

**ILPA response**  
**Inquiry into Asylum Support for Children and Young People**

The Immigration Law Practitioners' Association (ILPA) is a professional association with some 900 members (individuals and organisations), the majority of whom are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and non-governmental organisations are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous government, and other, advisory groups and has given both written and oral evidence to many parliamentary committees.

It is well established in international and national law that the best interests of a child are a primary consideration in all issues that involve that child<sup>1</sup>. The best interests extend beyond mere essential living needs and cover living in a family environment where possible, education, health, and the prohibition of harm both psychological and emotional. The best interests of a child must be applied without discrimination of any kind<sup>2</sup>.

ILPA considers that the current asylum support system fails to promote the welfare of asylum seeking children and young families. Our experience reflects the findings of the Children's Society briefing<sup>3</sup>. The Children's Society recommends that:

“current levels of asylum support need to be urgently updated to make sure that children's welfare is protected. This could be done by enabling all children and families access to Section 95 rather than Section 4 support, to guarantee that children are not unfairly disadvantaged by their parents' decisions and immigration status. This support should be at 100% of income support for all children under 18 and at least 70% for adults where accommodation is provided. Asylum support levels should also be adjusted annually to take into account the cost of living”.

ILPA supports this recommendation as a minimum commitment.

This paper sets out overarching concerns about the asylum support system for children and young people, before responding to those questions where members have specific experience

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<sup>1</sup> Article 3 of the UN Convention on the Rights of the Child.

<sup>2</sup> Articles 2 of the UN Convention on the Rights of the Child.

<sup>3</sup> A briefing from The Children's Society Highlighting the gap between asylum support and mainstream benefits **09/04/12 [W/E/Ni/S]**.

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## General concerns about the current support system for asylum seekers

ILPA opposes the use of the asylum support system as a means of “encouraging” compliance with enforcement and increasing rates of voluntary return. Access to accommodation and support to meet essential living needs is a fundamental right.<sup>4</sup> Asylum support should not be used as a “carrot” to reward those who “play by the rules” or as a stick to beat those who do not.

In its March 2007 report on “The Treatment of Asylum Seekers”, the Joint Committee on Human Rights found:

*“Many witnesses have told us that they are convinced that destitution is a deliberate tool in the operation of immigration policy. We have been persuaded by the evidence that the Government has indeed been practising a deliberate policy of destitution of this highly vulnerable group. We believe that the deliberate use of inhumane treatment is unacceptable. We have seen instances in all cases where the Government’s treatment of asylum seekers and refused asylum seekers falls below the requirements of the common law of humanity and of international human rights law.”<sup>5</sup>*

- 1.1 There is no evidence that removing accommodation and support from those who claim asylum encourages them to leave; on the contrary, the available evidence points in the opposite direction.<sup>6</sup> The pilot of the removal of support from families under section 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 is just one example.<sup>7</sup> Research carried out by the Asylum Support Partnership in October 2008 showed that nearly half of the destitute people encountered had been destitute for over six months.<sup>8</sup>
- 1.2 Removal of support may make it more likely that individuals and families will abscond. In the section 9 pilot, nearly twice as many families (39% of those required to report) absconded from the cohort group as those in the control group (21% of those required to report).<sup>9</sup> In an earlier consultation, UK Border Agency staff expressed concern that the removal of UK Border Agency support from asylum seekers would make it harder for them to maintain contact.<sup>10</sup>

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<sup>4</sup> International Covenant on Economic, Cultural and Social Rights 1966, ratified by the UK 20 May 1976.

<sup>5</sup> Joint Committee on Human rights, 10<sup>th</sup> report of the Session 2006 – 2007, “The Treatment of Asylum Seekers”, HL Paper 81-I, HC 60-I, published 30 March 2007, paragraph 120.

