

Further submissions and access to asylum support

30 July 2010

An account of the destitution experienced by One Stop Service clients as a result of the changes to the policy on presenting further submissions on a claim for asylum

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Statement of principle

For over ten years, since the creation of the One Stop Services to assist in the delivery of asylum support in 2000, the Refugee Council, the Scottish Refugee Council, the Welsh Refugee Council and the North of England Refugee Service have raised concerns regarding the UK's asylum support system and worked closely with the government to assist in developing a system which provides appropriate financial support and accommodation to people seeking asylum in the UK.

We believe that a consistent and effective support system is integral to the delivery of an efficient and fair asylum decision-making process. An asylum support system that is incoherent, unfair and disproportionately punitive will deny people the support they need in order to access asylum in this country. The changes to the process for delivering further submissions and accessing asylum support, as outlined below, create significant barriers to accessing asylum and support in the UK and result in destitution among some of the most vulnerable people in our country.

Asylum seekers are not allowed to work and often have no means of supporting themselves. Consequently, when they are denied asylum support they are often forced into destitution and dependence on friends or communities. Our evidence suggests that those with no alternative means of support or with additional needs, including children, people with serious health issues, and torture and trauma survivors, endure prolonged periods of poverty, exclusion and ill-health as a direct result of the denial or withdrawal of asylum support. Our evidence demonstrates the great cost that destitution inflicts on individuals and the wider community, including on community cohesion, public health and crime.

Our comments and recommendations, based on the four agencies' experience of giving advice to thousands of people across the UK, have been raised repeatedly with the UKBA and throughout government. We ask that the Government immediately reverses the policy change on further submissions and reinstates access to asylum support for those who wish to present further submissions as part of their asylum claim.

The One Stop Services (OSS)

The One Stop Services of the Refugee Council, Scottish Refugee Council, Welsh Refugee Council and North of England Refugee Service are funded by the Home Office through the UK Border Agency (UKBA), a department established by the Home Office to be responsible for support arrangements for asylum seekers. The agencies deliver services to asylum seekers and refugees under the UK Government's *Immigration and Asylum Act 1999*. This legislation provides the legal framework for the UK Government's provision of support for people who are seeking asylum in accordance with the UK's legal and humanitarian obligations under the *1951 United Nations Convention on Refugees*.

The OSS offer help and advice to asylum seekers and refugees while they are awaiting an asylum decision, once they have received a positive decision and are awaiting integration assistance, or once they have received a final negative decision and are considering their options. The OSS provide drop in advice, information and practical support for people seeking asylum or who have refugee status regarding the progress of their asylum application and their support needs. They also advise and assist people who have been granted leave to remain in the UK to make the transition from asylum support to mainstream services such as local authority accommodation or income support. In addition, the OSS advise and assist people who have exhausted their appeal rights to consider their support and protection options.

The four agencies run 17 One Stop Services across the United Kingdom through offices based in cities including London, Glasgow, Newcastle, Middlesbrough, Belfast, Birmingham, Leeds, and Cardiff.

Changes to the further submissions policy and procedures

When a person claiming asylum who has exhausted all appeal rights wants to make a request to have their claim re-examined owing to new evidence or a change in their circumstances, they must present further submissions on their claim to the UKBA.

Prior to 14th October 2009, people were able to send their further submissions by post to the UKBA. The UKBA granted support to destitute people while they waited for a decision to be made on their further submissions. This was on the basis that it was not reasonable to expect people to leave the UK until the UKBA had considered their claim and, if people were destitute, it would breach their human rights to leave them without support.

