

Information for the Committee on Economic, Social and Cultural Rights' (CESCR) review of the UK, 58th session, 6-24 June 2016

1.1 Still Human Still Here is a coalition of some 80 organisations which are seeking to end the destitution of asylum seekers in the UK. Its members include nine City Councils the British Red Cross, OXFAM, the Children's Society, Amnesty International, Crisis, Homeless Link, Citizens Advice Bureau, Doctors of the World, National Aids Trust, a range of faith based organisations and all of the main agencies working with asylum seekers and refugee in the UK.¹

1.2 In the list of issues to be taken up with the UK in relation to its 6th report to the CESCR (3 November 2015), the Committee requested information on the social assistance schemes available to asylum seekers and "on whether essential services for rejected asylum seekers are available throughout the State" (para. 14).

1.3 The Committee further requested information on measures taken to reduce inequality in access to health-care services and to ensure the accessibility and affordability of health-care services for all groups, including migrants, asylum seekers and refugees (para. 26).

1.4 This submission focusses on these two issues, providing details of the key developments since the UK Government was last reviewed by the CESCR in 2009 and highlighting why Still Human Still Here believes the UK Government is not fully implementing its obligations under Articles 9, 11 and 12 of the Covenant.

Article 9 – The right to social security & Article 11 - the right to an adequate standard of living

2.1 Asylum seekers who would otherwise be destitute can access support while their protection claim is being considered under section 95 of the Immigration and Asylum Act 1999. Section 95 support rates were originally set at 70% of Income Support on the basis that asylum seekers' accommodation and utility bills would be paid for separately, but the value of this support has been severely eroded in recent years.

2.2 Asylum support rates were frozen between 2011 and 2015 and, on 16 July 2015, the Government introduced a flat rate of support under which all asylum seekers receive the same amount, regardless of age. This measure dramatically reduced support to asylum seeking families, as the amount of money paid to each child was cut by £16 per week. These changes mean that all asylum seekers now receive £36.95 a week. This works out at just over £5 a day to pay for food, clothing, toiletries, transport and other essential

¹ See <http://stillhumanstillhere.wordpress.com/> for a full list of members and further details.

needs.² This means that most asylum seekers now receive the equivalent of around 50% of Income Support.

2.3 Even before the most recent cuts to support rates, a significant body of research had already indicated that asylum support rates were not sufficient to allow single adult asylum seekers to meet their essential living needs and pursue their asylum applications. For example, in 2013, Refugee Action interviewed 40 clients who were in receipt of section 95 support and found that 70% (28/40) of interviewees were unable to buy either: enough food to feed themselves; fresh fruit and vegetables; or food that met their dietary, religious or cultural requirements.³

2.4 Furthermore, 90% (36/40) of interviewees could not afford to buy sufficient/appropriate food and clothes. Of the four people who said they could meet both these essential needs, three stated that the level of support did not allow them to maintain good mental and physical health. The only individual who did not report difficulties in this respect received food and other essential items from friends.

2.5 Similar detailed research by Freedom from Torture⁴ found that all 17 asylum seekers on section 95 support who responded to detailed questions stated that overall their income was insufficient to meet their essential needs. As with the Refugee Action research, this survey indicated that asylum seekers usually had to sacrifice one essential item in order to meet another one.

2.6 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 levels are too low and given that they were not increased in 2012 they should be raised as a matter of urgency and increased annually at the very least in line with income support.”

2.7 The inquiry further recommended that the “rates of support should never fall below 70% of income support.”⁵ In October 2013, the Parliamentary Home Affairs Committee issued a report in which it also highlighted “concerns about the level of support available to those who seek asylum in the UK”.⁶

² Housing with utility bills are paid for separately for those who would otherwise have nowhere to live.

³ Refugee Action’s research took place in May 2013 with asylum seekers who visited offices in Liverpool, Manchester, Leicester, Bristol, Sheffield or Rotherham for advice sessions.

⁴ Freedom from Torture carried out research into the impact of poverty on torture survivors in July 2013. A total of 117 clients took part in the research across the UK, including 19 individuals who were in receipt of Section 95 support at the time and completed a detailed questionnaire about their experiences.

⁵ *Report of the Parliamentary Inquiry into asylum support for children and young people*, Children’s Society, January 2013, pages 24-25.

⁶ Home Affairs Committee, *Asylum*, Seventh report of session 2013-14, paragraph 77 and Press Release 10 October 2013.

2.8 It should be stressed that these conclusions were reached before the 2015 decision to cut support levels for children by £16 a week. The Children's Society calculates that this policy change means that asylum seeking families with children are now having to survive on social assistance which leave them living some 60% below the poverty line.

