

Asylum Support Partnership



The Asylum Support Partnership response to the UKBA consultation *Reforming Asylum Support: effective support for those with protection needs*

January 2010

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Introduction

The Asylum Support Partnership (the Partnership) has over 10 years experience delivering independent advice and support to people seeking asylum across the UK. During this time we have worked closely with UKBA to seek a fair and effective system of asylum support based on our experience of supporting people seeking asylum who are destitute due to UK Government policies and procedures. This submission sets out our concerns regarding the UK Government's proposed legislative and regulatory changes to asylum support provision under the Draft Immigration Bill and accompanying asylum support consultation published on 12 November 2009.

The Partnership consists of the five refugee charities grant funded by the Home Office to provide independent advice and support to people seeking asylum and with refugee status across the UK. Members are: the North of England Refugee Service, Refugee Action, Refugee Council, the Scottish Refugee Council and the Welsh Refugee Council. We provide people seeking asylum with information, advice regarding their ability to access UK support, support with their essential living needs, and referral to specialist advisers and support agencies such as Refugee Community Organisations, faith groups and charities. Destitute people currently comprise approximately 50% of the people needing our services¹.

Summary of response and main concerns

Since the Partnership's creation in 2000, we have raised concerns that the UK's asylum support system fails to provide adequate, timely and consistent financial support and accommodation to people seeking asylum in the UK. Asylum seekers are not allowed to work and often have no means of supporting themselves and, 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 administrative failings in the asylum support system.

We are concerned that the Government's proposals will fail to create a coherent asylum support system which meets the needs of asylum seeking individuals and families in the UK, resulting in destitution remaining a feature of the UK asylum system, at great cost to individuals and society. That cost can be measured in financial expense incurred through poor administration of a cumbersome and wasteful support system, and in social terms through the negative impact of destitution on community cohesion, public health and crime.

Our comments and recommendations, based on the Partnership agencies' experience of giving advice to thousands of people across the UK, have been raised repeatedly with the UKBA and throughout government, most recently in the Partnership's *'Second Destitution Tally 2009'*². Our concerns focus primarily on:

¹ *The Second Destitution Tally* revealed that 48% of visits – nearly half – were by destitute people (1972 of 4093 visits), Asylum Support Partnership, May 2009.

² *The Second Destitution Tally Report 2009*, Asylum Support Partnership, 2009, Refugee Council.

1. The Government's determination to use asylum support as a mechanism for enforcing compliance with efforts to return refused asylum seekers.
2. The increase of penalties for those who do not 'play by the rules', the lack of detail about these rules and the removal of any opportunity to challenge them in court.
3. The Government's preoccupation with preventing 'abuse' of the asylum determination system and the belief that asylum support should be used as a tool for deterring abuse. We are particularly concerned by the intention to re-enact section 55 of the 2002 Act. We are also concerned by the Government's belief that asylum support provision must be restricted because it is susceptible to widespread abuse.
4. The absence of any recognition of or attempt to address the administrative and operational failings within the asylum support system, and the consequent high levels of destitution among eligible applicants;
5. The failure to respond to the evidence about the extent of destitution among asylum seekers, including the Asylum Support Partnership's '*Second Destitution Tally 2009*', the Refugee Council's '*More Token Gestures*' research on Section 4 vouchers, Refugee Action's '*The Destitution Trap*' and the many Still Human Still Here (SHSH) reports on the destitution facing refused asylum seekers.
6. The Government's commitment to cutting asylum support costs by restricting access to support and by reducing support levels for some of the most vulnerable people in the UK.

Our key recommendations are:

1. Commit to ending destitution as a feature of the UK asylum system by providing asylum support in cash to all those who have claimed asylum until they are granted status or leave the country;
2. Invest in better quality decision-making and access to independent legal advice early in the asylum process.
3. Retain a right of appeal for all those whose application for asylum support is refused;
4. Retain cash support for families, and do not introduce the payment card for refused asylum seeking families who are currently supported under section 95;
5. The Government to introduce a level of asylum support which meets asylum seekers essential living needs, that is at least 70% of the rate of income support for individuals over 25 years of age, currently at least £45 per week for a single adult.

The UKBA context

The UKBA is under pressure to reduce asylum support costs to ensure that it can deliver on its case conclusion targets within a restricted budget. Tightening eligibility for asylum support, as well as changes in asylum flows, has allowed the UKBA to reduce the number of people supported³ and accelerate decision-making on support applications⁴. While we agree that faster decision-making is in the applicant's best interests, it must also be fair and high quality decision-

³ The total number of asylum seekers in receipt of asylum support in Q3 2009 (29,895) was 7 per cent lower than at the end of Q3 2008 (32,170). Control of Immigration: Quarterly Statistical Summary, UK, July-September 2009, Home Office. Available online at: <http://www.homeoffice.gov.uk/rds/pdfs09/immiq309.pdf>.

⁴ Anecdotal information from the Partnership agencies suggests that straightforward applications for section 95 are being processed in a reasonable amount of time. However, where these applications are subjected to the section 55 process, significant delays ensue. Problems with section 55 applications are discussed later in the submission. We hope that the new section 4 application form, with which we have assisted in developing, will contribute to the acceleration of decision-making for destitute section 4 applicants.

making or the UKBA risks making incorrect decisions and incurring further costs in the form of judicial reviews.

The UKBA prioritises the removal of refused asylum seekers over the alleviation of their destitution. Clearing the backlog of cases consisting of people who claimed asylum before March 2007 is key to this and should address some of the concerns raised in this submission. A reduced asylum, and therefore support, caseload; faster and fairer decision-making; fewer delays; reduced support costs and better administration of the asylum support system are all commendable goals of the legacy programme. However, there are and will always be people who cannot move swiftly through the system and be returned to their country of origin on refusal. As case resolution ends, and the supported caseload changes, there will continue to be people for whom return is not a realistic or safe proposal. These people should be able to live in dignity and meet their essential living needs while they remain in the UK, and must not be neglected by a system focused on tight timescales, strict targets and constrained budgets.

Positive proposals in the consultation

We are pleased that the consultation includes a commitment to improve the quality of decision making and conclude the 'legacy' asylum cases by summer 2011.