On the 13th October 2009, the UKBA sent a letter to stakeholders stating that, as of the following day, they would require people to deliver their further submissions in person.¹ People whose asylum claim had been made before 5th March 2007 (known as 'CRD' cases) are now required to make any further submissions by appointment and in person at the Further Submissions Unit (FSU) in Liverpool, regardless of where they live in the UK. Their further submissions will be considered by the Case Resolution Directorate (CRD) at some point before 2011. Those whose original asylum claim was submitted since 5th March 2007 and whose case is being managed through regional case management

¹ The ministerial statement on 13th October 2009, regarding the changes to the policy on presenting further submissions can be seen at: <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091013/wmstext/91013m0002.htm>

(known as New Asylum Model or 'NAM' cases) are required to present any further submissions in person at a scheduled reporting event at a specified reporting centre in their region.²

Alongside this procedural change, the UKBA stated that they will now not grant Section 4³ support until they have made a decision on the further submissions. They will prioritise further submissions that are linked to a Section 4 application and aim to decide such cases within 15 working days of receipt of the support application. The UKBA will not provide any support to destitute applicants during the 15 days that it takes to make the decision on their further submissions.

The UKBA has stated that if it will take over 15 working days from the date the client submitted the Section 4 support application, to the date of a likely decision on the further submissions then they will consider an application for Section 4 support. In such cases, the UKBA will aim to decide a Section 4 application within a reasonable period; as a guide, a decision on Section 4 should be provided by day 16. The usual procedure for allocating Section 4 support will then apply, resulting in anything up to a nine day delay in receiving support.

The impact of the policy change on levels of destitution – key issues

Voluntary sector agencies providing support and advice to destitute refused asylum seekers, including those who wished to present further submissions, united in opposition to this policy change and immediately communicated our concerns to the UKBA through the National Asylum Stakeholder Forum and in a letter to the Chief Executive of the UKBA. We requested reversal of this policy change as a matter of urgency and called for arrangements to be put in place immediately to facilitate access to the asylum process and to asylum support for those making further submissions on their asylum claim.

Our concerns are backed up by evidence we have collected through our frontline advice to destitute refused asylum seekers. Since April 2008, the One Stop Services of the four agencies have delivered over 300,000 advice sessions. In quarter 3 of 2009-10 (October – December 2009), the agencies delivered 37,921 OSS advice sessions, of which 14,137 (over 37%) related to Section 4 support.

1. The appointment telephone booking line – prolonging destitution

CRD cases must call to make an appointment at Liverpool FSU. The FSU is currently booking appointments seven working days in advance. There are 150 appointment slots available per day: 75 are booked each morning and 75 each afternoon. As of June, slots were usually filled in approximately one and a half hours, after which UKBA closed the telephone line. Applicants are turned away from the FSU if they arrive without a pre-booked appointment.

In practice the agencies' experience is that individuals, their legal representatives and others supporting or assisting them, are frequently unable to get through on the appointment booking telephone line. They have often attempted to get through, unsuccessfully, over periods of several days and despite frequent attempts throughout the advertised operating times of the telephone line. The UKBA have made some changes to the booking line but voluntary sector agencies report that it is often still not possible to get through for several days due to the line being busy or closed.

This arrangement wastes a considerable amount of people's time and further prolongs their period of destitution as they are prevented from making an appointment to present their further submissions and hence apply for support on that basis.

² Information on the procedures for presenting further submissions can be seen at:

<http://www.ukba.homeoffice.gov.uk/asylum/outcomes/unsuccessfulapplications/further-submissions/>

³ Refused asylum seekers who are destitute may qualify for support under Section 4 of the Immigration and Asylum Act 1999 if they can prove that they meet a set of conditions as outlined in the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005, available at: <http://www.opsi.gov.uk/si/si2005/20050930.htm>

2. Destitution is inevitable for those who are unable to travel to Liverpool

The UKBA will only exempt from these procedures a limited group of people with 'exceptional circumstances'. People who fit the following criteria can continue to make their applications by post/fax or request to be screened regionally:

- a. those who have a disability or severe illness and are physically unable to travel;
- b. those who are imprisoned or in detention and unable to make their submission in person;
- c. Unaccompanied asylum seeking children who cannot travel to the FSU in Liverpool due to the distance involved.
- d. those who have an ongoing Judicial Review or ongoing litigation of another kind;
- e. those who are subject to Removal Directions or have been accepted on a charter flight;
- f. those who have been picked up as a result of enforcement action.

Applicants must submit evidence that they meet the exceptional circumstances criteria when they send their further submissions. The UKBA has stated that they will return any further submissions made by post/fax that do not meet the criteria, to the legal representative/applicant.

