

## Refugee Council summary draft response to the UKBA consultation *Reforming asylum support: effective support for those with protection needs*

**January 2010**

On 12<sup>th</sup> November 2009, the UK Border Agency (UKBA) issued a consultation *Reforming asylum support: effective support for those with protection needs*. The consultation is open until **4<sup>th</sup> February 2010**. We are keen to encourage organisations, parliamentarians and individuals to respond, including refugees and Refugee Community Organisations who have direct experience of the current asylum support system and who can help to make the case for positive change.

This summary highlights the key issues in the consultation, sets out the consultation questions and summarises the Refugee Council's key queries and concerns.

***Please note that this document is not our formal and final response to the consultation.***

### **Background**

On 12<sup>th</sup> November 2009, the UK Border Agency (UKBA) published a Draft Immigration Bill. The Draft Bill seeks to simplify and consolidate asylum law into one single piece of legislation and represents a significant overhaul of the UK's immigration and asylum laws. The UKBA also published its long-awaited consultation document setting out proposals for reforming asylum support. The Draft Bill only contains high-level proposals on asylum support, and the UKBA intends to have a great deal of flexibility in how it implements the asylum support system.

### **Refugee Council concerns about asylum support**

The current system of asylum support in the UK fails to provide adequate, timely and consistent financial support to asylum seekers. Many people, including children and those with serious health issues, struggle to meet their basic living needs and endure prolonged periods of poverty, exclusion and ill-health as a direct result of the failure to administer a fair and just asylum support system. Our concerns, based on our experience of giving advice to thousands of people at our offices around the country, have been raised repeatedly with the UK Border Agency and throughout government. We have made a series of positive recommendations for alternative ways of approaching asylum support (see for example The Asylum Support Partnership "*Second Destitution Tally 2009*"

<http://www.refugeecouncil.org.uk/policy/responses/2009/destitution.htm>)

### **Overview of the proposals in the consultation document**

The Ministerial foreword to the consultation makes it clear that the proposals have been designed first and foremost to prevent abuse of the asylum system, to encourage returns of those whose claims have been refused and to increase the penalties for those who do not 'play by the rules' set by the UKBA.

There is no recognition of the current high levels of destitution among asylum seekers in the UK, often caused by the failure to deliver support promptly to those who are eligible, nor is there any mention of

the need to improve the asylum system so that refugees are correctly identified, supported and protected in a timely manner.

**We are concerned that the proposals will fail to create a coherent asylum support system which meets the needs of asylum seeking individuals and families in the UK. This means that destitution will remain a feature of the UK asylum system, at great cost to individuals and to society.**

In response to the particular proposals in this consultation paper, we urge the government to:

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. Retain cash support for families, and do not introduce the payment card for refused asylum seeking families who are currently supported under section 95.
3. Retain a right of appeal for all those whose application for asylum support is turned down.
4. Invest in better quality decisions and access to independent legal advice early in the asylum process.

### **Positive elements of the proposals**

We welcome the commitments from UKBA to:

- fulfil the UK's obligations under the 1951 Refugee Convention
- provide 'an appropriate level' of support to people who would otherwise be destitute
- support refugee integration
- process further submissions quickly
- support people to return under the Assisted Voluntary Returns Programme
- improve the quality of decision making and conclude the 'legacy' asylum cases by summer 2011
- work in partnership with local authorities and the voluntary sector to deliver a fair and efficient system
- repeal section 9 of the 2004 Act, which has been widely condemned as it enabled the UKBA to withdraw support from families whose claims had been refused, and take affected children into care where necessary to avoid a breach of their rights
- repeal section 10 of the 2004 Act, which hasn't ever been used but which gives UKBA the power to require asylum seekers to undertake 'compulsory volunteering' as a condition of support
- continue exploring 'the potential value' of early access to legal advice in increasing the quality of asylum decision making, and the intention to roll out the early access to legal advice project across the Midlands Region
- continue to support some unsuccessful asylum applicants who would otherwise be destitute

### **Concerns about the proposals**

We have serious concerns about the following proposals in the consultation document:

