



“Inhumane and Ineffective - Section 9 in Practice”

A Joint Refugee Council and Refugee Action
report on the Section 9 pilot

January 2006

About the Refugee Council

The Refugee Council is one of the leading organisations in the UK providing help and advice to asylum seekers and refugees. We also work with them to ensure that policy makers address their needs and concerns.

About the Refugee Action

The Refugee Action is an independent national charity that works with refugees to build new lives in the UK.

Introduction

Under Section 9 of the Asylum and Immigration Act 2004, families who have reached the end of the asylum process and exhausted all their appeal rights can have their financial support and accommodation removed if they 'fail to take reasonable steps' to leave the UK. In the event that families are made destitute, they can face having their children removed and taken into the care of social services. During the passage of the bill, the government said their aim was not to make victimise families with children but to encourage them to take up voluntary return packages.

Giving evidence to the Home Affairs Select Committee, Beverley Hughes, the Minister of State said: "The proposals . . . are intended both as a deterrent but also as an incentive . . . I want to try to persuade as many families as possible, when they come to the end of the road, to go back in a dignified way, with support, on a voluntary basis." (*First Report of Session, 2003-2004 p17*).

In December 2004, the Home Office started piloting Section 9. 116 families were selected to take part in the pilot in Leeds, London and Manchester. At the time of writing (January 2006) the Home Office is considering whether to go ahead with the national roll out of the policy.

This report is based on the casework experience of Refugee Council and Refugee Action. Through our offices in the three pilot areas we have had contact with many of the families affected by the pilot. Our key conclusions are:

- Section 9 has caused immense distress and panic among families who face destitution, homelessness and having their children taken into care
- Section 9 is completely incompatible with human rights standards
- Section 9 has comprehensively failed to achieve the Government's stated objective of encouraging families to return voluntarily to their home countries

These conclusions are based on the following facts:

- Only one family has left the UK as a result of Section 9.
- At the most, 3 families have signed up for voluntary return and only another 12 have taken steps to obtain travel documents.

- At least 32 families, almost a third of the total, have gone underground without support, housing or access to health and welfare services.
- Nine families were removed from the pilot after having their cases reviewed, highlighting the poor quality of decision making on asylum cases.
- Many of the families we have worked with have serious health and mental health problems which have been made worse by Section 9.

We call on the government to abandon this policy on the grounds that it is inhumane and ineffective. We urge the government to explore alternatives that support families at the end of the asylum process, ensuring they get refugee protection if they need it, and if they don't, are able to plan for a safe and sustainable return.

1 The pilot programme

The stated aim of the pilot was to test Section 9 in practice before deciding whether to implement the policy across the UK. 116 families were selected to take part in the pilot.

- Manchester area – 40
- Leeds area - 40
- London area– 36

The pilot process involved a five stage process:

- A Home Office (Stage 1) letter advising clients that all support could be removed if they did not make arrangements to leave the UK
- A follow up letter arranging an interview
- An interview with an Immigration Service official to assess the case
- A "Termination of Support" letter to clients whom the Immigration Service believed were not taking steps to leave
- Support stop after 14 days or after an appeal was heard.

In July 2005, refugee agencies working in the pilot areas reported their concern to the Home Office that very few families had sought advice about the Section 9 process. Subsequently, Refugee Council and Refugee Action were contracted to provide outreach support to affected families.

Outreach

Five of the 116 families had contact with the outreach teams.

- The 35 families had 73 children between them
- 80% of parents had mental health problems ranging from depression to self harming
- 10% of women were in the late stages of pregnancy
- 36% of parents had significant health conditions

Problems with the pilot

We have a number of concerns about the way the pilot has been handled. As one client advisor put it: "This has created panic and a feeling of victimisation within different communities, adding to peoples' confusion and upset." The main concerns are listed below:

- Information about Section 9 was sent to clients in letters written in English - 75% of clients could not understand it fully because of language difficulties.
- The tone of the letters made families feel threatened and insecure.
- Immigration officers conducting the interviews did not appear to have the necessary skills to respond adequately.
- Many clients asked why they were part of the process when other families who had exhausted appeal rights were not.
- A significant number of clients were awaiting outstanding asylum or other claims to remain in the UK.
- The Home Office did not consult and engage with refugee agencies and statutory bodies at an early stage.

Further confusion was caused in July 2005, when all families who had exhausted their appeal rights were sent Stage 1 letters even though the pilot was not complete and national implementation of Section 9 was some way off. Since July 2005, each agency has seen an average of 10 families a week, many of whom are very distressed and confused. On average families required a minimum of three advice sessions after receiving the letters. 50% of families required legal advice.

