

# LIBERTY

PROTECTING CIVIL LIBERTIES  
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**Liberty's response to the Home Office  
consultation '*Reforming support for  
failed asylum seekers and other illegal  
migrants*'**

**September 2015**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## **Liberty Policy**

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at  
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*“It also appears that a British government is using forced destitution as a means of encouraging people to leave voluntarily. It is a failed policy...”*

Rt Hon Iain Duncan Smith MP, 2008<sup>1</sup>

1. The consultation paper outlines Government plans to automatically cease already significantly reduced cash payments to asylum seeking families with minor children 28 days after their asylum claim is finally rejected. The Government also seeks to remove access to backstop cashless support for those who have not claimed asylum and reformulate provision of this support to asylum seekers whose claims have been rejected. If implemented these consultation proposals would hit children the hardest, leaving many without even the bare minimum of statutory support currently available.

2. It is clear that the Government views destitution as a legitimate way of enforcing removal and deterring migrants from coming to the UK. This approach not only ignores the evidence, it demonstrates a callousness which is increasingly coming to characterise UK immigration policy. The present proposals follow close on the heels of drastic cuts in support payments for asylum seeking families. Healthcare for those refused asylum in the UK is already severely restricted and the Secretary of State for Education recently announced an investigation into the extent to which the prospect of an education constitutes a “pull factor” for migrants.<sup>2</sup> The plan is apparently to make life so unbearable in the UK that news of the deprivations which await newcomers will spread and those already here will be driven out. In the frantic bid to introduce ever more severe and biting hardships, the Government is willing to see children left without the basic necessities of life.

3. The consultation proposals are not only cruel and pointless, they are also counter-productive. The evidence shows that enforced destitution does not facilitate removal nor discourage newcomers. People stripped of basic provision will stay and suffer or go underground compromising the integrity of the immigration system.

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<sup>1</sup> *Restoring Trust in the UK Asylum System*, The Centre for Social Justice: Asylum and Destitution Working Group, December 2008. Preface by Iain Duncan-Smith at page 4.

<sup>2</sup> *Nicky Morgan orders immigration review to examine 'education tourism'*, 16<sup>th</sup> August 2015, The Telegraph: <http://www.telegraph.co.uk/news/uknews/immigration/11805477/Nicky-Morgan-orders-immigration-review-to-examine-education-tourism.html>

Migrant movements to the UK will continue to ebb and flow with shifting global events.

## **Current law and policy on asylum support**

### *Background*

4. Asylum seekers are not allowed to work in the UK, save for limited provision for those waiting over a year for a decision on their asylum claim.<sup>3</sup> The support provided to those still within the asylum system - and hitherto to families whose claims have been rejected - was set at a bare minimum and has since been significantly reduced. Before 1999 asylum applicants were supported at 90% of the mainstream welfare support rate. It was a New Labour Government which, through the Immigration and Asylum Act 1999 ("the 1999 Act"), created a separate system of asylum support. Rates paid under section 95 of the 1999 Act were set at 70% of income support levels for adults and 100% for children. Until 2008 support was increased annually broadly in line with increases in income support. The link to mainstream welfare support was broken in 2009 when support rates for adults aged over 25 was reduced to 55% of income support levels. Rates were frozen from April 2011 until this summer leading to a significant real terms reduction in support. In August this year children were targeted by the introduction of a new standard asylum support rate resulting in drastic cuts for families, amounting to a near 30% reduction in support for a single parent with two children.<sup>4</sup> The situation for those forced to rely on even lower levels of cashless support, provided via the Azure payment card system under section 4 of the 1999 Act, is worse still. The evidence shows that physical and mental health problems amongst this group are incredibly high.<sup>5</sup>

### *Section 95 support*

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<sup>3</sup> *Asylum Policy Instruction: Permission to Work*, Home Office, 1<sup>st</sup> April 2014.

<sup>4</sup> Under the new scheme support for a couple with two children falls from £178.44 to £147.80 and for a couple with one child from £125.48 to £110.85. Support for a single parent with two children falls from £149.86 to £110.85 and for a single parent with one child from £96.90 to £73.90.