- the overwhelming emphasis on reducing perceived abuse of the asylum system as opposed to preventing asylum seeker destitution. It is of grave concern that the proposals indicate that UKBA is seeking to use asylum support as a mechanism to deal with perceived abuse of the asylum system, and we anticipate that vulnerable refugees will suffer as a result
- the statement that asylum support can or should be used to encourage people whose asylum claims have been refused to return to their countries of origin. This approach fails to recognise the complexities surrounding return, or the inadequacies of the asylum determination system which mean that refugees with protection needs have their asylum claims refused inappropriately and are expected to return when it is not safe for them to do so
- statements that only those who 'play by the rules' will be supported, without any detail about what such compliance will entail
- the lack of detail on the methodology and evidence base used by UKBA to evaluate current asylum support provision to ensure UKBA is providing an appropriate level of support.

- the failure to acknowledge or seek to address UKBA's current poor administration of the asylum support system, which leaves asylum seekers who are entitled to support destitute. There are no proposals to improve UKBA administration of the asylum support system
- the consultation fails to respond to the evidence presented by the sector about the extent of destitution among asylum seekers, including in the Refugee Council's *More Token Gestures* research on Section 4 vouchers, the Asylum Support Partnership's *Second Destitution Tally May 2009* and the many Still Human Still Here reports on the destitution facing refused asylum seekers
- the intention to 're-enact' section 55 of the 2002 Act, which contributes to destitution by arbitrarily denying asylum support to those who do not claim asylum 'as soon as reasonably practicable'
- the suggestion that families who are not co-operating fully or actively planning and implementing their departure will be denied support and could therefore be left destitute is very worrying. There is little supporting detail in terms of specific proposals
- the proposal to provide support in the form of the payment card, as opposed to cash, to families whose claims are refused but who will receive support for a time-limited period (three months) because they are taking steps to leave to UK, or because they would otherwise have the right to support from local authorities
- the proposal to '[bring] failed asylum seeking families into full board accommodation where we believe that will help removal'
- the proposal to set a fixed time limit for asylum support on the basis that an individual is taking steps to leave the UK and to remove the right of appeal, despite such an appeal being an essential safeguard against the inappropriate and unlawful removal of asylum support

### Consultation questions:

**Q1: 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?**

**No.**

- It is in the interests of asylum seekers to access the asylum process as soon as possible, but the fact that someone does not make an asylum claim immediately on arrival does not mean that they are trying to 'frustrate the system'.
- There are many legitimate reasons for a delay in making a claim – for example someone may not understand the asylum process, or may not be able to afford to travel to Croydon (a situation that has become more common as a result of the October 2009 decision to close the Asylum Screening Unit in Liverpool, meaning most in-country asylum claims can only be lodged in Croydon). They may be in the control of an agent or trafficker who prevents them from alerting the authorities until later, or may become a refugee *sur place* if they are already legitimately in the UK for work or study and the situation in their country changes, necessitating them to claim asylum.
- Asylum seekers are not allowed to work and many do not have any other source of income. Those who are denied asylum support are forced into destitution, homelessness, or dependence on friends or communities. The consequences for individuals and communities are dire.
- Section 55 of the 2002 Act which gives the Government a power to prevent asylum seekers from accessing support if they have not claimed asylum "as soon as reasonably practicable", and which the government proposes to re-enact, has demonstrably failed to lead to a reduction in claims made 'in country' (indeed, the number of asylum claims made 'at port' has decreased to only around 10% in 2008).
- Implementation of section 55 for subsistence-only applicants has resulted in extensive delays while applicants wait for an interview and for support to be granted or refused.

**Q2: 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)**

**Yes.**

- We welcome the decision to repeal section 9 of the 2004 Act, which has been widely condemned as it enabled the UKBA to withdraw support from families whose claims had been refused, and take affected children into care where necessary to avoid a breach of their rights. We urge UKBA to learn from the mistakes of this approach and ensure that families are able to access financial support in cash until they are granted status or leave the UK.
- We welcome the repeal of section 10 of the 2004 Act, which hasn't ever been used but which gives UKBA the power to require asylum seekers to undertake community activities as a condition of support.

