



Leeds City Council's response to the Home Office consultation: 'Reforming support for failed asylum seekers and other illegal migrants'

Reforming support for failed asylum seekers and other illegal migrants

Language

Before responding to the details in the document Leeds City Council want to put on record our objection to the language in the consultation document. 'Reforming support for failed asylum seekers and other migrants' is not helpful language in the current climate. Refused asylum seeker is a more accurate and a less inflammatory description.

The term illegal migrant is also inappropriate. No one is 'illegal' though they may have committed illegal acts. More appropriate terms would be undocumented or irregular migrants. The International Organisation for Migration (IOM) uses the term irregular migrant highlighting that "the term "irregular" is preferable to "illegal" because the latter carries a criminal connotation and is seen as denying migrants' humanity".

Proposals in the consultation document

1. The Repeal of Section 4 (1) of the 1999 Act (paragraph 16)

The implications for individuals are significant and could lead to them seeking assistance from local authorities. Individuals affected are likely to look to local authorities for assistance and this will have financial implications for those authorities who will have to investigate their circumstances even if the application for support is unsuccessful. For the individuals concerned, if Section 4(1) is repealed, it will prevent them from obtaining a bail address and may result in their being inappropriately detained. Whether or not they are detained they may apply for asylum so they can make a bail application. This will put further pressure on the asylum system as there will be more applications to process increasing the likelihood of delays in decision making and so unnecessary costs to the public purse.

2. The closing of support for failed asylum seekers through Section 4(2)

Leeds City Council is convinced that removing support from refused asylum seekers will not result in any significant increased returns. Instead, it will force people into desperate situations and result in indirect costs to local authorities and other public services.

The majority of new asylum seekers in this region are from Syria, Eritrea and Sudan - all of which are extremely unstable and dangerous states. We work directly with asylum seekers and believe that is highly likely most people would prefer to remain in the UK, even without support, than return to the situations they fled from.

It is worth recalling that there has recently been a precedent to try to achieve exactly what the current proposals are aiming to achieve. In December 2004, the Home Office started piloting what was known as Section 9 which was very similar to the current proposals. 116 families were selected to take part in the pilot in Leeds, London and Manchester therefore we have recent first-hand experience of how these proposals are likely to work based on that pilot which was generally regarded as an unsuccessful and was not rolled out in any other areas of the country.

Currently most individuals who do not want, or are unable, to return home go “underground” and off the authorities’ radar. If this proposal becomes law more refused asylum seekers will become destitute and they too will have very little incentive to stay in touch with the authorities once support is withdrawn. This has actually been recognised by the Home Office in the past.

It is likely that these proposals will increase the number of destitute individuals in the towns and cities of the region – with all the attendant health and cohesion issues this will bring. It is also likely that destitute single people will gravitate to the larger cities (and in particular Leeds and Sheffield) and both these cities already have numbers of destitute people sleeping rough and presenting challenges to local statutory and voluntary services.

Denying asylum seekers financial support is also likely to compel them into illegal forms of employment to survive where the risks of exploitation and abuse are high. They will be also be forced to seek illegal forms of accommodation or will be forced to stay in overcrowded and unhealthy conditions or on friends’ floors potentially putting these friends in breach of their tenancy agreements.

West Yorkshire Police comment that if an asylum seeker is determined to remain in the UK and is not receiving support their experience is that there can be a tendency for some to turn to crime in order to live. There is also the potential that they may become involved in organising People Trafficking – or become victims of some form of modern day slavery.

Appeals against Section 4 refusals are incredibly important, as they are often successful. Between 1 September 2014 and 28 February 2015, the Asylum Support Tribunal allowed 44% of the appeal cases it decided and remitted a further 12% back to the Home Office to retake the decision. This means that in over 50% of cases in which the Tribunal made a decision, the case was either allowed or remitted. We believe that whatever reforms to the provision of asylum support may be made the right of appeal against a refusal to grant support must be upheld.

