SLIPPING THROUGH THE CRACKS

How Britain’s asylum support system fails the most vulnerable

JULY 2017
Every day, Refugee Action works with asylum seekers who are destitute or at risk of becoming destitute. Many are living on the street or haven’t eaten properly for weeks. This is despite a duty on the part of the Home Office to ensure that people who require support while waiting for a decision on their asylum claim do not fall into destitution and homelessness. Most asylum seekers in the UK are not allowed to work, so must rely entirely on support they receive from the government.

However, the barriers to accessing asylum support currently mean that many vulnerable people are being wrongly denied assistance or are waiting unreasonable lengths of time to receive the support they are entitled to. The result is that people seeking asylum are pushed further into poverty and destitution, with both immediate and long-term impacts on their physical and mental health and that of their families.

Ultimately, instead of providing the assurances and stability that it ought to in order to allow people to navigate the asylum process in dignity, the current system for asylum support is yet another challenge to overcome in a journey of uncertainty.

In this report, we present research carried out between January 2016 and March 2017 based on analysis of a total of over 300 case files from our operations in Manchester and London, and the Greater Manchester Immigration Aid Unit’s asylum support project Asylum Support Housing Advice (ASHA). We set out to examine the extent of the delays experienced by the asylum seekers who we work with, and to explore the impact that such delays are having on people who have already been forced to flee conflict, violence and persecution. We look at how support is provided to the asylum seekers that so desperately need it in order to feed, clothe and house themselves and their families. The main issues that we encountered were caused by:

1. Incorrect refusals of emergency support
   Applications for emergency (section 98) support were incorrectly refused on a regular basis, leaving people destitute and homeless. Less than half of the applications for emergency support that we assisted with were granted on initial application; however, after challenging the refusals and resubmitting applications 92% were granted – 80% of them within a week of the initial refusal, often with no change in the applicant’s material situation.

2. Poor application of the destitution test
   Asylum support applicants have to show that they do not have adequate accommodation, or enough money to cover their essential living needs. The misapplication of this policy was the cause of huge amounts of distress and anxiety for the asylum seekers that Refugee Action works with.

3. Extended periods spent in Initial Accommodation
   Despite being inappropriate for long periods of stay, for those supported by Refugee Action the average length of time people spent in Initial Accommodation was 37 days. One person spent 85 days in Initial Accommodation while waiting for their support application to be processed.

4. Delays in receiving section 95 support
   Asylum seekers waiting for accommodation and financial assistance had to wait on average almost two months from applying for support to being accommodated. Those applying for financial assistance only were waiting an average of around 90 days from application to receiving support.

5. Onerous requests for further information
   We documented repeated requests for further information on support applications that disregarded the facts of applicants’ cases and, at times, ignored safeguarding for particularly vulnerable people.
The impact on the vulnerable asylum seekers that Refugee Action works with was serious, and is documented in the report through interviews carried out with 36 people who have gone through the process of applying for asylum support. Their testimonies are set out below. These include entire families who were forced to sleep on the floor of one room to avoid bedbugs, pregnant women being forced to choose between sleeping on a stranger’s sofa and street homelessness, parents and their children living in houses that were declared unsafe for habitation, people being forced into significant amounts of debt, and illnesses that could clearly be linked to the squalid conditions that people were forced to live in whilst waiting for support.

Refugee Action believes that nobody seeking protection in the UK should be left living in destitution. We hope and believe that this straightforward objective is shared by Ministers in government, who have consistently highlighted the importance of ensuring that UK asylum policy and practice adequately supports vulnerable people. Yet the current system fails to provide an adequate safety net to catch them.

Changes must be made to the UK’s asylum support system if it is to respond effectively and promptly to the needs of the people it is intended to provide for. Without this, it is inevitable widespread destitution will persist amongst asylum seekers and that these most vulnerable of people will continue to slip through the cracks of the system.

The Home Office has already demonstrated that, where there is the will, improvements are possible. Some of the most flagrant problems that Refugee Action and our partners have seen with referrals for emergency support, for instance, have been addressed as a result of positive dialogue with the Home Office and recognition that changes in approach are in everybody’s interests. Such changes are encouraging,
but further safeguards are necessary to address the issues outlined in this report and to ensure that such problems do not recur.

In order to improve the existing system, the following steps should be taken:

1. **The Government must urgently recommit to applying existing policy and guidance consistently in all cases.**
   
   To achieve this the Home Office must:
   
   - Correctly apply the destitution test.
   
   - Apply appropriate evidential burdens to section 98 cases to reflect the emergency nature of this type of support, and ensuring that 100% of section 98 applications submitted before 3pm receive a reply on the same day.
   
   - Make decisions on section 95 support which mean people do not fall into destitution, with an ambition to match the destitution test timeline of 14 days.
   
   - Backdate payments provided to destitute asylum seekers as standard, ideally from the point where it can reasonably be said that the Home Office had sufficient information to make a decision.
   
   - Ensure that requests for further information take into account the information already provided in the ASF1.
   
   - Provide asylum support in line with the 2016-2020 strategy for Ending Violence against Women and Girls, which states that “no woman should live in fear of violence.”

2. Within three months, the Home Office should put into practice a transparent approach to decision-making on asylum support so that the future treatment of asylum seekers is apparent to the public and all stakeholders. This should be achieved by:
   
   - Releasing detailed statistics on support decisions and ensuring that it is publicly monitoring meaningful indicators of success.
   
   - Commissioning independent reviews of the use of section 57 and section 55 decisions in asylum support decisions.

3. Finally, the Government should give asylum seekers the right to work, unconstrained by the shortage occupation list. In addition to bringing the UK in line with most European countries, this would mean that asylum seekers would no longer be forced to solely rely on state support to survive.
INTRODUCTION

Those seeking international protection in the UK are some of the most vulnerable people in this country. Many asylum seekers have left behind families, homes, and all their belongings in order to make long, often violent journeys to our shores so that they can escape conflict, violence, and persecution.

Every day, Refugee Action works with asylum seekers who are destitute or at risk of becoming destitute. Many are living on the street or haven’t eaten properly for weeks. This is despite a legal duty on the part of the Home Office to ensure that people navigating the asylum process do not fall into destitution and homelessness.

Asylum seekers are generally not allowed to work and many have no way to survive except through the small amounts of state support that they receive. This amounts to little more than a safety net; destitute asylum seekers receive just £5.28 per day to pay for all their meals, toiletries, clothing and transportation. But even this small sum is denied to those who often need it most, as the Home Office can often take weeks and sometimes months to provide them with the assistance that they are entitled to – leaving them without access to regular meals or a roof over their head.

The result is that people seeking asylum are pushed further into poverty and destitution, with long-term implications for their physical and mental health and that of their children and families.

“The Home Office is supposed to help you. They say, “come here and feel safe” - but it’s not actually what they do. We’re in constant limbo. We are in constant worry where our next meal is coming from.”

Halima, waited 254 days for support.

“Sometimes I just want to sleep and not get up... It was all too much to deal with. My country was bad and here was bad, too.”

Jamila, waited 48 days for support.

The research presented here shows how widespread this problem is. It presents data collected from an analysis of hundreds of cases that show the challenges faced by people in need of asylum support in order to avoid destitution. In this report, we document the experiences of some of the many individuals and families who are kept waiting for months before they receive any assistance. They are forced to sleep on the streets or to rely on the generosity of friends and family, many of whom can barely afford to make ends meet themselves.

Our research is reinforced by evidence from various other organisations working with asylum seekers, which has set out the shortcomings of the system – from delays to support, to the Home Office’s failure to apply the correct legal definitions of destitution in asylum support decisions, and a disinclination on the part of some Home Office officials to consider all relevant evidence submitted as part of an application for support.

Changes must be made to the UK’s asylum support system if it is to respond effectively and promptly to the needs of the people it is intended to provide for. Without such changes, it is inevitable that destitution will persist amongst asylum seekers and that these most vulnerable of people will continue to slip through the cracks of an unreliable system.
REFUGEE ACTION’S SERVICES FOR ASYLUM SEEKERS

For over 35 years Refugee Action has provided specialist advice to people seeking asylum on their rights and choices in securing support. These are some of the most vulnerable people in the country, having survived persecution and war. Refugee Action currently delivers services to asylum seekers in the North West, West Yorkshire, the West Midlands and London; since 2001, we have advised and supported over 70,000 asylum seekers in the UK.