We support the proposal to repeal sections 9 and 10 of the Immigration and Asylum Act (treatment of claimants) 2004. We have previously raised concerns that these legislative provisions would cause destitution among people who had unsuccessfully sought protection but are unable to leave the UK through no fault of their own. We raised particular concerns about the inhumane impact on children and families of section 9⁵. We believe that a policy which removes support from refused asylum seeking families does not increase return, and we urge the UKBA to apply this reasoning to its proposals regarding all refused asylum seekers.

We note that the draft legislation does not re-enact Parts 2 and 3 of the Nationality, Immigration and Asylum Act 2002 (legislation around Accommodation Centres). In light of the concerns raised at the time, including the risk of high capital costs, the danger of institutionalisation and isolation of residents, the likely damage and delay to integration and the lack of adequate child protection processes, we are pleased that this redundant piece of legislation has been excluded.

Consultation question 2: Do you agree with our proposals to repeal those parts of legislation which we do not intend to use (sections 9 and 10 of the 2004 Act)?

The Partnership answer: Yes.

⁵ *Interagency Partnership, 2007, Evaluation of the Section 9 Pilot*, Refugee Council.

The Partnership principles

The following principles reflect the Partnership's perspective on asylum support and challenge some of the key assumptions within the support consultation and the Draft Immigration Bill. We urge the UKBA to consider these principles in simplifying the asylum support system. We have also provided answers to the specific questions within the consultation, and made recommendations for improvements to the system of asylum support.

The Partnership principle 1: It is inappropriate and ineffective to use asylum support as a tool for enforcing compliance with efforts to return refused asylum seekers.

Consultation question 3: Should we support any failed asylum seekers who have been found to have no protection needs by the independent appeals system? If yes, under what circumstances?

The Partnership answer: Yes, all destitute refused asylum seekers, including those who through no fault of their own are unable to return to their country of origin, as well as those who have unmet protection needs and those against whom the UKBA are not enforcing removal, should continue to receive support. Support should be provided to asylum seekers through a single cash-based system as part of an holistic package of engagement and advice, until they are granted status and integrated in to the UK or they are refused status and either leave the UK voluntarily or are removed.

Consultation question 5: Do you agree that the way in which support is provided to asylum seekers should be different than the way support is provided to those who have been found to have no protection need?

The Partnership answer: No.

The Partnership is concerned that the proposed legislation places the focus on entitlement to asylum support as the means through which to make the distinction between those who have a right to be in the UK, and those who should return to their country of origin. The Government clearly believes that withdrawing or interrupting support will encourage refused asylum seekers return to their country of origin. However, the Government has not provided any evidence to support this assertion; on the contrary pilots on alternatives to detention and section 9 which linked support to efforts to return have proven unsuccessful⁶.

We challenge the idea that refusing, withdrawing or interrupting access to support sends a message to the refused asylum seeker that their situation has changed and that they must return home. There is no evidence that the refusal or withdrawal of support, and the subsequent destitution experienced by refused asylum seekers, encourages return. On the contrary, our research has demonstrated that refused asylum seekers will endure long-term poverty, ill health, exploitation and abuse in order to avoid returning to a country that they do

⁶ We discuss the Millbank pilot and the more recent A2D Glasgow pilot in more detail later in the submission.

not consider safe. The *Second Destitution Tally 2009*⁷ found that destitution amongst refused asylum seekers is widespread: 60% of visits (1178) were by destitute people at the end of the process⁸, and 62% of these (731) had been destitute for over 6 months. Many will not even consider return as they believe they have been wrongly refused asylum and continue to have protection needs⁹. People within this cohort come from a variety of countries but data from the Partnership agencies shows the biggest concentrations come from Iraq, Iran, China, Eritrea, the Democratic Republic of Congo, and Zimbabwe. The UKBA's Country of Origin Information may suggest that these countries are safe but the prevalence of well documented conflicts and human rights abuses within these countries illustrate why people do not feel confident to return¹⁰. The Scottish Refugee Council report on users of section 4 support in Glasgow found that fear of persecution on return remains the primary reason for not wishing to return, despite the difficulties with life in Scotland¹¹. The UKBA should not rely on an independent appeals system to validate its decisions, but should ensure that caseowners are getting decisions right first time. This is particularly important considering that 20-25% of appeals are upheld, while many asylum seekers do not even have the means to appeal an initial refusal¹².

Interruption in support leads to delays as applicants miss deadlines for reapplying for support, or the UKBA fails to administer the reapplication or the change in entitlement within the stated timescales. Furthermore, administering a system of support that is characterised by regular interruption, reapplication, and reassessment is burdensome and expensive, not to mention the costs incurred by local authorities in supporting destitute refused asylum seekers¹³ and the costs to UKBA of responding to legal challenges. Section 4 appeals to the Asylum Support Tribunal (AST) account for around 85% of appeals and, according to SHSH calculations, cost an estimated £700,000 per year¹⁴.

While there is little available information on refused asylum seekers' motivations for enquiring about return, our experience with clients suggests that support is not the crucial element in an individual's decision about return. The Home Office's own research into participation in assisted voluntary return (AVR) programmes stated that '*extraneous factors, particularly the situation in*

⁷ *The Destitution Tally*, January 2008 and *The Second Destitution Tally*, January 2009, The Asylum Support Partnership, Refugee Council.

⁸ This finding is echoed in evidence from other sources including *The Destitution Tally*, Asylum Support Partnership, 2008, Refugee Council; *The Destitution Trap: research into destitution among refused asylum seekers in the UK*, Refugee Action, 2006, found that over a third (35%) of those interviewed had exhausted all appeal rights.; *Destitution in the asylum system in Leicester*, Leicester Refugee and Asylum seekers Forum, June 2008, found 67% of their respondents became destitute as a result of their asylum applications being rejected (and any appeal rights having been exhausted); *Still Destitute: a worsening problem for refused asylum seekers*, Joseph Rowntree Charitable Trust, 2009, found that of 273 destitute clients recorded during a 4 week period, 80% were individuals at the end of the asylum process.

⁹ Anecdotal information from the Partnership agencies indicates that refused asylum seekers who request advice from the One Stop Service (OSS) on returning voluntarily to their country of origin consistently report that they do not consider their country safe to return to. Considerations around voluntary return are discussed later in the submission.

