

Preventing destitution within the asylum process: urgent action required

Summary

Everyone has the right to seek asylum. But many people seeking sanctuary in UK are left homeless and destitute with no right to work or to access any benefits.

It is currently only single adult asylum seekers who experience homelessness and destitution. However, changes in immigration law will put the children of asylum seekers in this same position from as early as April 2017. This will cause much distress for the families and will put considerable pressure on our Health & Social Care budgets and the voluntary and community sector.

Members of the Refugee & Asylum Forum invite the Executive Office to commit to protecting families from the impending change in UK law and to commit to alleviating destitution for all asylum seekers.

About Refugee & Asylum Forum

The Refugee & Asylum Forum (RAF) is an unincorporated group of organisations in Northern Ireland that has been meeting since 2012. Forum members have day-to-day expertise in delivering services to asylum seekers and refugees, or providing support, policy or advocacy. Our collective expertise is wide and spans health and social care, accommodation, integration and specialist immigration advice.

We believe that all asylum seekers and refugees have the right to be treated with the dignity and respect that everyone is entitled to and as has been articulated in the various human rights treaties ratified by the UK. We seek a fair and humane asylum system, where no person experiences destitution. The Forum is co-ordinated by South Belfast Roundtable

Northern Ireland: a proactive approach to refugee issues

The Northern Ireland Executive has shown itself ready and willing to take action to support people seeking sanctuary on these shores, thus demonstrating a deep-rooted commitment to humanitarian values. A high profile example is Northern Ireland's involvement in the Syrian Vulnerable Persons Relocation Scheme. Other initiatives include:

Department	Initiative
Executive Office	Creation of Crisis Fund ¹
Health	Access to healthcare for all asylum seekers ²
Justice	Safeguarding legal aid for asylum and refugee family reunion cases ³
Economy	Free English classes for all asylum seekers and refugees ⁴
Communities	Access to disability benefits for refugees ⁵
Justice / Health	Independent Guardianship for separated children ⁶

These examples span different government departments and have involved close partnership working with the voluntary & community sector. Other jurisdictions are interested in NI developments e.g. both the Scottish Government and Welsh Assembly Government are exploring the possibility of setting up their own version of the Crisis Fund.

In 2014, a paper issued by the NI Assembly Research & Information Service suggested that the devolved institutions might wish to explore the issue of supporting destitute asylum seekers.⁷ We consider that the time is right for a multi sectoral partnership approach to act on this suggestion and to commit to ending asylum destitution.

Asylum destitution: what happens at the moment?

When a person claims asylum, they are generally entitled to asylum support, which is limited to basic accommodation and £35.95 a week. If an asylum seeker's application is rejected, their asylum support is stopped after 21 days. The person must leave their home. They are not allowed to work or to receive social security benefits, meaning that a homeless hostel

¹ The Crisis Fund is administered by the Red Cross and supports destitute migrants including asylum seekers

² Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015

³ <https://allianceparty.org/article/2015/0009618/alliance-representatives-welcome-decision-on-legal-aid-for-refugees>

⁴ DEL Circular FE 12 /15 Addendum No. 1

⁵ DfC DMG Memo Vol 2/64

⁶ Human Trafficking & Exploitation (Northern Ireland) Act 2015, section 21

⁷ NI Assembly Research & Information Service Briefing, 'Refugees and asylum seekers in Northern Ireland' (2014) NIAR 348

cannot offer them a bed. These asylum seekers have absolutely no means to provide for themselves; a situation often described as ‘enforced destitution’. Asylum seekers can be in this position for weeks, months or years. Many people in this position are ultimately granted refugee status.

