

Briefing on Refugee Action's Bring Back Dignity campaign

April 2014

"I cannot afford to buy anything I need, particularly things for my unborn baby. I only buy a little bit of food that is all I can afford. This can't be good for my unborn baby. I feel like they have put me under pressure because there is no money. I feel like they are punishing me and my unborn child for coming to this country"

Who are we?

Refugee Action 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.

Through our 'Gateway Protection Programme', Choices service, and until the end of March this year, our 'One Stop Service' (OSS), the Home Office has funded us to give independent, confidential frontline advice and information to asylum seekers and refugees on a breadth of topics. These range from financial assistance, integration and employment following a successful decision, education, health, voluntary return and complex issues such as domestic violence, racial harassment and trafficking.

Why did Refugee Action take this challenge?

We decided to apply for judicial review because we are concerned that many asylum seekers are struggling to cope on the current rate of support provided by the Government. The decision was not taken lightly and followed extensive research and advocacy by Refugee Action and our partners in the sector. After more than five years attempting to persuade the Secretary of State to increase support rates, we decided that we had exhausted all possible negotiations and that recourse to legal action was appropriate.

With long-standing experience and expertise in advising and supporting asylum seekers and a robust evidence base built on direct contact with those in receipt of asylum support, Refugee Action was ideally placed to bring these issues before the Court. Although ideally an individual asylum seeker would have brought such a claim, given the vulnerability of those in receipt of asylum support, their primary interest in pursuing their asylum claims and suspicion around speaking out against the Home Office, it was difficult to find sufficient suitable and willing candidates who would be able to represent the full range of legal issues which fall for consideration in this case. This is one of the key reasons why it is vital that organisations like Refugee Action are able to act on behalf of our beneficiaries by taking legal action, where necessary, against the abuse of power by statutory bodies. Recent proposals

by the Ministry of Justice¹ seek to limit the ability of campaigning organisations to hold public bodies to account, thereby protecting government action from judicial scrutiny and weakening the rule of law.

Background to the challenge

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 the asylum claim and during this time people are not normally permitted to work. Once people are granted refugee status they can seek employment and access standard benefits.

When the system of support 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.

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. The break with the link with 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.
- 16 and 17 year old children in asylum seeking families receive 61% of income support.
- Single adults over 24 seeking asylum receive 51% of income support.

Summary of the evidence

Between October 2012 and May 2013, Refugee Action and partner organisations conducted interviews with 40 clients to establish what asylum seekers living on section 95 were able to buy with their weekly allowance, what they were obliged to sacrifice and what impact this was having on their health, wellbeing and engagement with the asylum process.

15 of the interviewees were men and 25 were women and they were aged between 18 and 59. Of the 23 interviewees who had children, 11 were in a couple and 12 were lone parents. Six of the women we interviewed were pregnant and two were new mothers. Eight of the people we interviewed reported physical health problems,

¹ Judicial Review: Proposals for Further Reform, Ministry of Justice, September 2013

10 people reported mental health problems and two people had a disability. Length of time in receipt of support ranged from one month to more than two years.

Responses to our interview questions revealed the harsh reality of a support system that fails to meet essential living needs or ensure a dignified standard of living for those in its care.

1. Asylum support levels do not allow for a healthy and nutritious diet

38 per cent (15) of our respondents stated that they could not buy enough food to feed themselves and their dependents, while 43 per cent (17) reported that, while in receipt of asylum support, they or their dependants had missed a meal because they could not afford food. One of our single male respondents explained that “I drink only green tea in morning and eat only one meal a day at night”. 45 per cent (18) have been unable to buy fresh fruit and vegetables since being in receipt of asylum support, suggesting that they are living on a cheaper diet of processed or tinned food. When asked what items they need but have been have not been able to buy with the amount of support they receive, many of our respondents mentioned healthy food. 60 per cent (24) stated that they could not buy food that meets their dietary, religious or cultural requirements and several of them specifically mentioned the inability to buy halal meat.

Parents are clearly making every effort to ensure their children are fed, including sacrificing their own meals. One of the lone parents with one child who had been on support for less than one month explained “I always feed my child but I sometimes do not eat, as I cannot always afford food.” For pregnant women, this dilemma is particularly worrying. One of the pregnant women that we interviewed explained that “I know I should eat healthy food because I am pregnant, fresh fruit and vegetables, but I cannot afford that so I eat what I can afford even if it is not healthy”.

