

# The end of the road

The impact on families of section 9  
of the Asylum and Immigration  
(Treatment of Claimants) Act 2004

**Nancy Kelley and Lise Meldgaard**

Supported by the Refugee Children's Consortium

# The end of the road

The impact on families of section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004

# Contents

Acknowledgements	2
Executive summary	4
1. Introduction	8
2. Section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004	10
3. Implementing section 9: the legal balancing act	13
4. Implementing section 9: local authority perspectives	19
5. Conclusion	28
6. References	31
7. Appendices	32

## Acknowledgements:

The authors would like to thank Daniel Clay, Gillian Holden, the interagency co-ordination team and staff at the ROOTS project in Manchester for assisting with the research and Nadine Finch at Two Garden Court for providing legal advice. Most of all, we are grateful to the many practitioners in local authorities and at the Refugee Children's Consortium who have given their time and support as a measure of their commitment to refugee children and families.

## Authors

Nancy Kelley is Head of UK and International Policy for the Refugee Council. Prior to September 2005 she was a Principal Policy Officer for Barnardo's and Chair of the Refugee Children's Consortium.

Lise Meldgaard is a Research Assistant for Barnardo's and has a background in participative research relating to refugees and asylum seekers.

# About Barnardo's and the Refugee Children's Consortium

Barnardo's vision is that the lives of all children and young people should be free from poverty, abuse and discrimination. Barnardo's purpose is to help the most vulnerable children and young people transform their lives and fulfil their potential. Across the UK, we work with refugee children, young people and families. These include Sure Start projects and residential care for separated children. Between February 2004 and August 2005, Barnardo's chaired the Refugee Children's Consortium (RCC).

The Refugee Children's Consortium was founded in 1998 and brings together more than 25 organisations committed to the needs and the rights of children and young people seeking asylum. Members of the Refugee Children's Consortium are: the Asphaelia Project, the Association of London Somali Organisations, AVID (Association of Visitors to Immigration Detainees), Bail for Immigration Detainees, Barnardo's, BASW (British Association of Social Workers), British Association for Adoption and Fostering (BAAF), Children's Legal Centre, Child Poverty Action Group, Children's Rights Alliance for England, The Children's Society, FSU, The Immigration Law Practitioners' Association (ILPA), the Medical Foundation for the Care of Victims of Torture, National Children's Bureau, NCH, NSPCC, Redbridge Refugee Forum, Refugee Council, Refugee Arrivals Project, Scottish Refugee Council, Save The Children UK and Voice for the Child in Care (VCC). The British Red Cross, UNICEF UK and UNHCR all have observer status.

The Refugee Children's Consortium works collaboratively to ensure that the rights and needs of refugee children are promoted, respected and met in accordance with the relevant domestic, regional and international standards, in particular:

- the United Nations Convention on the Rights of the Child (UNCRC), which was ratified in 1991
- the European Convention on Human Rights (ECHR), which was incorporated in 1998
- the Children Act 1989 and the Children (Scotland) Act 1995
- the United Nations (UN) 1951 Convention relating to the Status of Refugees, which was ratified in 1954.

For more information about Barnardo's work visit: [www.barnardos.org.uk](http://www.barnardos.org.uk).

For information about the work of the Refugee Children's Consortium contact the Chair, Lisa Nandy, Policy Adviser at The Children's Society: [lisa.nandy@childrenssociety.org.uk](mailto:lisa.nandy@childrenssociety.org.uk), 020 7841 4400.

# Executive summary

*'The proposals are not intended to make all families destitute. They are intended both as a deterrent but also an incentive... I want to try and persuade as many families as possible, when they come to the end of the road, to go back in a dignified way, with support, on a voluntary basis.'*

Beverly Hughes, Minister of State, in evidence to the House of Commons Home Affairs Select Committee, First Report of Session 2003-2004 p 17.

## Introduction

The Asylum and Immigration (Treatment of Claimants) Act 2004 is the third asylum and immigration statute introduced by the UK government over the last five years. Each of these acts has provisions that have had a negative impact on the quality of protection available to asylum seekers in the UK. Over time, it has become increasingly difficult for refugees to reach the UK and claim asylum, access essential legal services, or simply – as a result of poverty – to survive day-to-day life.

The Asylum and Immigration (Treatment of Claimants) Act 2004 had its first reading in the House of Commons on 27 November 2003. It received Royal Assent on 22 July 2004 after extensive debate, much of which focused on the potential impact of section 9. This section of the Act amends schedule 3 of the Nationality Immigration and Asylum Act 2002 by inserting paragraph 7A. It creates a new category of people described as *'failed asylum seeker with family'* and sets out the circumstances in which these people may lose their entitlement to financial or material support under domestic social welfare provisions including the Children Act 1989, the Children (Scotland) Act 1995 and the Children (Northern Ireland) Order 1995.

Specifically, it provides that where a failed asylum seeker with child dependant(s) fails to take 'reasonable steps' to leave the UK or place themselves in a position to leave and the Secretary of State issues a certificate to the effect that they have failed to do so without reasonable excuse, then an adult family member's entitlement to support from the state may end, unless withdrawal of support would lead to a breach of the Human Rights Act 1999.

The government's belief is that this will encourage families with children to leave the UK once their asylum claim has been decided. Whilst section 9 is not unique in its use of welfare restrictions to 'encourage' return, it is unique in its deliberate impact on refugee children, who are already amongst the most vulnerable groups in the UK.

Throughout the passage of the Act, the Refugee Children's Consortium, alongside other voluntary agencies, lobbied for section 9 to be deleted from the Bill. It said that refugee children should be viewed as children first and foremost, and that to use children as a tool by which to coerce families into co-operating with return is unethical and potentially in breach of the Children Act 1989, the Human Rights Act 1998 and the UN Convention on the Rights of the Child. Concern that section 9 might lead to negative impacts on children's safety and well being was expressed in both Houses of Parliament and by the Joint Committee on Human Rights. At the heart of these views was the fear that children would be left destitute, or be taken away from loving families as a result of this new policy. Despite this widespread disquiet, section 9 passed onto the statute book unchanged.

## Pilots

Section 9 is being piloted in three areas: Central/East London, Greater Manchester and West Yorkshire. The pilot areas were selected on the basis of two criteria: proximity to local enforcement offices with capacity to take on the additional workload, and numbers of asylum-seeking families at the end of the process. Families were identified for inclusion in the pilot on the basis that they had been notified by the Secretary of State that their appeal rights were exhausted prior to 1 December 2004 and that they had failed to take steps to leave voluntarily.

The pilot began on 1 December 2004, and is applicable to a specified group of 116 families, with 36 adult dependants and 219 children. The countries of origin of affected families vary, but include Pakistan (25 families), Somalia (16 families), Zimbabwe (10 families) and the Democratic Republic of Congo (8 families).

## Research

Between January and March 2005, Barnardo's contacted 55 local authorities, 23 of which were involved in the implementation pilot. Of these, 33 agreed to take part in the research, of which 18 were involved in the pilot. Most of the local authorities that chose not to participate indicated this was because they were not clear about the potential impact on families in their area, or had yet to make key decisions about their authority's perspective on or approach to implementation. Our aim was to get a better understanding of local authority perspectives on section 9, and specifically whether they felt themselves prepared for the challenge of supporting the families affected.

### Key findings from the research

- All of the local authorities interviewed believe that section 9 is wholly incompatible with the Children Act 1989, and some fear section 9 will damage the welfare principle and child centred practice more generally.
- Local authority staff have not been given any guidance from the DfES on how to undertake human rights assessments, or how they can work with families affected by section 9 without risking a breach of their duties under the Children Act 1989, or the Human Rights Act 1998.
- Many local authorities are fearful that in working with these families they are leaving themselves open to judicial review.
- There is evidence that the approaches taken by individual authorities are likely to significantly diverge, leading to a postcode lottery in support.
- Local authority staff responsible for working with families whose support has been withdrawn may not have the necessary training or experience to balance child welfare and human rights considerations alongside the imperatives of immigration control.
- Local authorities are extremely concerned about the resource implications of section 9, and some feel the policy is a deliberate attempt to shift resourcing from the Immigration and Nationality Directorate (IND) to local authority budgets.

Our interviews took place before families in the pilot began to reach the later stages of the process. Consequently they provide us with the perspectives of social care staff preparing for the implementation of section 9. Overall, the picture is one of confusion and of concern. Practitioners in and across the pilot areas had widely divergent perspectives of their legal obligations and the options available to them in supporting vulnerable children and families. Concerns about the practical and financial impact of the pilot were widespread, as was the perception that local authorities were being left to foot the bill by the National Asylum Support Service (NASS). All informants were clear that section 9 runs counter to their established welfare duties and practice under the Children Act 1989. Finally, though one informant expressed sympathy with the government's drive to push up the numbers of families being returned, none of the local authorities felt that the implementation of section 9 would decrease applications or significantly increase the numbers of families leaving the UK. In short, local authorities were unclear how or whether the policy was capable of being implemented, and felt that even if implemented, it was unlikely to work.

## The impact of the pilots: September 2005

*'This piece of legislation is clearly more concerned with coercing people to go back to their country of origin than supporting children and their families...it places social workers and their employers in an insidious position from our point of view...I would hope that the government would consider repealing this kind of legislation. If this is a civilised country we live in, then there is no place for that kind of treatment of families.'*

Ian Johnson, Director, British Association of Social Workers, Interview on BBC Radio 5 Live, 23 August 2005.