Many vulnerable people seek help to access asylum support when they are in crisis — their support has been stopped or their application refused. Existing services may not be able to help them to apply for support or challenge refusals. In this distressed state they need an expert, dedicated caseworker who can advise, guide and support them through the process. In response to the growing problem of destitution amongst asylum seekers in the UK, Refugee Action established its ‘Asylum Crisis’ projects in Manchester and London in January 2016, enabling asylum seekers to understand their support options and helping them to prepare support applications when they are eligible to do so. We also help people to challenge support application refusals by gathering additional evidence, resubmitting evidence, and engaging in legal action where necessary. Similar projects in Birmingham, Bradford and Liverpool work with destitute asylum seekers and refused asylum seekers in order to help them access the support that they are entitled to.

Refugee Action works extensively with partner organisations across the country, including Asylum Support Housing Advice (ASHA) in Manchester, in an effort to respond to such preventable destitution. The information presented in this report is based on casework undertaken by Refugee Action and ASHA in Manchester and Refugee Action in London. The findings are reflective of the wider experience of Refugee Action nationally.

Originally set up in 2004, ASHA works to alleviate destitution amongst asylum seekers and refused asylum seekers. It does this through supporting people’s applications for asylum support and challenging negative asylum support decisions or discontinuations, supporting people to access legal aid representation, health and education services, and providing welfare and housing advice, in partnership with local charities, to those who are not eligible for asylum support. Since its inception, ASHA has supported over 6,700 people and their families from 89 different countries and has successfully prevented destitution on 3,300 occasions either through applications for support or appeals to the Asylum Support Tribunal.

Since 2015, ASHA has been a project within the Greater Manchester Immigration Aid Unit (GMIAU). For 25 years GMIAU has supported people subject to immigration control in Greater Manchester and Merseyside. GMIAU provides legal advice, representation, and support to people across the north west of England.
ASYLUM SUPPORT PROVISION

People seeking protection in the UK generally do not have the right to work whilst they are waiting for their asylum claim to be processed. The Home Office aims to decide ‘straightforward’ asylum applications within six months, however decisions can take far longer.

It is unclear how long it takes, on average, to make a decision on an asylum claim, though Home Office figures for decisions that are pending do give an idea of the length of time that asylum seekers spend waiting for their claims to be decided. As of December 2016, 21,475 people were awaiting an initial decision on their asylum claims; of them, over 40% (8,825) had been waiting for over six months. This is a 143% increase on 2015 figures, when slightly over 20% of those awaiting a decision on their asylum claim had been waiting more than six months.6

Those who do not have an independent source of income are entirely dependent upon state support in order to survive. Asylum seekers are not eligible for mainstream welfare benefits, and the 1999 Immigration Act sets out the basis for the National Asylum Support Service, which created a parallel system for providing asylum seekers with support (now provided through UK Visas and Immigration, a division of the Home Office).7

ASYLUM SEEKERS AND THE RIGHT TO WORK

Asylum seekers only have the right to ask for permission to work after they have been waiting for a decision on their asylum claim for over a year, and even then their employment is restricted to jobs on the shortage occupation list, which includes such professions as ‘classical ballet dancer’, ‘nuclear medicine practitioner’, and ‘geo-environmental specialist’.8
The recast European Union Reception Conditions Directive of 2013 gave asylum seekers in most EU countries the right to access the labour market after nine months from the date on which an application for asylum was made. Several of these countries allow asylum seekers to seek employment even earlier. The UK chose to opt out of this common minimum standard and to maintain a 12-month minimum; the result is that many asylum seekers must rely wholly upon state support to feed, clothe, and house themselves and their families.

By allowing them to work, asylum seekers could be provided with a route out of poverty and thus avoid the negative consequences of prolonged economic exclusion. The burden on the taxpayer would also be reduced in both the short and the longer term, as those who are eventually given permission to stay will have higher chances of securing employment and integrating more successfully into their new communities if they have avoided long periods outside the labour market.

Asylum Support in the law

The two elements of asylum support that we focus on in this report are sections 95 and 98 of the 1999 Immigration and Asylum Act, which are the main forms of support available to asylum seekers. On the whole, these types of support are reserved for asylum applicants who have ongoing asylum claims awaiting a decision.

- **Section 95** of the 1999 Immigration and Asylum Act enables the provision of support to asylum seekers or dependants of asylum seekers who appear to the Secretary of State to be destitute or are likely to become destitute within 14 days. An asylum seeker is defined as a person who has made a claim for asylum which has been recorded by the Secretary of State but which has not yet been determined. Applicants apply by completing a 35 page ASF1 form; they can request financial support, support with accommodation, or both; accommodation is provided on a no-choice basis, and usually involves ‘dispersal’ – generally outside of the south east of the UK – with only a few exceptions.

The amount of financial support given to asylum seekers is currently £36.95 per person per week. Whilst support rates were previously set at 70% of mainstream benefits, over the years this link has broken. Asylum support rates are currently set at just over 50% of income support for people aged over 25. Changes were made in August 2015 that introduced a single weekly rate for all asylum seekers. Support had previously varied according to the age of applicants and the composition of their household. This represented a substantial reduction in support for families with children.

- **Section 98** ‘emergency’ support is intended to provide urgent temporary support to destitute asylum seekers, pending their application for section 95 support (however an ongoing section 95 application is not a prerequisite for section 98 to be approved). The ‘test’ for destitution for section 98 support, set out below, is the same as that used to determine section 95 applications, however the evidential requirements are lower; according to the 1999 Immigration Act, section 98 support should be given to those asylum seekers “who it appears to the Secretary of State may be destitute”, while section 95 support is reserved for asylum seekers “who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.”

In addition to these two types of support, sections 55 and 57 of the 2002 Nationality, Immigration and Asylum Act are particularly relevant to asylum seekers applying for support and, in Refugee Action’s experience, are often used inappropriately to deny support:
• Section 57 of the 2002 Nationality, Immigration and Asylum Act can be used to refuse applications for section 95 support on the basis that “the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with enquiries.” Applicants have no right of appeal following a section 57 decision.

• Section 55 of the 2002 Nationality, Immigration and Asylum Act states that the Home Office may withhold support from an asylum seeker where “the Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person’s arrival in the United Kingdom.” The exception is where denial of support would breech an individual’s human rights, for instance by making that person street homeless. The result is that, in practice, section 55 is not applied when an asylum seeker applies for both subsistence and accommodation support under section 95. Section 55 decisions require applicants to attend an interview, considerably delaying decisions. Applicants have no right of appeal following a section 55 decision.

The Destitution Test
In order for an applicant to qualify for asylum support the Home Office applies a test to all applicants, who must show that they are currently destitute (in the case of Section 98 support) or will be destitute within 14 days (in the case of applications for section 95 support). According to the 1999 Immigration Act:

“The Secretary of State may provide or arrange for the provision of support for asylum seekers or dependants of asylum seekers who appear to be destitute or are likely to become destitute within a 14 calendar day period. Applicants are deemed to appear destitute if:

• they and their dependants do not have adequate accommodation or any means of obtaining it (irrespective of whether other essential living needs are met); or

• they and their dependants have adequate accommodation or the means of obtaining it, but cannot meet essential living needs.”

A person is therefore deemed destitute if they do not have enough money to eat and buy other essentials, irrespective of whether they have a place to live. The definition of ‘adequate accommodation’ (set out below) goes further than just having a place to sleep at night; the accommodation must be safe, accessible, secure, and affordable. Importantly, the different evidential burden used for section 95 and section 98 support – set out above - reflects the immediate and urgent nature of section 98 provision.

Despite the fact that asylum support is enshrined in law, and that for many asylum seekers such support is the only thing available to them that keeps them off the streets, the destitute asylum seekers that Refugee Action works with face unreasonable – and often seemingly endless – hurdles to receiving such assistance.

“I felt as though I had no control over the situation. You don’t control your life... It is in the hands of the Home Office; it is like living like an animal.”

Patrick, spent 63 days in Initial Accommodation.
OUR FINDINGS: KEEPING PEOPLE IN DESTITUTION AND UNCERTAINTY

“My daughter’s health has suffered since being here. She has been very upset by moving about all the time… She’s frightened that we will have to move again. She is more aggressive and unhappy. She is also more withdrawn. I am also very affected by my experiences since coming to the UK. I feel hopeless and very lonely. I am living only for my daughter… I don’t want her to suffer like me.”