2. Asylum support levels do not allow people to meet their other essential living needs

The majority of our respondents reported that they could not afford essential items including clothes, shoes, or non-prescription medicine. 88 per cent (35) stated that they did not have enough money to buy clothes, with 50 per cent (20) stating that they needed to, but could not, purchase new clothes and / or shoes. One young man explained that “You can't live on £36.62. It is in my mind £40-50 per week just to buy food and things, no money to buy clothes, shaving stuff. I wear my friends' clothes”. Many asylum-seekers are ill-prepared for life in the UK at a practical level. They may lack adequate clothes for the British climate, having come from warmer countries. One of our interviewees informed us “the most important thing I am unable to buy is clothing for my family and myself. My baby wants to go outside but we cannot because it is cold and we don't have enough clothes so we have to stay indoors all the time”. A lack of warm clothing increases social isolation and vulnerability to health problems, particularly in the absence of a healthy diet.

43 per cent (17) of our respondents were unable to buy toiletries and 25 per cent (10) were unable to buy sanitary products. 68 per cent (27) were unable to buy essential items for the home such as kitchen utensils and cleaning products. Other essential items that our respondents report that they are not able to afford include washing powder, kitchen utensils, books, cleaning products, towels, bed linen, and an iron. Covering the cost of newly-born children poses a particular problem for people on asylum support. Of the 23 respondents with children, nine stated that they were not able to buy products for their baby including nappies, formula, bottles, baby-bottle steriliser and, in one case, a pram. Of the 12 lone parents we spoke to, only two could afford to buy baby products. One single pregnant woman explained “I have not been able to buy anything in preparation for my baby to be born. I have not clothes, nappies, milk, bottles”.

3. Asylum support is not sufficient to enable people to make essential journeys by public transport and leaves them cut off from vital sources of information and advice

Communication and transport are very difficult for people on asylum support and nearly all of our respondents mentioned bus tickets or public transport more generally as one of the essential items that they could not afford. As one of our respondents explained “for any reasons if you have to travel a lot such as taking your child to school, doctor appointments and shopping, you wouldn't have enough money left to buy food”. As a direct result of the low levels of support 80 per cent (32) of those we spoke to could not afford public transport to travel to do their shopping and most of these were obliged to walk. 48 per cent (19) could not afford public transport to travel to their legal representative where it was not covered by legal aid, and over 50 per cent (21) are unable to travel to visit a local advice organisation. One young woman explained that “I have to prioritise appointments to be able to afford to get there. I can only go to the most important ones. If I cannot afford the bus I cannot get to my solicitors appointment. This has happened twice now”. 80 per cent (32) of our respondents could not afford to buy telephone credit, and 60 per cent (24) of our respondents felt that the level of support impacts on their ability to pursue their asylum claim.

One young woman explained that “I cannot afford to see my solicitor regularly or visit local agencies to help me with any issues to do with my asylum claim and any support issues”. If applicants are missing appointments with their solicitor then they are missing opportunities to raise questions or provide new information about their claim. In addition, people on asylum support are much less likely to visit a doctor for medical and counselling appointments not covered by the NHS travel scheme as 45 per cent (18) of our respondents indicated that they could not afford public transport to visit the doctor. One of our pregnant clients explained that “I am seven months pregnant.... I couldn't follow all the medical checks due to not having enough money to travel.”

Aside from the provision of material goods, lack of informal services such as assistance with transport or childcare creates particular difficulties. Attendance at appointments such as interviews with the Home Office, meetings with solicitors,

medical appointments, counselling or physiotherapy may be impossible without some form of childcare. This is often not offered on-site.

4. Asylum support levels have a negative impact on the health, wellbeing and development of asylum seeking children

Our respondents expressed significant concern about the impact that poverty was having on the health, wellbeing and physical development of their children. Their principal concern was the impact a poor diet would have on their child's health and growth. A lone parent with two children responded that "my son has developed anaemia because I cannot provide adequate food. I think my children are losing too much weight because I cannot afford enough food". Parents also spoke about the limited social contact, and emotional or intellectual stimulus, and the lack of items such as books, writing materials, games, and pleasure activities to which their children are exposed – all elements that are key to the social development and wellbeing of a child. One lone parent explained "I cannot take them anywhere like museum, or anywhere to play and meet other children. To go out, you need money and we don't have a penny to spare"

