

Response from Asylum Welcome to the Home Office consultation: Reforming support for failed asylum seekers and other illegal migrants

8.9.2015

About Asylum Welcome

Asylum Welcome is an Oxford based charity providing a range of services. It is unusual in that for over 20 years it has worked both with immigration detainees (at Campsfield House) and with asylum seekers and refugees living in the community. Asylum Welcome is also unique in the strength of its volunteer workforce. The organisation has approximately 120 volunteers, all of whom donate several hours of time each week. It has an even wider network of local members, donors and supporters: it is well established and well supported in Oxford. This submission is on behalf of that network of Oxford people who support Asylum Welcome.

Introductory statement about our position

1. Asylum Welcome applauds the Home Office for emphasizing in its statement of principles (page 4, point 11) a commitment to provide protection and to assess asylum claims fairly. We support these commitments but our experience of working with refused asylum seekers tells us that there are still too many examples that fall short of this standard. We are regularly approached for help by people who believe that their claim for asylum has not been fairly assessed and who feel that they have a compelling case and a genuine fear of return. This includes people who have injuries that have been assessed by a relevant medical professional as highly consistent with torture, and it includes people who have attempted suicide rather than face return to their country of origin.
2. Asylum Welcome applauds the Home Office for emphasizing in its statement of principles (page 4, point 13) the importance of safeguarding children. We support this commitment but we notice that the consultation document makes no further reference to safeguarding children and does not set out how its reforms will safeguard children. We strongly believe that the proposal to remove the right to asylum support from refused asylum seekers with children, without providing the safety net of local authority support, will do nothing to safeguard children and in fact will have the opposite effect. We would expect to see, as a direct result of the implementation of this policy, an increase in destitute families with children who are homeless, hungry and sick.
3. Asylum Welcome challenges the assumption made throughout the consultation document that asylum seekers' decision making is influenced by the asylum support regime (page 4, point 10 "remove

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incentives” page 4, point 13 “financial incentive”, page 5, point 19 “providing incentives”, page 6 point 24 “creates an incentive... provides no incentive”, page 6 point 28 “sends the wrong message”). It is our belief, based on over 20 years of working with asylum seekers, refugees and detainees, that the £36.50 a week asylum support payment is not a significant factor in decisions to travel to or from the U.K. For the people we help the deciding factor is the immense difference in the level of safety in the U.K., relative to the level of safety in their country of origin. In our experience, no-one leaves their home and everyone and everything they know, to embark on a perilous journey to an unknown country, for £36.50 a week. Equally, in our experience, no-one would return to a country which they think is unsafe because the U.K. government will no longer provide £36.50 a week.

There is an underlying assumption that refused asylum seekers have a safe country to return to and that their reluctance to return is unreasonable. We challenge this – all too often we see people whose fear of return seems entirely rational given the circumstances in their country of origin.

Asylum support payments are not an incentive to remain, but they do prevent destitution. We would caution the Home Office to be prepared for a scenario in which the removal of asylum support payments from several thousand asylum seekers does not act as an incentive for them to return to the country of origin; rather, it increases the number of destitute people in the U.K.

5. Asylum Welcome supports the right to liberty for those who have been taken into detention but should not be there. Our primary concern is humanitarian, but there are other considerations. For the Home Office, failure to provide accommodation when an address is required as a condition of granting temporary admission or bail increases the likelihood of legal challenge in cases where detention is considered unlawful. It also adds to the pressure of numbers held in detention who do not need to be there. This is unnecessarily costly, counter to Home Office policy and counter to the prevailing mood among political and civil stakeholders to reduce the use of detention.