3. The proposed changes for failed asylum seekers with children.

In 2013 we estimated that there were between 300-400 destitute individuals in Leeds who were reliant on support from charities and faith groups. At that time, we wrote to the Home Secretary voicing concerns that the current application of the asylum process is allowing too many people to fall destitute, and that the burden of responsibility needed to be more equally shared between local and national government. We are concerned that the proposed policies will result in higher levels of asylum-related destitution in Leeds, putting vulnerable children and families at particular risk of homelessness, poverty and exploitation. The implications of this proposal have the most significant consequences.

As with single people we believe that removing support from failed asylum seeking families who are 'appeal rights exhausted' will not encourage those families to leave the UK. No matter how difficult living conditions are made for asylum seekers here, it will not overcome their real or their perceived fears about what would happen to them if they return to their country of origin.

In any case just because someone is refused asylum, it does not mean they do not have a protection need. Often because of poor legal advice, lack of adequate support or understanding of the asylum system, people seeking protection may have their first application refused. However, many go on to file fresh claims and receive full refugee status. It would be more beneficial to everyone if the Home Office could spend more time and resources in making better decisions in the first place.

Indeed, in the pilot in 2004/5 referred to earlier 116 refused asylum seeking families had their support withdrawn and this did not result in greater voluntary returns, forced removals or engagement with the authorities to make steps to return home. Instead, one third of the families involved in the pilot disappeared in order to avoid the risk of being returned to their country of origin.

The Home Office themselves ran an evaluation of the 2005 pilot, which compared the behaviour of the cohort of the 116 families involved against a control group of similar cases who remained on support. By 2007, the Home Office evaluation found that of the 116 cases that had support removed, there was only one case in which a family was successfully removed, in comparison to 9 successful removals in the control group. The Home Office concluded that during the pilot "there was no significant increase in the number of voluntary returns or removals of unsuccessful asylum seeking families." Similarly, the rate of absconding was 39% for those who had their support removed – nearly double the rate of those in the control group (21%) who remained supported.

The implications of these proposals for families, and particularly for the children, are immense. Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It is difficult to see how the current proposals do this.

The proposals suggest statutory services will not have to assist children who become destitute when their parent's application has been refused, if there is no legal obstacle to prevent them returning home. If local children's services agree with the Home Office that they do not have any duty to intervene then there will be an immediate increase in homelessness and poverty with families, including women and children becoming vulnerable to abuse and exploitation. This would clearly not be in the best interest of the children and the family.

If families get no support children may be removed from school increasing unauthorised absences and numbers of children missing education. The potential disruption on children and young people can be extremely serious as their life chances and opportunities may be severely diminished, wherever they ultimately end up.

The negative impact of unauthorised absences on the school can be extremely counterproductive and there will be a huge impact on the work of education services

as they will still be required to track the whereabouts of children. We are concerned that if we remain unaware of the whereabouts of these children our duty and ability to safeguard and protect children, young people and vulnerable adults will be seriously undermined.

It is impossible to see how these policies, if implemented, comply with the need to safeguard vulnerable children, as reflected in the UN Convention on the Rights of the Child, the Children's Act 1989 and other national guidance, including Every Child Matters. Indeed, the Children's Act 1989 puts an obligation on the Local Authority to support the child, and not the adult.

If local children's service conclude that their obligations under the Children's Act override Home Office guidance then this is likely to result in an increase in looked-after children who may be placed in expensive homes or with foster parents. Separating families in this situation is not only costly it is also not in the child's best interests. We are extremely concerned that there will not be a massive reduction in public expenditure if these proposals are implemented, but that there will be a shift in cost from central to local government.

We are also concerned that the threat of having children taken into care may encourage families to go underground, rather than leave the country. This raises serious issues when it comes to safeguarding children as they could go off the radar of all statutory safeguarding services.

Following the last pilot project (which used "section 9" to increase refused asylum seekers returning home by reducing/terminating support), a report based on the casework experience of the Refugee Council and Refugee Action concluded that:

- the pilot comprehensively failed to achieve the Government's stated objective of encouraging families to return voluntarily to their home countries
- Section 9 had caused immense distress and panic amongst families who faced destitution, homelessness and having their children taken into care and;
- The policy was completely incompatible with human rights standards.

