



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Evidence to the Joint Committee on Human Rights in respect of the legislative scrutiny of asylum support and destitution

Introduction

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ and advising on legislative and other measures which ought to be taken to protect human rights.²
2. The Commission understands that the Committee is considering arrangements within the Draft Immigration Bill which are equivalent to s.55 support. The Commission has recently published an investigation report which examined in part the extent and impact of destitution on non-UK nationals including asylum seekers. The Commission will therefore focus its evidence on the findings of the investigation report, *No Home from Home: Homelessness for people with No or Limited Access to Public Funds*. The report was published in September 2009 and widely disseminated, including to the Joint Committee on Human Rights.

No Home from Home

3. The Commission's investigation was conducted in the context of growing concerns among community and

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid*, s.69(3).

voluntary groups about the vulnerability of migrants to poverty and homelessness. The investigation aimed to establish the practical impact of existing immigration legislation which limits or excludes access to public funds for non-UK nationals. Our particular concern was whether this was leading to destitution among non-UK nationals living in Northern Ireland.

4. Fieldwork for the investigation ran from May to November 2008 across three geographical areas in Northern Ireland. The investigation focused on the three government agencies most relevant to this issue of homelessness and destitution, i.e. the Northern Ireland Housing Executive, the Social Security Agency and the Health and Social Care Trusts. During the course of the fieldwork, investigators interviewed close to one hundred relevant professionals and government agency staff as well as fourteen people who had personal experience of homelessness. In addition, investigators observed government agency practices, analysed relevant policy and guidance, collated case studies and reviewed 250 case files relating to non-UK nationals are decided.

Human rights framework

5. As with all Commission investigations, international, regional and domestic human rights standards were considered as part of the investigation. In particular, investigators relied upon Articles 2, 3, 8, 11 and 14 of the European Convention on Human Rights (ECHR) as well as the International Covenant on Economic, Social and Cultural Rights.
6. Of particular consideration in this regard is Article 11(1) – the right to an adequate standard of living: although the right is intended to be progressively realised it also includes core minimum obligations on the State to provide for those in need.³ The ESC Committee in its General Comment No. 3 stated that where a significant number are deprived of essential foodstuffs or the basic means of basic shelter and housing the State is *prima facie* failing to discharge its obligations under the covenant.⁴

³ Article 2(1) non-discrimination: While Article 2(3) permits restrictions in relation to persons who are not nationals of the State; this applies only to developing nations and would therefore not be relevant to the United Kingdom.

⁴ Par. 10, Committee on Economic, Social and Cultural Rights, General Comment No. 3, (Fifth session, 1990), UN doc E/1991/23, Annex III.

Findings relating to asylum seekers

7. *No Home from Home* considered the situation faced by all categories of non-UK nationals facing destitution including asylum seekers and unaccompanied minors. In addition, to the human rights standards outlined above, the investigation also took account of the Universal Declaration on Human Rights (Articles 6, 14(1), 23 and 25), the UN Convention on the Status of Refugees, the UN Convention on the Rights of the Child and the report of the Durban Review Conference, in particular, paragraph 80 which states:

[...] that the national, regional and international response and policies, including financial assistance, towards refugee and internal displacement situations in different parts of the world, should not be guided by any form of discrimination prohibited by international law and urges the international community to take concrete action to meet the protection and assistance needs of refugees [...] ⁵

Asylum applicants

8. In considering its findings, investigators reviewed all relevant European Directives and domestic legislation.

The report found that, by design, the immigration legislation facilitates the destitution of asylum seekers by denying the right to work and providing only a bare minimum of subsistence.

9. At present, asylum seekers are provided with UKBA funded accommodation through the Northern Ireland Housing Executive for the duration of their application as well as a weekly stipend under section 55 of the *Immigration and Asylum Act (1999)* via the National Asylum Support Service (NASS). The rate of NASS support is calculated at 70% of Income Support levels, the minimum amount which the government deems a person needs to live.⁶ The rationale for providing NASS support below the amount a person needs to survive is that asylum applicants to not have to pay for accommodation or associated household bills.

⁵ Durban Review Conference, Final Report, April 2009, para 80.

⁶ At the time of conducting fieldwork for *No Home from Home*, the weekly rate of NASS support for a single person over 25 years of age was £42.16.

10. Investigators spoke with a number of professionals working with asylum seekers and considered a range of government agency case files as well as voluntary organisation case studies which illustrated how difficult it is for asylum seekers to survive on this minimal support. There was also a range of difficulties surrounding the administration of payments. In spite of the hardship faced by asylum applicants, the Government recently decided to reduce NASS support further to just £35.13 per week for a single adult over 25 years of age. This amounts to just under 55% of the current income support levels for the same age category.⁷

The Commission is of the opinion that this level of support is unacceptable and should be reviewed as a matter of urgency.

