

Briefing for the Second Reading of the Immigration Bill, 22 December 2015

Still Human Still Here is a coalition of 78 organisations that are concerned about the destitution of refused asylum seekers in the UK.¹ Consequently, this briefing focuses on Clauses 37 & 38 of the Bill (introducing Schedules 8 & 9), the key provisions of which will:

- Leave refused asylum seeking families and their children without access to Section 95 support; remove leaving care support from specific groups of children; and prevent local authorities from supporting children and families under Section 17 of the Children Act 1989
- 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 37, 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.
- Section 9 should not be used on a blanket basis.²

The Joint Committee on Human Rights reached a similar conclusion:

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.

“The section 9 pilot has caused considerable hardship and does not appear to have encouraged more refused asylum seeking families to leave the UK... We believe that using both the threats and the actuality of destitution and family separation is incompatible with the principles of common humanity and with international human rights law and that it has no place in a humane society. We recommend that section 9 be repealed at the earliest opportunity.”

During Report, the Minister for Immigration, James Brokenshire, argued that the measures in the Bill would have a different impact to Section 9 because the burden would be on the family to show that there is a genuine obstacle to their departure in order to qualify for support and because there would be a managed process of engagement with the family instead of a largely correspondence based system.

There is no reason to believe these minor amendments will lead to a different outcome to that seen in the Section 9 pilot in terms of increased absconding and hardship amongst asylum seeking families. Where families abscond it makes removals extremely difficult and greatly increases 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.).

Research carried out while the Section 9 pilot was being run also found that all 33 local authorities interviewed believed that it ran counter to their established welfare duties and practices under the Children Act 1989.³ 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 the support Clauses in the current Bill. The Home Office’s own impact assessment estimates that supporting families with an outstanding Article 8 claim alone will cost local authorities £32 million over 10 years. This is likely to dramatically under-estimate the total costs to local authorities as it does not take into account:

- Their duty under the Children Act to promote the welfare of children who are in need.
- 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).

During Committee concerns were repeatedly raised about the changes to asylum support being incompatible with the principles set out in the Children Act 1989 and that they would place a considerable burden on local authorities. The Government consequently introduced amendments at Report which give the Home Secretary additional powers to support families with children but imposed conditions which:

³ Barnardos, *The End of the Road*, 2005, page 27.

- Prevent local authorities from providing support or assistance to children and families under Section 17 of the Children Act 1989 if that support could be provided by the Home Office under the new paragraphs to Schedule 3 of the 2002 Act.
- Remove leaving care support provided by social services under the Children Act 1989, including provisions relating to foster placements and personal advisors, from children leaving care who are under immigration control who reach the age of 18 and do not have a pending asylum claim or leave to enter or remain in the UK.

The consequence of this is that the Government is excluding groups of young people from the principal protections of the Children Act and, instead of simplifying the asylum support system, is setting up a much more complex process which doubles the mechanisms for accessing support from two to four. Under the Bill, asylum seekers who would otherwise be destitute may now be supported under:

- ***Section 95 of the 1999 Immigration and Asylum Act*** – for asylum seekers who have an initial application or appeal outstanding (including a fresh claim)
- ***Section 95A of the 1999 Act*** – for refused asylum seekers who face a genuine obstacle to returning to their country of origin (e.g. their government will not provide documents or they are too ill to travel)
- ***Paragraphs 10A of new Schedule 3 of the 2002 Nationality, Immigration and Asylum Act*** – which enables support to be provided to destitute asylum seeking families who do not meet the criteria for support under Section 95A, but do meet one of four conditions which include that “support is necessary to promote and safeguard the welfare of the child.”⁴
- ***Paragraphs 10B of new Schedule 3 of the 2002 Act*** – which enables support to be provided to asylum seekers who are appeal rights exhausted, have reached 18 and are leaving care, but have an outstanding immigration application or appeal and do not qualify for the support highlighted above.

The Government has established a highly bureaucratic system which will be burdensome to administer. Local authorities will remain the body to which destitute refused asylum seekers who have fallen through the safety net turn to for support and they will still have to conduct eligibility tests and assessments to see whether support is required in order to safeguard the welfare of a particular child. The Minister himself noted in Committee that Schedule 3 of the 2002 Act “provides for a process whereby local authorities assess human rights-related issues such as destitution. That will continue to apply.” (Co. 452, 10 November 2015).

Local authorities are also prevented from providing support under Section 17 of the Children Act 1989 where “there are reasonable grounds for believing that support will be provided”. This means that where a family is destitute, but they could or should receive support in the future, the local authority cannot intervene to provide support – even on an emergency basis.

⁴ The other conditions are that: they have a pending application for leave to enter/remain of a type to be specified in regulations; or they have a pending statutory appeal; or they have exhausted their appeal rights and are cooperating with removal.

The complexity of these new arrangements mean that families with children are likely to fall through the gaps in the system and find themselves destitute, at least temporarily. The consequences of refused asylum seekers being left without support even for short periods of time is extremely serious as it both causes illness and complicates existing health problems. This is illustrated by a 2012 Serious Case Review which involved 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.