2.9 Many asylum seekers will spend a considerable period of time on this support. At the end of 2015, more than 3,600 asylum seekers had been waiting more than six months for an initial decision on their application. During this time, and any subsequent appeal, asylum seekers are totally reliant on section 95 support and have no route out of poverty as they are prohibited by the UK Government from working to support themselves.

2.10 Many of these asylum seekers arrive in the UK with existing health problems resulting from trauma or deprivation. For example, asylum-seeking pregnant women are seven times more likely to develop complications during childbirth and three times more likely to die than the general population.⁷ Trying to survive on inadequate levels of support for extended periods of time both causes illness and complicates existing health problems.

2.11 This is illustrated by a family who are currently supported by Freedom from Torture. AB is a 28 year old asylum seeker from Pakistan who is waiting for a decision on his asylum application and lives in London with his wife who is eight months pregnant and their 18 month old girl. AB says the cut in support rates (which came into effect in August 2015) has had *“a huge everyday impact.... You're constantly thinking of what you can't afford but need. My wife won't go shopping with me anymore because she wants things we can't afford.”*

2.12 The family struggle to make the money last the whole week and are unable to meet food, clothes and travel costs. AB buys the cheapest food and products for himself and his wife so that they can prioritise their daughter's needs. As a consequence, he and his wife do not eat fresh fruit or vegetables at all. AB finds this particularly distressing as he is aware of how important a good diet is for the development of his unborn baby and their GP has told them that his wife needs to eat more fresh fruit and vegetables.

2.13 AB's therapist reports that his experience of poverty has had a profound impact on AB. He talks about his anxiety related to the family's poverty at every therapeutic session, particularly his fears about his child going hungry, and this interferes with his ability to address his experience of torture. AB's mental health has suffered greatly, he finds it difficult to sleep at night and has been hospitalised for stress over five times, once because he collapsed in public.

2.14 The situation for those asylum seekers who have had their initial application and any subsequent appeal refused is even more severe as they are left without any statutory

⁷ Royal College of Obstetricians and Gynaecologists, *The 6th report of the confidential enquiry into maternal deaths in the UK*. Quoted in Faculty for Public Health, *The health needs of asylum seekers*, 2008.

support and at risk of becoming street homeless. The British Red Cross estimates that it assists around 10,000 asylum seekers each year who are in this situation.

2.15 The only refused asylum seekers who continue to be supported after they are appeal rights exhausted are families with children and those asylum seekers who the Home Office accepts face a genuine obstacle to return (e.g. they are too sick to travel or are waiting for travel documents to be issued by their own governments). However, under the current Immigration Bill (2015-16) the Government is introducing measures to reduce even these two groups' ability to access essential services while still in the UK.

2.16 The Immigration Bill removes a right of appeal against a decision by the Home Office to refuse or discontinue support to those asylum seekers who claim to be facing a genuine obstacle to return. This is of great concern as the Home Office's decision making on support applications is of a very poor quality. This is evidenced in the latest statistics from the Asylum Support Tribunal (1 September 2015 to 29 February 2016) which show that the Tribunal allowed 42% of the appeal cases it decided (314 cases) and remitted a further 14% back to the Home Office to retake the decision (104 cases).

2.17 This means that in 56% of cases in which the Tribunal made a decision the case was either allowed or remitted. It should be stressed that this figure does not include an additional 234 successful appeals which were not heard as the Home Office withdrew prior to the hearing because it acknowledged that its decision was flawed.⁸ In the future these individuals will be left destitute as they will not be able to challenge a decision to refuse them support.

2.18 The Bill also removes the right of asylum seeking families with children who are appeal rights exhausted to continue to access section 95 support. Instead it introduces new support provisions (under the new paragraphs 10A and 10B of Schedule 3 of the 2002 Nationality, Immigration and Asylum Act) for which families with children or those who have reached 18 and are leaving care may be eligible if they meet certain conditions.

2.19 The complexity of these new arrangements, both in terms of who is eligible for support and which authority is responsible for considering requests for assistance, means that families with children are likely to fall through the gaps in the system and find themselves destitute, at least temporarily.

2.20 The consequences of refused asylum seekers being left without support even for short periods of time are extremely serious as 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.

⁸ Asylum Support Tribunal statistics, 1 September 2015 to 29 February 2016.

2.21 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.

2.22 Both these cases highlight the consequences of leaving vulnerable asylum seekers without support. The deterioration in refused 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.

