

Refugee Action briefing on Early Day Motion 99 – High Court judgment on asylum support

October 2014

Key messages

- Over 25,000 people seeking sanctuary in the UK are forced to live on as little as £5.23 a day.
- People seeking asylum are effectively not allowed to work.
- Research by Refugee Action found that nearly 40% of asylum seekers surveyed could not buy enough food to feed themselves or their families; 43% of asylum seekers were unable to buy toiletries; 88% did not have enough money to buy clothes.
- The High Court ruled in April 2014 that the Home Secretary acted unlawfully in deciding the level of asylum support required to meet essential living needs.
- She had until August 2014 to review asylum support rates in line with the Court's findings. Disappointingly her review concluded that the level of asylum support was sufficient and should remain unchanged.
- Refugee Action's experience shows people are forced into poverty because of the current rate of asylum support. We are urging MPs to sign Early Day Motion 99 to show their commitment to asylum support being dignified and fair.

Introduction

1. Cripplingly low levels of asylum support are pushing thousands¹ of people seeking safety in the UK into poverty. In a landmark legal case in April 2014², the High Court found that the Home Secretary had acted irrationally in deciding whether asylum support meets essential living needs and secures a dignified standard of living.
2. The Court ruled that the Home Secretary had until 9 August 2014 to re-assess the level at which asylum support should be set, in accordance with the guidance contained in the High Court judgment. The outcome of this review could have lifted over 25,000 of the most vulnerable people in the UK out of the grip of poverty.
3. Instead the Home Office concluded that the rate of asylum support should remain unchanged because it is sufficient to meet asylum seekers' essential living needs. This is not a reality recognised by Refugee Action or the people we support who are forced to live in asylum poverty.

What is asylum support?

4. Financial support is paid to people seeking asylum under section 95 of the Immigration and Asylum Act 1999. This support is paid until a final decision has been made on their asylum claim and during this time people are effectively not permitted to work.

¹ At the end of June 2014, the number of asylum seekers in receipt of section 95 support was 26,720. Source: <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2014/immigration-statistics-april-to-june-2014#asylum-1>

² The judgment in *Refugee Action, R (On the Application Of) v The Secretary of State for the Home Department* [2014] EWHC 1033 (Admin) is available at: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2014/1033.html&query=refugee+and+action&method=boolean>

5. When it was introduced, the Government stated that the level of support to be provided under section 95 was to be set at 70% of income support levels for adults, to reflect the fact that some utilities are included within the accommodation provided to people seeking asylum and that it is supposed to provide a short-term safety net. Originally children seeking asylum were to receive the same level of support as would be provided under the standard package of benefits.
6. Until 2008, the rates of support paid under section 95 were broadly increased in line with increases made to income support payments. In 2008 the Home Office decided to break this link to income support payments. Since April 2011 there has been no increase at all in the rates of support paid under section 95.
7. The break with the link to income support and the failure to increase the rates of support paid under section 95 has led to a striking disparity between the level of support provided to asylum seekers compared with those given income support. For example:
 - Lone parents seeking asylum receive 49% of the amount that would be provided under income support, just £43.94 a week
 - 16 and 17 year old children in asylum seeking families receive 61% of income support, just £39.80 a week
 - Single adults over 24 seeking asylum receive 51% of income support, just £36.62 a week

What has the High Court said about asylum support?

8. On 9 April 2014 the High Court found that the Secretary of State's decision to freeze the rates of support for asylum seekers was 'flawed', adding that: "She failed to take reasonable steps to gather sufficient information to enable her to make a rational judgment in setting the asylum support rates for 2013/2014."³ The Secretary of State was ordered to retake her decision as to the level at which asylum support should be set, in accordance with the guidance contained in the judgment, within four months.
9. In particular the High Court found the Secretary of State had wrongly failed to include the following categories of essential living needs in setting the level of asylum support:
 - essential household goods such as washing powder, cleaning materials and disinfectant
 - nappies, formula milk and other special requirements of new mothers, babies and very young children
 - non-prescription medication
 - the opportunity to maintain interpersonal relationships and a minimum level of participation in social, cultural, and religious life.
10. The High Court also directed the Secretary of State to consider whether the following items constituted essential living needs:
 - travel by public transport to attend appointments with legal advisors, where this is not covered by legal aid
 - telephone calls to maintain contact with families and legal representatives, and for necessary communication to progress an asylum claim
 - writing materials where necessary for communication and for the education of children.
11. In assessing the sums necessary to meet essential living needs the High Court found that the Secretary of State had made the following errors:

³ Paragraph 158 of the judgment

- she had taken into account the proposition that since 2007 the level of cash support for adults and children had increased by 11.5% whereas in fact for most adults it had *decreased* in absolute terms by 11%
- she had failed to take account of the extent of the erosion of rates in real terms over several years given inflationary price pressures
- she had misunderstood and misinterpreted Office of National Statistics data on which she relied in support of her decision
- she had failed to take reasonable steps to gather sufficient information to enable her to make a rational judgment
- she had misdirected herself in law as to her duties towards 16 and 17 year olds, and whether children within this age group are required to attend full-time education.

