

The impact of section 55 on the Inter-Agency Partnership and the asylum seekers it supports

"I just want to say that section 55 leads people to despair, loneliness, and theft, as what are you supposed to do when you are sleeping rough and do not have the right to work? NASS seems to think I have hidden people able to help me should things go wrong, but I have no one, nothing, nowhere." *26 year old male from Somalia – awaiting section 55 decision (RAP)*

February 2004

1. Executive summary

Since its implementation on 8 January 2003, Section 55 of the Nationality, Immigration and Asylum Act 2002 (NIA Act 2002) led to significant change within the Asylum Support Programme. As a result the Chief Executives of the six refugee agencies that make up the Inter-Agency Partnership (IAP)¹ proposed that research was conducted to qualify and quantify the impact that section 55 has had both on asylum seekers and the services that their agencies provide. The basic mandate was to collect and collate evidence in relation to policy on section 55, monitor decisions made under section 55, and to evaluate procedures and systems put in place to implement the legislation on the basis of cost, time and resources.

The research, conducted between September and December 2003, documents the experiences of 2,904 asylum seekers seen by the IAP. During the research period, 366 clients were initially refused support under section 55, 308 clients were allowed to apply to NASS for support under section 55 (initial decision), and 2,230 clients were pending a Level 2 screening interview (in emergency accommodation). This research also surveyed 154 asylum seekers in order to learn first hand their experience of the impact of section 55.

Findings

- 1.1 Of the clients refused access to NASS support under section 55 who participated in this survey, 61.3% were sleeping rough, with a further 8% facing imminent homelessness. 70% experienced great difficulty in accessing food on a daily basis. The irregular diet and lack of shelter had a negative impact on the health of 57.4% of the clients surveyed.
- 1.2 Home Office figures indicate that the refusal rate for section 55 decisions remained over 70% between 8 January and 17 December 2003. This is surprising considering that the High Court and Court of Appeal judged on successive occasions that the interview process required a more flexible approach (e.g. taking the applicant's state of mind into consideration) when trying to find out why an asylum seeker didn't submit their claim on arrival.
- 1.3 Examination of the section 55 refusal letters show that although specific circumstances relating to each case are listed, the refusal letters still contain repeated general phrases. The research findings thus suggest that each case is not fully considered on its individual merits as required by High Court and Court of Appeal rulings.
- 1.4 Section 55 decision letters regularly include references to events taking place in an asylum seeker's country of origin, making judgements on the credibility of the asylum claim rather than whether the "as soon as reasonably practicable" test is met.

¹ The Inter-Agency Partnership was formed in 1999 prior to the introduction of NASS. The Partnership is contracted by NASS to provide advice, support and emergency accommodation to newly arrived asylum seekers and to provide on-going support to asylum seekers living in dispersal accommodation. The Partnership consists of six established agencies - Migrant Helpline, Refugee Action, Refugee Arrivals Project, Refugee Council, Scottish Refugee Council and the Welsh Refugee Council.