Musa arrived in Northern Ireland in 2007 and claimed asylum. In 2010 his asylum application was rejected and his NASS support stopped. He says, “My landlord told me to go. I was a stranger in the city. I had no idea what to do. I walked and walked around the city all night”. Over the next five years, he was destitute and totally reliant on friends and charitable support. He describes this period of his life as a “bad, bad, terrible time”. He struggled with not being able to work and he volunteered with Simon Community, Homeplus and elsewhere. In 2015 he was granted refugee status. He found a job, is working hard and enjoys it. He is happy to finally feel safe and secure but worries about a number of his friends who are still destitute. “If people are left on the streets, where is the humanity?” Musa asks.⁸

Refugee & Asylum Forum members understand that approximately 100 asylum seekers *fell* into this destitute category in 2015/16. We do not know the *total* number of destitute asylum seekers because the Home Office does not provide disaggregated Northern Ireland data.⁹ As explained in a recent report by Participation and Practice of Rights (PPR), this lack of data is part of the problem: ‘if you do not know the extent of a problem then you cannot develop policies or programmes to address it’.¹⁰

Asylum destitution is rarely visible because the majority of asylum seekers are not street homeless. Behind the scenes, charities and individuals provide hot meals, clothes, access to food banks and sometimes a safe place to sleep at night in a church hall. A lot of support comes from other asylum seekers and refugees; people living off just £35 a week are sharing the little they have with others. Many asylum seekers end up sofa surfing: moving from place to place, trying not to exhaust goodwill.

87% of destitute refused asylum seekers surveyed in Belfast said that their living situation affected their mental and physical health.¹¹

⁸ Musa (not his real name) spoke to Law Centre about his experiences

⁹ See NI Assembly Research & Information Service Briefing, ‘Refugees and asylum seekers in Northern Ireland’ (2014) NIAR 348. We note that the NI Executive and voluntary and community sector has continuously pressed for better immigration data e.g. at the Racial Equality Panel’s, Immigration Sub Group meetings.

¹⁰ PPR, ‘A Place of Refuge: a Monitor of Homelessness among destitute asylum seekers’ (2016)

¹¹ PPR, ‘A Place of Refuge: a Monitor of Homelessness among destitute asylum seekers’ (2016)

Some asylum seekers take a gamble and stay with strangers, others are effectively trapped in abusive relationships. This is a very precarious – and potentially dangerous - existence.

Northern Ireland has some of the most robust legislative protections for victims of trafficking and slavery in the UK.¹² This is hugely commendable. Yet at the same time, we are doing little to prevent asylum seekers becoming so susceptible to forms of exploitation, including sexual and labour exploitation.¹³

Destitution does not just affect the individual asylum seekers. It has implications and costs for wider society.

Destitution exposes asylum seekers to the risk of exploitation and criminality and can negatively impact on community cohesion and social exclusion[...] Destitution can be costly due to demands on emergency support services especially for health, both physical health – such as treatment for frostbite - and mental health – such as emergency interventions for self harm.¹⁴

Almost a decade ago, the Westminster Joint Committee on Human Rights criticised what it described as the UK Government's 'deliberate policy of destitution'. It concluded that the treatment of asylum seekers falls below the requirements of the common law of humanity. Ten years on and nothing has changed, drawing increasing criticism from international human rights bodies.¹⁵

We consider that by refusing permission for most asylum seekers to work and operating a system of support which results in widespread destitution, the treatment of asylum seekers in a number of cases reaches the Article 3 ECHR threshold of inhuman and degrading treatment.¹⁶

¹² ATMG, 'Class Acts: Examining modern slavery legislation across the UK' (2016)

¹³ Evidence in England shows some asylum seekers are effectively pushed into situations of forced labour. Hannah Lewis, Peter Dwyer, Stuart Hodgkinson and Louise Waite, 'Precarious Lives: experiences of forced labour among refugees and asylum seekers in England' (University of Leeds and University of Salford: July 2013)

¹⁴ Law Centre NI, 'Response to Home Office consultation: reforming support for failed asylum seekers and other illegal migrants' (August 2015)

¹⁵ E.g. the UN Committee on the Rights of the Child has recently noted the high risk of destitution for asylum seeking children CRC /C/GBR/CO/5 whereas the UN Committee on Economic, Social and Cultural Rights is particularly critical of the UK policy that prevents asylum seekers from working. E/C.12/GBR/CO/6

¹⁶ JCHR, 'The Treatment of Asylum Seekers', 10th report of 2006-07, HL 81-I/HC 60-I 30 March 2007, paragraphs 120-122.