A separate 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.

Both these cases highlight the consequences of leaving vulnerable families without support. The deterioration in asylum seekers’ health is 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.

A further concern with the Government’s proposals is that the detail of the new support provisions, including the level of support and who will administer it, are left to regulations despite being pivotal to the protection and promotion of children’s welfare.⁵ Still Human is very concerned that the type and level of support provided in these circumstances may not be appropriate for vulnerable children and their families, particularly as we consider that the current level of Section 95 support is not sufficient to provide an adequate standard of living or to ensure the health and wellbeing of asylum seekers.

This view is shared by many other respected bodies. For example, in 2013, a cross-party parliamentary inquiry into asylum support for children and young people, which received information from more than 150 local authorities, local safeguarding children boards and child protection committees, found that “the levels of support for asylum seeking families are meeting neither children’s essential living needs, nor their wider need to learn and develop.” The inquiry recommended that the “rates of support should never fall below 70% of income support.”⁶ In October 2013, the Home Affairs Committee also stressed “concerns about the level of support available to those who seek asylum in the UK”.⁷

⁵ The Bill leaves a considerable amount of key issues relating to the protection of fundamental rights to Secretary of State to decide through delegated powers. These include, but are not limited to, regulations which may prescribe other criteria to be used in determining whether to provide or continue to provide support and make the provision or continuation of support to be a matter for the Secretary of State’s discretion.

⁶ *Report of the Parliamentary Inquiry into asylum support for children and young people*, Children’s Society, January 2013, pages 24-25.

⁷ Home Affairs Committee, *Asylum*, Seventh report of session 2013-14, paragraph 77 and Press Release 10 October 2013.

Since this time the value of this support has been severely reduced. Asylum support rates were frozen between 2011 and 2015 and rates for asylum seeking children were cut in August 2015 by £16 per week. Asylum seekers on Section 95 support now receive £36.95 a week (just over £5 a day), the equivalent of around 50% of Income Support.⁸

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. Instead, the government has devised a costly and inefficient system which puts children at risk of harm.

The Government's proposals run contrary to the recommendation made by the Joint Committee on Human Rights in 2007 when it called for "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."⁹

Furthermore, the measures outlined above are likely to increase absconding, make removals more difficult and undermine efforts to promote voluntary departure, while at the same time increasing the financial and administrative burden on local authorities.

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

Under Section 95A, the Government will provide support to refused asylum seekers where it accepts there is a genuine obstacle to departure (e.g. because they cannot obtain travel documents or that they are too sick to travel). However, it has removed a right of appeal against a decision by the Home Office to refuse or discontinue this support.

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 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.¹⁰

The Minister asserted that the Home Office got many of these decision wrong because "the person provided only in their appeal the evidence required for support to be granted". There is no evidence that this is true for a substantial number of appeals and even if this were the case, it only underlines the importance of the appeal process for ensuring that people are not wrongly refused support.

The Minister also noted that the Independent Chief Inspector of Borders and Immigration "found in his July 2014 report on asylum support that 89% of refusals were reasonably based on the evidence available at the time" (Col. 227 1 December 2015). It should be stressed that the Chief Inspector's review was conducted around two years ago and only looked at the

⁸ Housing with utility bills included are provided separately for asylum seekers who would otherwise be homeless, but all other necessities, including food, clothing, toiletries and transport, would have to be met on just over £5 a day.

⁹ The Joint Committee on Human Rights, *The Treatment of Asylum Seekers*, 2006-7, Recommendation 14.

¹⁰ Asylum Support Tribunal statistics, 1 September 2014 to 28 February 2015.

work of a particular cohort of decision makers, while the Asylum Support Tribunal figures are national, up to date and show an ongoing problem in terms of decision making quality. The Minister also claimed that decisions on whether there is a genuine obstacle to return were generally “straight forward”. If these decisions are really so straight forward it begs the question as to why the Home Office get so many of them wrong. Still Human is aware of many cases where it is clear that an individual is unable to return home, but they have still been denied 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 support to many destitute Iranian asylum seekers.

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.¹¹

The information above demonstrates 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. It should also be noted that 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.

Recommendations

Supporting refused asylum seeking families under Section 95 support until their case is concluded protects vulnerable children from being left destitute; avoids a transfer of costs to local authorities; and ensures immigration controls are not undermined because the Home Office has lost contact with families who are appeal rights exhausted. Still Human urges members of the House of Lords to support amendments to the Bill which would:

- Remove the provisions in the Bill that prevent destitute refused asylum seeking families from accessing Section 95 support
- Remove the provisions in the Bill that prevent local authorities providing leaving care support under the Children Act 1989 to specific groups of young people
- Provide a right of appeal to those who have their support refused or discontinued because the Home Office believes there is no barrier to them returning home
- Increase the current level of asylum support and ensure it is adjusted annually in line with inflation.
- Allow asylum seekers to work if an initial decision has not been taken on their application within six months.

¹¹ Independent Family Returns Panel: 2012-2014