6. Asylum Welcome is opposed to the proposal to remove the right of appeal against decisions to refuse asylum support payments. From our experience, we know that the bureaucracy of administering asylum support payments can lead to errors in decision making, for example because of errors in completing or in reading application forms, because applications are made remotely by post and fax rather than face-to-face and because of the applicants’ language barriers and unfamiliarity with the system. This is borne out by the number of refusals that are either overturned or sent back for a fresh decision by the Asylum Support Tribunal. Given that Asylum Support is only paid when a person is destitute, the impact of a wrong decision is severe: there is no safety net for the asylum seeker, no other source of funds. For this reason it is important to retain an effective system of appeal against the refusal or removal of asylum support payments.

Responses to the Consultation Questions

1. The proposed repeal of section 4(1) of the 1999 Act (paragraph 16).

Asylum Welcome knows from its experience of working in Campsfield Immigration Removal Centre that, even when judged by the Home Office's own standards, there are people held in detention who should not be there, for example survivors of torture, the chronically sick and those who cannot be removed from the U.K. Asylum Welcome is opposed to any measures that make it harder for such individuals to be released from detention.

Section 4(1) currently enables the provision of accommodation to detainees who require an address in order to be released from detention on temporary admission or bail, and have no alternative means of securing accommodation. Asylum Welcome is extremely concerned about the impact of these proposals on the welfare of detainees if those who would otherwise be released remain in detention for extended periods. Asylum Welcome understands that such detention could be considered unlawful under Article 5 of the European Convention on Human Rights (right to liberty).

Based on our experience, we foresee that in particular there will be an impact on so-called 'third country cases', i.e. those who are detained because their asylum claim was refused on the grounds that they have spent time in another country where they could have claimed asylum before arriving in the UK. In such cases, if that 'third' country refuses permission for the UK to return the person to them, they cannot be removed from the U.K. and under these proposals they would face long periods in detention. The Home Office has worked hard in recent years to reduce the average length of time that is spent in detention and that endeavour is jeopardized by this proposal. If this proposal goes ahead, we predict an increase in length of time spent in detention, an increase in pressure of numbers in detention and an associated increase in costs.

In the last year the Home Office has come under considerable pressure from a broad spectrum of stakeholders (including politicians of all political parties, medical experts, charitable organizations and investigative journalists) to improve welfare standards in detention, to limit time spent in detention and to reduce the need to detain people. Plans to expand detention capacity at Campsfield and elsewhere were defeated when the Home Office failed to make the case that more detention was needed. The asylum support proposals, instead of being guided by that consensus of opinion, run counter to it.

2. The proposal to close off support for failed asylum seekers who make no effort to leave the UK at the point that their asylum claim is finally rejected, subject to continued support in cases with a genuine obstacle to departure at that point or in which further submissions are lodged with the Home Office and are outstanding (paragraphs 20-21).

In our view, apart from the proposals concerning families and bail applicants, the wording of the consultation document does not clearly detail how the criteria for continuing to receive support will change compared to the current criteria. As such we can only make a general response to the proposal to "close off" payments. Refused asylum seekers who believe that it is unsafe to return to their country

of origin will respond to the rejection of their asylum claim by seeking alternative legal routes to pursue their case to remain in the U.K., rather than by making preparations to return to their country of origin. This is an entirely understandable and rational response. Our experience tells us that in many cases their persistence results in a reconsideration of their case and the granting of Leave to Remain. This is borne out by national statistics on the number of successful appeals and further submissions. We ask the Home Office to respond more sympathetically to those who are afraid to return to their country of origin, recognizing that their desire to pursue other legal avenues can be an indication that there is merit in their case.

3. The proposed changes for failed asylum seekers with children (paragraphs 29-33).

The previous Home Office pilot designed to remove support from families that did not prepare to leave the U.K.¹ had negative outcomes. It resulted in some children from loving families being taken into local authority care, but more families simply disappeared and there was no impact on the decision to return. The Home Office was heavily criticised by a wide range of stakeholders, not least those representing social workers. Ian Johnson, the Director of the British Association of Social Workers said of the policy, *“If this is a civilised country we live in, then there is no place for that kind of treatment of families.”*² The policy was dropped.

