

The end of the road

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

Summary Report

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Supported by the Refugee Children's Consortium

'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 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 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.

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 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.

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