

**Shelter's response to the
UK Border Agency
consultation - Reforming
asylum support: effective
support for those with
protection needs**

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Shelter

Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people a year. This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 20 advice centres
- Shelter's free advice helpline which runs from 8am-8pm
- Shelter's website which provides advice online
- The Government-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, which are approached by people seeking housing advice
- A number of specialist services promoting innovative solutions to particular homelessness and housing problems. These include Housing Support Services which work with formerly homeless families, including refugee families. The aim of these services is to sustain tenancies and ensure people live successfully in the community.
- We also campaign for new laws and policies - as well as more investment - to improve the lives of homeless and badly housed people, now and in the future.

Summary

Shelter welcomes the opportunity to respond to this consultation. We set our response to questions 1 to 7 below. We have not commented on question 8 as it does not relate specifically to housing or support.

Our main concerns are:

- the proposed re-enactment of s.55 of the 2002 Nationality, Immigration and Asylum Act; and,
- the proposal to place families in full board accommodation.

Neither of these proposals is acceptable to Shelter. We have successfully campaigned on these issues in the past and they remain core concerns.

Introduction

We welcome the UK Borders Agency (UKBA) commitment to fulfilling its obligations under the 1951 United Nations Convention relating to the Status of Refugees. The UN Convention requires signatories to make social welfare provision available to those who seek asylum.

Although the UKBA is responsible for the accommodation and support needs of those seeking asylum in the UK, there are increasing levels of destitution among the asylum-seeking population, including children. We are very concerned about the levels of destitution at all stages in the asylum process¹. Numerous reports have highlighted this issue, many of which are referenced in this consultation response.

We are disappointed that the consultation does not recognise the problems of poverty and destitution of those either in the asylum process or at the end of it. Instead it focuses on using the support system as a means of encouraging compliance with enforcement and increasing rates of voluntary return. Accommodation and support should be provided to asylum seekers to honour commitments under the 1951 Convention, rather than as a tool of immigration control.

Consultation questions:

Q1. Some asylum seekers frustrate the system by not making their claim at the earliest possible stage. Should we reserve the right not to support them in some circumstances?

No. Shelter is extremely concerned at the proposal to re-enact s.55 of 2002 Nationality, Immigration and Asylum Act.

In 2002, asylum legislation was passed to limit the entitlements of homeless asylum-seeking households. Section 55 allows the Home Secretary to deny asylum support to adult asylum seekers who cannot convince the Home Office that they claimed for asylum 'as soon as reasonably practicable after arrival in the UK'. From January to December 2003, s.55 of the legislation denied asylum support to 9,415 destitute people. Such was the impact of the legislation that it threatened to undermine the Government's own target to reduce rough sleeping by two thirds.

¹ *No place like home? Addressing the issues of housing and migration* Shelter 2008

A series of legal challenges to the operation of s.55 of the 2002 Act finally led to a House of Lords ruling² that the policy was in breach of asylum seekers' human rights where there was strong evidence that the policy would lead to inhuman and degrading treatment. On 25 June 2004, the Home Secretary issued guidance to immigration officers that had the effect of mitigating the test of applying for asylum as soon as reasonably practicable, but s55 still remains on the statute book.

However, the existence of s.55 on the statute books and its use has not led to an increase in port of entry claims. The number of claims made at the port of entry has been steadily decreasing and now stands at around 10 per cent.³ There are many reasons why people may not make their asylum application immediately on arrival or have to apply once they have already been in the country for some time. For example, they may not understand what they need to do; may not be able to travel to Croydon to make a claim (where most in-country claims have to be lodged); or, may have health problems, be traumatised or afraid of officials. This is far from an exhaustive list. We question the assumption that people do not claim asylum at the port of entry in order to frustrate the system.

The Joint Committee on Human rights recommended that this power under s.55 be repealed.⁴ We too believe it should be repealed, not re-enacted.