Failed asylum seekers

11. Investigators met with a number of organisations which provide support to asylum seekers including those who have failed in their application. Once an asylum claim has been refused, there is limited time to lodge an appeal and if the appeal is unsuccessful the individual is expected to leave the country as soon as possible. For those able to return, they can do so by themselves or with the assistance of the International Organisation for Migration (IOM) through the Voluntary Assisted Return and Reintegration Programme (VARRP). The support offered is conditional upon leaving the UK within three months of registering with IOM and not returning. Investigators interviewed one IOM registered individual who was awaiting return, living in IOM assigned temporary accommodation and reliant upon a £10 weekly voucher for a grocery shop. When investigators asked him how he was managing with such minimal support, he replied:

"I survive on that £10. I am very careful and I eat little. I get a few eggs, bread, chips."⁸

⁷ According to the Department of Work and Pensions, Benefit and Pension Rates, August 2009, the personal rate is £64.30 for a single adult over 25 years of age.

⁸ Devlin R and McKenna S (2009) *No Home from Home: Homelessness for People with No or Limited Access to Public Funds*, Northern Ireland Human Rights Commission, p95.

The Commission is concerned about the level and type of subsistence provided to IOM returnees and believes that cash payments should be made based on individual assessment of need.

12. If they meet the strict criteria failed asylum seekers, who are waiting or unable to return to their country of origin, may be entitled to support under section 4 of the *Immigration and Asylum Act (1999)*. Unlike NASS support, section 4 recipients are not given cash; instead they are provided with accommodation and weekly vouchers amounting to £35 per adult. Once again, the amount paid equates to only 55% of the income support rate. The Commission is concerned not only with the low rate of support but also with the administration of this support.
13. There is no onus on the UKBA to provide support to failed asylum seekers; rather, they must take the initiative to seek support and complete the 16-page application form. Interviews with immigration caseworkers indicated that many failed asylum seekers are not aware of the existence of section 4 support.⁹ At the time of the investigation fieldwork, asylum support workers complained of delays of up to eight weeks during which time individuals were completely destitute and reliant on the goodwill of charities and churches. This places a pressure not only on voluntary and charitable groups but also on social services which indirectly has to meet some of the costs of destitution.
14. The Commission is also opposed to the use of vouchers as the sole means of support as it fails to take account of other needs including clothes, postage and travel. One practical implication of voucher only support is that the individual has to travel to the designated shop to use the voucher without any means of transport.

The Commission believes that voucher support should not be the sole method of support provided to any person in destitution including failed asylum seekers.

⁹ Similar claims were made in research conducted in England and Wales. Asylum Support Appeals Project (2007) *Failing the Failed: How NASS Decision Making is Letting Down Destitute Rejected Asylum Seekers*, ASAP, Croydon, p11.

15. In addition to those failed asylum seekers who are relying on minimal amounts of subsistence, there are also an unknown number of rejected claimants who remain invisible. As one asylum support worker told the investigation:

“When the process ends, they become invisible; they don’t give addresses, they don’t sign on with the police.”¹⁰

This hidden group of people, which includes families with children, is estimated by the Home Office to be between 155,000 and 280,000.¹¹ These are individuals who have failed in their asylum application, but for whatever reason do not or cannot return to their country of origin and, rather than face removal, live ‘underground’ without any statutory support.

Recommendations relating to asylum seekers

16. Throughout the course of the investigation, the Commission received information indicating that many asylum seekers would welcome the opportunity to work and be self-sufficient. Allowing asylum seekers to work would not only minimise the need to provide NASS support but, through PAYE and increased consumerism, also provide a valuable source of revenue for the government. In addition, the social benefits of employment may have a positive impact on the mental health and wellbeing of asylum seekers during the lengthy process which some applicants find distressing and isolating. The Commission has therefore recommended in line with international standards and best practice that:

The Commission recommends that all asylum seekers should be allowed to work pending the outcome of their asylum application or, in the case of failed asylum seekers, until such time as they can be removed from the UK. Where possible, other individuals subject to immigration control should be allowed to work.¹²

¹⁰ Devlin R and McKenna S (2009) *No Home from Home: Homelessness for People with No or Limited Access to Public Funds*, NIHR, p96.

¹¹ House of Commons Committee of Public Accounts (2006) *Returning Failed Asylum Applicants*, Thirty-Fourth Report of the Session 2005-06, HC620 2005-06.

¹² Devlin R and McKenna S (2009) *No Home from Home: Homelessness for People with No or Limited Access to Public Funds*, NIHR, p147, recommendation 33.

Concluding comments

17. The Commission once again welcomes the opportunity to present this evidence to the Joint Committee on Human Rights and would be happy to provide further clarification if required.

January 2010

Northern Ireland Human Rights Commission
Temple Court, 39 North Street
Belfast BT1 1NA
Northern Ireland
Telephone: (028) 9024 3987
Textphone: (028) 9024 9066
SMS Text: 07786 202075
Fax: (028) 9024 7844
Email: information@nihrc.org
Website: www.nihrc.org