Legal issues

A number of legal issues have been raised by the Section 9 pilot:

- Local authorities are unclear about their responsibilities, in particular how Section 9 and obligations under the 1989 Children Act can be reconciled.
- Local authority staff have not received the required training to conduct human rights assessments.
- Many solicitors are unclear as to how Section 9 would affect their clients.
- Those affected face serious difficulties in appealing against decisions to terminate support because the process is so complex.
- 30% of families in the pilot had outstanding asylum claims or other legal representations unresolved and therefore should not have been included.

For example, the Refugee Council had contact with a woman who had been so badly abused by her husband that she was hospitalised. The husband subsequently abandoned her and her children. After leaving hospital the woman made an asylum claim in her own right and she was awaiting a substantive interview. But she was included in the Section 9 pilot on the grounds that her husband had exhausted all his appeal rights.

2 An inhumane policy

Section 9 is based on a fundamentally inhumane notion that it is acceptable to use withdrawal of support from families as a way of “encouraging” them to give up their fight for asylum and to return home.

In November 2005, the children’s charity Barnardo’s published a report entitled *The End of the Road: The Impact on Families of Section 9*. It concluded that: “threatening families with destitution, with having their children taken into care, is not an ‘incentive’ that any caring society should utilise.”

The effect on health

More than a third of the families who came to see Refugee Council and Refugee Action advice workers were already suffering from health problems, ranging from heart disease and rickets to sickle cell anaemia and asthma. Even before they had support removed or went underground most families were not receiving adequate health care.

In 80% of the families we worked with, parents had mental health problems, ranging from medically diagnosed conditions such as post traumatic stress disorder to those who were so depressed they wept throughout the advice sessions with our staff.

The most well known case of a family who have suffered as a result of the Section 9 pilot is the Sukulas from Bolton, who are asylum seekers from the Democratic Republic of the Congo. Talking in the House of Commons in November, 19 year old Flores Sukula described how her family had been affected. ‘For twelve weeks we have had all benefits taken away . . . we have to survive on the charity of others. It’s inhuman and degrading . . . My mum is so depressed she’s had to go on medication, she’s crying all the time . . . My brother, Destin, is seven now. We’ve had reports from his school of him being distant and having funny turns. He’s so stressed out. He’s just not the same person anymore. My sister Benedicte is nine months. But since August, we cannot give her nappies and baby milk.’

Removal of support

At the time of writing, approximately 60 of the 116 families are not getting any support, in 26 cases as a direct consequence of the Section 9 policy. No study has been carried out into how families denied support under Section 9 are coping but previous reports documenting the experiences of destitute asylum seekers have shown 75% were forced to sleep rough, experienced hunger and lacked essential items like toiletries (See: *Hungry and Homeless – Refugee Council and Oxfam report, April 2004*). We know that families are dependent on refugee community organisations, faith groups and other providers for food parcels and basic provisions.

A large number of families have gone underground and left their accommodation (see *Absconding* below) but even those who have been allowed to stay as a concession from the housing provider face eviction at any time.

Absconding

At least 32 families (almost a third of the total) have, for one reason or another, left their accommodation and are no longer in contact with the authorities. Homeless asylum seekers – in particular women and children – are particularly vulnerable to violence, abuse and sexual exploitation and face increased health and mental health problems.

Although no official figures are kept, this rate of absconding is thought to be extremely high when compared with other asylum seeking families who are not, as yet, subject to Section 9.

The Chair of the Asylum and Refugee Task Group of the Association of Directors of Social Services, Peter Gilroy, said in November 2005: "I am greatly concerned that Section 9 has apparently encouraged so many families to disappear . . . It is ironic that at the same time the government is working hard to implement *Every Child Matters*, national policy appears to be encouraging families to disappear."

Removal of children

We understand that 4 children of families involved in the Section 9 pilot have been taken into the care of social services. The exact circumstances of these cases are not clear, but decades of child protection research has documented the life-long impact that breaking up families can have.

The British Association of Social Workers (BASW) has publicly criticised Section 9. In August 2005, it said: "the possibility of children's social services removing children from their families as a result of Section 9 is incompatible with UK childcare legislation which upholds the fundamental right of all children to live with and be cared for by their parents". The BASW went on say the policy was incompatible with the 1989 Children Act and the UN Convention on the Rights of the Child.

In August 2005, the newly appointed Children's Commissioner for England, professor Al Aynsley-Green said: "It is vital to ensure that the State should only ever use its powers to take children away from their families where it is clear that it is the best thing to do for the child and not simply to be 'tough' on failed asylum applicants".

3 An ineffective policy

The Home Office's aims for Section 9 were as follows:

- To increase the number of failed asylum-seeking families exploring voluntary return options and leaving the UK
- To increase co-operation and compliance with removal directions
- To reduce costs to the tax payer in long-term asylum support and other associated costs
- To reduce the asylum intake and improve the asylum system

Return

At the evaluation stage of the pilot the key refugee agencies found that of the families who had received only the Stage 1 letter:

- None were taking steps to leave the UK
- None had sought information on voluntary return programmes

Of the 35 families who were involved in the Refugee Council/Refugee Action outreach programme:

- All believed it was unsafe for them to return to their home country

At the time of writing (January 2006), we believe that three families have signed up for voluntary return, and another 12 have taken steps to obtain travel documents. We are concerned that some families may be co-operating because they are terrified of their children being taken from them.