At the time of writing, seven months after the first letters were sent, some families are reaching the end of the road, notified of withdrawal of support by NASS, and unsure of what their future holds. On 31 August 2005, 27 families had reached Stage 4 of the process, 17 of these having had their support withdrawn under section 9. Amongst these, the Altaf, Sukula and Khanali families have attracted support in both the local and national media. Their stories illustrate the reality of section 9: families living with the fear of destitution and separation, local authorities caught between their welfare obligations and immigration control. A further 26 families involved in the pilot have had their support withdrawn for other reasons (such as failure to notify NASS of a changed address).

Crucially, no families have returned to their country of origin as a direct result of the implementation of section 9, and 35 families have disappeared, losing all contact with services, and leaving themselves and their children acutely vulnerable.

There is sound evidence that families involved in the pilot do not understand their situation or their options. In July 2005, at the request of NASS, the Refugee Council in London and Leeds and Refugee Action in Manchester sent translated letters to section 9 families. They were invited to attend advice sessions or call telephone advice services, to ascertain whether the families understood their position. This work revealed that many families had never received the letters relating to section 9, and that of those who had, few understood them.

## Conclusion

Today, as families face eviction from their homes, it is abundantly clear that whatever the intention behind section 9, it is being implemented in a way that runs the risk of causing life long damage to children and families who are already among the most vulnerable people in our society.

It is clear that the legal and practice problems posed by combining section 9 with child welfare and human rights standards have not been worked out through the pilot process. Rather than becoming increasingly confident as time has progressed, local authorities are becoming more acutely aware of the impossibility of their own position.

Finally, there is little evidence that this inhumane, administratively confused policy is effective, even in the limited sense of creating a significant rise in the numbers of families returning to their country of origin. Not one family has returned, but at least 35 have disappeared, and are now living on the margins of our society, vulnerable to abuse and exploitation.

Threatening families with destitution, with having their children taken into care, is not an 'incentive' that any caring society should utilise. When asylum-seeking families come to the 'end of the road' we should be meeting their welfare needs and working to ensure that any return is voluntary, supported, and safe.

## Recommendations

- Refugee children are children first and foremost, and UK asylum policy should protect their welfare as a first principle.
- The government should take the opportunity presented by the Immigration, Asylum and Nationality Bill to repeal section 9, before its implementation does further damage to the lives of individual children and families.
- Children in families affected by section 9 are children in need and should be provided with support according to the principles of the Children Act 1989.
- The government should review its asylum policy as a whole, specifically considering the extent to which it is compatible with the Children Act 1989, Human Rights Act 1998 and the UN Convention on the Rights of the Child.

# Section I

## Introduction

The Asylum and Immigration (Treatment of Claimants etc) Act 2004 is the third asylum and immigration statute to be introduced by the UK government over the last five years. Each of these acts has provisions that have had a negative impact on the quality of protection available to asylum seekers in the UK. Over time, it has become increasingly difficult for refugees to reach the UK and claim asylum, to access essential legal services, or simply – as a result of poverty – to survive day-to-day life.

Section 9 of the 2004 Act removes or significantly restricts the welfare entitlement of families who have reached the end of the asylum process and who have 'failed to take reasonable steps' to leave the UK. The government's belief is that this will encourage families with children to leave the UK once their asylum claim has been decided. Whilst section 9 is not unique in its use of welfare restrictions to 'encourage' return, it is unique in the way it deliberately impacts negatively on refugee children,<sup>1</sup> who are already amongst the most vulnerable groups in the UK.

Refugee children may have experienced or witnessed rape, violence, torture, imprisonment or persecution. They may have been enslaved as child soldiers, trafficked for prostitution, or punished to deter adult family members from political activity. In addition, they have to struggle to come to terms with a loss of identity and of home.

Unfortunately, arrival in the UK rarely signals the beginning of a safe and comfortable life. Our asylum system places these vulnerable children in a position where they are likely to continue to experience hardship and distress. Refugee children and young people live in conditions of extreme poverty. One study showed as many as 85 per cent of asylum seekers experience hunger regularly, 95 per cent are unable to buy the clothes and shoes they need and 80 per cent are unable to maintain their health (Penrose 2002). The dispersal scheme and government housing policies mean that refugee children, young people and families are likely to be housed in inappropriate accommodation, often for short periods of time with little security of tenure.<sup>2</sup> Refugee children of compulsory school age have the same entitlement to education as UK nationals, but their education rights are not often respected. Accessing a school place can be almost impossible. A study in 2002 estimated that at least 2,100 refugee children were out of school in London alone (Refugee Council 2002). Accessing health and mental health care can also represent a significant challenge as a result of structural complexity, language issues, and hostility on the part of services.

The policy enacted in section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004 gave rise to widespread fears that this acutely vulnerable group of children would be further marginalised and placed at risk to persuade parents to comply with immigration decisions.

In response, Barnardo's and the Refugee Children's Consortium (RCC) began this research with two principal aims:

- to map the tension between section 9 and child welfare/human rights law
- to better understand the degree to which local authorities were prepared for the task of safeguarding children in families affected by section 9.

- 1 Throughout this report the term 'refugee children' is used to denote children in asylum-seeking families.
- 2 Living in temporary accommodation is associated with a range of adverse effects on the health, education and wellbeing of children and young people (Rutter 2001), and studies have shown that temporary accommodation has a particularly adverse impact on nursing mothers and pregnant women (McLeish 2002).

## Section 2

### Section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004

The Asylum and Immigration (Treatment of Claimants) Act 2004 had its first reading in the House of Commons on 27 November 2003. Then followed an extensive debate, much of which focused on the potential impact of section 9.

This section of the Act amends Schedule 3 of the Nationality Immigration and Asylum Act 2002 by inserting paragraph 7A. It creates a new category of people described as *'failed asylum seeker with family'*<sup>1</sup> and sets out the circumstances in which these people may lose their entitlement to financial or material support under domestic social welfare provisions including the Children Act 1989, the Children (Scotland) Act 1995 and the Children (Northern Ireland) Order 1995.

Specifically, it provides that where a failed asylum seeker with child dependant(s) fails to take 'reasonable steps' to leave the UK or place themselves in a position to leave and the Secretary of State issues a certificate to the effect that they have failed to do so without reasonable excuse, then an adult family member's entitlement to support from the state may end, unless withdrawal of support would lead to a breach of the Human Rights Act 1999.<sup>2</sup>

*'The proposals are not intended to make all families destitute. They are intended both as a deterrent but also an incentive... I want to try and persuade as many families as possible, when they come to the end of the road, to go back in a dignified way, with support, on a voluntary basis.'*

Beverly Hughes, Minister of State, in evidence to the House of Commons Home Affairs Select Committee, first report of session 2003-2004, p 17

The purpose of section 9 is to encourage the 'voluntary' return of families who have reached the end of the asylum determination process, where potential destitution and homelessness operate as 'a deterrent but also an incentive'. However the policy is based upon implicit assumptions about the asylum process, and about the way in which policy is communicated. Firstly, it assumes that asylum claims are determined fairly and take into account the whole family's vulnerability to persecution and abuse of their human rights in their country of origin. This assumption is crucial, not only to the ethical justification of the policy but also its practical effect. For if families have a genuine fear of persecution or abuse, they are unlikely to return to their country of origin, however strong the 'incentive'.

Secondly, section 9 assumes an unbroken and clear chain of communication between the Immigration and Nationality Directorate and failed asylum seekers. Throughout the passage of the Asylum and Immigration (Treatment of Claimants) Act 2004, ministers repeatedly expressed the hope that it would not be necessary to withdraw support to families, as they would clearly understand the possible consequences if they did not cooperate and return to their country of origin.

The policy is explained as a consequence of parental dereliction, rather than as one arm of government placing children at risk, and another stepping in to ameliorate that risk:

*'In every circumstance in which parents make decisions and are held responsible – whether it is parents who engage in unlawful action, parents who neglect or abuse their children, or parents who are no longer in receipt of benefits as a result of their actions – we have to take steps.'*  
David Blunkett, Secretary of State for the Home Office, debate on the Queen's Speech, Hansard, December 2003, col 1599

Comparing failure to comply with immigration decisions with child abuse is perhaps the starkest example of the way in which asylum-seeking parents are misrepresented to justify the inclusion of section 9 in the Bill. The policy makes parents responsible for any trauma experienced by their children as a result of the government's decision to remove financial and material support.

Throughout the passage of the Act, the Refugee Children's Consortium, alongside other voluntary agencies, lobbied for section 9 to be deleted from the Bill. It said that refugee children should be viewed as children first and foremost, and that to use children as a tool by which to coerce families into co-operating with return is unethical and potentially in breach of the Children Act 1989, the Human Rights Act 1998 and the UN Convention on the Rights of the Child:

*'The Refugee Children's Consortium opposes this clause as it will result in families being made destitute, will place children's health, welfare and development at risk and will separate children from their parents and other family members. This clause is not about voluntary departure. Its purpose is to use the threat of family poverty and destitution and the separation of children from their families to coerce families into leaving the country and it should be resisted.'*  
RCC Amendment Briefing, Commons Report Stage

The principled argument and practical concerns raised by the RCC were reflected in the extensive parliamentary debate on the clause:

*'I do not believe that it is ever in the best interests of children to be taken into care when they have caring parents and where the only reason why those parents may not be able to look after them is that the government are (sic) not humane enough to ensure that they have the means. Children should not be used as tools to coerce parents, and I hope that, in reverse, asylum-seeking families would not use their children as tools to coerce the government.'*  
Baroness Walmsley, Lords debate on the Queen's Speech, 1 December 2003, col 128

*'We want to know how they intend to apply the provisions of new paragraph 7A of schedule 3 in the real world. If the parent or parents have no means and no accommodation, does section 21C of the Children Act 1989 kick in? Are local authorities caught between the Scylla of paragraph 7A and the Charybdis of an expensive court case under the Children Act or the Human Rights Act? If your Lordships have not the faintest idea how the conflict is to be resolved and if ministers will give us no answers, how can we expect local authorities to make such painful decisions?'*  
Lord Avebury, Lords Report Stage, 18 May 2005, Hansard, col 690

Furthermore, both the Home Affairs Select Committee and the Joint Committee on Human Rights (JCHR) expressed considerable misgivings about the potential impact of section 9 on vulnerable children:

*'Whilst clause 7 (later section 9) is in itself compatible with rights under the ECHR (European Commission on Human Rights) and the CRC (UN Convention on the Rights of the Child), we fear that violations could all too easily follow in practice. We draw this to the attention of each House'.*

JCHR, fifth report, session 2003-2004, para 45

Despite these widespread concerns and the risks section 9 might pose to the rights of adult and child family members alike, the clause passed unchanged through both Houses, and received Royal Assent on 23 July 2004.

