annual cost to support a family on s17 was £8,245 according to spending data from 24 authorities in 2012/3. J. Price & S. Spencer *Safeguarding children from destitution: local authority responses to families with ‘no recourse to public funds’*, University of Oxford, Compass, June 2015, p.41

February 2015, the Asylum Support Tribunal allowed 44% of the appeal cases it decided and remitted a further 12% back to the Home Office to retake the decision. This means that in over 50% of cases in which the Tribunal made a decision the case was either allowed or remitted. If cases in which the Home Office withdrew prior to the hearing are included, then a total of 61% of appeal cases received in this period were either allowed, remitted or acknowledged by the Home Office to be flawed before the hearing.⁸

Furthermore, the Independent Family Returns Panel also found that of the families that the Home Office considered to be in the UK unlawfully and expected to return through the Family Returns Process between 2012 and 2014, some 20% (242 families) could not actually be returned and needed to be granted leave.⁹

The information above demonstrate that the right of appeal is an essential mechanism for correcting mistakes made by Home Office and ensuring that those asylum seekers who are wrongly refused support are not left destitute in the UK.

An insufficient grace period

The Government also indicated in the support consultation that after an asylum seeking family is appeal rights exhausted it will provide a grace period of just 28 days before their support is cut off and they become street homeless. This is not a sufficient period of time for an asylum seeking family to review the options available to them, make decisions on what their next steps should be and/or make arrangements for their return to their country of origin.

The grace period should be comparable to that provided to asylum seekers who are engaged in a the voluntary returns programme (90 days) in recognition of the complex and difficult decisions refused asylum seekers will have to make. Indeed, the Home Office's own evaluation of the Family Returns Process shows that 72% of families take over 10 weeks to return.¹⁰ By comparison, 28 days is the time allocated to transfer asylum seekers from asylum support to mainstream benefits once they are recognised as a refugee. This regularly proves to be inadequate to make the relatively simple administrative arrangements required.

Delegated powers

A further concern is the amount of issues which are left to Secretary of State to decide through delegated powers. These include, but are not limited to:

- Regulations determining what is or is not regarded as a genuine obstacle to leaving the UK
- Regulations proscribing other criteria to be used in determining whether to provide or continue to provide support
- Regulations which may make the provision or continuation of support to be a matter for the Secretary of State's discretion to a prescribed extent or in cases of a prescribed description
- Regulations for the continuation of support to be subject to conditions, which may relate to the use of the support provided, compliance with particular restrictions

⁸ Asylum Support Tribunal statistics, 1 September 2014 to 28 February 2015.

⁹ Independent Family Returns Panel: 2012-2014

¹⁰ Home Office, Evaluation of the new family returns process, 2013, page 21.

imposed under the 1971 Act or to the performance of or participation in community activities.

Recommendations

The Home Office should continue to support refused asylum seeking families through s95 support until their case is concluded. This will protect vulnerable children from being left destitute; avoid a substantial transfer of costs to local authorities; and ensure immigration controls are not undermined because the Home Office has lost contact with families who are appeal rights exhausted.

However, if the Government does decide to take this policy forward then we would propose a number of amendments to address the issues highlighted above:

- Those who have their support refused or discontinued because the Home Office believes there is no barrier to them returning home should have a right of appeal against this decision.
- The grace period before support is cut off from families should be 90 days, as is the case for asylum seekers who are engaged in the voluntary returns programme, and the grace period should start on the day the asylum seeker receives notification that their appeal has been refused.
- Local authorities should be fully compensated by central government for their expenditure in assessing and assisting the children and families affected by the implementation of Clause 34.
- The current level of asylum support should be increased from £36.95 a week to £40.00 a week and this should be adjusted annually in line with inflation.

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