We believe that this will still be the case.

4. The length of the proposed grace period in family cases

It is proposed that there will be a 28 day grace-period following a refusal, in which the family would have to take concrete steps to leave the UK in order to be entitled to further support. If the proposals become law, 28 days does not give enough time for a family to review their options and make a decision on what their next steps could be. 28 days is the amount of time allocated by the Home Office to transfer new refugees from asylum support onto mainstream benefits. Recent reports have shown that 28 days is far too short to complete this administrative task, leaving many new refugees destitute in the process. We believe that making an informed decision following a refusal will take far longer.

Families often wait a long time for a decision on their application for refugee status, establishing connections and roots in the UK. Children may be in school, even at exam age, when the refusal letter is received. We believe that the grace period

should be comparable to the 3 months provided to asylum seekers who are engaged in the voluntary returns programme in recognition of the complex and difficult decisions refused asylum seekers will have to make. It is important that the grace period should start from the day on which the asylum seeker receives notification that their appeal had been refused, rather than the day the appeal was determined. Refused asylum seeking families should also be able to access impartial advice on their options and how to apply for a continuation of the grace period when they receive their final refusal.

There is also concern about the lack of clarity in the Home Office guidance about what constitutes taking 'concrete steps' to leave the UK. We are also concerned that many refused asylum seeking families will struggle within the proposed 28 days to gather sufficient evidence to prove their 'concrete steps' without the help of an advocate, as is the case for single refused asylum seeking adults attempting to access Section 4.

As the onus will be on the refused asylum seeking family to prove they need continued support, it is likely that there will be increased pressure on statutory and, particularly, voluntary organisations that support refugees and asylum seekers. Without personal resources and faced with the prospect of destitution it will be extremely difficult for refused asylum seeking families to rationally make the 'concrete steps' without the support of others. In this region the voluntary sector is under immense pressure already to meet increasing demands with decreasing resources.

The right of appeal against a refusal to extend support when an asylum seeker is taking reasonable steps to leave the UK, but is unable to do so due to a practical obstacle beyond their control, is an important mechanism to challenge mistakes made by the Home Office. Between 1 September 2014 and 28 February 2015, the Asylum Support Tribunal allowed 44% of the appeal cases it decided and remitted a further 12% back to the Home Office to retake the decision. This means that in over 50% of cases in which the Tribunal made a decision, the case was either allowed or remitted.

5. The proposed transitional arrangements

We strongly disagree with the proposal to remove support from refused asylum seeking families. However in the event that these proposals are implemented they should not be applied retrospectively and should only be applied to those individuals and families who receive final refusals after the new legislation comes into force.

6. The impact of the proposals on local authorities

The impact on local authorities is potentially huge. Whilst, in theory according to the Home Office, families may not be able to apply for support under the Children's Act there would still be a duty on local authorities to safeguard the welfare of destitute children, with the associated work and expenditure that this would incur. If, having become destitute, neither central nor local government know where children are, this is likely to give rise to a number of safeguarding concerns, with no agency or organisation able to own responsibility for safeguarding the welfare of children whose whereabouts are unknown.

We are extremely concerned about the impact of these proposals in Leeds and other local authorities across the country. Whilst the Home Office states in the consultation document that there is no general obligation on local authorities to accommodate refused asylum seekers (and therefore they do not foresee any knock on costs), it is clear that local authorities will be faced with ethical, financial and societal challenges if these changes were to come into force.

During the 2004/5 pilot, Barnardos carried out research looking at how the changes might impact on local authorities. 33 authorities took part, 18 of which were involved in the pilot. All of the local authorities interviewed were clear that the proposals ran counter to their established duties under the Children's Act 1989. More recently the guide "Working Together to Safeguard Children" was revised in 2015, reiterating that "local authorities have overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area."

As stated, the Children's Act 1989 may pose further ethical questions for local authorities. The legislation places a responsibility on the local authority to support the child, and not the parents. In extreme cases, this could result in children being taken into care, at a massive detriment to the health and wellbeing of the child and a huge cost to the public purse. Because of the lack of clarity about whether these proposals will actually eliminate a council's responsibilities under other legislation, it is important that clear, unambiguous advice and guidance, enshrined in law, should be provided to local authorities about their duties to destitute families and children.