- 1 The categories of people already covered in Schedule 3 are those who have refugee status in a country other than the UK, citizens of EEA states, failed asylum seekers and people unlawfully in the UK.
- 2 Paragraph 3 of schedule 3 allows NASS and local authorities to continue supporting failed asylum seekers with dependent children in order to protect their rights under the European Convention on Human Rights or under community treaties.

# Section 3

## Implementing section 9: the legal balancing act

The Children Act 1989, the Children (Scotland) Act 1995 and the Children (Northern Ireland) Order 1995 create the legislative backbone of all work with children and families across the UK. At their heart is the welfare principle that in all decisions or actions concerning children, the child's best interests should be paramount.<sup>1</sup>

Most relevant to the implementation of section 9 of the Asylum and Immigration (Treatment of Claimants) Act is section 17 in the Children Act 1989:

*Section 17 – provision of services to children in need*

*17.—(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—*

- (a) to safeguard and promote the welfare of children within their area who are in need; and*
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.*

Section 17 of the Children Act places a positive duty on local authorities to safeguard the welfare of all 'children in need' resident in their area. 'Children' for the purposes of the Act is all human beings under the age of 18, and 'in need' is defined at section 17 (10):

*(10) For the purposes of this Part a child shall be taken to be in need if—*

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;*
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or*
- (c) he is disabled.*

This duty is not subject to qualification: it is owed to all children in need. Moreover, both the Act and its accompanying guidance (Framework for the Assessment of Children in Need and their Families), make it clear that it is in the best interests of children to live with their families; that supporting families is not only an acceptable means of fulfilling section 17 duties to children, but may well be the preferable means of doing so:

*17 (3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.*

*'Services may be provided to any members of the family in order to assist a child in need (section 17(3) of the Children Act 1989). The needs of parent carers are an integral part of an assessment. Providing services which meet the needs of parents is often the most effective means of promoting the welfare of children.'*

Framework for the Assessment of Children in Need and their Families, p9.

In addition to services and financial support, the range of services a local authority may provide includes accommodation:

*Section 17 of the Children Act 1989 includes the power for local authorities to provide accommodation for families and children; and that the provision of accommodation in this way does not make a child looked after.*

Guidance on Accommodating Children in Need, Local Authority Circular (LAC), (2002), 13.

Refugee children often meet the section 17 threshold by virtue of their experience of trauma, loss and displacement. Children who are faced with withdrawal of support from their families and subsequent destitution clearly qualify as 'children in need'. Section 9 seeks to fetter the way in which local authorities can fulfil their duties to vulnerable children: they cannot follow the Framework guidance; nor indeed the letter of the law and preference support to the family. They are compelled to support children alone, except where a breach of human rights would be the consequence of that course of action.

There are a range of alternative options open to a local authority faced by a child whose family's support has been withdrawn under section 9, all of which are problematic when viewed through the lens of the Children Act 1989 and the Human Rights Act 1998.

## I. Support under section 17 for the child, but not the family

*'There might be family friends and members of the community who are able to assist.'*  
David Blunkett, Secretary of State for Home Affairs, debate on the Queen's Speech,  
17 December 2003, Hansard, col 1599

Comments, like those above, made during the passage of the Act, suggest that the child and family might live with 'friends and members of the community', in the same way that many families who are unwilling to co-operate with dispersal already do. However, in the case of families affected by section 9, the legal position is somewhat more complex, as subsistence money cannot be paid to the parents without breaching section 9, nor can it be paid to the child. In effect, the local authority would need to pay the subsistence money to another adult with whom the family was living. It is unclear how the local authority would then be able to ensure that the money they provide is spent on child, rather than adult family members, or indeed that the money is reaching the child or children at all.

If the child or children went to live with 'friends and members of the community' without their parents, this would qualify as a private fostering arrangement under the Children Act 1989. Private fostering arrangements are increasingly subject to regulation, in recognition of the risks that children can be exposed to through informal mechanisms of care. The Department for Education and Skills' (DfES) Minimum Standards for Private Fostering, which came into force on 1 July 2005, specify onerous checks and balances. These include duties to assess the suitability of the placement; police checking resident adults; monitoring the placement through regular visits; ensuring the placement meets the child's needs; and providing advice and support to both the foster parents and child or children. If a child or children subject to section 9 were to be supported in this way, the costs of their placement would place a significant burden on the resources of the local authority, who would be unable to claim the costs of placement support from the National Asylum Support Service (NASS).

As well as raising these practical concerns, supporting the child but not the family runs counter to the principles of the Children Act itself. Leaving parents destitute cannot be seen to be in a child's best interests, nor can forcing the family to live in temporary accommodation.

## 2. Accommodating a child with parental consent: section 20 of the Children Act 1989

Section 20 of the Children Act allows the local authority to 'accommodate' children in need where this is in their best interests:

- 20.—(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—*
- (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.*

There are a number of legal questions raised by the possibility of accommodating children under section 20 as a result of withdrawal of support under section 9. Some arise from the operation of the Children Act itself, others from the Human Rights Act, and section 9's provision that support may be given in order to avoid a breach of the latter.

Firstly, section 20 requires that the child's wishes be taken into account in the process of deciding whether or not to accommodate:

- 6) Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—*
- (a) ascertain the child's wishes regarding the provision of accommodation; and*  
*(b) give due consideration (having regard to his age and understanding) to such wishes of the child as they have been able to ascertain.*

It seems highly unlikely that a child whose family is subject to section 9 will wish to be taken away from their family and housed with strangers. Given the fact that this is a wholly reasonable position, it would be difficult for a local authority to override the child's wishes and accommodate them.

Secondly, a local authority seeking to accommodate a child under section 20 requires the permission of that child's parents:

- (7) A local authority may not provide accommodation under this section for any child if any person who—*
- (a) has parental responsibility for him; and*  
*(b) is willing and able to—*
- (i) provide accommodation for him; or*  
*(ii) arrange for accommodation to be provided for him, objects.*

Clearly, it is possible to argue that the parents in question are unable to provide or arrange for accommodation. However, given the fact that their inability to provide accommodation arises solely from NASS' withdrawal of support, this seems a little perverse. Finally, it is possible for a parent to remove their child from care provided under section 20:

- (8) *Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the local authority under this section.*

So while it might be possible to accommodate a child under section 20 without parental permission, it would be impossible to keep them in that placement where the parent objected.

More fundamentally, it is difficult to see how separating a child from its family avoids cutting across the founding principles of the Children Act as it cannot be said to be in a child's best interests to be separated from a caring family. All available evidence suggests that this kind of disruption to family relationships can have serious long term consequences for the child or children involved.

### 3. Accommodating a child without parental consent: section 31 of the Children Act

Finally, it is possible that a local authority might seek to accommodate a child under section 31 of the Children Act where its parents refused permission for a section 20 order:

- 31.—(1) *On the application of any local authority or authorised person, the court may make an order—*
- (a) *placing the child with respect to whom the application is made in the care of a designated local authority; or*
  - (2) *A court may only make a care order or supervision order if it is satisfied—*
    - (a) *that the child concerned is suffering, or is likely to suffer, significant harm; and*
    - (b) *that the harm, or likelihood of harm, is attributable to—*
      - (i) *the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or*
      - (ii) *the child's being beyond parental control.<sup>2</sup>*

It is highly unlikely that any local authority would be able to successfully obtain a care order purely on the basis of destitution arising from the impact of section 9. This is the case for two principal reasons: firstly, these children are unlikely to meet the threshold requirements of section 31, and secondly, because the courts are specifically required to abide by the welfare principle when determining such cases:

- 1.—(1) *When a court determines any question with respect to—*
- (a) *the upbringing of a child; or*
  - (b) *the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration.*

The court, unlike other public bodies, is expressly forbidden to privilege immigration control over the child's welfare. The 'paramount consideration' of the family court is the child's welfare

and, as we have said, children's welfare is almost always best served by supporting them in the care of their own family.

In summary, each of the three principal options open to local authorities seeking to support families affected by section 9 are problematic: at a fundamental level the Asylum and Immigration (Treatment of Claimants) Act 2004 and the Children Act 1989 appear incompatible.