- 1.5 The drafters of section 55 assume that an asylum seeker would ignore the advice of an agent, and would have a strong awareness of the UK asylum process before arrival. However, this client survey demonstrates that these assumptions are false. 69.4% of clients surveyed relied on an agent to enter the UK - 71.9% of which were refused access to NASS support. 152 of the 154 clients surveyed did not have prior information on the UK asylum system before entering the UK. Of this group, 8.4% did not know they were coming to the UK until they arrived.
- 1.6 On 10 November 2003, the Home Secretary David Blunkett reiterated that with section 55, many of the people 'losing out' only claimed asylum after being here for months². However, 48.8% of IAP clients who were refused between 3 and 21 November applied for asylum the same day or the next day after arrival in the UK. A total of 65% of IAP clients who were denied eligibility to apply for NASS support had applied within, at most, three days of arrival.
- 1.7 On 17 December, 2003 the Home Secretary announced that if asylum seekers give a credible explanation of how they arrived in the UK within three days of applying for asylum they will be considered to have made their claim "as soon as reasonably practicable". The justification for this new approach is confirmed by this research report. However, since the research was carried out, the IAP has evidence that the Home Office's dismissal of asylum seekers' accounts of when they arrived in the UK, means that many individuals continue to be denied access to NASS support on the ground of credibility.
- 1.8 The Home Office expects genuine asylum seekers to apply at port, but its asylum statistics show that individuals granted refugee status continue to apply in-country. The evidence suggests that section 55 is not changing the 'behaviour' of newly arrived asylum seekers.
- 1.9 67% of the reconsideration requests submitted by the IAP were successful. A large number of these decisions are overturned on ECHR grounds. This is alarming on consideration that decisions are reversed so quickly after submissions, indicating that many destitution issues should have been considered more thoroughly in the original decision making process.
- 1.10 It took the RANS Unit an average of 5.39 days to reconsider section 55 decisions, rather than the 24 hour timeframe it has made commitment to honour.
- 1.11 The data also verified current assumptions that the IAP is only seeing a small percentage of the clients refused under section 55 - an estimated 18%. This is of great concern to the IAP as staff are uncertain where these clients go for assistance and support or what conditions they are living in.
- 1.12 A significant effect of section 55 is the impact on IAP managed emergency accommodation (EA) – the total number in EA with section 55 holding letters peaked at 3,084 (week ending 20 November, 2003). During the research period an average of

² From interview with Keith Best, 10 November 2003

27.8% of clients in EA were awaiting a section 55 screening interview or decision. Backlogs in EA have an impact on the policy of dispersal.

- 1.13 The average length of time for clients in EA with a section 55 holding letter is 116.19 days. The Grant Agreements with the IAP state that EA is designed to accommodate clients for an average of seven nights only.
- 1.14 This report highlights miscommunication within the RANS Unit, inconsistent application of the policy and general difficulties in communicating between the Home Office and the IAP.
- 1.15 61.7% of clients surveyed were unhappy with the section 55 screening process (Level 2 screening). 39.6% of these stated that they felt they had not been understood properly by the interviewer or that the interviewer did not show any interest in listening to their story. 13.6% of the clients surveyed had interpretation/interpreter concerns and 8.4% found the process frightening and threatening.
- 1.16 The High Court³ judged on 31 July, 2003 that there were still flaws in the procedures for processing asylum support claims. This research demonstrates that many of these flaws still exist.

³R -v- Secretary of State for the Home Department (Exparte S,D and T)

7. Recommendations

The IAP strongly recommends that the Government repeal section 55. The IAP believes that there is significant evidence to support the view that this policy is causing unnecessary distress to newly arrived asylum seekers, and decision making is not refined enough to truly penalise those trying to abuse the system. In fact, there is no evidence that section 55 is meeting its objective to reduce abuse of the asylum system.

If Section 55 is not repealed then many changes are required to make it a humane policy, to ensure that it works in practice and meets the original policy intention of excluding people who had been in the country for long periods prior to making an asylum claim rather than penalising asylum seekers who are ignorant of the system.

Decision making process

The initial decision making process must be improved. If the quality of initial decision making is improved then unsupported asylum seekers would be less dependent on the reconsideration process and/or the court system. In order to improve initial decision making, the following are recommended:

- 7.1 This research shows that there is considerable divergence in the competence of staff within the RANS Unit, as well as those conducting Level 2 screening. There is inconsistency in complying with relevant screening guidelines. Thus, more training is required for both the interviewing teams and the Post Refusal Casework Team.
- 7.2 The screening interview should focus on the test for section 55.1 – whether or not the client applied for asylum “as soon as reasonably practicable”. Other areas of questioning designed to test credibility should not be relevant.
- 7.3 The RANS Unit should comply with the CoA Q et al ruling⁴ that the interviewer must allow the possibility that a client would follow the advice of an agent they trusted to help them journey to safety. The interviewer should also acknowledge that applying at Immigration control is not as well known or understood as currently supposed and thus many clients apply for asylum after passing through Immigration control.
- 7.4 The RANS Unit should consider each case on its individual merits yet remain consistent in the application of the policy. With a wider interpretation of “as soon as reasonably practicable” this should not be difficult.
- 7.5 The screening interview should be made less intimidating. The client should have the opportunity to raise concerns regarding the quality of the interpreting service provided. Clients should also be allowed the opportunity to comment on whether or not they were satisfied with the screening interview and felt they were listened to, were understood and were able to explain their experience regarding applying for asylum.