Why are refused asylum seekers still here?

The government argues that refused asylum seekers do not need to be homeless – they can go home. Indeed, some asylum seekers do return to their country.¹⁷ However, some asylum seekers stay in Northern Ireland for different reasons including, they may:

- Be gathering the necessary evidence to submit a fresh claim for asylum;¹⁸
- Be from a country to which they cannot be deported because the UK acknowledges it would be unsafe for them, for example Zimbabwe. This is a situation of ‘legal limbo’, as the refused asylum seeker cannot go home but is not granted status;
- Have a child at school who is completing examinations;
- Be receiving medical treatment before they are fit to fly;
- May have established family life in Northern Ireland;
- Want to return to their home country but cannot for practical or bureaucratic reasons such as the Home Office has lost their travel documents or their home country refuses to accept them.

Refused asylum seekers living in Northern Ireland must continue to comply with the conditions of their immigration status (Temporary Admission). Conditions include reporting regularly to the Home Office. Asylum seekers become ‘non persons’: they have no entitlements at all and yet must continue to meet Home Office requirements.

“Angry, think of wife and kids back home. Feel like a burden... Problems with liver made worse...”¹⁹

Destitution & Immigration Act 2016

The Immigration Act became law in May 2016. Its provisions are wide ranging and extend beyond immigration. It sets out additional rules about devolved matters such as housing, social welfare and employment.

The Immigration Act will change the asylum support system and will make a complicated system even more so.²⁰ See fig.1 for a diagram of the asylum support system. The overall

¹⁷ There were 1,974 voluntary asylum returns from UK in 2015 including 273 dependents. Home Office, ‘Immigration Statistics: Returns’ (May 2016). We do not have NI data.

¹⁸ For example, the asylum seeker might be in the process of translating or authenticating newly-accessed documents that demonstrate the risk of persecution such as an arrest or death warrant.

¹⁹ PPR, ‘A Place of Refuge: a Monitor of Homelessness among destitute asylum seekers’ (2016)

²⁰ E.g. Section 4 NASS support, which is currently available for some refused asylum seekers, will be abolished and a new Section 95A support will be introduced in its place. Recipients of section 4 NASS support do not receive cash support but instead receive a pre-paid card. It is likely that the new Section 95A support will also be paid in this way. The qualifying criteria for Section 95A is more restrictive than the existing Section 4 and we anticipate that many Section 4 applicants will not qualify. Other changes are that: there will be no right of appeal against decisions to refuse or discontinue section 95A

effect of the changes is that **fewer asylum seekers will be eligible for asylum support and more will be driven into destitution**. Families are now particularly at risk. Under this legislation, refused asylum-seeking families whose asylum claims are rejected will lose their asylum support after 90 days, and thus will be made homeless.

How many families are affected?

We understand that approximately 100 families are being supported by the Home Office here. Life for asylum seeking families is already hard.

Fatimah: It is very difficult when you have a disabled child and not being able to access any benefit for him.

*Lola: I really missed having moral and emotional support from my family back home in time of distresses.*²¹

While some families will remain eligible for support, some will become homeless.²² This will have a significant impact on the Northern Ireland Executive, which has a duty to protect and promote the welfare of all children within Northern Ireland. Homeless families will approach the Belfast Health & Social Care Trust for assistance. The Trust will have to carry out an individual assessment of need and then meet needs, where appropriate.²³ It is likely that each family will face a crisis situation and charities and faith groups will be compelled to step in to prevent families having to beg or sleep on the streets.²⁴

The cost of supporting asylum-seeking families is currently met by the Home Office. This is right and proper as it is the Home Office's policy that makes the support necessary. **The Immigration Act 2016 will shift responsibility and costs from the Home Office to devolved government.**

support; Section 95A will not be available for non-protection human rights claims; young care leavers in England will not have access to leaving care support and the responsibility for unaccompanied children may be transferred from one local authority to another.