<sup>5</sup> In 2011, Refugee Action identified 206 individuals at casework sessions who had physical or mental health problem. This is very high given that only 2,310 people were on section 4 at the end of 2011. *RE: Parliamentary inquiry on the destitution of asylum seeking families*, Still Human Still Here, paragraph 5.5. Available at: [https://www.childrenssociety.org.uk/sites/default/files/tcs/Policy/asylum-inquiry/still\\_human\\_still\\_here.pdf](https://www.childrenssociety.org.uk/sites/default/files/tcs/Policy/asylum-inquiry/still_human_still_here.pdf).

5. Accommodation and financial support under section 95 of the 1999 Act is paid to those with ongoing asylum claims, where they are destitute, or liable to become so within a 14 day period. It is also a requirement that they made their claim as soon as reasonably practical in accordance with section 55 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”).<sup>6</sup> A person is destitute if she does not have either adequate accommodation or any means of obtaining it or cannot meet her other essential living needs.<sup>7</sup> Section 95 support comprises accommodation and a new standard rate payment of £36.95 per person which no longer includes any additional support for households with minor children. An individual has no choice in the location of accommodation and is often subject to multiple dispersals.

6. Section 95 financial support for asylum seekers is automatically withdrawn 21 days after an individual’s asylum claim is refused. Section 94(3A) provides an exception to this rule for asylum seeking households which include minor, dependent children born prior to the final determination of an asylum claim. There is, however, already a power to withdraw section 95 support from families with minor dependent children where the Home Secretary certifies that they have failed, without reasonable excuse, to take steps to leave the United Kingdom voluntarily.<sup>8</sup> This power has not been routinely used, following its pronounced failure to facilitate removal when piloted in 2005.<sup>9</sup> Should support be removed under this power, an individual can appeal the decision,<sup>10</sup> although she would have no access to legal aid.

#### *Section 4 support*

7. Section 4(2) of the 1999 Act read together with the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 (“the 2005 Regulations”) allows for some basic accommodation and non-monetary support to be provided to destitute failed asylum seekers where they can meet strict eligibility criteria. In addition to being destitute and satisfying the section 55 requirement that a

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<sup>6</sup>It is currently Home Office policy to accept that a person claimed asylum as soon as reasonably practicable where he or she claimed within three days of arriving in the UK, subject to the circumstances in a particular case.

<sup>7</sup> Section 95(3).

<sup>8</sup> Nationality, Immigration and Asylum Act 2002, Schedule 3(7A) as inserted by section 9, Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

<sup>9</sup> *Family Asylum Policy: the Section 9 Implementation Project*, Home Office Border & Immigration Agency. Available at: <http://webarchive.nationalarchives.gov.uk/20140110181512/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/section9implementationproj.pdf>.

<sup>10</sup> Immigration and Asylum Act 1999. section 103.

claim was made as soon as reasonably practicable, the 2005 Regulations provide that an asylum seeker must satisfy one of five criteria to access support, namely that she is (i) taking all reasonable steps to leave the United Kingdom; (ii) is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason; (iii) is unable to leave the United Kingdom because in the opinion of the Secretary of State there is currently no viable route of return available; (iv) has been granted permission to pursue a judicial review of a decision related to her asylum claim; or (v) would otherwise face a violation of her human rights if accommodation is withheld.<sup>11</sup>

8. Under section 4(1), other migrants recently released from detention or granted temporary admission in the UK may be provided with basic cashless support regardless of whether they have submitted an asylum claim. There is a right of appeal against the decision to refuse or remove section 4 support, but again, legal aid is not available.

#### *Destitution and inhuman and degrading treatment*

9. The Article 3 protection against inhuman and degrading treatment enshrined in the Human Rights Act 1998 provides protection against the removal of asylum support where forced destitution would ensue. The role of Article 3 is acknowledged in the regulations governing section 4 support, which provide for support where an individual is destitute and would otherwise face a violation of her human rights.<sup>12</sup> Further, section 55 of the 2002 Act cannot be relied upon to remove support from those deemed not to have made a claim as soon as reasonably practicable where withholding support would constitute inhuman and degrading treatment.<sup>13</sup> In 2005, in the case of *Limbuela* the House of Lords confirmed that the removal of support under section 55 would constitute a human rights violation in circumstances where:

*“it appears on a fair and objective assessment of all relevant facts and circumstances that an individual applicant faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life.”<sup>14</sup>*

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<sup>11</sup> Paragraph 3 of the 2005 Regulations.