<sup>6</sup> See, for example, Refugee Action, *The Destitution Trap*, 2006, available at: <http://www.refugee-action.org.uk/campaigns/destitution/intro.aspx#download>; Asylum Support Appeals Project, *Unreasonably Destitute*, June 2008, available at: [http://www.asaproject.org/web/images/PDFs/news/unreasonably\\_destitute.pdf](http://www.asaproject.org/web/images/PDFs/news/unreasonably_destitute.pdf); Joseph Rowntree Charitable Trust, *Still destitute: A worsening problem for refused asylum seekers*, 2009, available at: <http://www.jrct.org.uk/text.asp?section=0001000200030006>

<sup>7</sup> The government’s evaluation of the pilot, *Family Asylum Policy: The Section 9 Implementation Project*, is available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/section9implementationproj.pdf>

<sup>8</sup> *The Second Destitution Tally: an indication of the extent of destitution amongst asylum seekers, refused asylum-seekers and refugees in the UK*, Kate Smart, Asylum Support Partnership, May 2009.

<sup>9</sup> See paragraphs 14 -15 of the Evaluation document.

<sup>10</sup> “Asylum - Comments indicate that the Agency should look to simplify the different types of asylum support, review section 55 (restricted access to asylum support), and not ask applicants to leave their accommodation after they are refused until they are actually removed from the UK (as this would make it easier to maintain contact with the applicant).” Summary of issues raised by [UK Border Agency] staff in workshops/presentations) p19, *Simplifying Immigration Law: consultation responses report*, December 2007, see

Call for Evidence:

**Is there any evidence of the effects of income poverty on children's development, well-being and their life chances? If so, what are the effects?**

The inability to afford or access good legal representation, as a result of legal aid cuts means that many families are not having their cases properly assessed. This is particularly true when cases have fallen foul of the legacy backlog and have been mishandled leading to long delays, mistaken letters and/or refusal letters not communicated to the client, and inadequate consideration of cases. Failure to have cases properly considered or to have access to a legal remedy when things have gone wrong means many families with young children are spending prolonged periods of time in legal limbo and living well below the poverty line.

**Are the current levels of support provided to asylum seeking children and families adequate in meeting the needs of children and young people?**

Asylum support levels should be set on the basis of need and not on the basis of immigration status.

On July 18, 2012, the German Federal Constitutional Court ruled<sup>11</sup> that the asylum support levels in Germany were insufficient to meet essential living needs of asylum seekers in Germany. The Court held that an assessment of support required to meet essential living needs should not take into account residency status but should only consider the actual needs of a specific group of people. The court took notice of the difference between income support levels for people with settled residency and those for asylum seekers.

In the UK the asylum support levels differ significantly from the income support and other mainstream benefit levels given to eligible people. A full assessment of the levels has been set out in the Children's Society Report of 2012<sup>12</sup> and is not reiterated here. In some cases the support levels for asylum seeking families are less than half of a comparable family on mainstream benefits.

In many cases clients are unable to focus on their immigration problems when overwhelmed with concerns over whether their family will have accommodation or food in the immediate future. Similarly, legal appointments are interrupted by children attending the interview because parents have no other support network to help with childcare and no funds to pay for it.

**Is the accommodation provided to asylum-seeking families effective in keeping children safe and promoting their welfare?**

We are aware of a number of cases in which accommodation providers have allowed men into women only accommodation or have misused accommodation that has been allocated for specific use such as accommodation for adults and children who are considered vulnerable to specific forms of harm. There has been no effective recourse to challenge such incidents in several cases.

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<http://www.ind.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/simplification1stconsultation/consultationresponses.pdf?view=Binary>

<sup>11</sup> 1 BvL 10/10, 1 BvL 2/11.

<sup>12</sup> A briefing from The Children's Society Highlighting the gap between asylum support and mainstream benefits 09/04/12 [W/E/NI/S].

**Does the current asylum support system enable children in asylum-seeking families to have a standard of living adequate for a child's physical, mental, spiritual, moral and social development?**

The standard of living that the Government set for individuals, couples and families with residency rights in the UK is higher than that accorded to asylum seekers or failed asylum seekers.