In our view there are other vulnerable groups that do not fall within the list of exceptions, but who struggle immensely to travel to Liverpool. This includes survivors of torture and people with serious mental or physical impairments who may not be able to submit medical evidence to demonstrate that they cannot travel to appointments as they have difficulties accessing health care. Pregnant women, particularly in the early stages of pregnancy when they may be feeling extremely unwell and tired, may be unable to get supporting evidence from their doctor to prove this.

The implications of this change might be less serious if provision was made to pay for the cost of travel to Liverpool and, if necessary, overnight accommodation, but the UKBA has indicated that they will not fund such costs, even if the person is destitute. There are many people who do not have the financial resources to enable them travel to Liverpool. Some people are forced to sleep in Liverpool overnight as they are only offered early appointments which they cannot otherwise attend. We include below some examples of these difficulties to demonstrate the consequences of obliging destitute people to travel long distances without any means to do so.

Many of the people affected are extremely vulnerable and some have to take their children with them to Liverpool because they cannot find or afford childcare. The UKBA has confirmed that a lack of childcare does not constitute an exceptional circumstance and that dependents who are not included on the initial asylum claim must be brought to Liverpool without consideration for the logistical and financial challenges this imposes on families. To suggest that somehow they will get there, without facilitating this access, and to propose that the voluntary sector will pay for travel and accommodation⁴ is a wholly unreasonable attempt to shift the burden for enabling access to a legal process that the government is responsible for administering.

We believe it is entirely unnecessary to oblige applicants to travel across the UK in order to present further submissions in Liverpool for no other reason than administrative convenience. The UKBA has gone to great lengths over the past five years to build a regional structure to manage its business and in Cardiff, there is a case resolution team based regionally. It would be far more cost effective to allow people dispersed to South Wales to submit further representations to staff responsible for case resolution in Cardiff. The policy requiring further representations to be submitted in Liverpool contradicts the regional approach, causes unnecessary expense and inflicts additional hardship on those people who have a need to make further submissions in relation to their claim for asylum. We believe that the UKBA has failed to quantify the real impacts of this policy change, including those experienced by the

⁴ This statement was made by a UKBA representative at the National Asylum Stakeholder Forum, Case Resolution Directorate sub-group meeting on 22nd October 2009.

voluntary sector agencies to whom many asylum seekers turn for assistance, as it did not produce any impact assessments prior to introducing the changes.

3. Applicants are destitute for 15 working days or more

As stated above, the UKBA agreed that they would provide Section 4 support if they require more than 15 working days from the date that the support application is made, to make a decision on the further submissions. In practice however, the agencies' experience is that this commitment is not being followed by regional UKBA teams particularly in Scotland and Wales. Even when the timeline is being adhered to, it can result in destitute applicants waiting for up to three weeks without support once the delay in allocation is taken into account. Welsh Refugee Council has clients who have waited up to a month after they have been granted Section 4, for that support to be allocated.

In our view, 15 working days, let alone a month, is far too long for someone who is destitute to wait without support. The Courts have made it clear that a duty to support exists to people whilst they are awaiting a decision on their asylum claim⁵ but the new procedure does not allow for this. This system leaves vulnerable applicants such as families with young children, pregnant women, people with mental and physical health problems as well as survivors of torture, trauma and trafficking, without subsistence or appropriate shelter for a prolonged period of time. We are extremely concerned for the wellbeing of such vulnerable people and believe that a three week period of destitution is very likely to cause detriment to their welfare and health.

The delay in deciding support applications and allocating accommodation means that many clients have experience of sleeping rough, often as a way of minimising the burden of relying on friends or family for financial support and accommodation. Many clients have recently lost the support of their friends who are now experiencing extreme financial difficulty. There have also been cases where clients have been obliged to do unpaid work in exchange for accommodation and support, such as child care, cooking, and cleaning. We are concerned that this could leave clients vulnerable to further exploitation, including sexual exploitation.

The agencies report that many clients who have exhausted the help of their friends or relatives are now wholly dependent on their services, which puts a strain on their limited hardship funds. Many clients rely on the Refugee Council daycentre for hot meals, food parcels, laundry and showers to survive. The Refugee Council receives no money from the government to deliver these essential services and must continuously fundraise to ensure their survival.