Wafa’a, section 98 rejection overturned.

This section sets out the key problems faced by the asylum seekers that Refugee Action works with when they attempt to access the asylum support to which they are entitled:

1. Incorrect refusals of emergency support
2. Poor application of the destitution test
3. Extended periods spent in Initial Accommodation
4. Delays in receiving section 95 support
5. Onerous requests for further information

The refusals, delays, and incorrect decisions outlined here result in a situation whereby people are kept in uncertain and sometimes unsafe situations for long periods of time. This can mean having to make the choice between feeding their children or having enough to eat themselves; in the most desperate cases, it puts them at risk of exploitation or street homelessness.

We spoke with families who were forced to stay in accommodation with leaking toilets or no heating. Parents were desperately concerned for their children’s health, but could do very little to improve their own situation except adopt extreme coping strategies; one mother and her child slept on the floor of a room while waiting for the Home Office to grant them support, because this was the only place that they could avoid being bitten by bed bugs. Another woman told us that when her support was denied she could no longer afford to buy sanitary towels for her teenage daughter; she told her daughter to use tissue instead.

“Most days I am tearful. I feel I have no life.”

Sima, waited 71 days in Initial Accommodation before receiving section 95 support.

Many people that we spoke to in the course of this research had given up hope; almost all of the people we interviewed felt confused and frustrated at the way they had been treated whilst applying for support.

“I feel near breaking point. I am suffering from depression and have been referred for counseling at my local mental health facility. I have felt powerless as to how to change my situation.”

Rashid, waited three months for support.

Abdullah* was denied section 98 support three times before his application was accepted. He spent several weeks sleeping rough, before being referred to an emergency night shelter by Refugee Action. “It was horrible to be on the streets. It was December and very cold. I would try to sleep next to vents in buildings that gave out a little heat because I didn’t have a blanket – just the clothes I was wearing. It was very dirty and I was scared what drunk people in the street might do to me.” Abdullah has recently been granted refugee status.

“I feel like I’m not living… We are like beggars.”

Sachini, waited 124 days for support.
Mahmoud was granted asylum support in September 2016, having originally applied in April 2016. By the time he applied for support, he had already spent 15 days on the street. He was recovering from a recent hernia operation, and over the next five months – during which time he lived on the streets and on the floor of a homeless shelter – he lost 9kg. Mahmoud described the shame he felt when he would have to search for coins in parks.

“I was crying every day, every night.”

Mahmoud’s application for support was delayed for four months because the Home Office did not consider that he had provided them with sufficient evidence to prove his destitution. “They asked me many questions – they don’t know how I feel. Already I have problems in my life. The first time it was normal, but the second and third times they were asking me for the same information.”

The Home Office had asked for details of Mahmoud’s bank account in Egypt. When he contacted his family, they warned him that it could be dangerous for them to get such information; “If you want your son to die, send him to the bank.”

Finally Mahmoud was able to obtain the requested information, but the ordeal left him in great stress and afraid for his family.

Mahmoud was granted refugee status in early 2017. He relishes the prospect of being able to work and to support himself; “Now my life starts.”

Hajiya came to the UK in 2012 with her two sons. Her first application for section 95 support was refused. Unable to pay rent, her landlord took her to court to try to evict her family; “It was hell.”

After coming to Refugee Action, Hajiya applied again for support but had to wait a further three months before she got her first payment at the end of March 2017. During that time, Hajiya went to charities and food banks to survive, skipping meals to ensure her children ate. Their heater was broken but the landlord wouldn’t take action as he wanted them to leave. It was very damp and cold; “I felt sick most of the time.” Her son, who has cerebral palsy and uses crutches, had to wake up at 5.30am to take three buses and a tube to get to school. Without travel money, Hajiya had to save up what she got from charities to fund these journeys.

At one point Hajiya tried to kill herself by drinking bleach; “Why did I come to this country? I wanted to be hit by a car.”
Incorrect refusals of emergency support

In an emergency, destitute asylum seekers can apply for section 98 support as an interim measure, usually until their eligibility for section 95 support is assessed.

From the outset, however, the process is often complex and unclear. Indeed, several of the asylum seekers that Refugee Action worked with as part of this research had originally been incorrectly refused support at the Asylum Intake Unit (AIU) or port of entry when they lodged their asylum claim, or told to apply at a later stage; despite this being contrary to Home Office guidance, many were not in a position to object as they were unaware of their rights.

For some of them this meant that they were forced to stay in uncertain and informal situations that put them at risk of exploitation. Others were left stranded after having used up any money they had to travel down to the AIU in Croydon. Subsequent applications for support were also affected, with refusals mentioning a failure on the part of the applicant to apply for support at the AIU – even when, in many cases, they had attempted to do so.

“[When I applied for asylum] I wasn’t actually told about section 98 support… They said I should live with my brother and if I needed support I’d get it in a couple of days. He wasn’t in a position to support me… it was very hard. It was 4 months before I got support.” Darwish.

As explained above, the burden of evidence for this type of urgent support requires applicants to show that they ‘may be’ destitute – a lower evidential requirement than that of section 95 support. This reflects the immediate necessity of such support; applicants are often newly arrived in the UK, sleeping on the street or having been thrown out of their accommodation.

Despite this, during the period covered by this research Refugee Action consistently saw an overly restrictive approach taken by the Home Office in granting section 98 support. Of the 88 people that we helped with an application for section 98 support in Manchester, after assessing as destitute, less than half – 43 – were granted on initial application and 45 were initially rejected. Refugee Action’s assessment of these cases, according to relevant law and policy, is that 44 were incorrectly refused.
Refugee Action saw high levels of incorrect decision-making for section 98 cases

50% of applications for emergency support were incorrectly refused

92% of these refusals were overturned when challenged

There is no right of appeal against a negative section 98 decision, however the applicant may reapply. In the case of all but six of the applicants who were initially refused section 98 support Refugee Action assisted them to reapply, sometimes several times, due to their desperate need for emergency support. When applicants reapplied the vast majority (92%), were subsequently approved. A large majority of these overturned cases (29 of 36) were made within a week of the refusal; 53% of all ‘overturned’ cases were made the day after such support had been rejected, with a third made within three days of the initial rejection.

The speed with which these overturns were made, along with the fact that in the majority of cases no extra evidence was put forward to the Home Office, clearly shows that such decisions had little or nothing to do with a change in the applicant’s material situation. Instead, it reflects the excessively restrictive approach taken by the Home Office to granting emergency support, which is too often inaccessible for those in need of it.

However, those refusals that take longer to overturn are also significant – and in many ways are some of the most vulnerable cases that Refugee Action sees. Refugee Action only assists in applications for asylum support when we have assessed the applicant as being destitute, according to the Home Office’s own test. When somebody’s application is wrongly rejected, often as a result of the Home Office misapplying or misusing its own policy and guidance, the result is that people are left living in destitution – often for weeks or months – without hope and with no safety net to catch them.
Even the most basic premise behind section 98 support – that applications are urgent and therefore require an immediate response – has been, on occasion, ignored by Home Office officials. A decision on section 98 support should be taken before the end of the working day on which the application is received, as long as it is sent before 3pm, as the assumption is that the applicant is currently destitute and thus the support is urgent.

Worryingly, Refugee Action saw even this basic safeguard ignored in seven different cases, where – despite referrals being made before 3pm, as per Home Office guidelines – no response was received from the Home Office on that day. In several cases, Refugee Action paid for the applicant to stay at a hostel so they would not find themselves sleeping on the street.

Gloria arrived in the UK in May 2015 with her infant daughter. The two initially stayed with the child’s father, however Gloria – who is a lesbian – realised that he wanted the relationship to develop further and so she left his home with her child. The first time she applied for section 98 support, the Home Office instructed her to go back to live with her daughter’s father and “pretend” not to be a lesbian for a few weeks, until section 95 support was arranged. “In the screening interview the woman said to me ‘A lesbian? With a baby?’ as if this was not possible or that I was lying. In my country people are often forced into marriage and into having children to hide the fact that they are gay. Once I got this response from her I was afraid to go to my big interview... how would they treat me fairly if this was what they thought about a gay woman having a child?”