This inherent tension between child welfare and immigration law is further compounded by the fact that any course of action taken by local authorities seeking to adhere to section 9 gives rise to a potential conflict with the European Convention on Human Rights (ECHR), domestically applicable through the Human Rights Act 1998.<sup>3</sup>

The clearest potential breach of rights relates to Article 8 and the right to private and family life: *'a breach of Article 8 of the European Convention on Human Rights is likely to occur if a local authority takes a child into care or accommodates whilst his family are still in the United Kingdom'*<sup>4</sup> (in circumstances where the risk of harm is wholly attributable to withdrawal of support). This potential for breach would equally apply to any private fostering arrangement that placed the child away from its immediate family. Article 8 is a qualified right, and therefore it would be open for the local authority to argue that their actions were a necessary and proportionate response, yet given the grave consequences of forced separation, this would be a difficult position to sustain.

Additionally there is a potential breach of Article 3 (prohibition on torture and inhuman or degrading treatment). The recent case of Limbuella v Secretary of State for the Home Department [2004] EWCA Civ 540, established that by removing support from an asylum seeker who had failed to file their claim within statutory time limits, the Home Office, acting through the National Asylum Support Service, had breached Article 3 of the European Convention on Human Rights. Though Limbuella applies to asylum seekers whose claim has not yet been determined, it is possible that refusing to support families under section 9 and rendering them destitute would be found to constitute a breach of Article 3.

Finally, it might be argued that section 9 itself breaches Article 14 (the right to enjoy Convention Rights without discrimination), in that it protects the Convention rights of children whose parents comply with re-documentation and removal to a far higher standard than those whose parents are refusing to co-operate.

This potential conflict between implementation of section 9 and the Human Rights Act is of particular significance here. Like public bodies, local authorities are obliged to act in accordance with the Human Rights Act. But in addition to this, the implementation process being piloted envisages two separate human rights assessments. The first, undertaken by the National Asylum Support Service, considers whether withdrawal of support will lead to a breach of the ECHR. The second, undertaken by a local authority, considers whether in choosing to support the child alone (in accordance with the express purpose of section 9), the rights of the child or of other family members are likely to be breached.

This is the legal balancing act facing local authorities: acting in accordance with section 9 means attempting to support the child or children without supporting adult family members. Acting in accordance with the Children Act 1989 and the Human Rights Act 1998 means acting in the best interests of that child, and respecting the right of both children and adults to enjoy family life without forcing them into destitution.

- 1 Given that section 9 is only being piloted in English local authorities, references in this report are to the Children Act 1989. In fact, should section 9 be implemented across the UK, many similar legal conflicts will be played out as the Children (Scotland) Act 1995 and the Children (Northern Ireland) Order 1995 set out a broadly equivalent structure for child protection and welfare.
- 2 According to the Act, "harm" means ill-treatment or the impairment of health or development; "development" means physical, intellectual, emotional, social or behavioural development; "health" means physical or mental health; and "ill-treatment" includes sexual abuse and forms of ill-treatment which are not physical.
- 3 Clearly, there is also potential for breach of the UN Convention on the Rights of the Child. Analysis here is focused on the domestically incorporated ECHR rights.
- 4 Nadine Finch, Two Garden Court 'In the Matter of section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004' p2.

# Section 4

## Implementing section 9: local authority perspectives

Section 9 is being piloted in three areas: Central/East London, Greater Manchester and West Yorkshire.<sup>1</sup> The pilot areas were selected on the basis of two criteria: proximity to local enforcement offices with capacity to take on the additional workload, and numbers of asylum-seeking families at the end of the process. Families were identified for inclusion in the pilot on the basis that they had been notified by the Secretary of State that their appeal rights were exhausted prior to 1 December 2004 and that they had failed to take steps to leave voluntarily.

The pilot began on 1 December 2004, and is applicable to a specified group of 116 families, with 36 adult dependants and 219 children. The countries of origin of affected families vary, but include Pakistan (25 families), Somalia (16 families), Zimbabwe (10 families) and the Democratic Republic of Congo (8 families).

In early 2005, the Immigration and Nationality Directorate (IND) published a five stage process for the withdrawal of support,<sup>2</sup> and each of the 116 families were issued with a Stage 1 letter on 16 February 2005:

### Stage 1

First letter issued at end of appeal, informing the family that they must leave the UK, giving details of how to make a voluntary or assisted departure and warning that support may be withdrawn if in the opinion of the Secretary of State they have failed without reasonable excuse to take reasonable steps to leave the UK or place themselves in a position in which they are able to leave voluntarily.

### Stage 2

Second letter issued with appointment for interview, together with information on voluntary returns, as before.

### Stage 3

Interview takes place. Where appropriate, third letter issued with warning that a certificate will be issued with the consequence that support might end unless acceptable reasons are provided within seven days. Information on voluntary returns provided as before. Certificate prepared. Case passed to NASS. Letter copied to local authority social services department (LASSD).

### Stage 4

European Convention on Human Rights (ECHR) aspects considered by NASS. Fourth letter sent (copied to LASSD), certifying that the family has failed, without reasonable excuse, to take reasonable steps to leave the UK or to place itself in a position in which it could. Support will end in 14 days where continuation of support is not necessary to avoid a breach of ECHR. Information on voluntary return provided as before.

### Stage 5

Support ends 14 days after the receipt of certificate unless an appeal is heard and allowed within this period.

From *Process Map for the Termination of Support Under section 9*, Home Office fact sheet, 16 February 2005

It is worth noting that none of the correspondence referred to above is issued in the applicant's first language, with the exception of the information on voluntary returns. Additionally, NASS failed to establish whether families included in the pilot cohort still lived in the accommodation listed in the NASS database, and therefore whether the initial letter would even be received.

Significantly, the process map as issued does not deal with the complex nature of the human rights assessment required from NASS, nor that required from local authorities after stage five. The challenges inherent in the former are evident from the fact that in April 2005, NASS introduced a 'minded to terminate process' at stage four. This extra step was designed to bolster NASS human rights assessments by asking the relevant local authority to submit any information that might call into question their decision to terminate support. The 'minded to terminate' process was introduced without consultation and, on the basis of legal advice, local authorities have refused to participate, as to do so, may prejudice their subsequent assessment of need under the Children Act 1989.

As the pilot progressed, it also became clear that the local authority is obliged to undertake a second human rights assessment (a nominal stage 6). The purpose of this second assessment is to determine whether choosing to support the child only (as envisaged by section 9) would lead to a breach of the child or the family's ECHR rights.

Between January and March 2005 Barnardo's contacted 55 local authorities; 23 of these were involved in the implementation pilot. Of these, 33 agreed to take part in the research, of which 18 were involved in the pilot. Most of the local authorities that chose not to participate indicated this was because they were not clear about the potential impact on families in their area, or had yet to make key decisions about their authority's perspective on or approach to implementation. It is interesting to note, that even after section 9 came into force and the pilot cohort of families were identified, 13 local authorities involved in the pilot were not in a position to answer questions about how they intended to work with the children and families in their area.

The non-pilot local authorities interviewed were part of a sample selected on the basis of high concentrations of asylum-seeking residents, as these are most likely to be affected by any eventual roll out of section 9. We chose to interview local authorities not involved in pilot both to provide a control against which we could measure the preparedness of pilot authorities and, as an indication of the degree to which attitudes to section 9 might change as a result of greater access to information or involvement in its implementation.

Members of Barnardo's research team conducted semi-structured telephone interviews with the person/s identified as responsible for assessing families affected by section 9 in participating authorities.<sup>3</sup> Overall, participants were happy to take part in the research, with some saying they

felt it was important that the policy be independently monitored. All were keen to see the findings of this report.

In our interviews with local authorities, our concern was to establish firstly whether they felt confident and prepared to navigate the legal and practice complexities involved in implementing section 9. Secondly whether they saw section 9 as compatible with their welfare duties and ethical practice. And finally, what they felt the likely outcome of implementation would be.

## Personnel and team structure

The majority of both non-pilot (13 out of 15) and pilot (15 out of 18) authorities stated that they were either working or due to start working with families subject to section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004.

All pilot local authorities and the majority of non-pilot authorities (n=13) have a team or individual responsible for implementing section 9. In 13 local authorities (9 non-pilot and 4 pilot), the team or individual was identified as being simply part of the social services department. In nine local authorities (2 non-pilot and 7 pilot) the team or individual was sited in the asylum team; in six local authorities (3 non-pilot and 3 pilot) within the housing team; in five local authorities (1 non-pilot and 4 pilot) within the children and families team; and one local authority (pilot) within the unaccompanied minors' team. Finally, one pilot local authority had placed the lead for section 9 implementation in their policy team, rather than in service delivery. This variation is a direct result of the way in which section 9 cuts across the work of children's services and asylum teams in local authorities.

The majority of local authorities are planning to use pre-existing posts to lead on implementation of section 9. Only three respondents (2 non-pilot and 1 pilot authority) had established new posts to meet this need. Twelve of the local authorities interviewed stated that experience of childcare or asylum work was not a prerequisite for postholders, though the majority of those in post are qualified social workers with relevant experience of one or both fields. In ten local authorities (5 non-pilot and 5 pilot) a background in both childcare and asylum work is a prerequisite for postholders.

Although it is dangerous to make assumptions about the experience, skills and likely practice of the teams involved, implementation will require a complex balancing of restrictions imposed by asylum and immigration law with duties under the Children Act 1989 and the Human Rights Act. Therefore some concern may be justified.

Firstly, all teams and individuals involved in implementing section 9 will have to undertake two key assessments. The first, a child in need assessment under section 17 of the Children Act. The second, an assessment of whether failure to support might lead to a breach of fundamental rights under the Human Rights Act. Assessments under section 17 follow a clear process, but one which will be primarily familiar to those with direct experience of supporting children and families. Members of a housing team are unlikely to have had extensive experience of assessing children and families in this way. While asylum team members may well have relevant experience, some evidence suggests that the Children Act has been applied differentially to refugee children and that assessments led by asylum team members might not reflect the process as applied to UK nationals.