Case studies of destitution caused by the change to the policy on further submissions

Since the 14th October 2009, the agencies have seen a large number of people who have experienced prolonged destitution, either because:

- they are unable to get through on the appointment booking telephone line;
 - they cannot afford the travel to deliver their further submission in person;
 - they are waiting for their appointment and cannot access support; or
 - they have delivered their further submissions but the UKBA has refused to consider their support application or there has been a delay in allocating support.
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- Refugee Council's Brixton office sees, on average, six clients per day who have presented further submissions, are destitute and want to apply for support. Other offices around the UK are seeing similar numbers of vulnerable clients in need of support.

⁵ See Nigatu [2004] EWHC 1806 (Admin) <http://www2.bailii.org/ew/cases/EWHC/Admin/2004/1806.html>

- The Scottish Refugee Council has had at least two cases of women who are heavily pregnant or have recently given birth and so cannot travel to Liverpool but have been refused postal submission by the UKBA on the grounds that they do not meet the 'exceptional criteria'. It appears that the UKBA enforces this policy very strictly and attempts by the agencies to advocate on behalf of vulnerable clients have been unsuccessful.
- A Welsh Refugee Council client applied for Section 4 support on 27th April, four days after presenting further submissions at Liverpool. The UKBA responded that they will not consider the support application until after the further submissions have been considered.
- As of 14th May 2010, the Scottish Refugee Council reports that 30 applications for Section 4 had been outstanding since January 2010. The majority of these are by applicants who have presented further submissions. The UKBA in Scotland refuses to apply the 15 day timescale, and has stated that they cannot make a decision on a Section 4 application until after a decision has been made on the further submissions.
- On 15th March 2010, a Scottish Refugee Council client – a woman with two adult children - applied for Section 4 on the basis of further submissions presented at Liverpool. At the time of the application the client's support had been stopped but the accommodation provider had not yet evicted the family. In late April, the Scottish Refugee Council requested an update from the UKBA as the client was due to be evicted on 11th May 2010. The UKBA responded that they were still waiting for her further submissions to be sent from Liverpool to Glasgow and therefore refused to take a decision on the Section 4 application until they were in possession of the further submissions. The family were subsequently evicted and had to rely on the community for accommodation. They have now been granted leave to remain.
- The Scottish Refugee Council has a client who is a survivor of torture. He first made an application for asylum in 2002 but decided to return to Sri Lanka and subsequently fled again in 2009. He arrived in the UK in December 2009 and, after considerable difficulty arranging an appointment at Liverpool FSU, the client finally lodged his further submissions and applied for Section 4 support in February 2010. The client has been homeless since arriving back in the UK. He has stated that he attempted suicide and expressed suicidal thoughts on several visits to the Scottish Refugee Council. When he was offered a referral to a specialist suicide and self-harm service, he refused saying that it was shelter and the fulfilment of his essential material needs, rather than emotional support that he needed. In March 2010 the Scottish Refugee Council contacted the UKBA and were advised that they are not permitted to grant Section 4 support on the basis of further submissions and instead will assess those submissions first. On 7th April 2010 the client was refused Section 4 on the basis that he was not destitute, but Scottish Refugee Council appealed this decision and the First Tier Tribunal (Asylum Support) granted him support in May 2010.
- On 13th April 2010, the Refugee Council's Leeds office booked an appointment for a pregnant client to attend at Liverpool to present further submissions, and faxed a Section 4 application. The appointment subsequently had to be delayed because the client was still in hospital, highlighting the difficulties created by the new system for vulnerable clients. The UKBA denied receiving the first support application so the Refugee Council re-faxed the application on 23rd April, and it was acknowledged four days later. The application clearly stated that the case was urgent as the client was in a hospital ward. Despite the considerable delay in acknowledging receipt of the support application and the urgency of the case, the UKBA set the start of their 15 day timescale for deciding the further submissions and Section 4 application from 27th April 2010 rather than the date it was originally submitted. The client had her baby prematurely, and is now living with a friend who does not want to continue to assist her. The UKBA has ignored the urgency of this case and refused to process her further submissions and support application within the stated timescale. The client and her premature baby are now in a very delicate state, and are extremely vulnerable.
- Refugee Council's Brixton office reports that they see approximately 15 clients per week whose application for Section 4 following presentation of further submissions has not been decided within

the 15 day deadline. One client in particular applied for support more than two weeks ago and is currently sleeping rough. His only source of food, clothing and shelter is the Refugee Council daycentre. He is HIV positive and finds it very difficult to manage his medications. This is not an isolated case and many clients in a similar situation suffered through the winter months.