**Q3 Should we support any failed asylum seekers who have been found to have no protection need by the independent appeals system? If yes, under what circumstances?**

**Yes to all.**

- We believe that asylum seekers should continue to receive support through a single cash-based system until they are granted status or leave the UK. Such a system would be simpler to administer and would prevent destitution. It would also ensure that people remain engaged with the system and are able to make decisions about their future – something people find impossible if they are struggling day to day to survive.

**Q4: 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?**

**No.**

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

- An effective right of appeal is necessary to provide protection against arbitrary or incorrect applications of the rule; it should be retained. It is particularly necessary where the consequences of a wrongful decision would be felt severely; destitution is such severe consequence. A right of appeal should also be available against a refusal by the UKBA of any reapplication for support.
- Experience of assisted voluntary return and voluntary departure has demonstrated that for many unsuccessful applicants a fixed three month time limit is not a period for which it is reasonable to expect them to be able to return home even having sought the assistance of the UKBA and the International Organization for Migration. Penalising such applicants so that they would be left destitute and unable to meet essential living needs on the grounds that others can return within a fixed time period, such as three months, is unjust
- The consultation paper fails to provide details, or give examples, of what are considered to be genuine difficulties in leaving the UK. Given that the proposed change would leave those affected in great hardship, it is important that this detail is provided.
- Present experience shows that despite their best efforts and the efforts of supporting agencies, such as the Refugee Council, applicants are often unable to obtain written evidence of the obstacles encountered in arranging departure when requested from the authorities of their home countries or from the International Organization for Migration.<sup>1</sup> Few embassies are willing to provide letters confirming that a person has visited them and even fewer letters that confirming the refusal to issue a travel document with an explanation of the grounds for the refusal. Cutting off support in these circumstances is unjust.
- In the interests of transparency and common justice there should be an obligation placed upon the UKBA to share with the asylum applicant and the asylum support appeal authorities all correspondence or communication between itself and IOM or any other bodies which has formed part of its decision to refuse or curtail support or to make a decision on a reapplication for support.

<sup>1</sup> For example, see *Unreasonably Destitute*, Asylum Support Appeals Project, London, July 2008  
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- We are not reassured by the proposal that an applicant experiencing genuine difficulties may make a reapplication for support. The areas of asylum support most in need of reform are the appalling inefficiency of its administration by the UKBA and the failure to provide support in time to meet need. These proposals would only lead to an increase in applications and reapplications for support requiring additional administration.
- Cutting off support of applicants who are taking steps to make arrangements to return will not assist them to depart. Past experience shows that unsuccessful applicants left without support are less able to take steps to leave the UK.

**Q5: 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?**

**No.**

- A stated aim of the proposed reforms is to make the support system simpler and more efficient. Continuing or extending the policy of different levels of support, including non-cash support, for different stages of the process will not achieve this aim and will be administratively burdensome and complicated.
- There is no evidence that removing support and causing destitution for refused asylum seekers leads to them leaving the UK.
- Refugee Council research into the use of vouchers 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 – they can't make phone calls, access legal advice easily or travel easily to appointments.  
(<http://www.refugeecouncil.org.uk/policy/position/2008/section4vouchers.htm>)
- Cash support should be provided to all those who have claimed asylum until they are granted status or leave the UK.

**Q6: 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.**

- It is our experience that if people understand the process, are able to access timely and consistent support, information and legal advice, and receive a fair hearing they are more likely to engage with the process and understand the different potential outcomes of their asylum claim. The voluntary sector has an important role to play in helping people to access and navigate the asylum process. We believe having a voluntary sector case worker supporting someone throughout their application would lead to a smoother and fairer process, reducing costs overall.
- As stated above, we think it is difficult for people to engage with decisions about their future if they are worried about where their next meal is coming from or where they will sleep that night. The most effective way to engage people, in our view, is to maintain cash support until status or departure from the UK and focus on ensuring quality decisions at an early stage.
- We accept that those without protection needs, for whom return is safe and logistically possible, will need to engage with the options and that a voluntary departure may well be a preferable option for people in that situation. However, we are concerned that at present, too many people with protection needs are let down by a system that fails to get decisions right first time, reflected in the significant number of cases overturned on appeal.