This assessment has a central role in determining the child's needs and best interests and in establishing the parameters of the local authority duty to provide support. Because of this, it is of concern that experience of childcare work is not a prerequisite for all post holders, and that in some cases the responsible team may not have an appropriate level of experience in relation to assessing children and young people's needs.

Human Rights assessments are a less clear process. There is no standardised framework by which to measure whether a withdrawal of support might breach the Human Rights Act. Indeed, many respondents indicated some anxiety on this point. Moreover, it will be essential that practitioners assess potential breaches in respect of all family members. This will require knowledge and sensitivity to interpret child specific areas of human rights' standards. Some respondents suggested that asylum team members are likely to be better prepared for undertaking such rights-based assessments.

Finally, it is worth considering whether the varied location and experience of implementing teams could contribute to the creation of a 'postcode lottery' with some areas provided for and others left destitute.

## Section 9 and the Children Act 1989

Although one informant expressed sympathy with the government's drive to push up the numbers of families being returned, none of the local authorities felt that the implementation of section 9 would decrease applications or significantly increase the numbers of families leaving the UK. In short, local authorities were unclear how or whether the policy was capable of being implemented, and felt that even if implemented, it was unlikely to work.

In addition, all of the local authorities interviewed stated that in their view section 9 was wholly incompatible with the Children Act 1989:

*'Overall, section 9 contradicts the Children Act as it does not aim to meet the child's needs.'*

*'It is in flat contradiction. The interests of children are supposed to be paramount and this legislation stamps on these.'*

All respondents identified a fundamental incompatibility in the way section 9 restricts, or seeks to restrict, the application of the welfare principle. Some respondents indicated that they fear section 9 will damage the primacy of the welfare principle in social work practice as a whole, or will force social workers to work against their professional ethics.

Other respondents went further, and described section 9 as incompatible with overarching moral imperatives, or human rights standards.

A significant number of respondents expressed some cynicism about the purpose of section 9, connecting the policy with political imperatives, or with a desire to shift resourcing from the Home Office to local authorities. Interestingly, attribution of political motives for the policy was more common amongst those local authorities involved in the pilot:

*'The whole thing is politically motivated and done to massage the asylum figures.'*

*'It is a cynical system from beginning to end. All it does is transfer funding to local authorities and it's totally negative and pointless.'*

In practice, this may mean that the welfare principle itself becomes weakened, as social workers are forced into providing a second class service to children and young people from asylum seeking families.

Also of concern is the extent to which some local authorities perceive the actions of the Home Office policy to be politically motivated, as this has serious implications for effective joint working and also raises the spectre of a further demoralised social care workforce.

## Compatibility with the Children Act and Human Rights Act in practice

Local authorities in and outside of the pilot areas had widely varying interpretations of the legal effect of section 9. The overwhelming majority felt that the legal position was unclear and could create a circular process in which the local authority would be trapped:

*'Section 9 could potentially place a great burden on section 20, there are limited resources available for section 20. There is also an assumption that if we sought to voluntarily accommodate children their parents would refuse ... If we were to opt for a section 38 (temporary accommodation order/interim order), we would really struggle to get the court to approve it if the parents contested the case.<sup>4</sup> Courts would say that they should be supported by section 17, but the section 17 budget is not large enough to pay for support for any length of time and local authorities would really struggle.'*

For some authorities this has prompted a pragmatic approach: the idea that they will simply have to try and follow the process, dealing with problems as they arise: *'It's a case of doing the best we can and seeing how it goes'*. Others are clearly concerned about the possibility of legal action, and are keen to avoid the late stages of withdrawal of support until a court has clarified the legal position.

Some local authorities clearly indicated they would be taking a specific approach to all families affected by section 9. Irrespective of their stated intention, the process for implementing section 9 rests on individual assessments, so adopting a blanket policy as regards families affected raises questions and concerns.

Worryingly, some local authorities are of the opinion that the only option available to them is to take children into care through the use of section 20. Others indicated that their intention was to support the whole family, in line with the principles of the Children Act:

*'We will not look after a young person purely as a result of NASS withdrawing support. Instead we will look to provide accommodation to the whole family.'*

*'The only option is to support families financially, which goes against section 9.'*

Overall this means the majority of interviewees were unsure of their own legal position in implementing section 9, while a small minority polarised around two courses of action: accommodating children away from their families, or supporting whole families as they had prior to the advent of section 9.

## Training and guidance

Of the non-pilot authorities interviewed, only one had received training on section 9. This training consisted of a briefing session hosted by the London Asylum Seekers Consortium, which focused on background information rather than practical implementation issues.

More worryingly, eight of the pilot authorities had not received any training on section 9 from the Immigration and Nationality Directorate (IND) or any other source. Four pilot authorities had received training from independent sources, either from a consortia of local authorities or voluntary sector groups. The remaining four authorities, that had received training, had attended a day session provided by IND.

Only two pilot authorities that had not yet been trained were aware that training was being planned. Eight stated that no training was scheduled. Several authorities stated that they were experiencing difficulties finding training or information about section 9 or that training had been scheduled but cancelled 'due to lack of interest'. Other authorities mentioned that they felt the number of families in their area was too small to justify the expense of training.

Overall, those authorities that had received training on section 9 were satisfied or partly satisfied with its quality, with many stating that it provided them with useful information about the process of withdrawing support from asylum-seeking families. Some respondents indicated that the training was less useful for managers without a background in childcare social work. The content of the training primarily focused on the IND process map, and some respondents indicated that they felt there was a lack of clarity about the responsibilities of local authorities, and the length of time for which a local authority might continue to support children and families involved in the pilot.

The majority of non-pilot (11 out of 15) and pilot authorities (12 out of 17) had received guidance on section 9 from the Home Office. None had received guidance from the Department for Education and Skills indicating how best to implement section 9 whilst discharging their duties under the Children Act 1989.<sup>5</sup> The five pilot authorities who had not received guidance from the Home Office had located the relevant material independently, by contacting other pilot authorities or by searching the internet.

The majority of both pilot (13) and non-pilot authorities (9) felt that the guidance was useful or partly useful. Non-pilot authorities indicated that it was harder to assess the extent to which the guidance was comprehensive, as they had not yet engaged with the implementation process. Some also stated that more detailed guidance would be necessary if section 9 was to be implemented more widely.

The Home Office guidance left local authorities with a range of outstanding questions and concerns. These included:

- a lack of information about local authorities' duties to families affected by section 9
- a lack of clarity about the interaction of section 9 with the Children Act
- a lack of information about the process for undertaking human rights assessments
- concern that the guidance would not be sufficient for those without a background both in asylum and in childcare
- concern that the guidance had arrived too late to be useful in the implementation timescales

- a lack of clarity about whether and how the Home Office would reimburse costs arising from local authorities' assessment and support of families.

Both the guidance and training provided to the respondent local authorities has focused on the process of withdrawing support from families, with little guidance about how to do this. Consequently there is a worrying 'guidance gap'. While there have been some attempts to plug this gap, they have been inadequate: a brief question and answer paper provided by IND in June 2005 in response to child welfare concerns raised by participant authorities in November/December 2004; and unpublished draft guidance developed by the Association of Directors of Social Services.

To help address these concerns, local authorities involved in the pilot scheme have publicly advocated open evaluation of the implementation process in the hope of establishing national guidance ahead of section 9 being rolled out.

Without clear guidance from the Department for Education and Skills, practitioners will remain unclear of their role, and perhaps fearful that they themselves will be exposed to censure or legal action in providing or failing to provide support.

## Implementation: experiences and concerns

We asked those authorities involved in the pilots to comment on their experiences of the process to date. As a result of the early stage at which authorities were contacted, the majority of their concerns related to what they saw as likely outcomes of the pilot schemes. However, two pilot authorities identified problems with communications between the Home Office, NASS and the local authority:

*'Insufficient notice was provided of section 9 coming into force.'*

*'We have not received the communication NASS promised for the first case we have.'*

Both pilot and non-pilot authorities were asked to state any concerns they had about the implementation of section 9. Their overriding concern related to section 9's incompatibility with the Children Act and possible damage to families and social work practice.

A range of concerns were expressed about the process, particularly about funding for both pilot (n=7) and non-pilot authorities (n=4). Whatever course of action each authority contemplated, they saw an unmanageable drain on their resources as a likely outcome:

*'The implications for an over-stretched care system are pretty serious – this seems to be a policy based on a complete lack of knowledge about the true costs of looking after children.'*

Some of these concerns about resources related to a lack of information about cost reimbursement. Other authorities were concerned because they were aware that NASS policy is that section 20 costs can be reimbursed in total, while section 17 costs are reimbursed only at a subsistence level. This practice imposes a financial penalty on local authorities that continue to support the family as a whole and act in line with the 1989 Children Act.

Both pilot and non-pilot authorities were concerned about communication problems between local authorities and either NASS or the Home Office. Pilot authorities also indicated additional concerns in three distinct areas. Firstly they raised concerns about how they should or could respond to family homelessness occurring as a result of section 9 (n=5):

*'It will be difficult to find suitable accommodation at crisis point.'*

Secondly, they raised concerns about interagency conflict, primarily between NASS and the local authority, but also between departments in the local authority, and between social services and the local voluntary sector. Finally three authorities raised significant concerns about how the human rights assessments would work in the context of providing support to destitute families:

*'It is critical how people are trained to carry out human rights assessments – there is a need for a lot of support and training...currently unqualified workers do needs assessments for asylum seekers – maybe they should only be done by qualified social workers.'*

These issues were of less concern to local authorities in non-pilot areas, although two raised practical concerns about forcibly removing children from their families.