A Refugee Council worker who talked to family who had decided to sign up for voluntary return rather than face losing their children described them as "traumatised and dejected." In another instance, a family who signed the Immigration Service declaration stating they would return voluntarily did so after being coerced by Immigration Service officers.

Section 9 has failed to achieve its aim of getting families to take up voluntary return and leave the UK:

- Only one family has returned to their home country
- Fewer than one in ten families have taken any steps to return

The Home Office says that five families have been referred to the Family Removal Team for enforced removal, but there is no evidence from Home Office statistical information or from refugee agency contact with families to suggest that any have complied with removal directions.

Reduced costs

There is no evidence that Section 9 has reduced costs to the taxpayer, indeed the added burden imposed on refugee agencies, social services, the legal system, community and church groups has meant higher costs.

- Local authority social services departments incur considerable costs for each Section 9 assessment. For each child taken into local authority care, the various processes are estimated to cost nearly £4,000 and nearly £1,500 for each month the children remain in care (*The Development of Unit Costs for Social Work Process – Ward, Holmes and Soper*).
- Section 9 has resulted in a number of appeals to the Asylum Support Adjudicator. The costs of hearings, solicitors and barristers fees, etc. are considerable. The Asylum Support Appeals Project provides support to each client costed at £3,700.

- Refugee agencies, refugee community organisations and other bodies have incurred considerable costs in providing support and advice to families and subsistence support if they are destitute.

Reduced asylum intake and improving the asylum system

There is no evidence that Section 9 has acted as deterrent to asylum applications, which were falling fast well before the pilot scheme began. We would argue that Section 9 has actually damaged the asylum system because it has undermined the credibility of the Government's commitment to human rights and voluntary return, as well as creating a costly and ineffective process.

5 An alternative to Section 9

Refugee Council and Refugee Action are wholly opposed to Section 9 and call on the Government to repeal this provision, or at the very least, make a commitment not to continue its implementation.

We urge the government to invest in a positive casework approach to families at the end of the process. Models such as the work of Hotham Mission in Melbourne, Australia demonstrate that working with families, rather than punishing them, is more likely to ensure that protection needs are met, and returns are safe and sustainable.

All families should be supported by a caseworker whose role is to identify their options once their appeal rights are exhausted. All families should have access to legal advice regarding their substantive claim and humanitarian protection issues. This is essential both to ensure that those who need protection get it, and as an integral part of building trust in the system.

Once protection needs have been fully considered, the role of the caseworker is to provide practical and emotional support to the family in considering their options and in planning for possible return. This includes work on family tracing and winding up financial and other responsibilities in the UK as well as planning for employment, housing, school places and reconnecting with social networks in countries of origin.

The Hotham Mission's Asylum Seeker Project (ASP) currently works with more than 200 asylum seekers. It has a reception/welfare approach which focuses on building trust and working consistently with the claimant. The aim is to ensure that asylum seekers completely understand the situation in which they have found themselves and that they have all the information they need in making decisions about the few choices available to them.

The ASP model includes:

- Appropriate means for communicating with those who are departing
- Allowing time for discussion and working through closure, particularly in dealing with abrupt terminations when asylum seekers must leave quickly
- Adequate time for hand-over if a different authority or worker is becoming involved in the case.

An evaluation of the ASP in 2003 considered 111 cases (203 people)

- 43% received immigration status (permanent or temporary)
- 57% had their claims refused and left the country
- 0% absconded

The high level of voluntary repatriation highlights the success of the ASP's casework system in preparing, supporting and empowering asylum seekers at the end of the process.

6 Conclusions

We believe that the Section 9 pilot has demonstrated the policy to be both inhumane and ineffective.

Using the threat of destitution and the removal of children to bring about the policy objective of increased returns is abhorrent in a civilised society. The families in the pilot were already vulnerable, with high levels of health and mental health problems - Section 9 made these worse by causing distress and panic.

Section 9 has pushed families with children into homelessness and destitution and led to a large number going underground.

Section 9 is incompatible with human rights standards and runs contrary to the government's child protection and child welfare policies.

The agencies involved in the implementation and monitoring of the Section 9 pilot, including social services departments, have expressed profound concerns and misgivings about the policy and many have called for Section 9 to be reviewed or scrapped.

Section 9 has not achieved its aim of encouraging families to take up voluntary return.

If Section 9 continues to be rolled out, the impact on children, families and communities will be devastating. We urge the government to repeal this provision.