

Refugee agencies policy response



Inter-agency partnership response to Joint Committee on Human Rights: Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers, Seventeenth Report of Session 2006–07

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About the Inter-Agency Partnership

The Asylum Support Programme Inter-Agency Partnership (IAP) consists of five independent advice agencies: Refugee Council, Refugee Action, Migrant Helpline, Scottish Refugee Council and Welsh Refugee Council. It also includes representations from subcontractors and refugee community organisations (RCOs).

The IAP delivers asylum support services to asylum seekers across the U.K. as contracted by the Border and Immigration Agency (BIA). IAP advises and assists asylum seekers with their asylum support applications, and provides subsidiary advice to failed asylum seekers requiring support. This consultation response has been prepared by the Inter-Agency Co-Ordination Team (ICT) on behalf of the IAP.

About the agencies

The Refugee Council is the largest organisation in the UK working with asylum seekers and refugees. They not only give help and support to asylum seekers and refugees, but also work with them to ensure their needs and concerns are addressed by decision-makers.

Migrant Helpline has a long history of working with asylum seekers, refugees and migrants in the South East. As well as providing direct services they proactively promote awareness of the issues surrounding their clients and work with host communities to assist with integration.

Refugee Action is an independent national charity that works with refugees to build new lives in the UK. With 25 years of experience in reception, resettlement, development and integration, they provide advice and support to asylum seekers and refugees in 10 regions across England.

Scottish Refugee Council provides help and advice to those who have fled human rights abuses or other persecution in their homeland and now seek refuge in Scotland. They are a membership organisation that works independently and in partnership with others to provide support to refugees from arrival to settlement and integration into Scottish society. They campaign to ensure that the UK Government meets its international, legal and humanitarian obligations and to raise awareness of refugee issues.

The Welsh Refugee Council (WRC) empowers refugees and asylum seekers to rebuild their lives in Wales. It provides advice, support and information to asylum seekers and refugees and advocates and campaigns for refugee rights as enshrined in international law.

Introduction

In 2006, the Joint Committee for Human Rights carried out an inquiry into the treatment of asylum seekers. The Inter-agency partnership submitted a memorandum of evidence to the inquiry which gave numerous case-studies highlighting the impact of shortcomings in asylum support policy. The JCHR published its report: *The Treatment of Asylum Seekers*, in March 2007. Refugee agencies welcomed the conclusions drawn in this report. In July 2007 the Home Office response to the report was published by the JCHR. In our reply, the IAP agencies assess the Home Office response and highlight where further policy change is needed.

Response

Obstacles to claiming asylum in person

The Committee said:

People who are attempting to claim asylum and support encounter significant practical difficulties because of the limited accessibility of Asylum Screening Units. These difficulties may discourage people from engaging in the asylum process and cause severe hardship for claimants with no resources. We recommend that the Government improves facilities for claiming asylum and provides locations for claiming asylum and support throughout the U.K. (paragraph 81)

The Home Office response includes:

Those who have entered the U.K. before applying for asylum will be screened at an Asylum Screening Unit. Asylum Screening Units are located at Croydon and Liverpool. We are currently considering whether improvements could be made to existing screening arrangements.

The view of the Inter-agency partnership is:

People who have entered the U.K. and wish to claim asylum and support should not face difficulties reaching centres which accept asylum applications. Asylum applications should be accepted locally, with support and assistance available from that point to avoid destitution and enable asylum seekers to fulfil requirements to travel to more distant centres. We welcome the Home Office's intention to look at improving the screening system and hope that this will result in more centres for accepting and screening applications.

Delays and errors in processing applications

The Committee said:

We have heard countless examples of Home Office inefficiencies in processing

support claims, with severe consequences for desperate, vulnerable people who have no other means to support themselves. There is an urgent need to improve the operational performance of the Home Office where decisions are being made about support for asylum seekers. The institutional failure to address operational inefficiencies and to protect asylum seekers from destitution amounts in many cases to a failure to protect them from inhuman and degrading treatment under Article 3 ECHR. (paragraph 84)

The Home Office response includes:

The consideration of applications for support under section 95 of the Immigration and Asylum Act 1999 is part of the end to end management of new asylum applications. In all new cases, applications are passed directly to the case owner in a regionally managed asylum team who is responsible for their case. Upon receipt of the application, if the applicant is not already in receipt of section 98 support, case owners will be able to assess whether the applicant appears to be destitute and in need of initial accommodation. Case owners having close contact and control over their cases will improve the efficiency with which applications for asylum support are made and considered. Each applicant has contact details of their case owner with whom they can get in touch during normal working hours in addition to the regular reporting events. Case owners are assisted in the processing of asylum support cases by other members of their asylum team.

