



Update: Withdrawal of in-country asylum support

On 8 January 2003, the Government implemented Section 55 of the Nationality, Immigration and Asylum Act 2002 (NIA Act). This allows the Home Office to deny access to the National Asylum Support Service (NASS) to asylum applicants who did not apply for asylum 'as soon as reasonably practicable'. This effectively denies support to many, if not most, in-country applicants.

Who is eligible to apply for NASS support?

Eligibility for NASS support: Under Section 55 of the NIA Act, asylum applicants will only be eligible to apply for NASS support if

- they can show they have applied for asylum;
- they meet the criteria for destitution;
- they apply for asylum 'as soon as reasonably practicable' after arrival in the UK.

However, when determining whether an application had been made 'as soon as reasonably practicable', caseworkers must consider

- physical or practical impediments to applying (for example, unable to get to authorities);
- the mental state of the applicant (for example, the applicant may have been scared or confused);
- anything the applicant may have been told by an agent assisting him or her in getting to the UK.

Who is exempt?

Asylum applicants will not have their eligibility for NASS support restricted if they

- have dependent children under 18;
- have special needs (if the needs are over and above the needs arising out of destitution, local authorities are responsible for care arrangements);
- applied for asylum in-country due to changed conditions in their country-of-origin and proved that they have applied at the earliest opportunity following that change of circumstances;
- can show that they would otherwise suffer treatment, which is contrary to Article 3 of the ECHR. Article 3 provides that no one should be subject to torture or any other inhumane or degrading treatment – destitution alone does not contravene Article 3.

Legal challenges

In February, the Refugee Council, in conjunction with other agencies, took the Government to court arguing that denying support to asylum seekers when they were not allowed to work, was inhumane and degrading treatment under Article 3 of the European Convention on Human Rights (ECHR). The statements from the refugee agencies were considered essential and persuasive. The challenge succeeded in respect of the six individuals involved. The Government then appealed.

Significantly, Section 55 was not reversed but the judge

- upheld the original decision in respect of the individuals concerned;
- instructed the Home Office to introduce more detailed screening and interview procedures;
- ruled that destitution alone did not necessarily constitute a breach of the Human Rights Act. Asylum seekers had to prove that they had suffered inhumane and degrading treatment and that the threshold for proof was extremely high.

In July, the Refugee Council supported another court case. The judge in this case ruled that the continuing refusal of the Secretary of State to relieve asylum seekers of the consequences of destitution amounted to a breach of Article 3 of the ECHR. Key findings of the judgement are as follows:

- In one of the three cases, the judge ruled that the Home Secretary's decision on Section 55 (1) was flawed and could not stand. The judge did still find some shortcomings in the Home Office's procedures for assessing claims, although some had been improved upon. He found that an asylum seeker would find it difficult to see or digest posters advertising the need to apply for asylum promptly in their present form and location.
- The judge ruled that 'inhuman and degrading treatment' under Article 3 of the ECHR could indeed include *sleeping rough, begging for food or money with which to buy it and the fear, humiliation and physical and mental suffering which soon ensure, particularly where the asylum seeker may be driven to crime or prostitution in order to survive.*

In September, the Court of Appeal heard the Home Office's appeal. Of the three cases in the July court case "S", "D", and "T", the Secretary of State did not challenge the initial finding in either "S" or "D", but was granted leave to appeal in the case of "T". The Court of Appeal found that the Secretary of State for the Home Office was right in denying "T" support under Section 55 (5). This, in fact, overturned Mr Justice Maurice Kay's initial ruling of 31 July.

The judgement states that it is "impossible to find that T's condition ... had reached or was verging on the inhuman or the degrading. He had shelter, sanitary facilities and some money for food. He was not entirely well physically, but not so unwell as to need immediate treatment".

The July High Court judgement offered an emotive account of "T's" situation whilst seeking refuge at Heathrow Airport. But the Court of Appeal has rejected this account and has judged that the fear of being moved on by officials and living life under constant glare of strip lights without access to washing facilities is adequate shelter and therefore does not constitute a breach of Article 3.

This is an extremely worrying interpretation of the particular asylum applicant's situation and one, which the Refugee Council together with others is aiming to contest when possible.

Future legal challenges

Mr Justice Maurice Kay, Head of the Administrative Court, issued a statement on 15 October expressing his concern that the High Court is the only viable appeal mechanism for asylum applicants denied support under Section 55. In the last six months, there have been over 800 injunctions granted to asylum applicants. This has significant implications on the financial and operational arrangement of the Administrative Court.

In an attempt to avoid a continuation of this clogging up of the system, Justice Maurice Kay has selected four test cases (from the 800) which he believes are appropriate as lead cases. He aims to give some general guidance on how Section 55 cases should be handled. Shelter has applied to intervene in these cases, providing a bundle of evidence collated from voluntary sector agencies, including the Refugee Council.