¹⁰ *The Second Destitution Tally*, The Asylum Support Partnership, January 2009 and *Life on Section 4 Support in Glasgow*, Scottish Refugee Council, October 2009.

¹¹ *Life on Section 4 Support in Glasgow*, Scottish Refugee Council, October 2009.

¹² Refugee Action found that the majority of individuals accessing their services were unable to find a solicitor to represent them either through appeal stage or post-appeal. Long term impact of the 2004 Asylum Legal Aid Reforms on access to legal aid, May 2008.

¹³ During the financial year 2007/08, at least £33.4 million was spent by 48 local authorities supporting individuals and families who have no recourse to public funds. This is an increase of 8% on expenditure incurred in the financial year 2006/07. *No Recourse to Public Funds: Financial Implications for Local Authorities*, No Recourse to Public Funds Network, 2008

¹⁴ *At the end of the line*, Still Human Still Here, forthcoming 2010.

*the country of origin, may have more impact on the return decision*¹⁵. The decision to return is a complex and personal decision for people seeking asylum and it is influenced by various factors in the UK and their country of origin. The continuation or withdrawal of support will not, alone, encourage someone to return or to stay in the UK. It is our experience that if people understand and are engaged in the wider asylum process, they will be better able to consider the different potential outcomes of their case and make an informed decision about return to their country of origin. Evidence on destitution suggests that it is very difficult for people to engage with decisions about their future if they have no food and nowhere to sleep¹⁶.

Timely and continuous support, safe accommodation, reliable and translated information, independent legal advice and access to a robust and fair hearing are key to ensuring that an individual is capable of engaging with the asylum process. Support could be provided alongside holistic case management, as outlined in the Voluntary Sector Key Worker Pilot proposal. This would guarantee a smoother and fairer process, reduce the likelihood of destitution as a result of operational error and minimise administrative and legal costs for the UKBA.

Continuous support would also enable the UKBA to maintain contact with people who are found not to have protection needs and therefore the UKBA will be better able to engage individuals in a gradual consideration of voluntary return. The consultation suggests that Local Immigration Teams (LITs) will work closely with local authorities to encourage and enforce returns and share information. It is not clear how this cooperation will work or what information local agencies are expected to share with LITs.

The Partnership recommendations:

1. Cooperation with the voluntary sector should not be purely for the purpose of achieving compliance objectives and seeing an increase in returns, but should focus on enabling the UKBA to meet the protection needs of all asylum seekers. We are disappointed that the UKBA has recently shown reluctance to engage with the voluntary sector in advance of introducing major policy changes such as the changes to further submissions and initial asylum applications. It is vital that we are given the opportunity to feed our comments and concerns in to the UKBA before such policies are implemented.
2. The UKBA should also seek to work closely with legal representatives to ensure that asylum seekers and refused asylum seekers have access to quality, independent legal advice at every stage in the process.
3. A voluntary sector casework model would provide the support and advice required to build a relationship of trust with the asylum seeker and to assist him/her to navigate the asylum process, access support entitlements, understand the decisions made on his/her application and consider potential outcomes.
4. The UKBA should maximise this sub-regional structure to improve engagement with applicants rather than narrowly focusing on its enforcement objectives.
5. The UKBA, in cooperation with IOM and Choices, should collect and publish monitoring data on the motivations of people who enquire about AVR as well as those who ultimately return, or choose not to return.

¹⁵ *Factors affecting participation in assisted voluntary return programmes and successful reintegration: a review of the evidence*, Home Office Research Report 29, January 2010. The research found that poor political, economic and social conditions in the country of origin was the predominant reason for asylum seekers' unwillingness to return. This echoes findings in the 2004 Home Office research report, *Understanding voluntary return*.

¹⁶ *Destitution in the asylum system in Leicester*, Leicester Refugee and Asylum Seekers Voluntary Sector Forum, June 2008.

Consultation question 6: Do you think that closer working with both the voluntary sector and local authorities will (a) help applicants to understand the options available to them at each stage of the process? And (b) encourage those who are found to have no protection needs to accept their position and return voluntarily?

The Partnership answer: Yes. However, the voluntary sector must remain independent and be sufficiently resourced to build trust and support people effectively.

The Partnership principle 2: Asylum support must not be withdrawn from those cooperating with efforts to return.

Consultation question 4: Do you agree that we should be able to set a fixed time limit for support for those supported on the basis that they are taking steps to leave, with no right of appeal?

The Partnership answer: No. There should be a right of appeal. No power to set a fixed time limit should be given.

The Partnership is very concerned by the proposal to set a fixed time limit for support for those supported on the basis that they are taking steps to leave the UK, and to remove the right of appeal against refusals on this basis.

Anecdotal evidence from Refugee Action's Choices programme, as well as reports from the One Stop Services, demonstrates that the three-month fixed deadline under the International Organisation for Migration's (IOM) Assisted Voluntary Return (AVR) programme, places an unreasonable and arbitrary expectation on applicants to leave the UK. It is unfair and ineffective to deny support to applicants who are unable to meet this deadline due to obstacles beyond their control which prevent return.

The proposal to allow applicants experiencing difficulties in leaving the UK to reapply for support before the end of the three-month period provides insufficient guarantee against destitution for those who continue to be eligible for support. Rather it will add to the overwhelming inefficiency of the asylum support system, the poor administration that leads to significant delays in providing support to those who are eligible and the inadequate communication with supported applicants. The obligation to repeatedly re-apply for support, and the inevitable judicial reviews of refusal and withdrawal of support will only add to the UKBA's administrative burden and unnecessary costs.

Furthermore, the consultation paper does not provide any detail of how the Government interprets genuine obstacles to leaving the UK. Evidence provided by the Asylum Support Appeals Project¹⁷ reveals a number of obstacles preventing applicants from returning to their country of origin despite their best efforts, including statelessness, disputed nationality and difficulty arranging travel documents due to the lack of ID or a birth certificate. The problem arises where applicants are unable to obtain written evidence of these obstacles from the

¹⁷ *Unreasonably Destitute*, Asylum Support Appeals Project, London, July 2008

authorities of their home country or from the IOM. Our clients report that embassies are frequently unwilling to provide evidence that the client has applied for a travel document, or that they have refused to recognise someone as their national. As a result, the applicant may not be able to provide evidence to support a reapplication in time, and will not have the right to appeal once support is withdrawn. The length of time required to prepare for return will be different for each applicant and should be based on an individual case assessment.