5. People on support are employing risky and unreliable survival strategies

Responses demonstrated that people make sacrifices, attempt to stretch their weekly allowance, or supplement it with additional items that are borrowed or gifted by others, in order to survive. However, this constant struggle to survive puts them under enormous emotional pressure, as described by one of our respondents: "I feel I am in the middle where I can still survive, but cannot do a lot of things that could be essential to our lives". More often than not, strict budgeting is not enough, particularly when emergencies strike: 40 per cent (16) stated that they rely on other sources of support to supplement their weekly allowance, usually the local faith group, friends or charitable organisations. In many cases asylum-seekers have no recourse to informal means of assistance or support as forced dispersal across the UK to asylum seeker accommodation and the lack of money for transport means they are isolated from support networks. While British nationals on basic levels of income support may be able to rely on family or friends for meals or clothes, this is generally unavailable to those in receipt of asylum support. Some are forced to borrow money from neighbours and acquaintances: "I have had to borrow money from others - I always owe money to people - £200 then £150".

The extended periods during which many asylum-seekers have to survive on asylum support aggravates all the difficulties mentioned above. As recorded in Home Office figures for July to September 2013, out of 20,809 applicants awaiting an initial decision on their claim, 7,570 (36%) had been waiting for more than six months.² According to the Government 37% of applicants wait over 12 months for an initial decision³. As a result of further delays resulting from appeals and time taken to

² <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/820/82006.htm>

³ Letter from Mark Harper MP, Minister for Immigration, 22 October 2013, to the Home Affairs Select Committee in response to the report "The Work of the UK Border Agency (July to September 2012)".

transfer refugees away from asylum support, the average time spent on asylum support is 525 days.⁴

Summary of the legal arguments

Refugee Action has challenged two decisions taken by the Secretary of State:

1. The failure to increase asylum support rates for 2013-14 financial year from 5 April 2013; and
2. The decision to maintain rates at their current level as set out in her statement of 6 June 2013.

The grounds of the challenge are:

1. The Secretary of State's decision to freeze the rates for 2013/14 is irrational and in breach of European Union law because:
 - a. The Secretary of State failed to carry out an adequate investigation into the amounts which are actually necessary to meet the essential living needs of asylum seekers, and it is not rational for her to simply rely on a belief that the current rates are sufficient;
 - b. The Secretary of State has not considered whether the rates are sufficient to ensure a dignified standard of living or to take account of the specific needs of vulnerable people as required by the Reception Directive;
 - c. The rates for asylum support are now so low that the Secretary of State has to justify them as being sufficient to meet asylum seekers' essential living needs.
2. The Secretary of State is in breach of her public sector equality duty (PSED) because:
 - a. The decision not to increase asylum support rates in the current financial year was taken following a review which did not meet the policy objectives set out in the Equality Act 2010 nor did the review consider the effect of a decision not to increase asylum support rates on the realisation of those objectives in relation to persons with protected characteristics;
 - b. Work on the 'Policy Equality Statement' (PES) started **after** the review had been completed;
 - c. There was no evidence to demonstrate that the Home Secretary herself had read the PES or considered the equality impacts of her decision not to increase the rates.
3. The Secretary of State failed to comply with her duty (under section 55 of the Borders, Citizenship and Immigration Act 2009) to have regard to the need to safeguard and promote the welfare of children because:

⁴ House of Lords Hansard, 5 March 2013, Col. 1457

- a. The Secretary of State had not given proper consideration to whether the current rates of asylum support meet her duty under section 55 and failed to ensure that asylum seeking children are afforded 'fair treatment which meets the same standard a British child would receive'
- b. The fact that, according to the Secretary of State, asylum support is paid for a short time does not mean that children's needs are different;
- c. The issue is particularly acute for 16-17 year olds because they now receive only just over 60% of what children of that age group would receive on income support, and just over £13 less (per week) than children aged under 16.

Legal remedies sought by Refugee Action

Refugee Action is seeking the following remedies:

- 1.** A declaration by the High Court that the failure to increase asylum support rates for the financial year 2013/2014 is unlawful.
- 2.** An order requiring the Home Office to conduct a full Equality Impact Assessment and an assessment of the impact of the level of support on children.

Refugee Action instructed solicitors at the Migrants' Law Project: Sonal Ghelani and Hannah Chambers.

Counsel instructed were: Dinah Rose QC of Blackstone Chambers, Alison Pickup of Doughty Street Chambers and Ben Silverstone of Doughty Street Matrix Chambers.