²¹ Barnardo's, 'Supporting refugees and asylum seeking families living in Northern Ireland' (2011)

²² Some families will retain their eligibility for support perhaps because they are in the process of returning, or have made a fresh claim.

²³ In general, refused adult asylum seekers must demonstrate an 'additional vulnerability' before the Trust will intervene. However, children are currently treated differently and the law does not require them to meet the so-called 'destitution plus' test before qualifying for support. The Home Office is seeking to change this principle.

²⁴ This process could potentially result in children being taken into the care of Social Services (as a means to protect them from destitution). This scenario would be devastating for parents and also difficult to reconcile with recent NI statutory guidance that confirms that families should be supported in staying together. See Department of Health, 'Cooperating to Safeguard Children and Young People in Northern Ireland' (2016) p.10. In addition, the draft Programme for Government is clear that enabling children to remain with their parents is 'the primary aim of the Executive'. See NI Executive, 'Programme for Government Consultation Document' p.106

The needs of homeless families will place considerable pressure on the Health & Social Care Trust and charities. Ultimately a case-by-case approach is likely to be the most expensive and most stressful for all involved. **A proactive approach is necessary.**

The current number of refused asylum-seeking families in Northern Ireland amounts to significantly less than 0.1% of the number of homeless families presenting to NIHE each year.²⁵

Homeless families: not a new problem

Local families can also find themselves homeless and so the spectre of homeless families is not new. 'Local' homelessness can be caused by a range of factors including family breakup, domestic violence, intimidation and harassment, etc.²⁶ It is a tragedy each and every time a family becomes homeless. The difference in this case is that asylum seeking families will be made homeless as a direct result of government policy.

We reiterate that asylum seekers cannot work and so they are not able to provide for themselves or their children.²⁷

*I don't want [financial] support. I want to be able to provide for myself. We want, as Africans, to have access to employment... We are capable, we are educated and we are willing to contribute to the economy, we don't want to be a burden.*²⁸

When will the changes affecting families happen?

We expect the changes to take effect from April 2017. While the Immigration Act 2016 provides the framework for these changes, the actual detail must be implemented through regulations, which have yet to be finalised.

²⁵ In 2014/15, 6,104 families presented to NIHE as homeless.

²⁶ NI Assembly Research and Information Service Briefing Paper, 'What do we know about homelessness in NI? An overview of some of the evidence base' NIAR 166-16

²⁷ Technically, the law does allow for a very small number of asylum seekers to work. However, the process of obtaining permission to work, coupled with the extremely narrow and specialised categories of permissible work, means that it is highly unlikely that an asylum seeker will obtain work. We are not aware of any asylum seeker in NI who has successfully obtained work permission and secured work.

²⁸ Institute for Conflict Research, 'The Horn of Africa Community In Belfast: a Needs Assessment'

Why should Northern Ireland act?

Ethically, there is no doubt that we should act: we should not stand by and continue to allow asylum seekers – and soon their children - to be made destitute.

Legally, in relation to adults, the courts have been clear that asylum destitution can amount to a breach of Article 3 ECHR i.e. torture, or inhuman or degrading treatment.²⁹ Institutions are under a positive duty to prevent the occurrence of such a breach.

The NI Children and Young People's Commissioner has said that the Home Office's proposals would breach the UN Convention on the Rights of the Child.

Abolishing a measure designed to safeguard children from destitution is, in the [children and young people's] Commissioners' view, inconsistent with the UK's obligations under the UNCRC.³⁰

This view is echoed by the Northern Ireland Human Rights Commission.