Withdrawing support from applicants who are taking steps to return will not encourage or assist them to depart. Evidence gathered by the Scottish Refugee Council suggests that unsuccessful applicants left without support are less able to take steps to leave the UK due to the lack of ability to maintain any form of contact with people in the country of origin¹⁸.

The Destitution Tallies demonstrate the importance of providing asylum seekers with adequate levels of continuous support until their case is resolved, in other words they have either been granted status and integrated into the UK, or they have been refused status and have left the UK. In our view, continuous support and advice will enable asylum seekers to maintain engagement with the asylum system and to confidently assess their options. It is apparent that the UKBA's case management system will ultimately fail if it prevents people from focusing on their protection needs by rendering them destitute due to arbitrary administrative concerns.

The Partnership recommendations:

1. Given that the proposed changes would leave those affected in great hardship, the UKBA must develop clear, realistic and practical guidelines concerning what constitutes 'genuine difficulty in leaving the UK' based on analysis of the experience of applicants within the AVR programme. Within this, the UKBA must recognise that there are certain countries to which refused asylum seekers cannot return at the moment.
2. The UKBA should suspend this policy where there is evidence that the person has done all in their power to leave the UK but, as in the case of Palestinians with no original ID and no family in Palestine to obtain it, there is no prospect of return.
3. The UKBA should share with the applicant and the Asylum Support Tribunal all correspondence, including between itself, IOM and any other relevant bodies, which has contributed to a decision to refuse or withdraw support.
4. The UKBA should work closely with people who are cooperating with efforts to arrange departure throughout the three-month period of support. Such open cooperation would enable the applicant to stay up to date with progress on his/her case, and would ensure that the UKBA is aware of any obstacles to return which prevent withdrawal of support.
5. The UKBA, in cooperation with IOM and Choices, should collect and publish monitoring data, on the length of time required by participants in the AVR programme, as well as the obstacles to return. This information should be taken into account when setting deadlines for return linked to entitlement to support.
6. The UKBA should maintain the right of appeal for all refused or withdrawn support applications.

¹⁸ Ibid, Scottish Refugee Council, October 2009

The Partnership principle 3: Early access to legal advice is a critical element of a fair and efficient system.

While we accept that those found not to have protection needs, for whom return is safe and logistically possible, should explore the viability of voluntary return amongst other options, this can only take place in the context of fair and quality asylum decision-making. The focus on enforcing return of refused asylum seekers ignores the complexities surrounding return and the inadequacies of the asylum determination system; refugees with protection needs have their asylum claims refused inappropriately and are expected to return when it is unsafe for them to do so. This is evidenced by the significant number of incorrect initial decisions that are subsequently overturned on appeal. Approximately a quarter of all initial decisions are found to be wrong by the AIT¹⁹. In 2009 31% of appeals were successful²⁰. Our evidence suggests that the lack of access to legal advice and representation may be contributing to the level of incorrect initial decisions²¹. We believe that many asylum seekers are unable to find solicitors who can represent them within the time constraints imposed by the legal aid cuts in 2004. As a result, applicants who would previously have been granted refugee status may now be refused, unable to appeal and returned to persecution in their country of origin.

Early access to quality legal advice would contribute to better quality decision-making, accurate initial decisions and increased confidence in the asylum determination system. The independent evaluation of the Solihull pilot, which allowed claimants access to quality information and advice from legal advisors from the earliest stages of the asylum process, found that the project had been successful, particularly regarding case conclusion, cost reduction, and decision-making. Importantly, the evaluation found that applicants felt more engaged with their claim and felt that they had a better understanding of what was happening at each stage of their claim²².

Fewer appeals as a result of correct initial decision-making would reduce costs for the UKBA, and other government departments, such as the Ministry of Justice, and speed up procedures throughout the system. Still Human Still Here estimates that the UKBA could have saved up to £13.5 million in legal, accommodation and support costs in 2008 if 95% of initial decisions had been correct²³.

The Partnership recommendation:

1. The Partnership supports the UKBA's proposal to continue exploring the potential advantages of offering early access to quality legal advice for asylum seekers, and to implement the Solihull pilot across the Midlands Region. We urge the Government to consider a national roll out of this pilot.

¹⁹ *Management of asylum applications by the UK Border Agency*, National Audit Office, January 2009.

²⁰ *Control of immigration: quarterly statistical summary, UK, July-September 2009*, Home Office.

²¹ *Access to legal advice for dispersed asylum seekers*, Asylum Support Partnership, July 2008, and *Long term impact of the 2004 Asylum Legal Aid Reforms on access to legal aid*, Refugee Action, May 2008.

²² *Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission*, Independent Evaluator Jane Aspden, October 2008.

²³ *Reforming Asylum Support Consultation, November 2009, Response to the Summary of Questions*, SHSH.

The Partnership principle 4: The right of appeal against any refusal or withdrawal of support is an essential safeguard.

Removing the right of appeal from applicants such as those taking steps to leave the UK exposes applicants to the danger of arbitrary or incorrect applications of the rule. The Draft Bill contains further proposals under clause 222 to place restrictions on the right to appeal against a refusal of support in a number of situations, including where an individual has *'failed to move into accommodation provided under section 206 or section 210'*. This fails to appreciate the reasons why an applicant may have decided not to take the accommodation; for example because it is unsuitable due to health or mobility problems or because it would involve being separated from family members. Alarming, the Bill proposes to grant the UKBA the power to withdraw the right of appeal for all section 210 (section 4) applications.

Many asylum seekers are wrongly refused support and the right of appeal is an essential safeguard to prevent destitution. In 2009, 50% of asylum support appeals succeeded or were sent back to the UKBA for a new decision, suggesting that decisions to withdraw or refuse support are frequently incorrect²⁴. Restricting the right of appeal will only result in an increase of judicial reviews, the only route for legal challenge, which are expensive for the UKBA, other parts of government and the UK taxpayer, and are difficult, lengthy and less accessible for applicants than AST appeals due to the difficulty finding legal representation. A reduction in capacity as a result of legal aid cuts means that in certain parts of the country there are no firms that will take forward a judicial review in the area of asylum support²⁵.

The Partnership recommendation:

1. The Government should retain the right of appeal against any refusal or withdrawal of any application or reapplication for support.