<sup>12</sup> 2005 Regulations, paragraph 3.

<sup>13</sup> Section 55(5)(a).

<sup>14</sup> *R (on the application of Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66 at paragraph 8-9.

10. The Court found that refusing support in circumstances where the Government itself has denied a person the ability to support themselves (by not allowing them to work) could breach Article 3:

*“A general public duty to house the homeless or provide for the destitute cannot be spelled out of article 3. But I have no doubt that the threshold may be crossed if a late applicant [for asylum] with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life.”<sup>15</sup>*

#### **Consultation proposals: section 4**

##### *Removal of section 4(1) support*

11. The paper proposes to remove the ability of the Home Secretary to provide support under section 4(1) for individuals released from immigration detention - whether on bail or otherwise - and others granted temporary admission to the UK. The paper argues that any asylum seekers with ongoing claims would be able to rely on section 95 financial support and accommodation, failed asylum seekers would have recourse to section 4(2) amended in accordance with the consultation proposals. For those who have never sought asylum in the UK, but cannot return because, for example, they cannot access travel documents, no alternative provision would apparently be in place on repeal of section 4(1).

12. The Government argues that the provisions of section 4(1) have been rarely used, although it acknowledges that section 4(1)(c) is routinely used to provide bail addresses to those released from immigration detention.<sup>16</sup> Removal of this provision would therefore increase the notorious difficulties detainees already face in accessing immigration bail.<sup>17</sup> The Home Office Asylum and Immigration statistics provide information about the number of asylum seekers reliant on section 4 support, but we have been unable to get a clear picture of the number of non-asylum

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<sup>15</sup> See *R (Limbuella) v Secretary of State for the Home Department* [2005] UKHL 66 at paragraph 7.

<sup>16</sup> *Reforming support for failed asylum seekers and other illegal migrants*, Home Office, August 2015, paragraph 15.

<sup>17</sup> *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, 3<sup>rd</sup> March 2015, page 51.

applicants currently reliant on section 4(1). Home Office guidance on section 4 support includes a section dealing with migrants seeking to rely on section 4(1) support who have not claimed asylum. Whilst the guidance clearly envisages that support would only be provided to this group in exceptional circumstances, it foresees some use of this provision for those who cannot reasonably be expected to leave the country *and “are destitute; and... have no avenue to any other form of support; and ...[where] provision of support is necessary in order to avoid a breach of their human rights.”*<sup>18</sup>

13. The repeal of section 4(1) would affect those who cannot return to their countries, perhaps because they lack travel documentation, have a health problem which means they cannot travel, or have an outstanding claim to remain in the country for compelling family reasons – for example to provide care for an elderly relative or dependent child. The numbers of non-asylum applicants supported under section 4 may be small, but it is easy to envisage circumstances in which individuals who cannot leave would be forced into destitution by the removal of support, breaching the prohibition on inhuman and degrading treatment.

#### *Reformulation of section 4(2) support*

14. The Government argues that section 4(2) cashless support for asylum seekers whose claims have been rejected *“provides an avenue for support simply on the basis that a person is in the UK and has previously made a failed asylum claim.”*<sup>19</sup> This is a bizarre assertion given that the consultation acknowledges support is already restricted to those who are destitute, made their claim as soon as reasonably practicable, and are either (i) taking reasonable steps to leave the country; (ii) unable to leave due to a medical impediment; (iii) have no viable route of return; (iv) pursuing a judicial review in relation to their asylum claim and have permission to proceed or (v) faced with a human rights violation should accommodation be removed.