2.23 A further concern is that much of the detail of the new support provisions, including the level of support, is left to regulations, despite being pivotal to the protection and promotion of children's welfare. The Government's proposals run contrary to the recommendation made by the Parliamentary 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

2.24 In its concluding observations on the UK in 2009, the CESCR raised concerns over the higher poverty levels affecting marginalised groups, including asylum-seekers, and specifically over "the low level of support and difficult access to health care for rejected asylum-seekers". The committee urged the UK to intensify its efforts to combat poverty and social exclusion amongst marginalised groups and review the regulation of "essential services to rejected asylum-seekers, and undocumented migrants".¹⁰ In 2010, the UN Special Rapporteur on the human rights of migrants endorsed the CESCR's conclusions.¹¹

2.25 The UK Government has not acted on these recommendations. On the contrary, it has introduced changes to the current asylum support system which has significantly increased deprivation and social exclusion amongst both asylum seekers and refused asylum seekers.

2.26 In view of the above, Still Human believes that the cuts to support rates for asylum seeking children should be reversed and that section 95 support rates should be increased to 70% of Income Support in order to ensure that vulnerable asylum seekers can properly meet their essential living needs and pursue their asylum applications.

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

¹⁰ Concluding Observations of the Committee on Economic, Social and Cultural Rights from its review of the UK, Forty-second session, E/C.12/GBR/CO/5, 22 May 2009, paragraphs 27 & 28.

¹¹ UN Special Rapporteur on the human rights of migrants, Jorge Bustamante, Mission to the UK, 22-26 June 2009, A/HRC/14/30/add.3, 16 March 2010, paragraph 81(b).

2.27 In addition, we hope the CESCR will restate its recommendation to the UK Government to “ensure that asylum-seekers are not restricted in their access to the labour market while their claims for asylum are being processed” and also support the UN Special Rapporteur on the human rights of migrants’ recommendation that “refused asylum-seekers are not left destitute while they remain in the United Kingdom.”

Article 12 – The right to physical and mental health

3.1 Currently, all migrants and visitors to the UK who do not have indefinite leave to remain are chargeable for any secondary care they need, except emergency cases, unless they have paid the migrant surcharge or are on the list of vulnerable groups who are exempt from charges. The Government now intends to extend the system of charging migrants and visitors so that it includes primary, A&E and community healthcare.

3.2 Still Human is extremely concerned that the proposed extension of charges into primary, A&E and community healthcare will significantly increase health inequalities by creating additional barriers for vulnerable groups to access care. These barriers include:

- Individuals thinking, rightly or wrongly, that they will be charged and not accessing care because that they cannot afford to pay for it and /or they will accrue unpayable debt which will jeopardise their future status in the UK.
- Individuals not being able to prove entitlement to free care and/or NHS staff wrongly refusing access to healthcare.
- Individuals believing they will be reported to the Home Office if they access NHS services.

3.3 The fact that charging makes it more difficult for vulnerable people to access treatment they need has already been documented under the current system. For example, even though all migrants currently still have access to free primary care, Doctors of the World found in 2014 that 97% of people coming to their clinic experienced barriers in accessing healthcare and 83% were not registered with a GP. 52% did not try to register because of perceived barriers; 29% experienced difficulties registering (e.g. no proof of address or ID); 17% did not understand how to access the health system; 14% because of a language barrier, 11% feared arrest; and 12% were refused when they tried to register. More than a quarter of those attending the Doctors of the World clinic reported their physical or psychological health as bad or very bad.¹²

3.4 Other members of Still Human also reported that asylum seekers continued to encounter difficulties in trying to access services despite their entitlement to do so. For example, in 2015, a Syrian refugee was admitted to hospital and treated following a heart attack, but his further treatment in Sheffield Northern General Hospital (insertion of a stent) was delayed by some 24 hours while his entitlement to treatment was queried.

¹² https://www.doctorsoftheworld.org.uk/files/uk_report_2014_web.pdf

3.5 In 2013, the Chairman of the Royal College of GPs stated that the introduction of charges would “deter people who need the health care.”¹³ This has proved to be the case and the Department of Health has itself acknowledged the need to take measures to ameliorate the impact of charging on health inequalities. Consequently, it has proposed that consultations with doctors and nurses should remain free, that treatment for communicable diseases should remain free and that vulnerable groups, including asylum seekers, refugees and trafficked people, should be exempt from charges.

3.6 While these measures are welcome, they are unlikely to be effective in preventing a significant increase in health inequalities. For example, most individuals will see little point in taking advantage of a free consultation with a healthcare professional when they do not have the means to pay for any diagnostic costs or medicines required to treat their illness.

3.7 Similarly, exempting tests and treatment for sexually transmitted infections and communicable diseases from charges will be undermined by the introduction of charging to primary healthcare as evidence shows that patients do not proactively seek such screening, but have it recommended as part of a routine GP visit.