After her first application was rejected at the Asylum Intake Unit, she had no money to get back to Manchester and resorted to begging for money on the street: “I felt so guilty – I had never had to ask for money before.”

Gloria stayed with various members of her community while waiting to be housed in Initial Accommodation, many of whom she did not even know. Those who took her in lived in crowded conditions; due to a lack of space, Gloria had to sleep on the floor and during this period was physically unable to breastfeed due to stress. She struggled to find any money to buy food and milk for herself and her baby.

Gloria was finally granted section 98 support on her third application, five days after her first application was initially (and incorrectly) refused because she had not first completed an application for section 95 support, despite this not being a requirement. “I asked for support but was told my case had to be referred to the gatekeeper. I imagined a man guarding a gate saying ‘No, you can’t come in.’”

“I felt so guilty – I had never had to ask for money before.”
Progress around access to section 98 support

In late 2015, Refugee Action caseworkers noted a significant increase in poor decisions on applications for section 98 support on the part of the Home Office’s ‘Gatekeeper’ team, which was responsible at the time for assessing section 98 support applications. The practice of this team – which was accompanied by inappropriate language and conduct from some team members towards those working with vulnerable asylum seekers – often contravened the Government’s own operational guidance and policies.

These issues were raised with Home Office officials, who took action to rectify some of the concerns identified – from addressing the problem of staff conduct and language, to bad decision making and failure of caseworkers to follow operational guidance on section 98 decision making, including onerously high evidential demands for applications.

As a result of ongoing dialogue between the Home Office and organisations who work directly with vulnerable asylum seekers, good progress has been made overall and many problems and concerns with decision-making on cases resolved. The Gatekeeper team was merged into the wider UKVI Intake and Accommodation team in late 2016.

These developments evidence the ability of the Home Office to effectively address and rectify problems with asylum support when brought to light. However, further progress is still required; despite having seen an improvement in practice towards the end of our research period, at the time of writing some partners that we spoke with were once again raising examples of poor decision making which suggests that section 98 decisions are yet again becoming problematic. Safeguards are needed to ensure that such problems do not recur in future. These include ensuring correct application of the destitution test and applying appropriate evidential burdens to section 98 cases, in line with the emergency nature of this support.

Poor application of the destitution test

“...My application for section 98 was refused several times; I was not ‘homeless’, so I was ineligible. I had received an eviction notice, as I was unable to pay the rent but had not actually been evicted.”

Ozioma, waited 57 days for section 95 support – her section 98 application was rejected three times.

The asylum seekers that Refugee Action works with often find themselves living in precarious situations, even if they are technically not street homeless. They are effectively told by the Home Office to ‘come back when you are homeless’. However, this directly contradicts Regulation 8(3) of the Asylum Support Regulations 2000 which sets out the conditions by which accommodation may be considered adequate, as follows:19

- whether it would be reasonable for the person to continue to occupy the accommodation;
- whether the accommodation is affordable for him [sic];
- whether the accommodation is provided under section 98 of the Act, or otherwise on an emergency basis, only while the claim for asylum support is being determined;
- whether the person can secure entry to the accommodation;
- where the accommodation consists of a moveable structure, vehicle or vessel designed or adapted for human habitation, whether there is a place where the person is entitled or permitted both to place it and reside in it;
- whether the accommodation is available for occupation by the person’s dependants together with him [sic];
- whether it is probable that the person’s continued occupation of the accommodation will lead to domestic violence against him [sic] or any of his [sic] dependants.

The use by the Home Office of the idea of intentional homelessness to deny asylum support – i.e. that if an applicant leaves their place of residence, even if in rent arrears and under the
threat of eviction or even violence, they will forgo their right to support – is clearly inappropriate. As set out above, ‘inadequate accommodation’ consists of more than just street homelessness or the imminent risk of removal by bailiffs. So, the fact that somebody may not be at immediate risk of one of these should not – according to existing legislation – be a reason to deny them support. If an applicant is in rent arrears, for instance, whether or not they are facing the immediate prospect of eviction – as is the case for many of the people Refugee Action works with – then their accommodation should not be considered ‘adequate’.

The misapplication of this policy was the cause of huge amounts of distress and anxiety for the asylum seekers that Refugee Action spoke with. However, due to a fear of making themselves intentionally homeless (often explicitly evoked by the Home Office in asylum support rejection letters) they had little choice but to stay put until they were taken to court, often to the detriment of their own and their children’s health. Several people told us that as soon as they stopped paying rent their landlords would ignore any problems with the accommodation. This left vulnerable individuals and families with accruing debt and living in damp, mouldy flats – sometimes with toilets that would not flush or bed bug infestations. One family were not given support because their landlady had not started formal court proceedings, though, due to their rent arrears, she had left the house to fall into disrepair. The family were forced to stay in this situation, even when a section of the roof collapsed.

Several others expressed their concern that entering formal court proceedings would damage their credit rating, or that they were afraid they would find it impossible in the future to secure a place to live. The implications for those who are subsequently granted refugee or humanitarian protection status are serious – jeopardising their future ability to rebuild their lives.

On the flip side, we also came across people who were clearly living in informal situations – sleeping on floors or staying with people who had taken them in for a few nights – and who had been requested by the Home Office to provide evidence that a formal eviction process had been initiated. Due to the informal nature of such arrangements this is often impossible, and sometimes hosts are reluctant to provide any written evidence of arrangements because they are afraid of what the repercussions may be for them. Even where written notice is given the Home Office frequently rejects this, informing applicants that their hosts must give them 28 days’ notice before making them leave, despite the lack of a legal basis for such a demand. One such example of this was a single mother with two daughters who were sleeping on the floor of a storage room at a distant family friend’s house. They were refused assistance by the Home Office, who said that they were not considered destitute as their host had not given them adequate notice to leave the property.

Leaving people to live in such conditions not only maintains the precarity of their situation, as a result of having to rely on the generosity of informal networks, but also puts them at risk of further exploitation, abuse, and even trafficking. This can be particularly dangerous for women, who are disproportionately exposed to such risks and may be put in a position where they undergo re-traumatisation after having fled gender-based violence in the first place.

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When Fatima arrived in the UK with her two daughters, a family friend offered to host the family while they waited to find more permanent accommodation. However, their hosts were an elderly couple with serious health problems who could not accommodate Fatima and her family for an extended period. Moreover, the only space they had available was a small storage room without furniture, and Fatima and her children – one of whom has been mute since witnessing a car bombing in Iraq – slept on the floor in this room for a month.

Sometimes, Fatima went without food to ensure that her children would have enough and to avoid imposing on the family. During this time, she developed vitamin D and iron deficiencies, as well as suffering from a thyroid condition.

After a few weeks, the family were asked to leave because of their hosts’ growing health problems. However, when she applied for asylum support, Fatima was told that her hosts would have to give her 28 days’ notice before making the family leave, even though the couple accommodating them had done so for free, on the basis that it would only be for a short period of time.

Fatima’s application for section 98 support was therefore needlessly refused twice, before finally being accepted after Refugee Action challenged the decisions. After another month in Initial Accommodation, Fatima and her children were dispersed into section 95 accommodation. “Most of the day we all spent inside this little storage room. Even since moving into our [section 95] accommodation, my mental health is not good. I am scared and unsettled.”

Yi Ling and Ke Wei applied for asylum in July 2016. They applied for section 98 support at the Asylum Intake Unit but were refused and told to apply for section 95 support instead, despite the inadequate nature of their accommodation. They submitted an application shortly afterwards in order to support themselves and their nine children. The family had been living in private accommodation, but the house had been sold and the family issued with a section 21 notice, requiring them to leave the property. A structural assessment of the property found it unsound, with “urgent repair” required as a result of “structural movement”.