The Government accepts that in the past, and particularly during 2005 and the first part of 2006, unacceptable delays occurred in the provision of support under section 4 of the Immigration and Asylum Act 1999. This was because the numbers of applications for support increased significantly and rapidly, from a few hundred to more than 14,000, and backlogs built up as the staff and systems in place at that time struggled to keep pace.

A range of improvements has been put in place since then. The number of staff considering initial applications in the central section 4 team has more than doubled, and applications are now recorded and processed on the ASYS system (the main IT system for asylum support) rather than a stand alone database, as was previously the case.

Turnaround times for initial applications are monitored regularly. A prioritisation system exists which enables applications from those who are street homeless or who have medical conditions to be considered first. In addition, there are enquiry telephone lines, the numbers of which are known to the voluntary sector, which enable representatives to check on the progress of particular applications if necessary. Significant improvements in turnaround times have been made. In January 2006 there was a backlog of more than 700 unactioned cases, with applications dating back to October 2005. We have now reached the position that around 40% of the most urgent cases are decided within 2 days, and a frictional backlog of about one to two weeks' work exists for the less urgent cases

Since 1 May 2007, regional asylum teams have considered all applications for section 4 support from applicants whose asylum claims they handled. This has increased further the number of staff trained to consider such applications, and should lead to further improvements in turnaround times.

The view of the Inter-agency partnership is:

The One Stop Services, run by the inter-agency partnership, deal with numerous destitute individuals who have a right to asylum support but whose support has been delayed. This is most common when refused asylum seekers lose entitlements to support under section 95 and face difficulties in accessing support under section 4. This is not simply a problem that occurred in the past. Changes being implemented at the Home Office have not prevented this from continuing to occur on a daily basis, partly because of insufficient trained staff. In our view, no-one who has applied for, and is entitled to, asylum support, should be without support for more than 24 hours, and this should be addressed by the Home Office as a matter of urgency. Creating one system for provision of support that replaces the separate Section 95 and Section 4 systems would reduce delays.

Advice about entitlement to support

The Committee said:

We welcome the development of the New Asylum Model (NAM) which has the potential to improve the timeliness of decision making and the quality of support to asylum seekers and refused asylum seekers. However, we are concerned that the Home Office has yet to ensure that NAM caseworkers receive adequate training about asylum seekers' entitlement to support. We recommend that the capacity of NAM is closely monitored whilst it is assuming responsibility for support provision. We also recommend that the Home Office reviews arrangements for the provision of advice and information to asylum seekers and their representatives, both during the applicant's asylum claim and during the transition to mainstream support after asylum is granted. (paragraph 87)

The Home Office response includes:

During the 55 day Foundation Training Programme, case owners are given an overview of asylum support, with a focus on the details they need to know. Other members of the asylum teams who assist case owners, receive more specific training, as it is they who deal with asylum support, working through a number of asylum support issues. There are also experienced case owners in the asylum teams within the regions available to give further guidance and support as required.

Training for members of the new asylum teams is subject to continuous review and improvement.

In addition to training materials, members of asylum teams have access to comprehensive written guidance on all aspects of asylum support through an intranet which has a dedicated section specifically for asylum support.

The intranet also offers a forum by which case owners and those involved in the determination of support can offer feedback where they feel there are shortcomings in the process or where they or their managers feel training or development issues exist.

Teams are currently being recruited who will look at the quality aspects of the asylum teams' work. These teams will enable us to better monitor and feedback to asylum teams the quality of the support work carried out.

The view of the Inter-agency partnership is:

Despite the steps taken by the Home Office, errors made by BIA staff in processing support applications contribute to delays in accessing asylum support. We welcome the introduction of teams to monitor the quality of the support work carried out and call on the Home Office to implement this swiftly and make available their findings. We also believe there should be independent oversight of quality assurance processes in asylum support comparable to UNHCR's quality assurance initiative.