The Partnership principle 5: The delivery of support to refused asylum seeking families must not be used to enforce compliance with efforts to persuade families to return.

Consultation question 7: Do you agree that case owners should be able to tailor accommodation provisions for those who have been found to have no protection needs and bring families who purposefully frustrate the system into full board accommodation (where this could assist with removal or return?)

The Partnership answer: No

The Partnership supports the UKBA's commitment to continue to support families who are appeal rights exhausted without the need for them to re-apply for support. However, under the

²⁴ These figures are the latest available on the First-Tier Tribunal (Asylum Support) website, counting only the appeals heard i.e. those that were allowed, dismissed or remitted. Quoted in the *Asylum Support Appeals Project submission to the Joint Committee for Human Rights on the Draft Immigration Bill 2009*. Available online at: http://www.asaproject.org/web/images/PDFs/news/asap_jchr_submission_jan10.pdf

²⁵ *Submission to the Joint Committee for Human Rights on the Draft Immigration Bill 2009*, Asylum Support Appeals Project, January 2010.

Draft Bill the legal basis for the support will transfer from the duty to provide support to protection applicants (current section 95) to the power to provide support to ex-protection applicants (new section 210). As such they will receive section 4 support, currently for families with children born after they became appeal rights exhausted. The proposal does not clarify whether this will involve families moving onto a lower rate of support and into new accommodation, or whether this 'power' could be withheld. We encourage the UKBA to apply this 'power' generously in the spirit of the new duty to safeguard and promote the welfare of asylum seeking children; support should, at a minimum, be set at 70% of Income Support or no less than £45 per week for single adults including lone parents.

The Partnership is very concerned by the proposal to provide support in the form of a payment card, as opposed to cash, to refused asylum seeking families who can demonstrate that they face a legitimate barrier to return and would otherwise be destitute, or families who may otherwise fall to be supported by local authorities. We believe that this proposal would impoverish families with no guarantee that it would deliver on the UKBA's objective of encouraging return.

Refugee Council research into the use of vouchers²⁶ for those on section 4 support shows that those living without cash are unable to meet their essential living needs and may find it harder to engage with their future and make decisions about their next steps. One of the many hardships they face is the inability to stay in touch, either by phone or in person, with their legal representative, which is an essential function if the person is going to engage with the asylum process and, if appropriate, the possibility of return.

This evidence has been echoed in the initial findings of the Partnership's monitoring of the implementation of the section 4 payment card²⁷. It is apparent that the card has contributed to the hardship experienced by refused asylum seekers and can, in many cases, act as a barrier to accessing support. Almost 30% of our respondents reported delays in receiving their weekly payments; almost half reported that they are unable to buy sufficient food to meet their dietary, religious or cultural requirements; 46% reported that they are unable to travel to their doctor, hospital or legal representative and 55% reported feelings of anxiety and shame related to using the card. The majority stated that the card did not work in the shops and 81% reported that shop staff do not understand the card or refuse to accept it. One respondent commented that:

"Other customers were looking at me when I had to give back items I bought because the card did not work – I felt very ashamed. Staff said the card was invalid, I do not want to use this card any more!"

The Partnership is also alarmed by the proposal to include a power to require everyone, including refused asylum seeking families, to reapply for support *'if partnership working does not yield the results we expect'*. It is unclear what is meant by 'partnership working' but we can assume that the anticipated 'result' is return. We do not think it is acceptable for families to be faced with destitution if they do not cooperate fully with efforts to return. Destitution is already a significant problem for asylum seeking families as evidenced by *The Second Destitution Tally 2009*, which revealed that 13% of destitute people had children. As previously stated and

²⁶ *'More token gestures'*, Refugee Council, 2008

²⁷ These findings are based on analysis of interim data gathered during the Partnership monitoring of the section 4 payment card. The monitoring began in December 2009 and will be completed in March 2010. A research report is forthcoming in 2010.

demonstrated by piloting section 9, threatening families with destitution does not increase their engagement with the system or encourage a decision to return.

Clause 221 in the draft bill prohibits local authorities from providing support to a child or his/her family, if the child is eligible for UKBA support. While we agree that it is important to clarify who is responsible for providing support, the Partnership is concerned that this clause will result in children not being supported during the period required to implement section 4. Extensive delays caused by the operational inadequacies of the asylum support system, particularly in setting up section 4 support, oblige a significant number of families to seek local authority support while they wait for the UKBA to process their application. The number of families being supported by local authorities increased by 10.7% in 2007/08 compared to the previous year²⁸. It is unclear how the proposal to remove this essential safeguard is compatible with the Government's duty to safeguard and promote child welfare and with the duty on local authorities to support vulnerable children in their area.

The Partnership is concerned by the assertion that families who do not return are purposefully frustrating the system and therefore must be brought into full board accommodation in order to facilitate removal. This assertion fails to acknowledge the complex reality for some parents who have been living in the UK for a long time and fear for the safety of their family if they return. Added to this is the upheaval experienced by children who have spent a considerable proportion of their life in the UK, having attended school and established attachments to their community.

We are surprised to see this proposal following the issues experienced by the 'alternatives to detention' pilot at Millbank in Kent, where only one family out of 12 took up assisted voluntary return²⁹. Even if the new proposal seeks to be more targeted than Millbank, it is unlikely that removing families from their communities, schools, friends and support structures including health and social care, will encourage return. The UKBA may consider 'full-board accommodation' to be an alternative to detention, but in reality the disruption, isolation and risks inherent in mixed accommodation will remain. We are yet to see the findings of the Glasgow A2D pilot but we urge the UKBA to ensure a full and thorough evaluation of the pilot is conducted, including analysis of the effectiveness of intervention, the impact on children and the role of social workers in engaging with families to better understand the option of return.

The Partnership recommendations:

1. Cash support should be provided to all those who have claimed asylum until they are granted status or leave the UK.
2. The UKBA should conduct a full evaluation of the section 4 payment card and the impact on families before extending its usage to families who currently qualify for section 95 support. Careful consideration needs to be given to the impact of the payment card on parents' ability to meet the needs of their children.
3. Children should never be detained or moved to full-board accommodation solely for the purpose of encouraging their parents to return.
4. The UKBA needs to have a better understanding of what motivates people to engage with the process of return. A full evaluation of the Glasgow A2D pilot, with reference to the shortcomings of the Millbank pilot, will assist in this understanding.