The house was covered with mould and the beds in the accommodation were infested with bedbugs; the family resorted to sleeping on the floor and using their clothes as bedding. However, they had nowhere else to go and no support. Two days before they were required to vacate the property, the family applied for urgent section 98 support, worried that they would find themselves on the streets with their children. This request was again refused by the Home Office with the reason given that their landlord would have to apply to the County Court for a Possession Order before legally evicting them. The couple were told that if they left the house now they would be making themselves intentionally homeless. They applied a total of five times until approval – but not before legal action against the Home Office had been threatened. It was 52 days before the family was dispersed into section 95 accommodation. Yi Ling told us: “I felt anxious, angry and helpless that I could do nothing more at the time to help my children. I came to the UK to feel safe but I felt unsafe here.”
From her arrival in the UK with her three children, single mother Rania had been staying in private accommodation and using her savings to pay for this. When their money ran out, however, Rania applied for section 95 support. She waited over three months for the support to come through; during this time they were surviving on food parcels from charities and falling behind on their rent payments. When their accommodation became infested with bedbugs the landlord was unresponsive; Rania was already in rent arrears by three months. The family – who were receiving medication from their GP for the bites – resorted to sleeping together on the floor of the living room, the only place where they could avoid being bitten. Despite this, the landlord still came to pressure the family to pay the rent; Rania was never formally issued with an eviction notice, but the constant visits terrified her.

“I was very anxious and frightened. My children were too. When anybody knocked on the door they thought it was the landlord; I stopped answering the phone, even to friends.”

“I worried constantly about what would happen to my children.”

Due to her lack of English language skills, Rania’s teenage daughter often helped with translations when dealing with the Home Office; “Everything was blocked. Nothing moved. [The Home Office] told my daughter: you are not homeless so we won’t give you accommodation. My daughter said, ‘I think they mean we should be in the street, then they will give us a house.’”

Nabila’s application for support was submitted in February 2016, but by the time the family approached Refugee Action for assistance in April 2016 they still had not received any support. By that time, the family owed five months’ worth of rent and their landlord was pressuring them to leave.

“Our landlady would visit the house every week and ask for the rent we owed; I just had to say that my hands were tied, I can’t pay, and this was very difficult emotionally. This was adding to the pressure we felt, because of what had happened in our country and now this...”

Nabila and her husband also owed £3,000 to friends in the UK, and were relying on charities and foodbanks to feed their three children. The Home Office had requested evidence that Nabila’s landlord was going to take her to court. However, despite the rent arrears, and the fact that the house was falling into disrepair, the landlady did not intend to do this, so Nabila and her family were considered to have ‘security of tenure.’

The family were eventually given section 95 support, including accommodation, but Nabila’s worries about her debts continue.

“My previous landlord still contacts me. She says that I can afford to pay her back now I have my housing and bills paid for but she doesn’t understand that the money we receive from the Home Office is not that much. And although our debts are not going up anymore, we are not in a position to pay our friends back even though they are now in a difficult position themselves.”
In addition to a poor application of the destitution test when assessing an applicant’s security of tenure, and the ‘gatekeeping’ that affects such assessments, the notion of an ‘intentional deprivation of capital’ on the part of the applicant is also used to deny support to asylum seekers. Such intentional deprivation of capital can occur, according to Home Office guidance, when “[applicants] and their dependants... purposefully deprive themselves of funds in order to bolster their application for asylum support.”

However, the guidance also explicitly sets out that support may only be withheld as a result of such intentional deprivation of funds if “those funds can be recovered.” So, if somebody has spent their money on food or lodging – or even items for which they may no longer have a receipt – this should not be used as a valid reason to deny them support. Refugee Action came across examples of people having been denied support because, having arrived in the UK in the winter months with just a few hundred pounds, they had spent the little money they had on warm clothes and a place to stay. In one case, this resulted in an applicant sleeping on the floor of a church for ten days before his request for support was granted – and this was only after the threat of legal action against the Home Office.

**Extended periods spent in Initial Accommodation**

When a person is granted section 98 support, the ‘Initial Accommodation’ that they are allocated is intended to be temporary, whilst a decision on eligibility for section 95 support is being made. Such accommodation is not appropriate for long stays, and generally consists of hotels or hostel-like conditions, with shared rooms and bathrooms. In addition to the fact that it costs the government far more to host people in such properties than in dispersed housing, there are damaging and often very serious human impacts. Several people that Refugee Action spoke to told us that their Initial Accommodation was cold and dirty. Women, in particular, highlight the inappropriate nature of such accommodation: facilities for children and families are rarely available; access to boiling water for sterilising baby bottles is limited; and rooms are not always available on single-sex corridors (in mainstream homelessness hostels, on the other hand, such corridors are consistently available). One mother told us how she is worried that her infant son will develop bronchitis due to the cold. Initial Accommodation also often fails to meet the needs of other particularly vulnerable groups, including survivors of torture.

Local authorities are not legally required to provide education for children waiting for dispersal...
from Initial Accommodation, and Refugee Action spoke to several parents whose children have been unable to go to school whilst waiting to be dispersed from Initial Accommodation. One woman that we spoke to said her 13-year-old son had missed three months of school when the family were placed in Initial Accommodation, as the school he had been attending was too far away and he was unable to re-register for a school place. Similarly, asylum seekers can only register with a GP when they have been dispersed from Initial Accommodation and are encouraged not to seek legal assistance with their asylum case before being dispersed.31

According to the National Audit Office, the Home Office aims for asylum seekers to spend no longer than 19 days in Initial Accommodation while waiting for section 95 support.32 However, despite the supposed temporary nature of such accommodation, the people that Refugee Action assists are often kept in Initial Accommodation for much longer. For the people that Refugee Action worked with who had been housed in Initial Accommodation whilst waiting for a decision on their section 95 application, the average length of time spent in such accommodation was over a month (37 days) – almost double the Home Office target. Over 40% of them spent longer than this average length of time in Initial Accommodation, with 16% having spent 60 days or more in such ‘temporary’ accommodation. One individual that Refugee Action assisted spent a total of almost three months (85 days) living in Initial Accommodation as a result of delays in processing their support application.33

Applicants were left in initial accommodation for far too long

PEOPLE WERE WAITING AN AVERAGE OF 37 DAYS FOR LONG TERM ACCOMMODATION THAT IS NEARLY DOUBLE THE GOVERNMENT’S MAXIMUM WAITING TIME TARGET OF 19 DAYS
Delays in receiving section 95 support

It is unclear what the Government’s own target is for providing section 95 support in a timely manner. As mentioned above, the Home Affairs Committee’s report on asylum accommodation suggests that the Home Office should make decisions on an applicant’s eligibility for section 95 support within 19 days.

According to the destitution threshold that underpins asylum support, meanwhile, the specified time frames within which a person must be likely to become destitute are 14 calendar days for a new applicant (i.e. somebody not already in receipt of section 95 support). It seems reasonable for initial applicants to expect that they should be supported from the moment that they are due to become destitute, so Refugee Action is therefore working on the assumption that applications should be processed within a maximum of 14 calendar days.

However, the 107 clients in Manchester and London that Refugee Action assisted in their applications for section 95 support (subsistence and accommodation) had to wait on average 58 days from application to being ‘dispersed’. ASHA experienced similar delays, of 27 applications made for section 95 support (accommodation and subsistence) it took an average of 50 days from application to being dispersed.

Throughout the course of this research it was routine to record delays of several months, during which clients were often left living in precarious situations. In one case, two sisters waited 254 days for their support to come through; during this time their only form of support came from charities and food banks. They were given a place to sleep by an acquaintance, but told us that they felt unsafe where they were staying.

The delays experienced by people applying for subsistence-only (i.e. cash) support were particularly notable. Refugee Action and ASHA found

Nnedi entered Initial Accommodation at the beginning of March 2017 and had been in Initial Accommodation for three weeks when Refugee Action spoke with her. She described the room that she had been put in as “always cold and smelly.” Nnedi has an 18 month old baby and she is worried about having to stay too long; she said that she was told by the provider not to feed her son water from the taps, and is concerned that he will get ill from the cold. He was diagnosed with bronchitis when he was younger, and Nnedi is afraid that the cold room – combined with bathing him in cold water, as the water rarely runs warm – will bring on another bout.

Nnedi is also in constant worry that the providers will put somebody else in to share her room; she explained to us that every time she opens the door she is terrified of who she might find in the room. But for now, she is resigned to waiting until her section 95 accommodation is granted: “Do I really have a choice?”

Bilquees was 35 weeks pregnant when her application for section 98 support was accepted and, despite the fact that she was due to give birth in ten days’ time, she was sent from London to a hotel in Stoke-on-Trent. Bilquees told Refugee Action that the room she was in did not have a bathroom, and that she would have to walk up and down several flights of stairs to find the nearest toilet. “Sometimes it would become very difficult to climb all the stairs and so I would stop myself drinking water all night so as not to have to climb the stairs.”
that, in Manchester and London, it took people who applied for subsistence-only support an average of three months to receive this support. One man that Refugee Action worked with waited 308 days – almost ten months – on his application for subsistence-only support. He was granted refugee status before ever hearing if he would be given any assistance.