The new proposal is that asylum seekers with dependent children and with no alternative means of support who are refused asylum (including the rejection of any appeal) will lose their current entitlement to Home Office-funded asylum support payments and accommodation and will no longer be able to apply to local authorities as a safety net for support under the Children Act.

In effect, the proposal is for refused asylum seekers and their children to be made destitute for so long as they remain in the U.K.

Asylum Welcome’s view is that this proposal shows a complete absence of basic, decent humanitarian values.

Furthermore, the proposed policy is open to legal challenge under international and national law concerning children but also under Section 55 of the Borders, Citizenship and Immigration Act 2009, which places a duty on the Home Secretary to have regard to the need to safeguard and promote the welfare of children.

4. The length of the proposed grace period in family cases (paragraph 31).

Since Asylum Welcome is opposed to the proposed cuts in Asylum Support it is difficult to comment on what grace period should be allowed if they are introduced. Currently, families have 28 days notice if they are transferring from the asylum support system to mainstream benefits and that is not a

¹ Home Office Border and Immigration Agency, Family Asylum Policy – The Section 9 Implementation Project (evaluation report of the pilot)

<http://webarchive.nationalarchives.gov.uk/20140110181512/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/section9implementationproj.pdf>

² Barnardos, *The End of the Road*, 2005, page 6.

comparable situation to the removal of support. We can foresee that 28 days is very little time for people to make the adjustments needed to their situation in order to prevent destitution. Even if they consider returning to their country of origin, 28 days is likely to be insufficient time to do so. Asylum Welcome is aware that the Still Human Still Here coalition is calling for a 90 day grace period and we endorse that position.

5. The proposed transitional arrangements (paragraphs 36-37).

Asylum Welcome has no comment on this aspect of the proposed reforms.

6. The assessment of the impact of the proposals on local authorities (paragraphs 38- 45). The proposed reforms intend to minimize the impact on local authorities.

Asylum Welcome foresees that, if the reforms go ahead but refused asylum seekers do not leave the U.K., then local authorities will be placed in a difficult position. Legally they will have no responsibility to assist refused asylum seekers, but morally they may feel obliged to as they are likely to witness growing numbers of destitute people in their localities. In particular social workers who are committed to the safeguarding of children are likely to find the situation unacceptable. The local authorities themselves are best placed to give a detailed response to this question and we would encourage the Home Office to seek and to take account of their views.

Asylum Welcome understands that there is a possibility that local authorities may also be drawn into the challenge of meeting the accommodation conditions for bail for detainees if the changes to section 4(1) of the 1999 Act go ahead, under their Localism Act responsibilities. This would have a significant impact in Oxfordshire due to the location of Campsfield House Immigration Removal Centre.

7. Whether and, if so, how we might 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 (paragraph 42).

In response to this point, Asylum Welcome's position is that, for the duration of time that refused asylum seekers remain in the U.K. each of them will (to a greater or lesser extent) need some form of support. If this is not provided by either national or local government bodies then, as happens now and has happened for many years, local people, acting individually or as part of community and faith organizations such as Asylum Welcome, will make every effort to help. This help is not and cannot be sufficient to prevent suffering.

8. Any 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 (paragraph 47).

In our experience, people who have claimed asylum are most likely to return voluntarily to their country of origin when they feel it is safe to do so. Most asylum seekers and refugees feel a strong sense of loss for all that they have left behind in their home country and although some are so traumatized that they

cannot contemplate ever returning, many dream of being able to return one day, when it is safe and when they feel that they can rebuild some kind of normal life. It is well documented that, when conditions in once dangerous countries significantly improve, large numbers of refugees are willing to return. Asylum Welcome's view is that "joined-up" policies, where the Home Office works with those U.K. government departments and those international bodies that promote democracy, the rule of law, respect for human rights and sustainable livelihoods, are the fairest and most likely means of achieving the Home Office aim of encouraging return to countries of origin.