Issue	Pilot Authority	Non-Pilot Authority
Unrealistic timescales		1
Communication problems with NASS/ Home Office	2	2
Families disappearing	3	2
Problems accommodating families made homeless	5	1
Money	7	4
Inter-agency / inter-departmental conflict	4	
How will support packages last?	1	1
Human rights assessments	3	
Return to unsafe country		1
Damage to community cohesion	1	1
Forced removal of children		2

The concerns shared by both pilot and non-pilot authorities: funding, communications, and families disappearing, are not indicative of a policy in which local authorities have much confidence. For some authorities, being involved in the pilots appears to raise new concerns, rather than allaying fears. These concerns go to the heart of practical implementation: interagency wrangling, and the challenges posed by homeless families, and new forms of assessment.

The interviews for this report took place before families in the pilot began to reach the later stages of the process. Consequently they provide the perspectives of social care staff preparing for the implementation of section 9. Overall, the picture is one of confusion and of concern.

Practitioners in and across the pilot areas had widely divergent perspectives of their legal obligations and the options available to them in supporting vulnerable children and families. Concerns about the practical and financial impact of the pilot were widespread, as was the perception that local authorities were being left to foot the bill by NASS. All informants were clear that section 9 runs counter to their established welfare duties and practice under the Children Act 1989.

- 1 For a full list of participating local authorities see Appendix 1.
- 2 See Appendix 2.
- 3 A full version of the interview schedule can be found at Appendix 3, and tabulated responses at Appendix 4.
- 4 Section 38 of the Children Act 1989 provides for emergency care orders pending a full section 31 application.
- 5 Participating local authorities had repeatedly requested DfES guidance in section 9 implementation meetings.

# Section 5

## Conclusion

*'This is a tough policy, but we need to send a clear message that those whose asylum claims have failed must leave the UK, and that we will not provide support indefinitely.'*

Tony McNulty, Immigration Minister

The Guardian, 31 August 2005

When presented with the possibility of families being separated and families rendered destitute throughout the passage of the Act, the government responded by stating that it was not the 'intention' of the policy that children be harmed in that way. Government ministers stressed that they hoped parents would act in a 'responsible' way, and that it would not be necessary to use the legal tool they were creating.

At the time of writing, September 2005, seven months after the first letters were sent, some families are reaching the end of the road, notified of withdrawal of support by NASS, and unsure of what their future holds. On 31 August 2005,<sup>1</sup> 27 families had reached Stage 4 of the process, 17 of these having had their support withdrawn under section 9. Amongst these, the Altaf, Sukula and Khanali families have attracted support in both the local and national media. Their stories are illustrative of the reality: families living with the fear of destitution and separation; and local authorities caught between their welfare obligations and immigration control. A further 26 families involved in the pilot have had their support withdrawn for other reasons (such as failure to notify NASS of a changed address).

Crucially, no families have returned to their country of origin as a direct result of the implementation of section 9 and 35 families have disappeared, losing all contact with services, and leaving themselves and their children acutely vulnerable.

Further, section 9 is not serving its stated purpose and there is sound evidence that families involved in the pilot do not understand their situation or their options. In July 2005, at the request of NASS,<sup>2</sup> the Refugee Council in London and Leeds, and Refugee Action in Manchester sent translated letters to section 9 families. They were invited to attend advice sessions or call telephone advice services to ascertain whether the families understood their position. This work revealed that many families had never received the letters relating to section 9, and that of those who had, few understood them.

So is section 9 working? No families have been returned, although many are now destitute either as a result of section 9, NASS regulations or their desperate choice to disappear. The pilot implementation has taken up a significant resource across the Immigration and Nationality Directorate (IND), NASS, local authorities and the voluntary sector. The process itself is no clearer now than at the outset: of 20 appeals to the Asylum Support Adjudicator, over half have been remitted to NASS as a result of NASS' failure to follow its own process.

As the first judicial review appears on the horizon, and sympathetic coverage fills the press, it is difficult to see how this policy could be viewed as successful, even viewed only through the narrow lens of immigration control.

Today, as families face eviction from their homes, it is abundantly clear that whatever the 'intention' behind section 9, it is being implemented in a way that runs the risk of causing life long damage to children and families who are already among the most vulnerable people in our society.

Further, it is clear that the legal and practice problems posed by combining section 9 with child welfare and human rights standards have not been worked out through the pilot process. Rather than becoming increasingly confident as time has progressed, local authorities are becoming more acutely aware of the impossibility of their own position.

Over the course of the last seven months, the conflict between child care, human rights and immigration law has given rise to a range of divergent interpretations, with each of the three pilot areas taking a different view on: the point at which they have a duty to engage with these families; the nature of their duty to support; and the range of options available to them.

Within pilot areas, individual local authorities and practitioners remain confused, and nervous about the prospect of legal action. Some of the local authorities we spoke to are increasingly persuaded that section 9 simply represents an attempt to shift responsibility and resourcing from the Home Office to local authorities. Some have expressed a fear that the 'success' of the pilot will be measured, not by its effectiveness in encouraging safe returns, but by its effectiveness in passing the buck.

Finally there is little evidence that this inhumane, administratively confused policy is effective, even in the limited sense of creating a significant rise in the numbers of families returning to their country of origin.

In August 2005, NASS sent a letter to families whose claims have been determined, but who are living outside of the three pilot areas. The letter states:

*'You need to be aware that with effect from 1st December 2004 by virtue of paragraph 7A to Schedule 3 to the Nationality, Immigration and Asylum Act 2002 a failed asylum seeking family becomes ineligible for NASS (or various other types of) support where the Secretary of State has certified that the family has failed, without reasonable excuse, to take reasonable steps to leave the UK voluntarily or to place themselves in a position where they can do so.*

*'You and your family now have no basis on which to remain in the United Kingdom, and your support could be discontinued. An Immigration Officer may ask you what action you are taking to leave the UK. If the Immigration Officer considers that you have failed to take steps to leave they will notify your support provider accordingly who will then decide whether to issue the certificate that will end your support.'*

On receipt of this letter, scores of terrified families began contacting support workers and voluntary sector agencies, believing the withdrawal of support to be imminent. Approximately a dozen such families are contacting the Inter Agency Partnership each week. NASS has stated that their letter does not signal the roll out of section 9 outside of the three pilot areas, and yet it is difficult to read this as anything other than notice of imminent implementation. At best, the letter is a clumsy representation of the legal position these families find themselves in. At worst, it is a roll out of section 9 without any evaluation of its impact.

Local authorities, now faced with undertaking an impossible legal balancing act, are becoming increasingly outspoken in voicing concerns. Most recently, 10 authorities in the Manchester area, with the support of others from West Yorkshire and London have written to the Home Office requesting a fundamental review of section 9 as a result of their own experiences in the pilot. Both the British Association of Social Workers and the Association of Directors of Social Services have publicly called for a wholesale review; citing the conflict imposed on the practising social worker and the local authority by the operation of section 9:

*'This piece of legislation is clearly more concerned with coercing people to go back to their country of origin than supporting children and their families...it places social workers and their employers in an insidious position from our point of view...I would hope that the government would consider repealing this kind of legislation. If this is a civilised country we live in, then there is no place for that kind of treatment of families.'*

Ian Johnson, Director, British Association of Social Workers, interview on BBC Radio 5 Live, 23 August 2005

*'The pilot of section 9 by the Immigration and Nationality Directorate ... has highlighted the conflict that exists between this policy and childcare legislation within which local authorities operate to safeguard the interests and welfare of children... the ADSS is also aware that the inherent conflict... is likely to result in judicial reviews of individual cases and both the Home Office and local councils may be challenged in this way.'*

Press Statement, Association of Directors of Social Services (ADSS), 12 August 2005

Threatening families with destitution, with having their children taken into care, is not an 'incentive' that any caring society should utilise. When asylum-seeking families come to the 'end of the road' we should be meeting their welfare needs and working to ensure that any return is voluntary, supported, and safe.

## Recommendations

- Refugee children are children first and foremost, and UK asylum policy should protect their welfare as a first principle.
- The government should take the opportunity presented by the Immigration, Asylum and Nationality Bill to repeal section 9, before its implementation does further damage to the lives of individual children and families.
- Children in families affected by section 9 are children in need and should be provided with support according to the principles of the Children Act 1989.
- The government should review its asylum policy as a whole, specifically considering the extent to which it is compatible with the Children Act 1989, Human Rights Act 1998 and the UN Convention on the Rights of the Child.