The specific delays experienced by those applying for subsistence-only support are directly linked to a tendency on the part of the Home Office to use the conditions under section 55 of the 2002 Nationality, Immigration and Asylum Act for subsistence-only applications. In Home Office guidance on how to apply section 55, it is stated that “[i]f a person applies for subsistence only support it is less likely that support is necessary to avoid a breach of Convention rights.”

This is because an applicant who applies for subsistence only either has or does not need accommodation and, therefore, shelter and access to sanitary facilities.”
Section 55 decisions are frequently invoked when somebody has failed to apply for asylum at the point of entry (for instance at an airport or seaport), even when there is no evidence that they did not lodge their application as soon as reasonably practicable after their arrival (see explanation of section 55, above). People often have good reasons for delaying their asylum applications; in the case of people who may have been smuggled, for instance, it is understandable that they may take some time to reach the Asylum Intake Unit in Croydon.

Currently, there is a tendency on the part of the Home Office – at least when it comes to section 55 decisions – to treat people as ‘guilty until proven innocent’. The result of this can be long delays, generally for those applying for subsistence-only support. Those concerned can wait weeks – and sometimes months – for an interview to determine whether they are eligible for support. The main aim of section 55 decisions is to prevent those who are not genuine asylum seekers from obtaining assistance, but the current use of such decisions is clearly being extended beyond its original intention.35

In the experience of Refugee Action and our partners, moreover, the notion that those applying for subsistence-only support may be less in need of assistance fails to take into account the fact that many of these people are often unable to afford food for themselves and their families; they are usually given a roof over their head but little else. Often their hosts are distant relatives or family friends, and are even sometimes strangers. In many cases they themselves are dependent upon state support to survive and do not have the means to support others.

Such decisions demonstrate, yet again, a failure on the part of the Home Office to fully engage with an individual applicant’s case or to consider their specific situation when making a decision on their eligibility for support; a far cry from the “careful questioning and appropriate fact checking” that should be used.36 Section 55 refusals, and the delays caused when somebody is referred for a section 55 interview, leave extremely vulnerable people with no assistance and no right of appeal, sometimes forced to rely on the goodwill of people who cannot find it in themselves to turn away young children and pregnant women.

Tesfay applied for section 95 subsistence-only support in March 2016. He was living with his partner, young child, and newborn baby. Despite the fact that Tesfay’s partner had refugee status and was receiving income support, the family was struggling to cope. Friends would share food with them when they were able to, but money was difficult to come by and the family was often unable to find enough to top up their heating meter. “We would go to my partner’s parents’ house to visit just to be somewhere warm. Other times we just stayed cold.”

Tesfay was contacted by the Home Office in August 2016, as a result of a follow-up on his case on the part of Refugee Action. He was referred to the section 55 compliance team, but never contacted for an interview to be arranged. This was despite the fact that Refugee Action contacted the Home Office twice to draw attention to the delay.

Finally, in January 2017 – ten months after his application for section 95 support – Tesfay was granted refugee status without ever having received support. The family, meanwhile, have accumulated debts that they must now carry into this new phase of their life. Despite the relief that refugee status brings, it is impossible to erase a year of uncertainty. “When I think..."
about my stress in the last 15 months it is very difficult. Even now when things go wrong I am angry more easily than I used to be.”

“I was a dad at the time but I couldn’t do anything that a dad can do.”

Zishan waited 73 days before receiving section 95 support. He has a congenital illness which affects the alignment of his brain and causes constant headaches with dizziness, tinnitus and vomiting. He also suffers from allergies and requires prescribed medication for this. Without being in receipt of asylum support, Zishan had difficulties applying for a HC2 certificate to prove his eligibility for free prescriptions. His attacks became more and more serious, and on one occasion he fell unconscious whilst walking in the street. “My head was not working during this time. I felt very ill but couldn’t afford the medicine I needed… I was really suffering.”

With no other means to support himself Zishan, who was already in debt at the time, began to borrow money to support his family and to buy food for his children – one a three-month-old baby: “I had no way of surviving without going into more debt.”

Ahmed claimed asylum following the outbreak of the Libyan civil war. He had been attending university in the UK on a scholarship from the government, which was frozen when conflict broke out. Ahmed, who lives with his wife and two young children, was refused his initial application for asylum support, despite having provided bank statements, proof of his previous income, and a statement explaining his circumstances.

Despite the dangers involved, following one such request for further information he made contact with his bank in Libya. But even this was not enough, and the Home Office told him that he had not provided sufficient evidence that the money he had been receiving from the Libyan government had stopped. Ahmed’s support case was eventually brought to appeal, where the judge ruled in Ahmed’s favour. The conduct of the Home Office was described as “poor and wholly unexplained” by the judge in question.

But for Ahmed, like for so many others, being granted support has not been the lifeline that he had hoped for. Despite winning his appeal, and despite the Home Office agreeing to back-date his support payments, Ahmed has not been given back-dated payments for the support that the Home Office withheld from him and his family. This has meant that he is struggling to repay debts that he owes with the little money that he and his family have to survive on.37
Salim arrived in the UK from Iraq in 2016, entering by truck after being smuggled from Greece. Following a short period in Initial Accommodation he moved in with his sister Laila who lives in the UK with her six-year-old daughter. Laila, who is a single mother, receives Employment and Support Allowance; she cannot work as she suffers from fibromyalgia, cervical spondylosis, a cyst in her spine and has recently suffered burns to her body in an accident. Salim therefore applied for section 95 subsistence-only support in order to allow him to support himself financially – something that his sister was unable to do.

Despite strong evidence that Salim had applied for asylum as soon as reasonably practicable, the Home Office refused to accept this, and Salim’s subsistence-only support was rejected based on section 55 of the 2002 Nationality, Immigration and Asylum Act. In total, Salim waited over ten months before his section 95 support was finally approved, and this only came about as the result of consistent advocacy, including legal action taken by Refugee Action against the Home Office. He told us that, during this time, he tried his best to avoid imposing on his sister; he showered only rarely to save hot water, and when he did he wouldn’t use toiletries.

He started to cut down on what he ate until he was eating only one meal per day.

As a result, he has had health problems and is now taking medication for his stomach; the emotional impact was also severe, and Salim attends regular mental health sessions to combat the depression that he experienced during this period. The impact on his sister, who was already struggling to survive, was extremely serious; despite the fact that she was hosting Salim at no cost, Laila was required to pay extra towards her council tax bill. Whilst waiting for his support, Salim could not contribute and so the family had to cut down on their costs even further.

Onerous requests for further information

Another barrier to support that Refugee Action identified was the excessive use of requests for further information sent to applicants, many of which had already been answered by information provided in the 35-page ASF1 that all applicants for section 95 must complete.

Many of these requests disregarded the facts of the applicants’ cases; people who had clearly stated that they had never worked in the UK were asked for previous documentation, including P45s, and even when applicants declared to have never had a bank account they were asked to send bank statements for the preceding six-month period. One man told us that he had been asked to provide details of a bank account that he had previously held in Egypt, the country he was fleeing (see Mahmoud’s story on page 10). This was despite the fact that he had warned the Home Office that contacting his family for such information could put their lives at risk. Refugee Action also saw similar requests used in the case of section 98 applications, with applicants asked to obtain additional information from their countries of origin to support their applications – a difficult task at the best of times, and next to impossible in urgent cases.
Refugee Action – Slipping through the cracks

It is, of course, understandable that the Home Office must be satisfied that it is more likely than not that the people applying for section 95 support are destitute. However, excessive and improper use of such requests can have serious consequences in several ways. Firstly, excessive requests delay people’s access to support unnecessarily, forcing them to wait while the same questions are asked of them repeatedly. Secondly, in the case of section 95 support such requests also effectively ‘stop the clock’ on applications – meaning that the Home Office is not held accountable for the time taken for an applicant to respond to the request, even if this request is not relevant or has already been answered in previous correspondence.\(^3\)

Finally, continued requests for further information are often followed by a decision under section 57 of the 2002 Nationality, Immigration and Asylum Act to refuse an application for support where the Secretary of State is “not satisfied that the information provided is complete or accurate or that the applicant is cooperating with enquiries.”