²⁸ Ibid, No Recourse to Public Funds Network, 2008.

²⁹ *Review of the Alternative to Detention (A2D) Project*, Andrew Cranfield, carried out for UKBA, May 2009

5. The UKBA should invest in good quality decision-making and access to independent legal advice at the earliest stage so that applicants understand and have confidence in the asylum process and the decisions that are made about their claim.
6. The UKBA to provide appropriate levels of support for refused asylum seeking families: support should, at a minimum, be set at 70% of Income Support or no less than £45 per week for single adults including lone parents.

The Partnership principle 6: The Government is disproportionately preoccupied with tackling 'abuse' of the asylum support system.

The Partnership is concerned about the disproportionate focus on tackling fraud and abuse of the asylum determination and support systems, and by the continued use of language such as 'genuine' and 'founded' to refer to applicants who have yet to have their claims assessed. The implication being that it is possible to determine when an application is not 'genuine' or 'founded' before it has been subjected to any kind of examination.

The consultation demonstrates the UKBA's focus on reducing perceived abuse of the asylum system rather than on preventing destitution amongst applicants who are eligible for support. The UKBA's intention to use asylum support as a tool to address perceived abuse of the asylum system will, we believe, result in unnecessary suffering among vulnerable asylum seekers.

The Partnership principle 7: Section 55 has failed to achieve its objectives and contributes to destitution

Consultation question 1: Some asylum seekers frustrate the system by not making their claim at the earliest possible stage. Should we reserve the right not to support them in some circumstances?

The Partnership answer: No.

The Partnership is very concerned that the asylum support consultation proposes to re-enact section 55 of the *Nationality, Immigration and Asylum Act 2002*. Despite commitments to avoid a breach of a person's Convention or Article 3 rights under the European Convention on Human Rights (ECHR), our experience of its current application is that a significant number of people are made destitute as a result of the policy.

This policy is consistent with the UK Government's view that asylum claims should be made at the earliest opportunity and that section 55 is designed to deter late or unfounded applications³⁰. The Government has argued that denying late claimants access to asylum

³⁰ Reference to Beverley Hughes' statement to the House of Commons on Hansard 4 March 2003: Column 241WH, available online at:

<http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmhansrd/vo030304/halltext/30304h04.htm>, and to the 10 Downing Street press release, 28 November 2002, which stated:

"If people are genuinely fleeing persecution we expect them to claim asylum at the earliest possible opportunity - as soon as they arrive in the country. If they have been in the country for weeks, months, or even years, before claiming

support is an effective way to reduce abuse of the asylum system, targeting people caught working illegally, or students who on the expiration of their visas want to stay in the UK and subsequently claim asylum.

Both our operational experience and our 2002 research on the impact of section 55, demonstrate that this policy had failed to meet the Government's aims to reduce unfounded 'in-country' claims³¹. Rather, it penalises the majority of asylum seekers who make their claim in-country, i.e. not at port, a significant proportion of whom subsequently receive refugee status. Their capacity to integrate, on receiving status, is hampered by a lengthy and debilitating experience of destitution as a result of section 55. The policy has also markedly failed to reduce the number of asylum claims made 'in-country' in the UK compared to those made 'at port'. Asylum applications made 'at port' have actually decreased from 41% in 1999 to only 10% in the last published quarter of 2009³².

Our evidence also demonstrates that the application of section 55 for subsistence-only asylum support applicants has resulted in destitution for a significant number of people due to lengthy delays while applicants wait for an interview and for support to be granted or refused³³. Refugee Action and Refugee Council both state that their clients are waiting up to 3 months for subsistence only support in some regions, while the section 55 process is underway, and report that several UKBA decision making hubs are mistakenly applying the policy to families. This ineffective and unnecessary additional administrative process, with its corresponding additional operational costs, has contributed to the UKBA's failure to deliver on its commitment to provide value for money as identified in the 2009 National Audit Office report³⁴. We would like to see a full cost analysis of the section 55 policy before it is reenacted in the Draft Bill.

Based on our frontline experience with asylum seekers throughout the process, including at pre-application and initial accommodation stage, we challenge the UKBA's assertion that those who do not make an asylum claim immediately on arrival are attempting to 'frustrate the system'. There are many legitimate reasons why a person may not apply for asylum immediately on arrival in the UK such as: they may not understand the asylum process and may wish to seek advice before applying; they may have been prevented by an agent or trafficker from alerting the authorities until later; they may become a refugee *sur place*; or they may be unable to travel to the Asylum Screening Unit (ASU) due either to a lack of funds or physical barriers such as illness or disability, old age, having young children, or being a torture, trauma or trafficking survivor. This situation has worsened following the UKBA's decision in October 2009 to close the ASU in Liverpool, requiring all in-country asylum claims to be lodged in Croydon only, unless the applicant meets a restricted set of exceptional criteria. It is likely that this new policy, which runs contrary to the UKBA's stated aim of encouraging timely applications, will increase the

asylum, that casts doubts on the credibility of their claim. We will still consider their asylum claim and will do so quickly, but we are not prepared to support them at the government's expense while we do so." Available online at: <http://www.number-10.gov.uk/output/page1125.asp>

³¹ Inter-Agency Partnership, February 2004, *The impact of section 55 on the Inter-Agency Partnership and the asylum seekers it supports*, Refugee Council.

³² Out of a total of 5,055 asylum applications, excluding dependents in Q3 2009, only 500 of those were made 'at port'. *Control of immigration: quarterly statistical summary, UK, July-September 2009*, Home Office.

³³ Asylum Support Partnership, August 2009, evidence submitted to the UKBA National Asylum Stakeholder Operational Forum.

³⁴ National Audit Office, 2009. *Management of asylum applications by the UK Border Agency*, available online at: http://www.nao.org.uk/publications/0809/management_of_asylum_appl.aspx

number of section 55 interviews as applicants will now have to justify why they were not able to travel to Croydon to submit their claim.

