



**Law Centre (NI)**

**Response to Home Office consultation:  
Reforming support for failed asylum seekers and other illegal  
migrants**

**August 2015**

## **Response to Home Office consultation: reforming support for failed asylum seekers and other illegal immigrants**

### **About the Law Centre**

Law Centre (NI) works to promote social justice and provides specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. The Law Centre provides advice, casework, training, information and policy services to our member organisations. We chair OFMDFM's Racial Equality Forum's Immigration Sub Group and are members of the NI Strategic Migration Partnership, the Refugee and Asylum Forum and the Home Office Asylum Stakeholders Forum.

### **Introduction**

This consultation response is arranged in two parts. In Part One, we make some general comments and observations. In Part Two, we respond to the consultation questions in turn.

### **PART ONE**

#### **General comments**

These proposals are retrogressive and will leave those affected in an even more vulnerable situation by exacerbating instances of destitution. The Law Centre has long experience of providing advice to asylum seekers in Northern Ireland and we call on the Home Office to urgently reconsider these proposals.

Our experience is that the asylum support system is already insufficient to enable recipients to provide for their "essential living needs." Thereby, using the Home Office's own definition, many people in Northern Ireland within the asylum system are destitute.<sup>1</sup> The prevalence of destitution across the asylum process affects physical health and mental health (with extreme anxiety, depression and post traumatic stress being most commonly cited conditions) and may place an unbearable stress on relationships between family and friends as 'good will' support cannot always be sustained. Destitution exposes asylum seekers to exploitation and criminality. It may also negatively impact on community cohesion and social exclusion.<sup>2</sup>

In evidence to a Parliamentary Inquiry on behalf of a number of Northern Ireland voluntary and community organisations in 2012<sup>3</sup> we cited numerous examples of asylum seekers struggling to buy healthy food, nappies, medication, clothing and books. Evidence collected

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<sup>1</sup> Immigration and Asylum Act 1999, s.95 (3). Liz does the Red Cross paper quantify this at all?

<sup>2</sup> ICAR, 'Destitution amongst refugees and asylum seekers in the UK', May 2006

<sup>3</sup> <http://www.lawcentreni.org/Publications/Policy-Responses/Inquiry-into-asylum-support-for-children.pdf><http://www.lawcentreni.org/Publications/Policy-Responses/Inquiry-into-asylum-support-for-children.pdf>

by large children's charities of families struggling to care for disabled children with cerebral palsy and spina bifida<sup>4</sup> or mothers unable to provide for new-born babies was set out.<sup>5</sup> We explained that destitution was impacting significantly on children's education; on their ability to integrate and to enjoy their childhood and also on their aspirations in life. We explained that charities' resources were extremely stretched and were unable to meet all the needs. We also cited the Chair of Northern Ireland's main refugee community organisation, whose words continue to resonate:

*Our children are not any different to any other child. Why do they continue to put so many obstacles and barriers around them? Why can our children not have the same opportunities as every other child?*

In 2007, the Joint Committee on Human Rights recommended the introduction of a 'coherent, unified, simplified and accessible system of support for asylum seekers, from arrival until voluntary departure or compulsory departure.'<sup>6</sup> Eight years later and this recommendation remains un-actioned.

These are the fundamental flaws in the asylum support system that we identify as needing to be addressed. Three years ago, the Home Office Minister said, "there is absolutely no intention that destitution should be a deliberate aim of public policy. That would be wrong and is not the aim of immigration policy or any other part of our policy".<sup>7</sup> These proposals will compound the hardship experienced by asylum seekers including by reducing NASS support rates for single adults and removing additional payments to children.

We do not support these proposals. Instead, we would ask the Home Office to consider the recommendations submitted on behalf of a number of Northern Ireland NGOs to the Parliamentary Inquiry in 2012. See Annex A.

## **PART TWO**

### **Response to consultation questions**

#### **1. The proposal to repeal of section 4(1) of the 1999 Act**

This proposal strikes us as short sighted. Few claimants rely on this provision. Any cost savings may well be offset by other displacement costs associated with the repeal of section 4(1).. For example,:

- Section 4(1)(c) is a useful mechanism to provide a bail address for persons released from immigration detention. Without it, detainees will struggle to meet the bail requirements and will remain in detention. The cost of immigration detention is far

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<sup>4</sup> Barnardo's Supporting Refugees and Asylum Seeking Families in NI (June 2011)

<sup>5</sup> NCB, 'New to Northern Ireland' (2010)

<sup>6</sup> JCHR, The Treatment of Asylum Seekers, para 121

<sup>7</sup> Evidence given by Damian Green to the Education Select Committee HC 149, 4 July 2012: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/149/120704.htm>

higher than the cost of section 4 NASS support.<sup>8</sup> Thus this proposal will not achieve the policy objective of reducing costs to the public purse (objective iv).