Section 55 of the Nationality, Immigration and Asylum Act 2002

The Committee said:

The continued use of the section 55 provision to deny support in subsistence-only cases leaves many asylum seekers reliant on ad hoc charitable support and with no regular means of providing for their basic daily necessities. We believe that this treatment does not comply with the House of Lords Limbuela judgement, and is in clear breach of Article 3 ECHR. We recommend that section 55 be repealed. (paragraph 92)

The Home Office response includes:

Section 55 of the Nationality, Immigration and Asylum Act 2002 prevents the provision of asylum support to asylum claimants who did not make their asylum claim as soon as reasonably practicable after their arrival in the United Kingdom. It was introduced as part of a wider package of measures aimed at tackling abuse of the asylum system and removing incentives to the making of non-genuine claims for asylum. The sooner an asylum claim is made, the sooner the processing of it can begin and the greater the chance of being able to obtain factual information and travel documents which will assist in the determination of the claim.

There have always been a number of safeguards built into section 55 to protect the vulnerable. Most significantly, it does not prevent the provision of support if it would be a breach of human rights not to provide it. Moreover, it does not prevent a person from receiving medical treatment in the United Kingdom. The Government recognises the concerns about potentially increased levels of destitution as a result of section 55. However, support is not refused under section 55 to any person who does not have alternative support available, including overnight shelter, adequate food and basic amenities.

There are no plans at present for section 55 to be repealed.

The view of the Inter-agency partnership is:

Despite the safeguards outlined by the Home Office, Section 55 is wrong in principle and unworkable in practice and we believe it should be repealed.

Section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004

The Committee said:

The section 9 pilot has caused considerable hardship and does not appear to have encouraged more refused asylum seeking families to leave the U.K.. We urge the Government to publish the results of the pilot without further delay. 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. (paragraph 97).

The Home Office response includes:

The Government is committed to ensuring that unsuccessful asylum seeking families do not remain in the U.K. indefinitely. We consider that voluntary returns are by far the more dignified way of making a return for the families concerned.

Under the section 9 staged pilot process, special care was taken to inform and engage with families, to ensure that they fully understood the requirement to cooperate with a voluntary return, how to do this, and the implications of not doing so. This engagement allowed individual families the opportunity to identify to the Border and Immigration Agency any European Convention on Human Rights (ECHR) issues where it would not be appropriate for support to be discontinued.

Families were provided with details of voluntary return packages at each stage of the process. Parents are free to take appropriate steps to leave the country. Sections 17 or 20 of the Children Act 1989 provide a legal framework for a local authority to support children if parents fail to take those steps, and if it is necessary to avoid a breach of ECHR rights.

The results of the pilot suggest that section 9 was not effective as a standalone measure.

However, since the introduction of section 9 there have been a number of significant developments in relation to the management of asylum applications and assisted voluntary returns – including the new process for asylum decision making and the enhanced assisted voluntary returns scheme.

The Government accepts this is a tough policy and acknowledges the concerns that have been raised. It must however remain our priority to increase the voluntary returns of families who no longer have a right to remain in the country. We do not accept that it would be right for people refused asylum to be supported indefinitely when they are choosing not to return to a home country that has been found safe for them to live in.

The agenda for reform within the Border and Immigration Agency delayed the evaluation of the pilot. The Immigration Minister, in evidence taken for the enquiry, made a commitment to publish the evaluation report over the next few months, once he had had opportunity to test the conclusions.

Section 44 of the Immigration, Asylum & Nationality Act 2006 provides for the repeal of section 9 by order. Section 44 has not been commenced and, prior to completion of this section 9 review, it would be premature to bring this section of the Act into force.

The view of the Inter-agency partnership is:

Section 9 is inhumane and ineffective and we believe it should be repealed. From its reply, the Home Office seems to recognise that Section 9 is an ineffective policy about which there are justifiable concerns. The Home Office response points to the capacity to repeal Section 9 and we strongly recommend this course of action.