1 Section 9 Implementation Project (SNIP) Snapshot, 31 August 2005.

2 The request was made to the Inter Agency Partnership, of which the Refugee Council and Refugee Action are members.

# Section 6

## References

Department of Health, Home Office, Department for Education and Employment (2000) *Framework for the assessment of children in need and their families*. The Stationery Office, London

McLeish, J (2002) *Mothers in exile: the maternity experiences of asylum seekers in England*. London, Maternity Alliance

Penrose, J (2002) *Poverty and asylum*. London, Oxfam and Refugee Council

Refugee Council (2002) *A case for change: how refugee children in England are missing out*. London

Rutter, J (2001) *Supporting refugee children in 21st century Britain*. Stoke on Trent, Tretham Books

# Appendix I

## List of local authorities participating in government pilot

### Greater Manchester:

Blackburn with Darwen  
Bolton  
Bury  
Manchester  
Oldham  
Rochdale  
Salford  
Stockport  
Trafford  
Wigan

### Bradford:

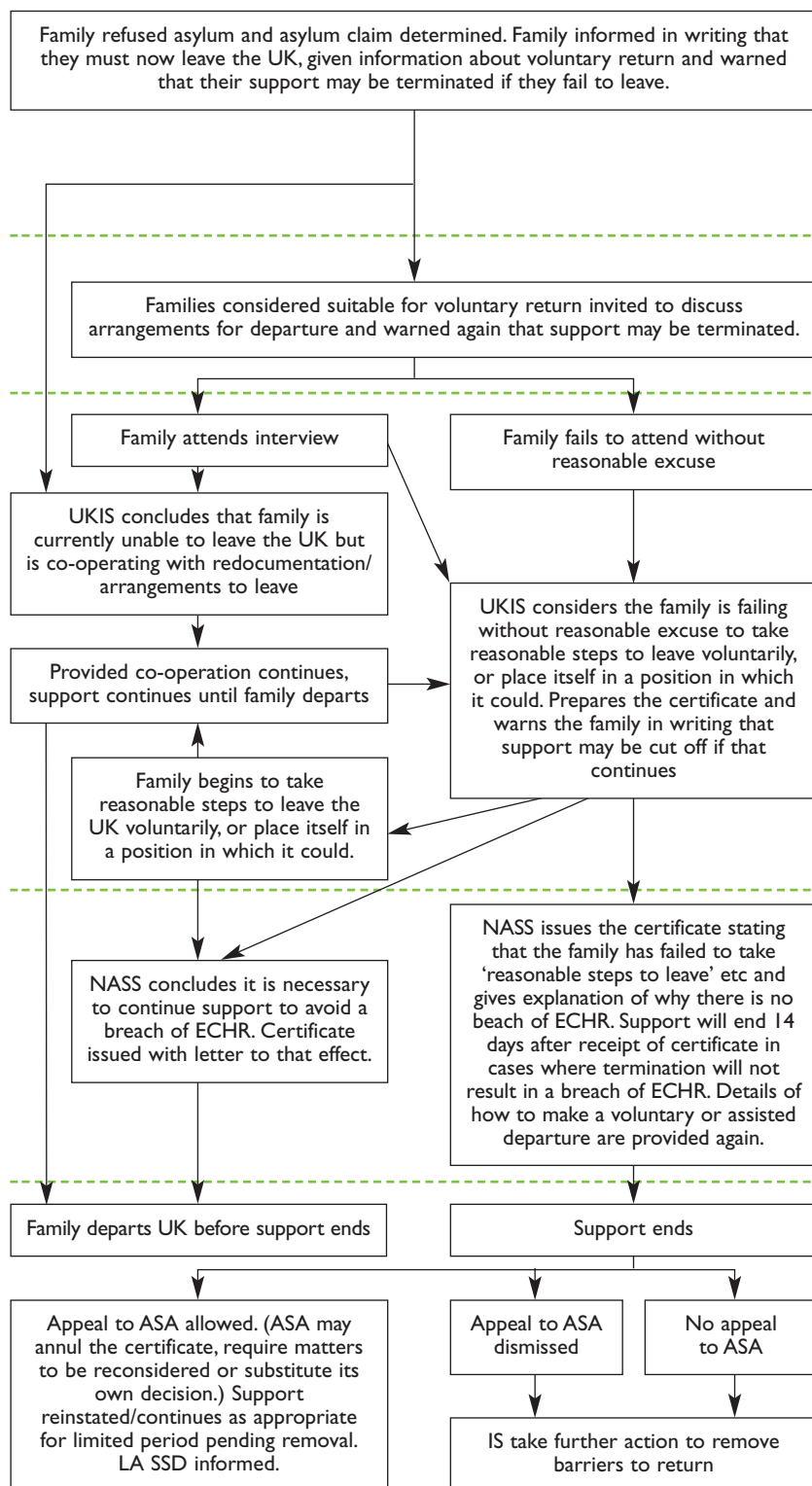
Bradford  
Calderdale  
Kirklees  
Leeds  
Wakefield

### Greater London:

Barking and Dagenham  
Greenwich  
Havering  
Lambeth  
Newham  
Redbridge  
Southwark  
Tower Hamlets

# Appendix 2

## Process map for the termination of support under Section 9



**Stage One**  
 First letter issued at end of appeal, informing the family that they must leave the UK, giving details of how to make a voluntary or assisted departure, and warning that support may be withdrawn if in the opinion of the Secretary of State they have failed to take reasonable steps to leave the UK or place themselves in a position in which they are able to leave voluntarily.

**Stage Two**  
 Second letter issued with appointment for interview, together with information on voluntary returns, as before.

**Stage Three**  
 Interview takes place. Where appropriate, third letter issued with warning that a certificate will be issued with the consequences that support might end unless acceptable reasons are provided within 7 days. Information on voluntary return provided as before. Certificate prepared. Case passed to NASS. Letter copied to (local social services department).

**Stage Four**  
 ECHR aspects considered by NASS. Fourth letter sent (copied to LA SSD), certifying that the family has failed, without reasonable excuse, to take reasonable steps to leave the UK, or place itself in a position in which it could. Support will end in 14 days where continuation of support is not necessary to avoid a breach of ECHR. Information on voluntary return provided as before.

**Stage Five**  
 Support ends 14 days after receipt of certificate unless an appeal is heard and allowed within this period.

# Appendix 3

## Interview schedule for non-pilot local authorities

### Initial identification

1. Is there a team or an individual within the local authority with responsibility for working with asylum seeking families?

YES team     YES individual     NO

Job title (if individual): .....

2. Which team or department does this position sit within?

Social services  
 Children's services  
 Unaccompanied minors' team  
 Children and families' team  
 Other (specify).....

3. Is this individual or team responsible for dealing with families who have been refused asylum and have come to the end of the appeals process?

YES     NO

If no, who is responsible for families who have been refused leave to remain and have come to the end of the appeals process?

.....

Which team or department does this position sit within?

Social services  
 Children's services  
 Unaccompanied minors' team  
 Children and families' team  
 Other (specify).....

## When relevant individual identified

1. Are you working/due to work with families whose support is to be terminated under Section 9 of the Asylum and Immigration Act 2004?

YES WORKING

YES DUE TO WORK

NOT WORKING

NOT DUE TO WORK

UNSURE

2. Is your post new?

YES       NO

3. Is responsibility for families whose appeals have failed and support has been terminated a new responsibility for your role?

NEW       OLD

4. Is a background in childcare social work/asylum social work a requirement for your post?

NO REQUIREMENT

CHILDCARE REQUIREMENT

ASYLUM REQUIREMENT

BOTH REQUIRED

5. Have you received any training from the local authority or the government around Section 9?

YES       NO

If YES

What training is this? (sent copy? )

.....

6. How useful have you found this training? Is there anything that you felt needs to be included/covered which wasn't?

.....

If NO

Is training scheduled (when)?

.....

7. Have you received any guidance from the local authority or the government around Section 9?

YES       NO

If YES

What guidance is this? (sent copy? )

.....

8. How useful have you found this guidance? Is there anything that you feel needs to be included/covered which isn't?

.....

If NO

Is guidance to be received (when)?

.....

9. Have policies and procedures been developed to work with families whose support has been terminated under Section 9?

YES       NO       NOT SURE

If YES

Are these in the written form?

YES       NO       NOT SURE

If YES ask for copy (sent copy ) and ask to explain system they will be using.

Who was responsible for producing these policies and procedures?

.....

If NO

Are any policies and procedures being planned/in development? If they are then when are they likely to be produced and who is responsible for their production?

Planned       Not planned       Waiting for legal challenges ?

When produced .....

Who responsible .....

10. Could you provide an estimate as to the number of potential cases in your local authority?

Potential: .....

Unknown

11. Do you perceive any potential difficulties in this process? Or have you any concerns around this area?

YES (detail below)       NO

.....  
.....

12. How do you feel Section 9 fits with the welfare principles of the Children Act 1989? Do you have concerns about their compatibility?

.....  
.....

If necessary prompt :

How do you feel Section 9 fits with Section 17 of the Children Act?

.....  
.....

13. How do you feel Section 9 fits with Section 20 of the Children Act?

.....  
.....

14. How do you feel Section 9 fits with Section 31 of the Children Act?

.....  
.....

15. Do you have any further comments around this topic, which have not been covered by the questions above?

.....  
.....

# Appendix 4

## Interview schedule for pilot local authorities

### Initial identification

1. Is there a team or an individual within the local authority with responsibility for working with asylum seeking families?

- YES team       YES individual       NO

Job title (if individual): .....

2. Which team or department does this position sit within?

- Social services  
 Children's services  
 Unaccompanied minors' team  
 Children and families' team  
 Other (specify).....

3. Is this individual or team responsible for dealing with families who have been refused leave to remain and have come to the end of the appeals process?

- YES       NO

If NO

Who is responsible for families who have been refused leave to remain and have come to the end of the appeals' process?

.....

Which team or department does this position sit within?

- Social services ?  
 Children's services ?  
 Unaccompanied minors' team ?  
 Children and families' team ?  
 Other (specify).....