The Asylum Support Appeals Project has pointed to the Government’s growing and inappropriate use of such decisions, which hold no right of appeal. Increasingly, organisations such as Refugee Action are able to challenge the validity of such decisions and reverse them, either through communicating directly with Home Office officials on specific cases or through the threat of legal action – but the initial distress caused by such a decision is much harder to reverse.

Vien and his wife, Linh, applied for section 95 support in April 2016. They had been staying with a member of their community, who had taken them in on a temporary basis because Linh was pregnant at the time. However, their host was worried about potential repercussions she could face if Linh became ill, so asked the couple to leave. The couple were taken in by another member of their community who they had approached in the street. Linh was, by this point, six months pregnant. But their new host had a young family herself, and could only support Vien and Linh for a short period of time.

Despite providing all the information they could in their application for support, and in spite of strong indications that the couple may have been victims of trafficking, in July the Home Office came back to the couple with a section 57 decision, claiming that they had failed to provide sufficient information on the ASF1 to support their application. In particular, they had failed to provide all their previous addresses – something that can often be difficult or even impossible for people who have been forced to rely on the hospitality of strangers or, worse still, those who have experienced exploitation or trafficking.

By the time they approached Refugee Action, Vien and Linh had lost hope that they would ever receive support. With our assistance, they applied again and were finally granted section 95 support. However, the unnecessary despair that the family went through – including the threat of becoming street homeless when Linh was heavily pregnant – stays with them.

“I am so surprised at the way I have been treated in the UK. At times I feel I am being treated like an animal.”

Wafa’a
Jamila arrived in the UK from Libya to study for her PhD. However, when war broke out in Libya she was afraid that if she went back her life would be at risk, so applied for asylum. Jamila’s government stipend had abruptly ended and she was left without anything to live on.

In response to her request for section 95 support, Jamila was sent several requests for further information from the Home Office; “Three times they sent me requests for more information about my financial support. Sometimes it was the same information I have given before... It is a very confusing process for someone who has not done it before.”

Whilst waiting for support, Jamila and her husband were in rent arrears and being constantly contacted by their landlord, who would shout at them over the phone and threatened legal action several times. Every day they were falling further into debt in order to be able to afford to eat.

Eventually, and following a threat of litigation towards the Home Office on the part of Refugee Action, Jamila was granted support. But the ordeal left her anxious and stressed. A medical report that she showed us directly linked her situation during this period with stress and high blood pressure, and she is worried about what the future will hold. “I didn’t want to think what would happen tomorrow and the things I would have to deal with.”

“Every door was closed for me.”

By the time Talha approached Refugee Action for assistance with an application for asylum support, he and his family had been relying on food parcels from the British Red Cross to survive. Talha was living with his wife and three children in a one-bedroom flat, for which they were three months in arrears with the rent. He had already received a court summons for non-payment of council tax, and when the boiler broke their landlord refused to fix it – leaving the family with no heat or hot water near the end of October. Talha told us that they could not buy any clothes for their children, who sometimes had to go without milk.

When the Home Office asked for further information on Talha’s application, his wife responded to this in full by post. However, to his great surprise Talha was nonetheless issued with a section 57 decision, according to which “the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with enquiries.” He was given no right of appeal.

When Refugee Action challenged the case, the Home Office reversed its decision and the family were offered section 98 support; however, this seemingly innocuous mistake created yet more unnecessary stress for Talha and his family;

“My wife already had health issues of high blood pressure and this stressful situation was affecting her adversely. We were very stressed and upset throughout this time. I argued with my wife because of our situation.”
The aim of this research was not to look into the reasons why decisions were not made in a timely fashion, but instead to understand the shortcomings of the current system and the impact on the men, women, and children who so desperately need support whilst waiting for a decision on their asylum claim.

Nonetheless, it seems important to touch upon the ‘Culture of Disbelief’ that is often referred to when discussing asylum claims or asylum support. This idea – which is frequently cited by organisations working with refugees and asylum seekers, the British press, and academics – is based on the premise that Home Office staff work within the constraints of a culture that encourages scepticism towards asylum applications, and a de facto mistrust of the credibility of people seeking protection. The high success rate of those who appeal against a negative decision on their asylum claim, as a result of poor decision making on the part of Home Office officials, could be seen to further bolster the argument that such a culture exists.

“I know these people – anything you say is a lie to them.”

Hajiya, waited 89 days for support.

Similarly, the current asylum support system emerged – and subsequently evolved – in the context of a widespread belief that so-called ‘bogus’ asylum applicants are attracted to the UK by the generous welfare provision that they will receive and thus to deter applications for asylum. Continuous and ongoing restrictions on the form and amount of support given to asylum seekers reflect such a belief. The restrictive approach evident within policy seems to have found its way into the everyday decision-making of Home Office caseworkers, impacting on the way in which decisions are made and leading – in many cases – to incorrect assessments of applicants’ requests for support, making an already restrictive system even more so.

However, there is no evidence to indicate that asylum support policy in the UK constitutes a ‘pull’ factor for asylum seekers. Studies that have broached this question – including research commissioned by the Home Office itself – conclude that, in all cases, forced migration is overwhelmingly driven by push factors. Where those fleeing violence and persecution are given a choice as to their destination, the elements shaping their decisions are generally determined by previous links between their own country and the UK (including colonialism), the ability to speak English, presence of relatives and friends in the host country, and the belief that the host country is generally safe, tolerant and democratic – rather than a specific knowledge of the conditions of reception upon arrival.

“Being here like this is so degrading and shameful. My life is in turmoil. There is no dignity. I can feel the hostility people have for me because I am an asylum seeker.”

Darwish, waited 4 months for support.

Not only is there no evidence to suggest that such an approach to limiting asylum support is effective in reducing the number of people who apply for asylum without a well-founded fear of persecution, but the current system is actively leaving many vulnerable asylum seekers in a state of destitution and deprivation.

The result of the restrictive approach to asylum support adopted by the Home Office in both policy and practice is a support system that demands an overly high evidential burden from desperate asylum seekers, meaning that people are too often inappropriately denied the assistance they need.

Ultimately, people who have no other choice except to live off the little support provided to them by the state are left to slip through the cracks of the system and fall into destitution – much of which could easily be prevented.
Refugee Action believes that nobody seeking protection in the UK should be left to live in destitution. At the moment, many asylum seekers are having to do just that, as the result of an asylum support system that is neglecting the most vulnerable and failing to prevent them from falling through the cracks of this most basic of safety nets.

Our research on asylum support shows that destitute asylum seekers are being kept or forced into intolerable circumstances due to poor decision making, a failure on the part of Home Office officials to apply their own policy and guidance, and unreasonable delays in dealing with people’s cases.

The inefficiencies and inadequacies of the current system are keeping vulnerable people – who are fleeing conflict, violence, and persecution – in conditions of destitution, with apparently little regard for the consequences.

However, destitution has a long-lasting impact on the women, men, girls and boys that Refugee Action works with. The impact of long-term destitution and poverty can include lower academic achievement for children, greater levels of stress in both parents and children, and altered (often negative) decision making patterns. In their report on Destitution in the UK, the Joseph Rowntree Foundation highlighted the direct link between mental and physical ill-health and destitution.

Our research shows that this very much reflects the experiences of destitute asylum seekers who have either been wrongly refused support or who have had to wait unreasonable amounts of time to receive support. Since January 2016, Refugee Action has supported over 750 destitute asylum seekers with financial support, and many others have been supported by charities that provide financial or in-kind assistance. However, it is unsustainable and unrealistic to expect...
the charity sector to adequately substitute for what is, ultimately, a responsibility of the Government.

The solution does not require new legislation or policy – indeed, the Government already has a legal obligation to those seeking asylum in the UK who need support and much of what we are calling for here is already enshrined in legislation and policy. However, the Home Office must ensure that such policy is consistently implemented in practice; this is the only way to guarantee that the system in place gives asylum seekers the support that they are entitled to.

Importantly, the decision to grant support or not should not depend on whether somebody is able to obtain assistance from Refugee Action, ASHA, or any of the other organisations that work each day to advocate for the basic needs of asylum seekers. Whilst we assist some of the most vulnerable asylum seekers in their applications for support, in many ways they are the lucky ones – our advocacy frequently results in unfair decisions being overturned and support being awarded. Countless others, however, are living without such support because they have not had the opportunity to challenge an incorrect decision.