3.8 Even though asylum seekers, refugees and other vulnerable groups are exempt from charging this has not prevented them from failing to access or being refused care they are entitled to because of concerns they have about being charged (see above). It should also be stressed that many vulnerable groups are not included on the list of those who are exempt from charges, including pregnant women, children, refused asylum seekers and individuals with mental health problems.

3.9 The problems relating to individuals being either deterred or wrongly refused access to care will increase if charging is extended into primary and A&E care and this will result in late diagnosis and treatment amongst groups most at risk. This puts the individuals concerned at risk and increases the costs to the NHS because preventive or early treatment is more cost effective than emergency interventions undertaken after an individual’s health has deteriorated.¹⁴

3.10 A case study from Northern Ireland illustrates this point: an asylum seeker could not get access to an inhaler for her asthma after her asylum application was rejected. She consequently became so ill that she was admitted to the Intensive Care unit at Belfast hospital in November 2012 and had to stay in hospital for five days before being discharged. In her case, the cost of a prescription would have been £12.87, while the cost of a visit to A&E by ambulance and five days in hospital was £1,508.¹⁵

¹³ Evidence to the Immigration Bill Standing Committee, 29 October 2013, Col.26.

¹⁴ Research by the National Audit Office confirmed that early diagnosis and intervention provides significant long term savings (31 January 2013, HC683 Session 2012-13).

¹⁵ Northern Ireland Law Centre, *Policy briefing: Accessing healthcare for migrant groups*, June 2013, p. 5.

3.11 It should be stressed that in 2015 Northern Ireland decided to change its charging system and to widen the categories of migrants who can receive free primary and secondary healthcare.¹⁶ This decision acknowledged the fact that restricting people's access to such care risks patient health, public health and is ultimately more expensive for the health service as a whole. Specifically, the new regulations provide all asylum seekers with entitlement to free healthcare regardless of the status of their asylum claim.

3.12 This brings Northern Ireland's policy on charging asylum seekers in line with that in Scotland and Wales.¹⁷ However, in England the Government's policy continues to be that refused asylum seekers should be charged for any care they need despite the fact that they are extremely vulnerable and will be very unlikely to pay for such care. Indeed, the Royal College of Psychiatrists observed that "The psychological health of refugees and asylum seekers currently worsens on contact with the UK asylum system" and recommended that:

"Services should aim for improved coordination across sectors and promote access to the full range of social and medical care services. These should be available at all times throughout the asylum process, including those whose claims have failed, whilst they remain legally in the UK."¹⁸

3.13 In its concluding observations on the UK in 2009 the CESCR particularly drew attention to its concerns over the "difficult access to health care for rejected asylum-seekers"¹⁹ Still Human believes the Department of Health should learn from the experience of Northern Ireland and exempt all asylum seekers from the charging system irrespective of their status as this will protect a vulnerable group, reduce health inequalities and reduce overall costs through preventative and early treatment of illness.

3.14 The serious consequences of charging visitors and migrants for healthcare they cannot afford was illustrated in March 2014, when a heavily pregnant migrant carrying a dead, unborn child was too afraid to seek the urgent medical help she needed after being told she would have to pay the NHS thousands of pounds to remove the foetus.²⁰ The woman could not pay the fees and could not access care without accruing debt which would have prevented her from being able to obtain a visa to live with her husband in the UK.²¹

¹⁶ Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015, [Provision of Health Services to Persons not Ordinarily Resident Regulations 2015](#)

¹⁷ Health is a devolved power and therefore it is possible for Scotland Wales and Northern Ireland to implement different policies to England.

¹⁸ The Royal College of Psychiatrists (RCP), *Improving services for refugees and asylum seekers: position statement*, Summer 2007.

¹⁹ Concluding Observations of the Committee on Economic, Social and Cultural Rights from its review of the UK, Forty-second session, E/C.12/GBR/CO/5, 22 May 2009, paragraph 27.

²⁰ While urgent and immediately necessary treatment should always be provided, hospitals are required to charge for this treatment, irrespective of whether the individual can pay for it.

²¹ The Independent, 20 March 2014 <http://www.independent.co.uk/news/uk/home-news/heavily-pregnant-immigrant-carrying-dead-child-wouldnt-see-help-as-she-was-afraid-she-have-to-pay-nhs-under-health-tourism-rules-9205591.html>

3.15 The CESCR has stated that “States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services” (General Comment 14, paragraph 34, 2000).

3.16 Still Human believes that the UK Government is not complying with this obligation and that its current proposals to extend the existing system of charging migrants and visitors so that it includes primary and A&E healthcare should not be implemented as it this will negatively impact on the health of the most vulnerable members of society and significantly increase health inequalities.