Section 4 vouchers

The Committee said:

We consider the section 4 voucher scheme to be inhumane and inefficient. It stigmatises refused asylum seekers and does not adequately provide for basic living needs. There is no evidence that the voucher system encourages refused asylum seekers to leave the U.K.. We believe that the section 4 voucher scheme discriminates on the grounds of nationality, and could constitute a breach of Article 14 in conjunction with Articles 3 and 8 ECHR and of Articles 3 and 8 themselves. There are particular responsibilities towards women, especially relating to pregnancy and post natal treatment. In many cases these responsibilities are not being met and there is an immediate need to provide financial support for essential items not covered by the vouchers, including clothing, baby items, telephone costs and travel. We recommend that the Government extends section 95 support to section 4 applicants and abandons the voucher system. (paragraph 110)

The Home Office response includes:

The Government view is that the provision of any cash support to unsuccessful asylum seekers is not appropriate. However, most families do get cash support until the children turn 18 or the family leave the U.K.. A more limited support regime endorses the message that the asylum seeker has exhausted his or her appeal rights and should take steps to leave the U.K. once the barrier to leaving has been resolved. The legislation does not allow cash to be provided under section 4 and it is not the Government's intention to change this.

Once appeal rights are exhausted, families remain eligible for section 95 support provided they have a child under the age of 18 in their household before the grace period ends. Individuals, childless couples and those who have a child after the grace period are eligible for section 4 support.

Support under section 4 is provided through board and lodging, or in the form of self-catering accommodation with vouchers, to the value of £35 per week, to purchase food and essential toiletries. This is broadly in line with the level of cash support provided to asylum seekers and ensures basic living needs are met.

The vouchers issued to those in receipt of support under section 4 are primarily luncheon vouchers, supermarket payment cards or supermarket vouchers which are widely used by people who are not unsuccessful asylum seekers. They can be used at supermarkets and a variety of other outlets. Accommodation providers have negotiated for local shops to take vouchers to ensure dietary needs are met. Where practical difficulties arise with provision of support through vouchers, the Border and Immigration Agency works with the providers concerned to ensure solutions are found. The Agency is committed to quickly resolving any problems that arise and has established a mechanism for doing so within 24 hours.

Regulations under section 4(10) of the Immigration and Asylum Act 1999 will provide improved support to the most vulnerable – pregnant women, young babies and children – and those who may require support for longer than six months. The regulations will enable facilities to provide for travel to necessary medical appointments and for communications.

If the Secretary of State is satisfied that a supported person has an exceptional need for certain services or facilities he may provide for that need. We plan to consult on a second draft of the regulations before the summer recess.

The Government does not accept that the section 4 voucher scheme constitutes a breach of Articles 3 and 8. Nor does it accept that the scheme could constitute a breach of Article 14 by way of discrimination on the grounds of nationality. Whilst there is different treatment as between unsuccessful asylum seekers on section 4 support and others, for example, British nationals, persons with leave and asylum seekers, it is not accepted that these comparators are in an analogous situation to those on section 4 support.

The view of the Inter-agency partnership is:

The use of vouchers creates severe hardship for individuals who despite having been refused asylum, have a right to remain in the U.K., for example because there are medical reasons why they cannot travel. We believe the voucher scheme should be replaced with cash payments. Improved support for the most vulnerable is welcome, and we would like to see these regulations issued immediately, but this does not reduce the need to provide cash support.

Housing for refused asylum seekers

The Committee said:

Inadequate housing could give rise to a breach of a family's right to respect for

family and home life under Article 8 ECHR, especially where a child is living there. We welcome the Home Office's assurance that it intends to standardise the accommodation contracts to make all section 4 accommodation of the same standard as section 95 accommodation by the end of 2007. We recommend that the Home Office puts in place measures to ensure that where accommodation is of an inadequate standard, urgent repairs are carried out or alternative accommodation is provided. (paragraph 112)

The Home Office response includes:

We are currently undertaking a programme to transfer all people who are receiving section 4 support into accommodation which is subject to the same target contracts which apply to section 95 accommodation. The target contracts have explicit provision for maintaining appropriate accommodation standards including requirements for urgent repairs and the use of alternative accommodation. Commercial sanctions may be applied for poor performance by the provider.

Under the target accommodation contracts the accommodation provider is obliged to meet four distinct accommodation standards. The property must be: safe; habitable; fit for purpose; and correctly equipped.

The contract develops the definition of each accommodation standard and sets out what would constitute an issue of non-compliance. For example, a gas leak or flooding/free standing water within a property would designate it as "unsafe".

Timescales are set out for the provider to address issues of non-compliance according to their severity. For a property designated as "unsafe" the accommodation provider has a response time of 2 hours.

The accommodation provider's responses to such issues are monitored and audited. Financial sanctions may be applied in certain circumstances if the accommodation provider's response has not complied fully with their contractual requirements. For example, dispersals to a particular provider can be stopped until we are satisfied that effective remedial action has been taken.