Failure to support destitute children may result in breaches of the Human Rights Act 1998 or Children's Act 1989 and expose us to the possibility of legal challenges.

The Home Office's own review of the pilot acknowledged that the changes "place significant demands upon local authority resources." Since 2004/5, local authorities have faced significant cuts to their funding and their services. To shift the cost of supporting vulnerable refused asylum seeking families to local authorities in this economic climate will mean practitioners and service providers making difficult ethical decisions around limited resources and increased need.

Importantly, these costs will not be shouldered by all Local Authorities across the country. It is inevitable that local authorities who participate in the dispersal programme will see higher presentations at social services from destitute asylum seeking families than those which do not host people seeking asylum. In Yorkshire and Humberside only 10 council areas have asylum seekers dispersed to them. These are the 10 larger towns and cities who, arguably, currently face more serious financial challenges than other areas. Therefore it is likely that the burden on local authorities will not only be greater than predicted in the Impact Assessment, but also disproportionately felt by certain local authorities across the country.

There are currently attempts being made by the Home Office to increase the number of dispersal areas, which would reduce pressures in the current areas and be more equitable. It is unlikely any council will want to become a dispersal area if the implications of doing so are that they may have to pay for the support of refused asylum families and children.

There are also significant indirect financial and social costs to local authorities which result from leaving asylum seekers without any form of support. This includes costs to the NHS and public health budgets, policing, and the voluntary sector.

Those who are of no fixed abode seek help at a much later stage in an illness than the general population, usually through A&E departments. It is well documented that acute conditions are more expensive to treat and emergency care is far more costly than preventative care. Homelessness contributes significantly to secondary healthcare costs and if an additional 2,500 asylum seekers and their dependents becoming destitute each year it could cost potentially £4 million in additional secondary healthcare costs each year. As with local authorities, costs will not be spread evenly throughout the NHS, as they will be borne by hospitals and trusts in local authorities to which asylum seekers are dispersed.

There has been an increase in far-right activity in relation to asylum seekers, refugees and migrants in dispersal cities across the UK. This has included Leeds and a number of towns and cities in this region. Forcing refused asylum seeking families into homelessness and to compete for limited statutory support has the potential to aggravate existing community tensions and damage community cohesion. This may well have knock-on costs for community policing and negative impacts on local community relations.

It is also clear that if the proposed policies are introduced the voluntary sector's resources will be redirected to assist asylum seeking families and children without support. Organisations working with refugees and asylum seekers have already faced massive cuts over the past 2 years and many are operating without any statutory funding. In April 2014, an estimated £1.5million was lost from the migrant third sector in Leeds alone and in some of the smaller towns in the region this sector is virtually non-existent.

This cut in funding has been matched by a huge increase in demand. Under these proposals, there will be a reduction in the statutory safety net for refused asylum seeking individuals or families, leaving the voluntary sector as the only avenue of support. We fear that the present refugee sector does not have the capacity to meet this potential demand.

The proposals in this consultation document run contrary to a number of cross-departmental government strategies and objectives. It is almost certain that the consequences of removing support from refused asylum seeking families will undermine the principles of a number of other key agendas including the PREVENT agenda and the Modern Slavery Act.

Forcing people into destitution increases their vulnerability and it is widely agreed that vulnerable individuals are particularly at risk of radicalisation. People in desperate situations are forced into doing desperate things to support themselves and their families. Destitution has been proven to be a key trigger for individuals ending up in exploitative working conditions or forced labour. Without avenues of alternative support, families and children may be forced to endure abusive situations in order to keep a roof over their heads.

We are far from convinced that the suggestions made in this consultation will save money. Financial savings should not be the primary criteria on which policies

regarding welfare and child protection are considered. It is inevitable that a significant part of the Home Office's "savings" will simply become costs for local authorities to shoulder - at a time when they are already spending significant amounts on children in need of care and are suffering cuts on an unprecedented scale.