⁴ Court of Appeal test case judgment R -v- Secretary of State for the Home Department (Exparte Q et al)

- 7.6 The RANS Unit must continue to carry out the backlog clearing exercises across the UK and in London. However, along with the goal of clearing the backlog in EA, the aim should be to make quality initial decisions.
- 7.7 Clients should be given copies of their screening notes with more consistency. The interviewer should stress that it is important for the client to keep the screening notes in case they wish to challenge the decision.

Support issues

- 7.8 If the Home Office will not provide a safety net for destitute asylum seekers (i.e., NASS support), then the IAP is of the view that asylum seekers should be given permission to work.
- 7.9 If the Home Office expects refugee communities and local charities to provide a safety net for destitute asylum seekers instead of NASS, then it should provide funding to appropriate agencies to facilitate such services.

Procedural concerns

- 7.10 There is a great need to increase awareness of the section 55 process and procedures across the whole of IND, particularly within the Immigration Service and the Asylum Screening Units. Particular attention should be given to regional operations including Scotland.
- 7.11 Migrant Helpline in Kent works with a dedicated team within the RANS Unit, known as DAMP (Dover Ashford Margate Project) that has alleviated many of the problems it experienced. The DAMP team is aware of the unique situation in Kent and is able to answer most queries efficiently. This has improved communication between Migrant Helpline and the RANS Unit. Similar teams should be established for the other IAP agencies.
- 7.12 The RANS Unit should inform the relevant IAP agency of any section 55 decisions it has made for an IAP client. This information should be passed on more consistently and in a more timely fashion than current practices.
- 7.13 There should be better communication flows between the RANS Unit, other NASS departments and the Asylum Casework Directorate. When clients receive a decision on their asylum application prior to hearing from the RANS Unit, legal advisers and IAP staff have great difficulty chasing the required documents to allow the client to access the appropriate support. This is unnecessary and consumes great time and resources for the refugee sector and IND.
- 7.14 The need to renew holding letters while a client is in EA is unnecessary and an inefficient use of staff time and resources for both the IAP and the RANS Unit. Instead, the IAP recommend that holding letters expire once a client has attended a Level 2 screening interview. If clients are denied access to NASS support, then a time limited letter should

be issued at this point allowing the client to remain in EA up to seven days from the negative section 55 decision.

- 7.15 Transportation costs to the Level 2 screening should be provided for destitute asylum seekers.
- 7.16 Clients who enter the UK via non-passenger ports where the Immigration Service is not present should be treated as port applicants automatically. This is currently the case for a few ports like Immingham, but should be made a general, consistent policy across the UK.

Policy concerns

- 7.17 The RANS Unit must be more consistent in applying the policies regarding asylum seekers classified as having additional or care needs. This is especially true for pregnant women and clients who are HIV positive or who have TB.
- 7.18 The RANS Unit needs to be more consistent in its implementation of exempting families from section 55. Currently, some families are issued a letter entitling them to EA immediately while others must attend a Level 2 screening interview.
- 7.19 IND needs to redirect resources from section 55 to the Asylum Casework Directorate. If asylum decisions were made in a timely fashion, the cost of supporting asylum seekers would be reduced.

Registered charity numbers: Migrant Helpline: 1088631 Refugee Action: 283660 Refugee Arrivals Project: 1013556
Refugee Council: 1014576 Scottish Refugee Council: SCO 08639 Welsh Refugee Council: 1044885