- Inadvertently encouraging irregular migrants/ immigration detainees who do not have the grounds for an asylum claim to apply for asylum as a means to access support. This runs entirely counter to the consultation's aim of reducing the number of 'unfounded asylum applications.'<sup>9</sup>

**2. The proposal to close off support for failed asylum seekers who make no effort to leave the UK at the point that their asylum claim is finally rejected, subject to continued support in cases with a genuine obstacle to departure at that point or in which further submissions are lodged with the Home Office and are outstanding.**

There is no automatic entitlement to asylum support for refused adult asylum seekers.

The current law is that a refused adult asylum seeker is only eligible to receive section 4 if s/he is destitute and falls within one of the following categories:

- Is taking all reasonable steps to leave the UK or place himself in a position in which he is able to leave the UK [...]
- Is unable to leave the UK by reason of a physical impediment to travel or for some other medical reason
- Is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return available
- He has made an application for judicial review of a decision in relation to his asylum claim; or
- Provision of accommodation is necessary to avoid a human rights breach.<sup>10</sup>

The proposals outlined in this consultation are remarkably similar to the existing legislation. The Home Office proposes that support should only be available to asylum seekers where there is a genuine/practical obstacle preventing their departure (e.g. "they are genuinely unfit to travel or have taken all reasonable steps to obtain the required travel documentation from their embassy") or that they have lodged further submissions with the Home Office.<sup>11</sup>

It is also impractical: for example, to withdraw asylum support from a person who is medically unfit to travel is likely to result in a further deterioration of their health.

**3. The proposed changes for failed asylum seekers with children.**

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<sup>8</sup> The cost of immigration detention per day is estimated at £97 i.e. £679 per week. See Migration Observatory: <http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Immigration%20Detention%20Briefing.pdf>

<sup>9</sup> Consultation Impact Assessment paper page 6

<sup>10</sup> The Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 accessible here: [http://www.legislation.gov.uk/uksi/2005/930/pdfs/uksi\\_20050930\\_en.pdf](http://www.legislation.gov.uk/uksi/2005/930/pdfs/uksi_20050930_en.pdf)

<sup>11</sup> See Option 2 in the Impact Assessment document.

We oppose these proposed changes. The Impact Assessment outlines one of the policy objectives of this consultation to ‘retain important safeguards for children’ (iii). These proposals do not meet this objective.

Home Office guidance is that the section 55 child welfare duty applies to asylum support decisions.<sup>12</sup> We cannot see how it would be lawful for the Home Office to withdraw asylum support from a family which would make a child destitute. It appears that this policy will breach domestic duties Borders, Citizenship and Immigration Act 2009 as well as international duties such as UN Convention on the Rights of the Child.<sup>13</sup> Further, it may lead to displaced costs to other agencies (see further below).

Realistically, a person who is in a crisis situation – with neither food nor shelter – is in no position to make an informed decision about making a voluntary return or to start making preparations. We suggest that, rather than reduce eligibility to NASS, the asylum support system is replaced with a system that assesses each asylum seeker in the exact same way that any other family’s needs are assessed and that grants access to the UK’s social security system.

#### **4. The length of the proposed grace period in family cases.**

We disagree with the proposal to withdraw support from families given the impact it will have on children.

#### **5. The proposed transitional arrangements**

As above, we disagree with this proposal.

#### **6. The assessment of the impact of the proposals on local authorities**

These proposals will effectively transfer the responsibility for asylum seeking families to local authorities. In Northern Ireland, responsibility will fall to the Health and Social Care Trusts.

We are mindful the UK legislation limits the scope of community care duties to those within the asylum system. Indeed, there is UK legislation that specifically states that some provisions of Northern Ireland’s domestic law - including the general support duties in Article 7 and 15 of the 1972 Order<sup>14</sup> - cannot be applied to refused asylum seekers.<sup>15</sup> This restriction on services does not prevent an intervention to avoid a breach of a person’s

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/431346/Section\\_55\\_v12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/431346/Section_55_v12.pdf)

<sup>13</sup> We note that UNCRC Committee’s Concluding Observations 2008 has criticised the UK on a number of issues in respect of asylum seeking children including their cultural and social integration (which is hampered significantly by destitution)