The Home Office can also make improvements to the asylum determination process so that asylum seekers can have more confidence that their case has been fairly assessed. Key to this is access to timely and good quality legal advice. The availability of good legal representation in the early stages of an asylum application and for appeals and further representations is not only in the best interests of the asylum seeker, it also makes the task of Home Office decision-makers easier, because legal representatives are able to help their clients understand the asylum system and set out evidence and arguments in an appropriate format. Cuts to legal aid budgets in recent years have made it harder for asylum seekers to access good quality legal advice and therefore have increased the number who feel that their case was not fairly considered.

Given the focus in this proposal on encouraging departure from the U.K. we are reminded of the recent Home Office decision to remove funding for the independent advice and support service for people considering voluntary return that was run by the charity Refugee Action. In our view, the closure of this service is counter-productive to the Home Office aim of encouraging return.

9. Any 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 (paragraph 48).

Asylum Welcome can supply the following case-studies from its current caseload to inform the Home Office policy formation. More case-studies are available if requested.

1. A young man from Afghanistan who arrived in Oxford aged 13 years old. He was refused asylum but granted Discretionary Leave to Remain in the U.K. until reaching 17 and a half years of age. The Home Office refused his application to extend his Discretionary Leave, he failed to make a case to remain in the U.K. on human rights grounds and he is unable to provide any evidence to support a fresh asylum claim. Now 18 years of age, his local authority social worker has explained that he will lose his accommodation, financial support and the emotional and practical support of that social worker in Oxford. His only support in Oxford is from Asylum Welcome, which can provide him with food parcels and friendship. The expectation of the Home Office and of the local authority is that, faced with the removal of support and inevitable destitution, he will return to Afghanistan. He has no living relatives in Afghanistan and no source of support there and he is fearful of return to a country that is still troubled by widespread human rights abuses (including regular terrorist attacks), weak government and extreme poverty. In his words (remembering that he is only 18), "If I have to choose between sleeping on the streets in Oxford and sleeping on the streets in Kabul, I will choose sleeping on the streets in Oxford."

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2. A refused asylum seeker from Iraq who has visible injuries that have been expertly assessed as consistent with torture by the medical charity Freedom from Torture. He was refused asylum on the grounds that he had previously spent time in Hungary – a safe third country. He is currently detained at Campsfield but cannot be removed from the U.K. because the Hungarian authorities will not agree to his return to Hungary. Under the existing support arrangements, given the evidence of torture and given the barrier to removal from the U.K. we are able to make a case for his release from detention to an address provided under Section 4(1).
3. A man from the Caribbean with a complex immigration history including a failed asylum claim is living in Oxford in Home Office funded accommodation because he is so severely ill that there is a risk that he would die during the process of being removed from the U.K. He recently received notification that his accommodation would be stopped. Were he to become street homeless, he would likely die. Asylum Welcome and a local immigration solicitor made an appeal to the Home Office against the decision to stop his asylum support and this appeal was successful.
4. A young woman from Zimbabwe had a child after having been refused asylum. She is therefore outside the eligibility for Home Office asylum support accommodation and payments. Initially she had been looked after by friends but when this came to an end she faced homelessness and turned to Asylum Welcome for help. We referred her to the local authority social services department. Initially the local authority was unsure whether they had a legal responsibility to house her and they entered into discussions with the Home Office. During this period the woman was required to spend much of every day waiting in the social services offices before a decision was taken at the end of the day whether to give her accommodation. This went on for a week or two, with uncertainty each night about whether or where she would be accommodated. She and her child became physically unwell and stressed during this period, and she found it difficult to adequately feed her child because of the extremely temporary nature of her accommodation. At no point during this period did she contemplate return to her country of origin. Eventually the social services department accepted responsibility for her and provided her with longer term accommodation.

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 (paragraph 49).

Asylum Welcome has no comment on this aspect of the proposed reforms.