The view of the Inter-agency partnership is:

The IAP welcome the steps that the Home Office is taking to ensure accommodation is safe, habitable, fit for purpose and correctly equipped, and to monitor compliance among accommodation providers. It is concerned that despite this numerous cases are brought to our attention of delays in responding to unsafe and unsanitary accommodation and we urge the Home Office to rigorously implement its monitoring and enforcement procedures. We also recommend that the Home Office should make available its policies on monitoring and inspection, and the results of inspections.

Support from local authorities for asylum seekers with care needs

The Committee said:

Mr Liam Byrne MP, Minister of State for Immigration, Citizenship and Nationality, advised us that Glasgow City Council did not accept that the Westminster judgment applied in Scotland and that IND was therefore accepting responsibility for asylum seekers with care needs in Scotland. We are concerned that this may result in discriminatory treatment for asylum seekers with care needs in Scotland, in breach of Articles 8 and 14 ECHR. There is no clear guidance reflecting recent court decisions regarding local authority responsibilities towards asylum seekers with care needs. We recommend that the Government issue new guidance setting out when local authorities have a duty to provide community care help to asylum seekers and refused asylum seekers and that it implements procedures to ensure that local authorities comply with this duty. (paragraph 115).

The Home Office response included:

The legislative provisions in Scotland are different from those in England and Wales. Glasgow City Council considers that their powers under these provisions are more limited than the powers available to local authorities in England and Wales. In the absence of recent Scottish case law on this specific point, Border and Immigration Agency staff in Scotland working with Glasgow City Council to ensure that suitable support is available on a case by case basis.

The view of the Inter-agency partnership:

The partnership, and in particular Scottish Refugee Council, recognise that in the local context agencies are working closely together. Nevertheless in the absence of clear guidance and case law, asylum seekers north of the border with complex needs face discriminatory treatment. We believe that the Border and Immigration Agency should develop a written protocol with Glasgow City Council and publish guidance to ensure that the treatment of asylum seekers with community care needs is consistent now and in the future.

Destitution

The Committee said:

13. 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. This applies at all stages of the asylum claim process: when an individual is attempting to claim asylum during the period of consideration of their claim and during the period after their claim is refused if they are unable to return to their country of origin. Many witnesses have told us that they are convinced that destitution is a deliberate tool in the operation of immigration policy. We have been persuaded by the evidence that the Government has indeed been practising a deliberate policy of destitution of this highly vulnerable group. We believe that the deliberate use of inhumane treatment is unacceptable. We have seen instances in all cases where the Government's treatment of asylum seekers and refused asylum seekers falls below the requirements of the common law of humanity and of international human rights law. (paragraph 120)

14. The policy of enforced destitution must cease. The system of asylum seeker support is a confusing mess. We have seen no justification for providing varying standards of support and recommend 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 U.K.. (paragraph 121)

15. We recommend that the Immigration Rules be amended so that asylum seekers may apply for permission to work when their asylum appeal is outstanding for 12 months or more and the delay is due to factors outside their control. We recommend that where there is evidence that an asylum seeker will not be able to leave the U.K. for 12 months or more, he or she should be granted limited leave for a 12 month period with permission to work attached.

The Home Office response includes:

The Government strongly refutes the Committee's claim of a deliberate policy of destitution towards asylum seekers. The Government has consistently stated that genuine, asylum seekers are welcome and has put in place considered arrangements to provide support to those in need.

The view of the Inter-agency partnership is:

Destitution is widespread among those who have been refused asylum and have exhausted their right of appeal, but have not voluntarily left or been removed from the U.K. As already mentioned, this is in part due to delays in processing those with entitlements under section 4, which could be overcome by creating a more unified asylum support system.

For those without entitlements, many have made the choice that destitution in the U.K. is preferable to return. In our view there is an urgent need for some form of provision to be made for these people until they have left the U.K., including financial support and accommodation, and full access to health care and education, both on humanitarian grounds and to alleviate the impact on communities. It is neither humane nor effective to use destitution as a policy tool.

We believe that permission to work should be considered, and welcome the Committee's recommendation that 'where there is evidence that an asylum seeker will not be able to leave the U.K. for 12 months or more, he or she should be granted limited leave for a 12 month period with permission to work attached'.