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

<sup>14</sup> Health and Personal Social Services Order Northern Ireland 1972

<sup>15</sup> Paragraph 1 (1) Schedule 3 of the Nationality, Immigration and Asylum Act 2002

human rights.<sup>16</sup> Therefore, where there is a risk of a breach of human rights, the Trust will be required to act to avoid a violation of same following an assessment of need. Caselaw confirms that destitution and homeless can amount to the most severe breach of human rights i.e. the Limbuela principle. Children and people with disabilities are also entitled to assessments under separate legislation.<sup>17</sup>

Where an individual assessment identifies specific needs – such as the need for accommodation, food and warm clothing - the Trusts may be under a statutory duty to provide services to meet these needs. We anticipate that the needs of a destitute and homeless asylum seeking family will be of nature that will require the Trusts to intervene in most instances.

There is an important distinction to be made here between adults and children. We acknowledge that legislation prevents the DHSSPS from providing support to adult asylum seekers whose need for assistance arises solely because he is destitute or because of the physical effects of being destitute.<sup>18</sup> In other words, it is not enough to be destitute: a person must demonstrate an additional vulnerability such as a disability before the Trust will consider intervening. However, children are treated differently and the law does not required them to meet the so-called “destitution plus” test before qualifying for support. In short, whenever an asylum seeking family faces destitution and homelessness, we believe that the Trusts will be obliged to conduct a needs assessment in all cases and to provide assistance in the majority of cases. This will require considerable resources.

In addition to creating responsibilities for local authorities / Health and Social Care Trust, the impact of these proposals will be felt locally by other organisations/agencies:

- The voluntary and community sector is likely to experience a significant demand for services in particular for financial support and accommodation.
- In turn, this will create a demand on OFMDFM resources, which currently funds a number of Northern Ireland’s migrant support organisations through the Minority Ethnic Development Fund. OFMDFM also provides funds for destitute migrants through its Crisis Fund. Thus, in effect, OFMDFM will have to shoulder the costs that arise from the Home Office’s proposals.
- Emergency support services such as ambulance and A&E are likely to see an increase in demand from homeless asylum seekers. This applies both to physical health – for example, treatment for frostbite – and mental health – for example, emergency interventions for self harm / suicide.

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<sup>16</sup> Paragraph 3 Schedule 3 of the Nationality, Immigration and Asylum Act 2002

<sup>17</sup> Children’s Order as amended by the Children (Leaving Care) Act and Chronically Sick Disabled People 1972

- Forcing people into destitution can make them susceptible to labour exploitation.<sup>19</sup> This can impact on the criminal justice system and also runs counter to programmes pursued by Northern Ireland's Departments of Justice and Department of Employment and Learning, which seek to reduce people's vulnerability to exploitation.

**7. Whether and, if so, how we might make it clearer for local authorities that they do not need to support migrants, including families, who can and should return to their own country.**

In the consultation (para 39), the Home Office refers to a number of cases as evidence for its assertion that there is no general obligation on local authorities to accommodate refused asylum seekers who could leave the UK. We do not agree that this assertion can be inferred from the three cases the Home Office cites. The facts in these three cases are not analogous to refused asylum seekers (one case deals with non-asylum overstayers, one deals with parents who are not cooperating with Social Services and one deals with a marriage of convenience). The Home Office will be aware of two subsequent cases, which have considerably reduced the effect of the three judgements it has cited here.<sup>20</sup>

As we have outlined above, the current legislative framework (comprising legislation and caselaw) will require Northern Ireland's Health and Social Care Trusts to assess the needs of and provide support to asylum seeking families. Quite simply, we do not think the Home Office can remove these duties without substantial reform of the laws.

**8. Any suggestions on how the Home Office, local authorities and other partners can work together to ensure the departure from the UK of those migrants with no lawful basis to remain here and minimise burdens on the public purse.**

We would like to make two key points:

- First of all, there is a need to improve the quality of decision making. Over the last decade, the percentage of decisions overturned at appeal has been at least one quarter.<sup>21</sup> Given that the likelihood of the Home Office making a wrong decision is relatively high, it is understandable that asylum seekers do not readily agree to return to their country of origin. Comparative research suggests that asylum seekers are more likely to make a voluntary return if they are confident in the asylum process and in the quality of the asylum decision.<sup>22</sup>

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<sup>19</sup> Hannah Lewis, Peter Dwyer, Stuart Hodgkinson and Louise Waite, 'Precarious Lives: experiences of forced labour among refugees and asylum seekers in England' (University of Leeds and University of Salford: July 2013)

<sup>20</sup> *Clue v Birmingham CC* [2010] EWCA Civ 460 (2011) 1 WLR 99 and *R ((KA) Nigeria v Essex CC* [2013] EWHC 43 (Admin) [2013] 1 WLR 1163.