## When relevant individual identified

4. Are you working/due to work with families whose support is to be terminated under Section 9 of the Asylum and Immigration Act 2004?
- YES WORKING  
 YES DUE TO WORK  
 NOT WORKING  
 NOT DUE TO WORK  
 UNSURE ?
5. Is your post new?
- YES       NO
6. Is responsibility for families whose appeals have failed and support has been terminated a new responsibility for your role?
- NEW       OLD
7. Is a background in childcare social work/asylum social work a requirement for your post?
- NO REQUIREMENT  
 CHILDCARE REQUIREMENT  
 ASYLUM REQUIREMENT  
 BOTH REQUIRED
8. Have you received any training from the local authority or the government around Section 9?
- YES       NO
- If YES  
 What training is this? (sent copy? )
- .....
- How useful have you found this training? Is there anything that you felt needs to be included/covered, which wasn't?
- .....
- If NO  
 Is training scheduled (when)?
- .....
9. Have you received any guidance from the local authority or the government around Section 9?
- YES       NO

If YES

What guidance is this? (sent copy? )

.....

How useful have you found this guidance? Is there anything that you feel needs to be included/covered which isn't?

.....

If NO

Is guidance to be received (when)?

.....

10. Have policies and procedures been developed to work with families whose support has been terminated under Section 9?

YES     NO     NOT SURE

If YES, are these in the written form?

YES     NO     NOT SURE

If YES ask for copy (sent copy ) and ask to explain system they will be using.

.....

11. Who was responsible for producing these policies and procedures?

.....

If no, are any policies and procedures being planned/in development? If they are then when are they likely to be produced and who is responsible for their production?

Planned     Not planned     Waiting for legal challenges

When produced .....

Who responsible .....

12. At what stage/point of the process are you informed that NASS will be terminating support to a family? (Match to stages 1-5)

.....

13. What information do you receive about the family at this stage?

.....

14. What are the next steps after you receive letter from NASS informing that support will be withdrawn?

.....

15. What resources are you able to draw on to support families whose claims have failed?

.....

16. Have additional resources/funds been put into place? If so what? (i.e. around interpretation/administrative costs).

.....

Additional resources (detail below)       No additional resources

.....

17. Could you provide an estimate as to the number of current or potential cases there are in your local authority?

Current: .....

Potential: .....

Unknown

18. Have you encountered any difficulties in this process so far?

If YES

What difficulties? .....

If NO

19. Do you perceive any potential difficulties in this process?

YES (detail below)       NO

20. Have you any concerns around this area?

.....

21. (If time/relevant) Are you aware of any prosecutions under Section 35 of the Asylum and Immigration Act 2004?

YES       NO

22. Do you have a system in place to monitor how well the process for supporting these families is working?

YES       NO

If YES

What kind of measures are you using and what do your results show?

.....

23. How do you feel Section 9 fits with the welfare principles of the Children Act 1989?

.....

Do you have concerns about their compatibility?

.....

24. How do you feel Section 9 fits with Section 17 of the Children Act?

.....

25. How do you feel Section 9 fits with Section 20 of the Children Act?

.....

26. How do you feel Section 9 fits with Section 31 of the Children Act?

.....

27. Do you have any further comments around this topic which have not been covered by the questions above?

.....

.....

# Appendix 5

## Tables

**Table 1**

Team or individual responsible for working with asylum seeking families	No. of non-pilot local authorities	No. of pilot local authorities	Total
Team responsible	13	18	31
Individual responsible	2	0	2
<b>Total</b>	<b>15</b>	<b>18</b>	<b>33</b>

**Table 2**

Department/ team this position sits within	No. of non-pilot local authorities	No. of pilot local authorities	Total
Social services	9	4	13
Children's services	0	0	0
Asylum team	2	7	9
Unaccompanied minors' team	0	1	1
Children and families' team	1	4	5
Housing	3	3	6
Policy department	0	1	1
<b>Total</b>	<b>15</b>	<b>19</b>	<b>36</b>

**Table 3**

Work with families whose support has been terminated under section 9	No. of non-pilot local authorities	No. of pilot local authorities	Total
Working	5	8	13
Due to work	7	7	14
Not working	2	2	4
Not sure	1	1	2
<b>Total</b>	<b>15</b>	<b>18</b>	<b>33</b>

Table 4

Is post new or old?	No. of non-pilot local authorities	No. of pilot local authorities	Total
New	2	1	3
Old	13	17	30
<b>Total</b>	<b>15</b>	<b>18</b>	<b>33</b>

Table 5

Background requirements	No. of non-pilot local authorities	No. of pilot local authorities	Total
Childcare requirement	3	3	6
Asylum requirement	2	3	5
Both requirement	5	5	10
Neither are required	5	7	11
<b>Total</b>	<b>15</b>	<b>18</b>	<b>32</b>

## Policies and procedures

Table 6

Development of policies and procedures	No. of non-pilot local authorities	No. of pilot local authorities	Total
Has been developed	1	6	7
Has not been developed	12	11	23
Not sure	2	1	3
<b>Total</b>	<b>15</b>	<b>18</b>	<b>33</b>

Development of policies and procedures	No. of non-pilot local authorities	No. of pilot local authorities	Total
Planned	3	4	7
Not being planned	9	5	14
Waiting for legal challenges	0	1	1
Not sure	0	1	1
<b>Total</b>	<b>12</b>	<b>11</b>	<b>23</b>

If policies and procedures are developed:

**Table 8**

Written form	No. of non-pilot local authorities	No. of pilot local authorities	Total
In written form	0	4	4
Not in written form	0	2	2
Not sure	1	0	1
<b>Total</b>	<b>1</b>	<b>6</b>	<b>7</b>

**Table 9**

Produced policies and procedures	No. of non-pilot local authorities	No. of pilot local authorities	Total
Housing Team	0	1	1
Social services	0	1	1
Children's services	0	1	1
Not sure	1	3	4
<b>Total</b>	<b>1</b>	<b>6</b>	<b>7</b>

## Training and guidance

### Training

**Table 10**

Training	Non-pilot local authorities	Pilot-authorities	Total
Received training from Home Office	0	4	4
Received training from other than Home Office	1	4	5
Received no training but training is scheduled	0	2	2
Received no training and no training is scheduled	14	8	22
<b>Total</b>	<b>15</b>	<b>18</b>	<b>33</b>

**Table 11**

Usefulness of training	Non-pilot local authorities	Pilot authorities	Total
Found training satisfactory	0	4	4
Found only parts of training satisfactory	1	3	4
Did not find training satisfactory	0	1	1
Not sure	0	0	0
<b>Total</b>	<b>1</b>	<b>8</b>	<b>9</b>

## Guidance

**Table 12**

Guidance	Non-pilot local authorities	Pilot-authorities	Total
Received guidance from Home Office	11	12	23
Received guidance from other than Home Office	0	1	1
Received no guidance	4	5	9
<b>Total</b>	<b>15</b>	<b>18</b>	<b>33</b>

**Table 13**

Usefulness of guidance	Non-pilot local authorities	Pilot local authorities	Total
Guidance was useful	1	4	5
Guidance was partly useful	8	9	17
Guidance was not useful	2	0	2
<b>Total</b>	<b>11</b>	<b>13</b>	<b>24</b>

## Children Act

**Table 14**

Children Act 1989 and Section 9	Non-pilot local authorities	Pilot local authorities	Total
Compatible	0	0	0
Incompatible	15	16	31
Not sure	0	2	1
<b>Total</b>	<b>15</b>	<b>18</b>	<b>32</b>

## Difficulties and concerns

### Difficulties

**Table 15**

Difficulties	Pilot local authorities
Has encountered difficulties	3
Has not encountered difficulties	15
<b>Total</b>	<b>18</b>

**Table 16**

Perceived difficulties	Pilot local authorities
Families disappearing	3
Finding suitable accommodation	2
Conflict between departments within local authority	1
Incompatibility with Children Act and Human Rights Act	6
Human Rights Assessment	2
Unclear section 9 legislation	1
Funding	2
Poor correspondence with Home Office	2
Supporting families for longer period	3
Conflict with voluntary organisations	1

## Concerns

**Table 17**

Concerns	Non-pilot local authorities	Pilot local authorities	Total
Impact on children and families	8	6	14
Impact on local communities	1	1	2
Impact on voluntary organisations	0	1	1
Concerns about resources	6	4	10
Legal challenges	5	6	11
Conflict between local and central government	3	2	5
No concerns mentioned	2	5	7
<b>Total</b>	<b>25</b>	<b>25</b>	<b>50</b>

## For pilot authorities only

**Table 18**

Stage provided with information about family	No. of pilot local authorities
Stage 1	7
Stage 2	1
Stage 3	3
Stage 4	4
Stage 5	1
Not sure	2
<b>Total</b>	<b>18</b>

**Table 19**

Information about family given	No. of pilot local authorities
Contact details and personal information such as date of birth (DOB)	16
Not sure	2
<b>Total</b>	<b>18</b>

Table 20

Next steps	No. of pilot local authorities
Children and families team will contact family to provide advice and assistance	12
Contact NASS about the progression of case	1
Liaise with private accommodation providers	1
Get legal advice about the individual case	1
Carry out assessments on family	6
Have not had any family progress till that stage	4
<b>Total</b>	<b>25</b>

Table 21

Resources	No. of pilot local authorities
Section 17 resources	5
Social services budget	5
Not sure	8

Table 22

Additional resources	No. of pilot local authorities
Additional resources	0
No additional resources	18

Table 23

Monitoring system	No. of pilot local authorities
Yes – a monitoring system is in place	8
No – a monitoring system is not in place	10
<b>Total</b>	<b>18</b>

Table 24

Awareness of any prosecutions under section 35	No. of pilot local authorities
Yes	0
No	18
<b>Total</b>	<b>18</b>



GIVING CHILDREN BACK THEIR FUTURE

Barnardo's, Tanners Lane, Barkingside, Essex IG6 1QG  
Tel: 020 8550 8822 Fax: 020 8551 6870 [www.barnardos.org.uk](http://www.barnardos.org.uk)  
Registered charity No. 216250