The Partnership recommendations:

1. Do not re-enact section 55.
2. A key recommendation of the Partnership's *The Second Destitution Tally Report 2009*³⁵ is for the UKBA to enable claims to be made locally to avoid destitution among those who wish to claim but cannot travel to the ASU to do so. The Report found that 6% of visits by destitute clients were by people who wished to claim asylum but had yet to register their claim at the ASU. This solution would prevent destitution by making the asylum registration system accessible to everyone. It would also support the UKBA's aim of encouraging timely applications and increasing control of the asylum system, as more people could claim at the first available opportunity rather than having to wait until they have sufficient money or the means to travel to the ASU.
3. We are pleased that the UKBA has considered some of our concerns about the section 55 delays, and subsequent destitution, and has agreed to examine the operational procedures.

The Partnership principle 8: There is insufficient evidence of fraud to justify the introduction of punitive measures to prevent fraud, prosecute offenders and recover assets.

Consultation question 8: Do you agree that the offences to tackle support fraud should apply to all types of support?

The Partnership answer: Yes.

While the Partnership does not object to the proposal to seek standard powers for prosecuting fraud cases, we challenge the UKBA's interpretation of 'fraud' and the disproportionate level of importance placed on targeting asylum support fraud. There is very little reliable evidence to support the UKBA's assertion that 20% of single supported asylum seekers are defrauding the support system³⁶. Despite these uncertainties, the UKBA's preoccupation with fraud has supported the introduction of several punitive measures, including the £5 limit on the section 4 payment card, which cause disproportionate hardship and are administratively costly. Evidence collected by the Partnership on the impact of the payment card suggests that the £5 limit is causing significant hardship to users. Nearly 40% of our respondents to whom the limit applied reported that they need to carry over more than £5 per week; the primary motivation for this is in order to save up for something that costs more than £5, such as clothing, books, medicine or toys for children.

We are concerned by the proposal within clause 223 of the Draft Bill, which allows the Secretary of State, rather than a court, to determine whether a person has misrepresented or failed to disclose a material fact and has been provided with support on this basis. We believe that this could lead to flawed decisions and the withdrawal of support from those who genuinely need it.

³⁵ Asylum Support Partnership, June 2009, *The Second Destitution Tally Report*, Refugee Council.

³⁶ *Financial checks on section 4 service users, A report for the CRD sub-group*, Case Resolution Directorate, 4 December 2009.

We have already challenged the UKBA's assumption that the existence of a bank account in itself constitutes evidence of assets or alternative income and, therefore, of support fraud³⁷. We would welcome more information on the level of the UKBA's inquiry into bank account activity prior to withdrawal of support. The Partnership was concerned by the outcome of the 2009 Identity and Passport Service section 4 interview pilot, which aimed to identify asylum support fraud. Of the 200 cases involved in the pilot, not a single person had their support withdrawn as a result of fraudulent activity³⁸. Subsequent court action revealed that the Experion checks of bank accounts did not constitute sufficient evidence in court to justify withdrawing support.

The Partnership recommendations:

1. The onus must be on the Secretary of State to prove that the applicant was fraudulent and that the misrepresentation or failure to disclose was not an innocent error.
2. The Government must not remove judicial scrutiny from a process that may result in the withdrawal of support and subsequent destitution.
3. If there is no demonstrable evidence of a high level of fraudulent activity there is no need to introduce new measures that act indiscriminately to counter it.
4. The UKBA should suspend the £5 limit on the payment card used by single asylum seekers.

The Partnership principle 9: Administrative errors and delays in the asylum support system lead to destitution.

The purpose of the Simplification reform process is to make the asylum and support systems more simple and efficient. Unfortunately, the proposals within the consultation fail to produce a 'cohesive single scheme'. In fact, the consultation proposes continuing two separate systems for support, with different levels of payment and mechanisms of delivery depending on where the claimant is within the determination process. Rather than achieving 'simplification' this will exacerbate existing delays, administrative errors and associated operational and legal costs and, ultimately, destitution.

We are disappointed that the asylum support consultation fails to acknowledge or address the current poor administration of the asylum support system as noted by the National Audit Office in 2009³⁹, which leaves asylum seekers who are entitled to support destitute, as evidenced in *The Second Destitution Tally 2009*. Delays in processing support are a primary cause of destitution: the Tally revealed that 29% of destitute people were waiting for a decision on their asylum support application⁴⁰. Recent evidence from the Partnership agencies reveals that administrative obstacles and delivery delays mean that initial asylum applicants do not receive sufficient Emergency Support Tokens (ESTs) with which to support themselves while they wait 36 days for their ARC card to be delivered. We welcome the UKBA's engagement with us on this

³⁷ In our experience, it is possible that a refused asylum seeker opened an account when s/he had permission to work, or as a safe place to store section 95 payments, and has not used it since receiving section 4

³⁸ The courts performed a key role in this process as they overturned the decision to withdraw support in two cases and a further seven cases had their support reinstated before the case reached the Asylum Support Tribunal (AST). Information provided by the UKBA in response to questions submitted by the Partnership following the evaluation of the Identity and Passport Service interview pilot in October 2009.

³⁹ Management of Asylum Applications by the UK Border Agency, National Audit Office, January 2009.

⁴⁰ *Whats going on?*, Refugee Survival Trust, 2005, found that 52% of people were destitute due to UKBA administrative errors; *Failing the Failed?*, ASAP, 2007, found that 88% of section 4 refusal letters contained errors; *27 Days Later*, Refugee Survival Trust, 2009, found that 34% were destitute due to administrative errors.

issue and hope to resolve the issues highlighted in our research, however we remain concerned by the remaining fundamental problems with the implementation of the asylum support system.

Monitoring conducted by the Partnership revealed that the difficulties involved in completing the section 4 application form resulted in severe delays rendering eligible applicants destitute for months⁴¹. This is due to unreasonable requests for further information, regional inconsistency in applying the priority categories and a lengthy process for verifying medical declarations. Refugee Action has also drawn attention to the delays in initial decision-making and allocation of accommodation for section 4 applicants⁴². During February 2009, they found that 50% of applicants required urgent support (priority A) but waited on average 9 calendar days to receive a decision and 7 further days to be accommodated.

The Partnership is also concerned about the standard of accommodation provided to supported asylum seekers and the mechanisms for managing these standards. Recent reports from the Partnership agencies reveal that overcrowding continues to be a problem, while in some areas the UKBA Accommodation Providers are commissioning mixed accommodation for families and single adults with no consideration for the risks posed to children.