- A client of the Refugee Council's Leeds office presented his further submissions and applied for Section 4 on 30th March 2010 but has still not received a decision on either application. The office has another six clients who have been waiting longer than 15 days for a decision on their application for Section 4 following presentation of further submissions.
- Even when support is approved, pregnant clients are sometimes dispersed too late to obtain antenatal care in their dispersal area. Refugee Council's Brixton office has a number of pregnant clients who have not received their Section 4 support before the birth because they have waited months for the application to be approved and allocated.
- Scottish Refugee Council has a client who is also being treated by the Medical Foundation for the Care of Victims of Torture. He became destitute in 2002 when he exhausted his appeal rights and has been sleeping rough most nights since then. Occasionally acquaintances take pity on him and allow him to stay when the weather is very cold or his health is particularly bad, however most nights he sleeps on the streets. He has experienced verbal and physical abuse whilst sleeping rough. He has, for many years, been trying to obtain information from his country of origin to form the basis of further submissions but has found this very difficult as he has very little contact with people there. He eventually obtained this information, presented further submissions at Liverpool and submitted an urgent Section 4 application on 13th April 2010. The UKBA replied by requesting an explanation as to why the client had never applied for the voluntary assisted return and reintegration programme, which was provided. The client accessed short-term charitable support to pay for hostels while he waited for a decision on his support application. On 26th April 2010, Scottish Refugee Council alerted the UKBA to the fact that they could no longer prevent the client from sleeping rough and were advised that further checks were necessary before a decision on Section 4 could be reached. The client is now sleeping on the street and both he and Scottish Refugee Council are worried about the impact this is having on his health.
- Scottish Refugee Council reports that Refugee Survival Trust, an independent charity based in Scotland is currently able to provide money for a return bus ticket to Liverpool (approximately £40 per person). However, this diverts money from other essential payments such as monies disbursed to people who are destitute due to administrative problems on section 95 support; or people awaiting Section 4 decisions (currently up to as much as six months). They are also providing money to new arrivals to travel to claim asylum in Croydon (£50 per person) so this small charitable trust are spending considerable amounts each month on facilitating travel to UKBA offices around the country. Currently their funding position is fairly stable but like most trusts they have been affected by low interest rates and reduced funding in the current environment, so the extra burden of paying for travel is not easily absorbed.

Conclusion and recommendations

We believe the above examples help to illustrate that the new procedure imposes logistical and financial burdens on people seeking to present further submissions which are disproportionate and impractical. The result is to create barriers to presenting further submissions and hence exclude people from the protection of the Refugee Convention and the Human Rights Act, and from the support to which they are entitled. As a direct consequence we have seen an increase in prolonged destitution amongst extremely vulnerable people, including children.

We request that the UKBA immediately reverse this policy change so that all applicants can present their further submissions by post or at their local UKBA office and, if eligible, are entitled to support while

those submissions are considered. If the UKBA will not agree to a reversal of the policy change, we request that they:

1. Provide travel costs to Liverpool and regional reporting centres, as well as overnight accommodation where necessary.
2. Provide childcare while the main applicant is in the application interview, where required.
3. Provide section 4 support to destitute applicants, if they are eligible, from the date their support application is submitted, while the UKBA considers their further submissions.
4. The concession allowing postal applications for people who meet the exceptional circumstances criteria should also apply to survivors of torture, rape, organised violence or trafficking, those experiencing mental health issues, including trauma, the physically unwell, applicants with disabilities and pregnant women. All unaccompanied asylum seeking children should be allowed to post their further submissions.