Removing section 95 support for failed asylum seekers with dependents [...] is contrary to the best interests of the child principle under Article 3 of the UN Convention on the Rights of the Child.³¹

That immigration is an excepted matter need not prevent Northern Ireland from taking action although we recognise that legislation is crafted in such a way as to largely exclude destitute asylum seekers from receiving statutory assistance.³² The challenge for Northern Ireland is to find a way to utilise its powers in respect of health and social care and housing within the constraints imposed by immigration law.³³

The public have been hugely supportive of the Syrian resettlement scheme in Northern Ireland and have been very generous towards families. We do not think that the Northern Ireland public would accept that some families seeking sanctuary are left homeless.

²⁹ Limbuela [2005] UKHL 66

³⁰ UK Children's Commissioners response to the Home Office consultation, 'Reforming support for failed asylum seekers and other illegal immigrants' (September 2015)

³¹ NIHRC, 'Briefing on Support for Certain Categories of Migrants: Committee Stage of the Immigration Bill, House of Lords' (28 January 2016)

³² The Department of Health has general welfare support duties under Article 7 and 15 of the Health and Personal Social Services Order NI 1972 and also particular duties to children under the Children's Order. The NI Housing Executive has statutory responsibility for responding to homelessness under the Housing Order (NI) 1998 as amended. However, these wide duties are limited by immigration law i.e. by 3 Schedule 3 of the Nationality, Immigration & Asylum Act 2002 and Article 22A of the Housing Order 1981.

³³ Northern Ireland Act 1998 gives the Assembly full legislative powers in relation to health and social services as well as housing

What can be done?

We ask the NI Executive to commit to protecting families from the impending change in UK law and to alleviate destitution for all asylum seekers. The Executive may wish to work with other devolved administrations to object to the national policy of destitution.³⁴

Specifically, we ask the Executive Office to explore the possibility of blocking the commencement of these provisions in Northern Ireland. The regulations that will implement the provisions will be subject to a public consultation, which provides an opportunity for Northern Ireland to act.³⁵

In addition, we ask the Executive Office to set up a working group of key stakeholders from within and outside government to:

- identify what powers (specifically those relating to social care, children and housing) might be used to accommodate refused asylum seekers notwithstanding the restrictions of UK wide immigration law;
- consider whether destitute asylum seekers have access to the social care they need and whether the Health & Social Care Trusts have the resources to meet needs;
- consider the role of the Crisis Fund in alleviating destitution;³⁶
- consider recommendations made by organisations to date including NIHRC and Housing 4 All.³⁷

Finally

Ultimately, it is the national system that needs to change: the Home Office should amend its policy to remove destitution from the asylum process. However, until this happens, it falls upon Northern Ireland to provide a humanitarian response.

³⁴ For example the Scottish Government has criticised Home Office policy on different issues relating to immigration. See: Scottish Government European & External Relations Committee (26 June 2014)

³⁵ ILPA suggests that the use of secondary legislation to implement certain provisions, particularly in Scotland and Northern Ireland provides greater scope for the striking down of provisions identified as incompatible with human rights rather than them being declared incompatible as would be the case for provisions introduced through primary legislation. ILPA, 'Public law problems arising from the Immigration Act' (2016)

³⁶ A Red Cross report on the Crisis Fund is forthcoming

³⁷ The Working Group would consider information and recommendations compiled in NI to date e.g. PPR, 'A Place of Refuge: a Monitor of Homelessness among destitute asylum seekers' (2016), NIHRC, 'No Home from Home: Homelessness for People with No or Limited Access to Public Funds' (2009) as well as reports focussing on GB.

This response is endorsed by the following organisations:

ACSONI, Barnardo's, Belfast City Mission, British Red Cross, Bryson Intercultural, EMBRACE, EXTERN, Falls Women's Centre, Horn of Africa People's Aid NI (HAPANI), Homeplus, Housing 4 All, Law Centre (NI), LORAG/Shafetesbury Community Recreation Centre, NIACRO, Northern Ireland Community of Refugees and Asylum Seekers (NICRAS), Red Cross, STEP NI.



In partnership with



Fig 1. Asylum legal process & asylum support process