What has been the Government's response?

12. In May 2014 the Secretary of State confirmed she was not appealing the High Court's decision and committed to undertaking a re-assessment of support rates within the four month window set by the Court.
13. However in August 2014, having looked again at the figures, the Home Office concluded that the rate of asylum support should remain unchanged. This means the Home Office believes that single adult asylum seekers can meet their essential living needs (food, clothes, transport, toiletries, non-prescription medication, communications etc.) on just £5.23 a day.
14. To arrive at this decision the Home Office concluded that asylum seekers need just
 - £1.08 a week for toiletries, £0.55 a week for healthcare and £0.92 a week for household cleaning items
 - £2.51 a week for all essential clothing and footwear, even in winter
 - £3.00 a week to cover travel costs, as this "generally covers the cost of at least one weekly return journey in most UK towns and cities".
15. This is not a reality that Refugee Action recognises. For example, in recent research nearly 40% of asylum seekers told us they were unable to properly feed themselves on asylum support and 88% were unable to buy clothes. It is also not a reality recognised by the people we work with, like Vianney and Clara, who are forced to live on asylum support.

What is it like to live on asylum support?

Vianney's story

In Sierra Leone, Vianney's home country, 88% of women are 'cut' through the practice of female genital mutilation. With pressure mounting for his thirteen year old daughter to be cut, the family claimed asylum in 2013.

"It is very stressful when you've got a family and you are used to taking care of them," explains Vianney. "It's been horrible. If we want to eat, our money is just for food. If we need to go to any appointment we are forced to walk. We can't buy toys, we can't do activities – we find it difficult to even cover the children's food."

Meanwhile, the family was experiencing severe racist abuse. Eventually, they were moved – but their new accommodation was a forty-five minute walk from their children's school. There wasn't enough money for them to take the bus, so they had to walk this distance twice daily. Moving to a new school required a new uniform for each child, and the family couldn't afford this either.

Clara's story

In her home country in West Africa, Clara had a University degree in Communications and worked as a qualified teacher. But when she spoke out about a customary practice that threatened her pupils, as well as her own children, she found herself under threat.

"The first time I received asylum support I went into a pharmacy and bought the stuff I'd normally buy... toothpaste, sanitary towels, body wash. Normal stuff like that. When I looked at my hand I was left with three pounds.

That's when it occurred to me that I had not bought food, I had to make calls, and I had to pay for transport," explains Clara. "My diet changed significantly – you can't eat what you want on that money. I went to hospital recently and the doctor told me to eat better and eat more meat. But if you want to start buying meat, how much is that? And fresh vegetables?"

What is Refugee Action doing about asylum support?

16. Refugee Action is a national charity that helps people who've survived some of the world's worst regimes to find the basic support they need to live with dignity. For over thirty years we have provided essential, practical support for newly arrived asylum seekers as well as a long-term commitment to their settlement.⁴
17. Commenting on the Home Office's review of asylum support Dave Garratt, Chief Executive of Refugee Action, said: "This decision will have a devastating impact on the dignity and wellbeing of thousands of individuals and families in our government's care. Ask any member of the British public in the lowest income band how much they struggle. How then can our government think it humane to force other families to survive on as little as half as much again? The evidence presented in the review doesn't tally with real-life experiences of people seeking safety in the UK. Every day at Refugee Action we support people who, having been forced to flee their home in fear of their life, are now cut off from society and unable to pursue their asylum cases adequately due to these unreasonable and outrageously low levels of support."
18. Since the High Court ruling and the Home Office's review, Refugee Action has been meeting with the Home Office, our legal team and our charity partners to examine all the options available to ensure that asylum support is set at a level that allows asylum seekers to live in dignity while a decision on their asylum claim is made.
19. We have also launched a public campaign called Bring Back Dignity⁵ calling on the Secretary of State to make support rates lawful, dignified and fair. As part of that

⁴ www.refugee-action.org.uk

⁵ www.refugee-action.org.uk/dignity

campaign, we are urging MPs to sign Early Day Motion 99⁶ to demonstrate their commitment to raising asylum support to at least 70% of income support.

Get in touch

20. For more information please contact the Refugee Action policy team on policy@refugee-action.org.uk / 020 7952 1566.

⁶ <http://www.parliament.uk/edm/2014-15/99>