These proposals are likely to place workers in local authorities in the difficult position of having to choose whether to provide vital support to families and honour laws on child protection and international conventions on human rights, or obey these proposals and possibly fail in their duty to uphold those laws.

7. Whether and how to make it clearer for local authorities that they do not need to support migrants, including families, who can and should return to their own country

Local authorities believe they have a continued responsibility to safeguard refused asylum seeking families with children. Ultimately our first duty is to safeguard vulnerable children and these proposals compromise our ability to fulfil this duty. It is therefore not possible to make it clear that local councils do not need to support families.

8. Suggestions on how the Home Office, local authorities and other partners can work together to ensure the departure from the UK of those migrants with no lawful basis to remain here and minimise burdens on the public purse

We believe that it is in everyone's interest that refused asylum seekers should be left in their Home Office accommodation until they are removed from the UK. Only in this way will local statutory and voluntary (and the Immigration Service) know where people are and therefore be able to respond to them. The current proposed policy changes will not achieve their aims and objectives and is further alienating local government from the aims of central government.

If the Government wishes to minimise costs to the tax payer and ensure refused asylum seekers with no lawful basis to remain here do leave the UK then it should review and reform ALL stages of the asylum system.

Decisions need to be taken in a reasonable time and be more consistent, fair and reliable. Addressing this will reduce the number of successful appeals, increase confidence in the asylum system and save money.

In some European countries such as Sweden, each asylum seeker is allocated a 'case-manager', who ensures they have access to legal advice, housing, welfare support, information about their case, and options for the future. This continues even after a refusal. The evidence suggests that this model of 'case-management' is effective in increasing uptakes of voluntary return, with a voluntary return rate of 82%. This is an approach which could be adopted in the UK.

9. Information or evidence that will help us to assess the potential impacts of the changes proposed in this consultation document and to revise the consultation stage Impact Assessment

See above response.

10. Any information or evidence that will help us to assess the potential impacts of the changes proposed in this consultation document on persons who have any of the protected characteristics as defined in the Equality Act 2010

The changes outlined in the consultation will disproportionately affect all persons who have protected characteristics as defined in the Equality Act 2010, in particular race, gender, age, pregnancy and maternity.

The Home Office has a duty to regard the need to safeguard and promote the welfare of children. Section 55 of the Borders, Citizenship and Immigration Act 2009 expressly states that this duty must be taken into account when developing policy. The government is also a signatory to the UN Convention on the Rights of the Child, which makes the best interest of the child a primary consideration in all actions concerning children. As the proposals may result in children becoming destitute, or separated from their parents and taken into care, it is difficult to see what consideration has been given as to how these changes would impact children.

Families falling into destitution will negatively affect the health and wellbeing of both parents and children. The proposals therefore run counter to the duties in the Health and Social Care Act 2012 which require the Government to reduce health inequalities.

Conclusion

Ending support for refused asylum seeking families will be ineffective and inhumane.

Evidence has shown that removing support from refused asylum seeking families will not result in significant increased returns instead the outcomes were an increase to the public purse and a large number of families choosing to disappear (rather than return to their countries of origin). There will inevitably be significant secondary costs to local communities, the health sector and the voluntary sector.

Although the proposals will force families and individuals into destitution they will still be more likely to decide to stay in the UK rather than return to the real or perceived threat of persecution in their country of origin.

Local children's services will feel they have no choice other than to pay for the care of potentially destitute children. If they decide not to, they leave themselves exposed to significant risks including legal challenge. If families and children are not cared for by local authorities or if those families chose to go "underground" we have major concerns for the safety and welfare of those children and families. The impacts of destitution on vulnerable children are huge, including worsening physical and mental health, alongside an increased risk of exploitation and abuse.

Policies that put children at risk run counter to multiple government duties and commitments to safeguard the rights of all children in the UK.

Any major reform of support for refused asylum seekers is only appropriate within a wider reform of the whole asylum system. The Government need to properly invest in all stages of the asylum system to make sure that decisions are taken in a reasonable time frame, are fair and reliable, and are properly implemented. We

strongly disagree with the proposal to remove support from refused asylum seeking families for the reasons outlined.