The test cases were heard on 24 October and Justice Maurice Kay issued his guidance on 28 October. The guidance itself is not binding and does not instruct NASS to change their processes. Yet it does

put some pressure on the authorities to change the way in which they make decisions on Section 55 and how cases are reconsidered. It is up to them to decide as to which elements contained within the guidance, if any, they will follow.

The guidance includes significant recommendations such as:

- Cases should be reconsidered within 24 hours and if this cannot be achieved and the evidence is sufficient to determine that NASS is likely to provide support, then NASS should provide emergency accommodation.
- Individuals receiving a negative Section 55 should be given 7 to 14 days' eviction notice.
- People should be given a translated letter of advice together with a negative Section 55 decision letter.

The guidance itself has not yet been published. For more details about this judgement, see the briefing entitled *Guidance on s.55 cases handed down by Mr Justice Maurice Kay* produced by the Interagency Coordination Team.

To get a copy of the Interagency Co-ordination Team briefing on the Section 55 guidance, contact Louise Mitchell on 020 7840 4350 or email her at: louise.mitchell@refugeecouncil.org.uk

ECHR reconsiderations

The Home Office has spent some months reviewing its procedures. More than 3,000 asylum seekers have been admitted to emergency accommodation with pending Section 55 letters. The Home Office is now trying to process these applications for support as quickly as possible. The overwhelming majority of claimants are being given negative decisions and the Home Office has refused to continue accommodating them.

There is no appeal mechanism but asylum seekers can ask to have their claim reconsidered. In order for the reconsideration to be successful, the Home Office needs to see individualised evidence of the circumstances of the applicant, such as the following:

- Evidence that there is no charitable accommodation or support available in the area, and that there is no other support available (such as friends, family, community)
- Evidence from a doctor or hospital relating to physical symptoms of lack of support (such as malnutrition, weight loss, stomach disorders)
- Evidence from a doctor or hospital of any physical or mental conditions
- Evidence of how the applicant is living and how this is impacting on his/her state of mind such that it is diminishing his/her human dignity

What can the Refugee Council do?

It is evident that with considerable effort and evidence from the Refugee Council, other organisations and doctors, some individuals are getting their cases successfully reconsidered. But many are still being refused. The Refugee Council and other refugee agencies and charities working with the homeless have already issued a statement saying that they simply do not have the resources to provide support to thousands of people for what could be a period of months. All of the Refugee Council's accommodation is Government-funded and cannot be made available to people turned down under Section 55. Most shelters for the homeless can only be used by people who have housing benefit. In the meantime, the Refugee Council will

- campaign against this legislation;
- continue to support legal challenges which ameliorate the worst aspects of Section 55;
- advise individual clients on how to get their cases reconsidered and assist them finding lawyers;

- ensure that during the week, a limited number of Section 55 clients can access the services provided by our One Stop Service including food and showers;
- provide information to community groups on the most effective way to advocate on behalf on their clients.

What can other stakeholders do?

- The impact of clients left homeless will create major issues for the police and local authorities. They must make their concerns known to Government in the strongest possible manner.
- MPs and faith leaders should also protest to the Government. It should be remembered that when the legislation was first introduced, ministers stated that it would not target asylum seekers who had only been in the country a few days.
- Local authorities need to develop contingency plans for large numbers of people been left homeless. This could include the equivalent of soup kitchens and emergency toilet facilities.
- Social services should assess clients with special needs and provide support where feasible.
- Faith and community groups need to look at what support they can provide locally. For our campaign, it is useful to be able to identify asylum seekers who have been made homeless and make good case studies.
- Legal advice groups should prioritise working with these clients to get their cases reconsidered.
- Local community groups can write to their MPs and organise petitions. The Refugee Council can provide support on this and will be developing campaign materials shortly.
- Community groups can advise clients on how best to present their case for reconsideration. The Refugee Council will provide what assistance it can on this, but groups need to be aware that much of this is still been tested in the courts and the Home Office's guidance is still work in progress.
- It has to be recognised that many clients will not be successful in getting their cases reconsidered and they will be left without support unless and until they can prove extreme levels of destitution. The Refugee Council can provide a limited amount of support to people during the week but it cannot provide overnight accommodation or support over the weekend. Other groups may wish to consider what support they can offer and how this is best co-ordinated. However, groups do need to bear in mind that without change in legislation, this is likely to be an ongoing issue of significant scale and in order to meet the needs of these clients fully, a level of resourcing beyond the scope of any small local group would be required.

What you can do?

You can help by writing to your MP, asking him or her to uphold the rights of asylum seekers to food and shelter and requesting that your concerns are raised with the Home Secretary.

For details on what to include in your letter and to download the Refugee Council's latest *Urgent Action*, visit the following page on our website:

www.refugeecouncil.org.uk/supportus/campaigns/camp001.htm