Q2. Do you agree with our proposals to repeal those parts of legislation which we do not intend to use and which:

- a) **relate to withdrawal of support for families where they fail to cooperate with removal processes**

² *R v Secretary of State for the Home Department, ex parte Adam; R v Secretary of State for the Home Department, ex parte Limbuela; R v Secretary of State for the Home Department, ex parte Tesema* [2005] UKHL 66, [2006] 1 AC 396

³ The proportion of applications made in-country (that is, by persons who had already entered the UK, rather than applications at port) was 90 per cent in 2008, compared with 84 per cent in 2007 and 85 per cent in 2006. *Control of Immigration: Statistics United Kingdom 2008* p20 <http://www.homeoffice.gov.uk/rds/pdfs09/hosb1409.pdf>

⁴ Joint Committee on Human Rights, 10th report of the Session 2006-2007, "The Treatment of Asylum Seekers", HL Paper 81-1, HC 60-1, March 2007 para 92 <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf>

Yes. We welcome the decision to repeal s.9 of the 2004 Act, which enables the UKBA to withdraw support from families whose claim had been refused and take affected children into care where necessary to avoid a breach of their rights. However, we are disappointed to see that at the same time as repealing this section, UKBA is seeking to introduce procedures for moving families into full board accommodation as a means of enforcement. See question 7.

b) **Require failed asylum seekers to participate in Community Activities as a condition of support**

Yes. We understand that this provision has not been used, but that it gives UKBA power to require the asylum seekers to undertake community activities as a condition of accommodation and support. We do not believe that asylum support should be conditional on such activities.

Q3. Should we support any failed asylum seekers who have been found to have no protection need by the independent appeals system?

Yes. We believe that all asylum seekers should continue to receive support through a single cash-based system until they are granted leave to remain or leave the UK. Those who have had their application refused are prohibited from working and this only increases their dependency on state provision. Some are unable to work (due to age or ill health, for example) and they too are dependent on support. We are not aware of any evidence that removing accommodation and support from failed asylum seekers encourages them to leave. In fact, existing evidence points in the opposite direction. The pilot of the removal of support from families under s.9 of the Asylum and Immigration (Treatment of Claimants) Act 2004 is one example.⁵ The pilot showed that removing support from families had no tangible impact on the uptake of voluntary return and, in fact, led to a higher rate of absconding.

Q4. Do you agree that we should be able to set a fixed time limit for support for those supported on the basis that they are taking steps to leave, with no right of appeal?

⁵ *Family Asylum Policy, Section 9 Implementation Project*, Home Office
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/section9implementationproj.pdf>

No. Shelter does not believe it is appropriate to set fixed time limits for support. The proposal is that support would automatically end after three months, with the onus on the applicant to reapply if experiencing 'genuine difficulty in leaving'. However, the consultation does not give details of what would be considered 'genuine difficulty'. There may be many barriers to departure. The Asylum Support Appeals Project has provided numerous examples of where people are making clear efforts to leave the UK but have not been able to do so for longer than 3 months because they have had difficulty obtaining travel documents.⁶

Reapplication for support increases both the amount of bureaucracy and the likelihood of people falling through the net. In 2006, the Joseph Rowntree Charitable Trust carried out research into destitution in Leeds. Eighteen months later a follow up survey was carried out, with the aim of assessing whether there had been any change in the number of people living destitute in the city. The findings revealed a chronic problem. The number of destitute asylum seekers had risen since the introduction of the New Asylum Model in April 2007. The number of destitute asylum seekers, refused asylum seekers and refugees rose 180 per cent between the first and second survey. In addition, 90 per cent had been destitute for more than one year, showing that destitution among this group had become more entrenched.

The most common reason cited for becoming destitute was a delay in processing applications for support. Waiting times for decisions on support applications have increased since 2006, particularly for those applying on medical grounds. The proportion of people becoming destitute whilst still in the asylum process substantially increased from 2006-2008. The fourth most common reason was administrative error and support stopped during the asylum process.⁷

This is not a helpful background against which to introduce a system of time-limited support with repeated applications for those experiencing difficulty in leaving the UK.

Q5. Do you agree that the way in which support is provided to asylum seekers should be different to the way support is provided to those who have been found to have no protection need?

No. Shelter believes that having multiple systems for asylum support increases bureaucracy and leads to confusion and unnecessary administrative procedures. The delays documented in

⁶ Hickey, G. *Unreasonably Destitute?* Asylum Support Appeals Project June 2008

⁷ Joseph Rowntree Charitable Trust, *More destitution in Leeds*, 2008

applications for s.4 support (see question 3 above) illustrate the case for one system for all, from the point of application to either status being granted or leaving the country.