<sup>21</sup> House of Commons Library Service, 'Asylum Statistics' SN/SG/1403. Data from January – March 2015 gives an appeal rate of 28%: <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2015/immigration-statistics-january-to-march-2015#asylum-1>

<sup>22</sup> Findings of the Independent Asylum Commission

- One way to reduce public expenditure on asylum support would be for the Home Office to grant asylum seekers permission to work. Although there is currently provision for some asylum seekers to work, in practical terms, this right is virtually inaccessible due to restricting employment to the Shortage Occupation List. We recall the Joint Committee on Human Rights condemnation of the UK's policy on work permission, "We consider that by refusing permission for most asylum seekers to work and operating a system of support which results in widespread destitution, the treatment of asylum seekers in a number of cases reaches the Article 3 ECHR threshold of inhuman and degrading treatment."<sup>23</sup>

**9. Any information or evidence that will help us to assess the potential impacts of the changes proposed in this consultation document and to revise the consultation stage Impact Assessment**

We note that Impact Assessment states that 50% of the stock of ARE individuals currently supported under s.4 have further submissions outstanding (8). This strikes us a relatively high figure and, given the two-tier process of lodging a fresh claim, we can assume that all these cases contain information not previously considered and have some prospects of success.<sup>24</sup> Perhaps this points to inadequacies in the initial decision making and suggests the need for 'upfronting' the asylum system through provision of quality legal advice at an early stage.<sup>25</sup>

**10. Any information or evidence that will help us to assess the potential impacts of the changes proposed in this consultation document on persons who have any of the protected characteristics as defined in the Equality Act (2010).**

There is ample evidence that demonstrates that the current rates of NASS support are insufficient to meet the needs of asylum seekers who have disabilities – especially where there are children involved.<sup>26</sup> These proposals, which will further restrict access to asylum support, will compound this adverse impact on disabled asylum seekers.

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<sup>23</sup> JCHR, 'Treatment of asylum seekers' 10<sup>th</sup> report of 2006-07 paras 120-122

<sup>24</sup> See Home Office Guidance – section 4

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/420295/Further\\_Submissions\\_v8\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420295/Further_Submissions_v8_0.pdf)

<sup>25</sup> <http://www.asylumaid.org.uk/providing-protection-access-to-early-legal-advice-for-asylum-seekers/>

<sup>26</sup> E.g. Barnardo's, 'Support asylum seeking and refugee families living in Northern Ireland' (2011) <http://www.barnardos.org.uk/8886-tuar-ceatha.pdf>



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## ANNEX A

Recommendations submitted by Law Centre (NI), NICRAS, Barnardo's and Horn of Africa People's Aid to the Parliamentary Inquiry on the asylum support system for children and young people:

The key recommendations we would urge this inquiry to make is for the UK to:

- Replace the NASS system with an entitlement to social security benefits.
- Mainstream asylum seeking children by making this group visible in the government's commitment to eradicate child poverty.

Short of abolishing the concept of NASS and replacing it with social security, we would like the Inquiry to recommend that the UK moves to:

- Restore the NASS rate to a minimum of 70% of Income Support.
- Increase provision for pregnant women and new mothers.
- Extend access to disability benefits to asylum seeking families and their children.
- Introduce a unified system of asylum support to replace current s.4, s.95 and s.98 NASS support. If the government declines to do this, at the very least, it should amend policy to ensure that no family is ever placed on s. 4 support.
- Remove the requirement that NASS accommodation is provided on a 'no choice' basis.
- Ensure that quality asylum decisions are made promptly.
- Lift the prohibition on work permission. The right to work should be an expansive right and should not be limited to the Shortage Occupation List.
- Remove the requirement for families to report at UKBA. At the very least, UKBA Caseowners should proactively review, and reduce, reporting requirements for families.
- Amend the Asylum Support Regulations to remove the requirement to withdraw NASS support after 28 days until transitional arrangements are in place
- Prevent destitution by extending the availability of NASS support to all cases where families have a pending immigration application.
- Ensure that Biometric Residence Permit cards are issued within 10 days.
- Ensure that asylum support is provided on the basis of need and that any punitive measures are removed from the NASS system.

NB. We also made recommendations to HMRC, OFMDFM, DEL and NIHE that are not included here.