**Q7: 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)?**

## No.

- In our experience, families with children who have been in the UK a long time often feel let down by the system and fear for their safety if forced to leave the UK. We are not aware of evidence that families are purposefully frustrating the system on a significant scale.
- Families with children should continue to receive cash support until they are granted status or leave the UK; the suggestion that families who are not co-operating fully or actively planning and implementing their departure will be denied support and left destitute is very worrying. There is little supporting detail in terms of specific proposals.
- The proposal to prohibit local authorities from providing support to a child or his/her family, if the child is eligible for UKBA support, is alarming considering the delays and errors inherent in the current asylum support system. Local authorities provide an essential safety net to ensure that children and their families do not find themselves destitute as a result of the UKBA's operational inadequacies. With this in mind, it is difficult to see how the proposals within the consultation are compatible with the Government's duty to safeguard and promote the welfare of children seeking asylum.
- The proposal to provide support in the form of the payment card, as opposed to cash, to families whose claims are refused but who will receive support for a time-limited period (three months) because they are taking steps to leave the UK, or because they would otherwise have the right to support from local authorities is unjustified and will lead to greater hardship for families without evidence that misery and poverty leads to return. Initial monitoring by the Asylum Support Partnership of the implementation of the payment card for section 4 clients suggests that the card contributes to the hardship experienced by refused asylum seekers and can, in many cases, act as an obstacle to accessing support. The UKBA should not consider extending use of the card without thorough evaluation of the impact of the card on families and, more specifically, on children.
- The Refugee Council is opposed to the detention of children. We do not believe that removing families from their communities and requiring them to live in full board accommodation will be effective in making people return. It was tried in the A2D project at Millbank in Kent without success.
- We would be concerned about measures intended to lead to return that resulted in disruption to children, including leaving schools and friends and other support services, including health and social care.
- We have raised these concerns in relation to previous pilots and have suggested ways in which families at the end of the process could be better supported.

## **Q8: Do you agree that the offences to tackle support fraud should apply to all types of support?**

### Yes.

- We have no objection to the seeking of standard powers for prosecuting fraud cases, though we have some concerns regarding the UKBA's interpretation of 'fraud' and the low number of cases that fall within this criteria. We challenge the UKBA's assertion that existence of a bank account constitutes evidence of fraud, and request a detailed outline of the UKBA's further investigations resulting in the withdrawal of support. We refer to the outcome of the recent 'Identity and Passport Service interview pilot' which aimed to identify fraudulent use of the asylum support system. The project failed to result in a single case of support being withdrawn as a result of fraud.
- We are disappointed that there is little attempt in the consultation to deal with issues which affect a far greater number of people, for example consultation on measures that the UKBA could take to deal with administrative problems and delays in managing the asylum support process.

## Links to key documents

The asylum support consultation –

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/221878/simplifying-imm-law-new-framew1/>

The draft Immigration Bill –

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/simplification-project-draft-bil/>

The Refugee Council's response to the previous draft Immigration Bill –

<http://www.refugeecouncil.org.uk/policy/briefings/2008/immigrationandcitizenship.htm>

The Refugee Council's vouchers research ("More token gestures" 2008) –

<http://www.refugeecouncil.org.uk/policy/position/2008/section4vouchers.htm>

The Refugee Council's Work Campaign – *"Let them work"*

<http://www.refugeecouncil.org.uk/campaigning/letthemwork/>

The Asylum Support Partnership *"Second Destitution Tally 2009"*

<http://www.refugeecouncil.org.uk/policy/responses/2009/destitution.htm>

The Still Human Still Here campaign website - <http://stillhumanstillhere.wordpress.com/>

Information about the October asylum support cuts is available at -

<http://www.refugeecouncil.org.uk/news/press/2009/october/20091005.htm>

## Contact

Other organisations or individuals who wish to feed in to the Refugee Council's response, please contact Sarah Cutler, Head of Policy and Public Affairs, 020 7346 1171 [sarah.cutler@refugeecouncil.org.uk](mailto:sarah.cutler@refugeecouncil.org.uk)