Shelter is very concerned about the plight of those forced to live without cash. Refugee Council research into the use of vouchers for those on s.4 support shows that those living without cash are unable to meet their essential living needs.⁸ We consider wholly unacceptable a system which neither allows refused asylum seekers to work, nor provides support in the form of cash. The overall amount spent on support has halved in recent years, falling from £1,035m in 2003-04 to £485m in 2007-08.⁹ Costs are already being reduced. We believe that the proposals to extend the cashless system and introduce payment cards are based on a flawed premise, namely that such measures will encourage voluntary return. In contrast, we believe that it unnecessarily increases hardship.

The Refugee Council research report provided clear evidence that forcing asylum seekers to move to accommodation in a new area, away from their support networks, causes isolation and suffering. Asylum seekers who are supported at the end of the asylum process should be entitled to remain in the same accommodation that they lived in during the asylum process. Providing support differently to those at the end of the process counters attempts to promote community cohesion and stable communities.

Q6. Do you think that closer working with both the voluntary sector and local authorities will

- a) Help applicants understand the options available to them at each stage of the process?**
- b) Encourage those who are found to have no protection need to accept their position and return voluntarily?**

We believe that the best way to ensure that asylum seekers understand the process of their application for asylum and the options available to them is through the availability of good quality independent specialist legal advice at all stages. Voluntary sector partners and local authorities would not necessarily be qualified to provide such. We welcome UKBA's interest in continuing to explore advantages of offering early access to legal advice for asylum seekers and hope that

⁸ Doyle, L. *More Token Gestures*, Refugee Council October 2008

⁹ *Equality Impact Assessment of the Reforming Asylum Support Proposals*, Home Office, November 2009 p7

UKBA has taken on board the need for Legal Services Commission support for these proposals, or other sources of funding.

While Shelter supports mechanisms to promote good working relations between UKBA, the voluntary sector and local authorities, we also believe that it is important to understand where the roles of each sector may be distinct or overlap. A voluntary organisation for example may be able to help an asylum seeker understand the options available to them, but they would not necessarily implement enforcement measures or take decisions about the withdrawal of support.

Q7. Do you agree that case owners should be able to tailor accommodation provisions for those who have been found to have no protection need and bring families who purposefully frustrate the system into full board accommodation (where this could assist with removal or return)?

No. Shelter does not believe that the type of support or accommodation offered should be dependent on where an asylum seeker is the process. Offers of accommodation should not be used as a tool for enforcement of immigration rules.

'Full board accommodation' could mean a hotel or hostel or a detention centre. The consultation paper is very unspecific. In view of the fact that this proposal is reserved for those who are perceived not to be cooperating, we are concerned that it may have characteristics of a secure unit. We are strongly opposed to this kind of provision. In no circumstances should children be accommodated in detention centres.

We similarly oppose the use of hotel-type accommodation for families. We believe that such measures would result in disruption to children, including leaving schools and friends and other support services, including health and social care. Moving families into full board accommodation would have a detrimental effect on children and their family life. This is already acknowledged by Government in its housing policy and legislation. For example, the Homelessness (Suitability of Accommodation) (England) Order 2003 prohibits the use of such accommodation for homeless families, except in an emergency. Even then it may only be used for a maximum of six weeks. Government's own guidance acknowledges that such accommodation caters for very short-term stays only and can be detrimental to the health and development of children.

Furthermore, the Government's strategy for children is "for every child, whatever their background or their circumstances, to have the support they need to: be healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being."¹⁰

The Alternative to Detention Project (A2D) at Millbank in Kent piloted the kind of proposal made in the consultation paper. The main objective of the A2D pilot was to encourage failed asylum seeker (FAS) families on section 95 support, whose appeal rights were exhausted, to return to their country of origin voluntarily.¹¹ However it failed to show any increase in voluntary returns.

Proposals that UKBA should prohibit local authorities from providing support, if the child is eligible for UKBA support, will cause greater hardship, misery and poverty. Families with children could be better supported by local authority children's services, with the specialist knowledge to provide appropriate support to vulnerable children. We remain concerned that asylum seeking families with children will not be able to access any mainstream local authority support. Shelter strongly believes that the UKBA policy towards children must be based on the principle that the best interests of the child should be paramount.

Shelter Policy Team

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¹⁰ <http://www.dcsf.gov.uk/everychildmatters/about/>

¹¹ *Review of the Alternative to Detention (A2D) Project*, May 2009
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/alternative-to-detention/alternative-to-detention.pdf?view=Binary>