**Recommendations**

Refugee Action believes that everybody who applies for asylum support should receive a prompt response to their application, and that support should be given to destitute asylum seekers in a timely manner. We hope and believe that these straightforward objectives are shared by Ministers in government, who have consistently highlighted the importance of ensuring that UK asylum policy and practice adequately supports vulnerable people. To achieve this, the Home Office should urgently put into practice the following measures:

- Correct application of the destitution test.
- Applying appropriate evidential burdens to section 98 cases to reflect the emergency nature of this type of support, and ensuring that 100% of section 98 applications submitted before 3pm receive a reply on the same day.
- Making decisions on section 95 support which mean people do not fall into destitution, with an ambition to match the destitution test timeline of 14 days.
- Backdated payments provided to destitute asylum seekers as standard, ideally from the point where it can reasonably be said that the Home Office had sufficient information to make a decision.
- Ensuring that requests for further information take into account the information already provided in the ASF1.
- Provision of asylum support in line with the 2016-2020 strategy for Ending Violence against Women and Girls, which states that “no woman should live in fear of violence.”

Within the next three months, the Home Office should ensure that it has committed itself to transparency within the asylum support system, including by:

- Releasing detailed statistics on support decisions and ensuring that it is publicly monitoring meaningful indicators of success.
- Commissioning independent reviews of the use of section 57 and section 55 decisions in asylum support decisions.

Finally, the Government should consider giving asylum seekers the right to work, unconstrained by the shortage occupation list. In addition to bringing the UK in line with most European countries, this would mean that asylum seekers would no longer be forced to solely rely on state support to survive.
Annex: Methodology

The research carried out for this report originated in testimony from Refugee Action’s service delivery teams, who have seen consistent delays in applications for asylum support, unreasonable and unjustified denial of emergency support for asylum seekers, and a related increase in destitution for many of the most vulnerable asylum seekers that we work with.

237 case files from Refugee Action’s Asylum Crisis projects – based in London and Manchester – were examined in order to create a complete picture of delays to support and the impact on the women, men and children who are often left destitute as a result. ASHA also provided figures from 78 of their case files for section 95 applications. The aim was to document problems with the provision of asylum support and then to explore what impact these had on those asylum seekers who were affected. Our intention has not been to provide a comprehensive explanation of why the delays occurred, however we do touch briefly on such questions.

We are making no claims that our findings apply to all those on asylum support, but rather that unreasonable refusals and delays in support present a frequent and worrying trend and allow some of the most vulnerable people in this country to slip through the cracks. And those who come to see Refugee Action or similar organisations are, to a degree, the ‘lucky ones’; the advocacy that is undertaken on their cases often expedites the process and, where a client has submitted an application for support, Refugee Action is able to follow up on this to secure a response. Without such assistance, applicants can go for months without an answer or perhaps never receive any follow-up at all.

The information presented here is based on casework undertaken in Manchester and London, however, according to Refugee Action’s caseworkers in Bradford, Liverpool and Birmingham, the findings presented here also reflect their experiences of asylum support applications. Anecdotally we know that many of our other partners across the UK see the same problems, suggesting that they are a widespread and ingrained characteristic of the asylum support system.

Measuring the human impact

In addition to recording actual delays in receiving support through an analysis of case files, we also sought to understand the impact that such delays have upon the asylum seekers that we work to support. This was done through 36 individual, semi-structured interviews with affected asylum seekers. Cases were selected because of their length or severity, in addition to a desire to have a range of interviewees who had experienced applying for different types of support and were at different stages in the asylum process. Otherwise, no formal criteria were applied. Refugee Action staff members and volunteers conducted these interviews, and during each interview the following was explained in detail to each interviewee:

1. The purpose of the research and how the interview would be used;
2. That participation in the research would have no influence over either their asylum support application or their asylum claim;
3. That all information would be anonymised and no personally identifiable information used; and
4. That the interview would have no impact upon the interviewee’s relationship with Refugee Action, and that they could choose to leave (or not answer certain questions) at any point.

Interviewees were provided with £5 Tesco vouchers in order to compensate them for their time, and travel expenses were paid. Many of the interviewees brought up ongoing issues and concerns with their support during interviews, and in such cases the interviewer made sure to
follow up with this and book the applicant in for an appointment with one of Refugee Action’s caseworkers, if necessary. All of the staff and volunteers that participated in this research are trained to handle delicate situations with our clients, and conducted themselves accordingly.

**Acknowledgements**
Refugee Action would like to express our gratitude to the refugees and asylum seekers who were willing to share their experiences of asylum support. Particular thanks also go to Asylum Support Housing Advice (ASHA), part of the Greater Manchester Immigration Aid Unit, for the part they played in the research.

We would also like to thank staff from Asylum Matters, the Asylum Support Appeals Project, the British Red Cross, the Refugee Council, and Women for Refugee Women, for their feedback on the report.
The 1996 Asylum and Immigration Act had already removed the entitlement of asylum seekers to mainstream welfare benefits.


Refugee Action – Slipping through the cracks 32

Endnotes

1 194 case files from Refugee Action’s Manchester operations and 43 from Refugee Action’s London operations, in addition to a total of 78 case files provided by ASHA.


4 All names and photos used in this report have been changed in order to protect the identities of the individuals.


7 The 1996 Asylum and Immigration Act had already removed the entitlement of asylum seekers to mainstream welfare benefits.


9 See Article 15 of Directive 2013/33/EU.


12 Refused asylum seekers who have dependent children in their household at the time their claim is fully determined will also continue to receive section 95 support.

13 Including, for instance, for victims of torture using specialist services in London.

14 Most people already present in the UK must go to the Asylum Intake Unit in Croydon in order to claim asylum. No financial help is available for travel too and from the AIU.


16 The same data was not available for Refugee Action’s London operations.

17 Thirty-nine people reapplied, and 36 of these applications were subsequently approved.

18 Where new evidence was put forward, this was material to the decision only in a small number of cases. Moreover, in many of those cases where we provided new evidence it was regarding impacts that occurred because of the original – incorrect – refusal. In other cases, new evidence was provided that should not have been required, given the lower evidential burden for section 98 decisions as compared with section 95 decisions and the two-part nature of the test for destitution. On several occasions, Refugee Action threatened to escalate the case and present a legal challenge. The fact that this often brought about an ‘overturn’ further demonstrates the importance of advocacy on behalf of asylum seekers seeking support.


23 Ibid.

24 The Home Office guidance recognises that: ‘There are cases in which, for legitimate reasons, an applicant has spent or is spending money at a faster rate than envisaged under the threshold system. For example, a family may have to buy a significant amount of clothing having arrived in mid winter with inadequate clothing for the climate.’ However, in practice staff often fail to take such circumstances it into account.


26 This is with the exception of cases they could not assist, i.e. cases that are withdrawn or adjourned prior to the hearing; cases that are designated by the Tribunal as being ‘ASAP barred’ (the Tribunal prohibits ASAP from assisting when an appellant is represented by a law firm unless they received written consent from the firm); or cases where the client failed to attend or refused ASAP’s assistance.

27 Information provided by ASAP staff. 64% of appeals dealt with by ASAP in 2016-2017 were destitution cases.


31 Doctors and nurses make on-site visits to Initial Accommodation.


34 The Government’s intention is to make a decision on each section 95 decision within 19 days. Arguably, somebody can apply for section 98 support if they become destitute after 14 days and still do not have a response on their section 95 application – however Refugee Action believes that the need for emergency support should not be built into the process, so is calling for section 95 decision making to reflect the timescales set out in the destitution test.


36 Ibid.

37 Home Office guidance specifies that back payment should be given “where the supported person was not responsible for the non-payment of support”; but there are no explicit provisions for back-dating payments prior to the date on which support was granted. However, in certain cases Refugee Action has managed to secure Home Office commitment to back-date payments from the point where it can reasonably be said that the Home Office had sufficient information to make a decision.

38 An applicant for asylum support is given five days to reply to a request for further information, from the date they receive this request. When calculating the total time taken to make a decision on support, the Home Office can discount the period of time spent waiting to receive this further information – even if it is information that has already been provided.