The recent case review in the case of child EG<sup>13</sup> is an example of a gap that in our experience appears all too often between the termination of asylum support and a person's transfer to mainstream benefits following a grant of leave to enter or remain. The case was discussed at the National Asylum Stakeholder Forum on 8 November 2012, at which ILPA was represented. Organisations present asked for an urgent response to the findings of the case review. The UK Border Agency staff member leading on this responded that the matter had to be discussed with other departments such as the Department of Work and Pensions. The ILPA representative expressed disagreement: the UK Border Agency could at once put in place a system whereby asylum support continued until a person was getting mainstream benefits, pending discussions with the other Government departments about the best way to achieve the transfer. The Home Office policy lead, Mr Rob Jones, Head of Asylum in the Strategy, Immigration and International Group of the Home Office suggested that there was a need to collect more evidence to understand the extent of the problem. It was suggested to him that a child and a mother having starved to death constituted sufficient evidence of a problem and a need for action.

**How does the current support system affect families where there is a child or parent with a disability?**

Current levels of section 4 support do not provide additional funding for children or adults with disabilities and therefore people in this group are unable to cope with the higher cost of living required to support a person with a disability. Children with disabilities may require specialist help to access education, health, social activities and their parents may require extra support.

**What is the impact on children and parents of the fact that parents are not allowed to work?**

ILPA appends hereto extracts from its February 2010 response to the Ministry of Justice consultation on legal aid, showing the adverse effects on children and young families of the asylum support system.

Many clients are prevented from attending the further submissions unit in Liverpool to hand in further submissions because they cannot afford to travel, sometimes with children, to Liverpool.

The refusal to grant permission to work to asylum seekers with young children, in conjunction with the extremely low levels of support provided by the government is causing widespread poverty through the asylum seeking community. Even once an applicant has been waiting over 12 months and has made the relevant application for permission to work,

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<sup>13</sup>Westminster Safeguarding Children's Board Serious Case Review, Executive Summary Child EG.

he or she faces a long wait before a decision is made and often finds it difficult to find work of the kind specified in the relevant occupation list. Concerns over children's essential living needs not being met are set out throughout this response and not reiterated here.

### **Are there any concerns about the use of the Azure payment card in relation to children?**

The Azure card replaced the voucher scheme for payments to destitute failed asylum seekers who were unable to leave the UK. The system was introduced in November 2009.

In March 2007 the Joint Committee on Human Rights published the report of its inquiry into *The Treatment of Asylum Seekers*.<sup>14</sup> The Committee concluded that support for those whose claims for asylum had failed but who were unable to leave, 'section 4 support', was discriminatory under the European Convention on Human Rights, "inhumane and inefficient", and should be replaced with the same form of cash support provided to asylum seekers still waiting for a decision. In response<sup>15</sup>, the then Government stated that it did not consider it appropriate to provide cash support to refused asylum seekers, and argued that the limited nature of section 4 support "endorses the message that the asylum seeker has exhausted his or her appeal rights and should take steps to leave the UK once the barrier to leaving has been resolved."<sup>16</sup>

There has been no evidence that this scheme, or the previously voucher scheme led to increased levels of returns. A consultation document published by the UK Border Agency in November 2009 recognised that:

"...the current system does not do enough to encourage those whose asylum application has been refused to take the appropriate steps to return home. This is demonstrated by the increasing proportion of the budget currently spent on section 4 support and the fact that in 2007/8 over half of our support spend went on those who have been found to have no protection needs."<sup>17</sup>

The consultation proposed that support be provided through the Azure card, but be more closely linked to a person's willingness to cooperate with removal arrangements.

There has been no consideration of the circumstances in which many Iranian, Zimbabwean, Afghani or Iraqi people seeking asylum or whose claims have failed but who cannot be returned, have found themselves in the past. Where there is no viable route of return, a person can be forced to live on cashless section 4 support for a prolonged period of time.

As illustrated by the recent report from the Chief Inspector of the UK Border Agency, setting out the disorganisation within the legacy backlog, many cases, including children, have been left in limbo for years<sup>18</sup>.

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<sup>14</sup> *Joint Committee on Human Rights, The Treatment of Asylum Seekers, 10<sup>th</sup> report of Session 2006-2007, Vol 1.*

<sup>15</sup> Parliament Standard Note SN/HA/5792.

<sup>16</sup> Parliamentary Commons Standard Library Note SN05792, Melanie Gower.

<sup>17</sup> UKBA, *Reforming Asylum Support: Effective support for those with protection needs*, 12 November 2009, p.11

<sup>18</sup> An Inspection of the UK Border Agency's handling of legacy asylum and migrant cases March – July 2012.