The interruptions and inefficiencies in the asylum support system cause destitution and misery among asylum seekers, and impose unnecessary financial costs on the UKBA. Rather than address the errors and wastefulness within the UKBA administration of the asylum support system, the consultation proposes a system of increased casework responsibilities, increased interventions, and increased bureaucracy. In contrast to this, we propose a the continuation of support and accommodation throughout the process, reinforced by published national service standards and caseworker guidance, which we believe would result in a simpler and more efficient system of support and would deliver better value for money to the taxpayer.

The Partnership recommendations:

1. The UKBA should outline how it intends to address the administrative and operational errors and delays inherent in the asylum support system.
2. The COMPASS programme is an opportunity for the UKBA to commission more efficient and flexible accommodation provision which adheres to national housing standards. The UKBA should involve specialist agencies include the Partnership, in designing contracts which will fulfil the UKBA's responsibility to meet asylum seekers' needs.
3. Publish management information on national service standards and target timescales for processing asylum support applications, so that the UKBA and Target Accommodation Provider can be held accountable regionally.

The Partnership principle 10: Support levels are not sufficient to ensure that asylum seekers are effectively and comprehensively supported during the determination of their claim.

The consultation rightly states that one of the purposes of the reform is to ensure that those seeking asylum are effectively and comprehensively supported during the determination of their claim. We believe that asylum support rates are key to achieving this objective but that, as they

⁴¹ *Asylum Support Partnership response to section 4 application form – 3 month review*, October 2009

⁴² *Section 4 timescales, discussion paper for CRD subgroup*, Refugee Action, June 2009.

are currently conceived, they fail to provide a level of material assistance that allows asylum seekers to meet their essential living needs. Originally set at only 70% of Income Support, asylum support rates began below the poverty line. However, changes to asylum support rates in October 2009 which de-linked support for lone parents over 18 and single people over 25 from the Consumer Price Index (CPI), have further impoverished asylum seekers⁴³.

Following these changes, a single parent with one child now only receives £92.97 per week, £2.19 less than s/he would have received had the rate remained linked to the CPI. A single person aged 25 or over experiences a loss of money 'in real terms' as the rate decreased from £42.16 to £35.13, or £5 per day. If one takes in to consideration the increase that should have come had the rate followed CPI, single people within this age group actually experience a loss of £9.22 per week. We are concerned at the UKBA's failure to engage with the inadequacy of current levels of support and by the level of misinformation regarding this issue within the Government⁴⁴.

The UKBA has not provided any detail on the methodology or evidence used by the Government to evaluate current support provision to ensure that it meets asylum seekers' needs. The above changes were introduced with no consideration for the impact they will have on extremely vulnerable people, or on the communities in which they live. Monitoring by Refugee Action in September 2009 revealed that most supported asylum seekers were unable to afford to buy the food they needed, or essential items such as toiletries, clothes or items for their children⁴⁵. The notion that asylum support can be reduced because it is a short-term requirement is false. Far from being a temporary form of support, evidence suggests that some people have been on section 4 support for a very long time; as of 14 June 2009 45% of section 4 supported asylum seekers had been on this support for over 2 years⁴⁶. Scottish Refugee Council found that as many as 10 of the 330 cases involved in their research had received section 4 for over 4 years⁴⁷.

Any review of the asylum support rates for 2010-11 must begin from a recognition of the essential living needs of supported asylum seekers, and the difficulties they experience meeting those needs on current support levels. Still Human Still Here has calculated that an asylum seeker would need approximately £45 a week (or 70% of Income Support) to meet their essential living needs and be able to pursue their asylum application. Rather than seeking to save money by cutting support rates, the UKBA should cut inefficiencies in the support system including administrative delays and ineffectual policies such as section 55.

The Partnership recommendation:

1. The UKBA should engage with the Department for Work and Pensions (DWP) on all issues relating to poverty, including assessing living needs and setting asylum support levels.

⁴³ For more information on the Partnership concerns about the changes to asylum support rates, see the Partnership letter to the Home Secretary dated 13 August 2009.

⁴⁴ The issue appears to be misunderstood by the Minister for Borders and Immigration; in his response to the adjournment debate on the asylum system, dated 7 December 2009, the Minister responded inaccurately that asylum support rates had not been cut and stated that they had increased by 5.1 per cent, in line with the CPI. He conceded that there were changes in the 25-26 age bracket and the single parent bracket but asserted that no-one had lost money 'in real terms'. Hansard HC 7 December 2009: Column 128, available online at: <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091207/debtext/91207-0021.htm>

⁴⁵ *Asylum Support Cuts*, Refugee Action, January 2010.

⁴⁶ Phil Woolas MP, written answer, Hansard, 15 July 2009.

⁴⁷ *Ibid*, Scottish Refugee Council, October 2009.

2. 2010 is the European Year for Combating Poverty and Social Exclusion. Key themes for the year are child poverty; severe multiple deprivation and those who are most at risk of social exclusion; poverty amongst working age adults (i.e. overcoming barriers to participation in the labour market) and social exclusion amongst older people. The UKBA should explain how it plans to contribute to the UK Government's commitments to these. Joined up working across government to reduce poverty amongst asylum seekers and refused asylum seekers would be a worthwhile contribution to this effort.
3. We support SHSH's call for asylum support to be set, at a minimum, at 70% of Income Support (and no less than £45 per week) for single adult asylum seekers and lone parents.

The Partnership principle 11: Asylum support arrangements require Parliamentary oversight and full consultation.

Throughout the Draft Bill there is too little detail on how these proposals will be implemented, as much of this will be left to the Asylum Support Regulations, making it very difficult for the Partnership to respond comprehensively. Details concerning the accommodation and living needs of supported asylum seekers should be set in statute so that Parliament has full oversight. If they are to remain within the Regulations, the UKBA must ensure that there is a full consultation on their Regulations when they are published.

There is a lack of clarity within the legislation regarding responsibility for providing support to vulnerable adults and the overlap between local authority responsibilities under section 21 of the National Assistance Act 1948, the Community Care Act 1990, the Social Work (Scotland) Act 1968 and the Local Government in Scotland Act 2003, with provision of section 4. We hope that the Regulations will provide more clarity on the role of local authorities across the UK in relation to the UKBA.