15. The paper proposes that section 4(2) support be closed off *“to failed asylum seekers who make no effort to leave the UK at the point that their asylum claim is*

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<sup>18</sup> *Asylum Support, Section 4 Policy and Process*, Home Office, paragraph 1.1.3. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/438472/asylum\\_support\\_section\\_4\\_policy\\_and\\_process\\_public\\_v5.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/438472/asylum_support_section_4_policy_and_process_public_v5.pdf).

<sup>19</sup> Consultation Paper, paragraph 19.



*finally rejected*".<sup>20</sup> Support would continue to be available where either there was "a *genuine obstacle preventing return*" or when an individual has lodged a fresh claim based on asylum or Article 3.<sup>21</sup>

16. The extent to which this formulation would differ from current provision is not clear. Is it simply that eligibility provision currently set out in Regulations would be reformulated and set out in primary legislation, or does the Government intend to limit provision? The only category of individuals currently able to access section 4(2) support not obviously covered in the reform proposals would seem to be the backstop category of those who would face a violation of their human rights should accommodation be withheld.<sup>22</sup> Home Office guidance suggests that this provision is primarily used for those with outstanding submissions to remain in the UK other than an application for judicial review.<sup>23</sup> Whilst these individuals would continue to be accommodated under the consultation proposals, it is far from clear that the new formulation would safeguard against the removal of support in all cases where the Article 3 prohibition on inhuman and degrading treatment would otherwise be breached.

### **Consultation proposals: section 95**

17. The consultation proposes changes to section 94(5) of the 1999 Act which, when read together with section 95 provides for asylum seeking families whose claims have been rejected to continue to access support designed to prevent destitution. Currently, support continues for asylum seeking households with minor children unless the Government certifies that a family is not taking the necessary steps to leave the UK.<sup>24</sup> Under the consultation proposals, support would be stopped automatically after 28 days. The Government rejects existing powers to remove support as they "*place the onus on the Home Office to establish that the failed asylum seeker is not taking the necessary steps to leave*" and because there is "*a right of appeal against any decision to cease support*".<sup>25</sup> Under the consultation

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<sup>20</sup> Consultation Paper, paragraph 20.

<sup>21</sup> Consultation Paper, paragraph 21.

<sup>22</sup> Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005, paragraph 3(2)(e).

<sup>23</sup> *Asylum Support, Section 4 Policy and Process*, paragraph 1.14.

<sup>24</sup> Current powers to remove support where the Government demonstrates that an asylum seeking family is not taking the necessary steps to leave the UK are set out in Schedule 3 to the Nationality, Immigration and Asylum Act 2002.

<sup>25</sup> Consultation Paper, paragraph 28.

proposals, the onus would be on the asylum seeker to satisfy the Government that there is a practical obstacle to her removal. It is not clear what, if any, provision would be put in place while an application for support is made. No consideration is given to the difficulty asylum seekers may face in applying for the reinstatement of support due to language and literacy barriers. This failure to engage with the realities of life for asylum seekers in the UK will likely mean that families who simply cannot leave will have support and accommodation removed in violation of the Article 3 prohibition on inhuman and degrading treatment. The Government further proposes that there be no right of appeal against the decision to refuse to reinstate support, meaning no accessible redress for administrative errors.<sup>26</sup>

#### *Destitution as a means of enforcement*

18. The Government argues that the removal of support is a way to “reinforce our immigration controls” and suggests that, when support is removed, “some failed asylum seekers will necessitate less enforcement activity”.<sup>27</sup> In the Impact Assessment accompanying these consultation proposals, however, the Government acknowledges that the prospect of behavioural change is too speculative to form part of a cost-benefit analysis of the proposals:

*“...the financial value of support available is small in comparison to the benefits of living and working in the UK, and as the behavioural response to the withdrawal or restriction of support is difficult to evidence, even after changes have been introduced, we have not made any estimate of additional savings resulting from any behavioural response to the measures proposed.”<sup>28</sup>*

19. The counter-productive nature of policy which relies on destitution as an enforcement tool was neatly summarised by the current Secretary of State for Work and Pensions in a 2008 report:

*“If asylum is refused, asylum seekers are often left without support and usually without permission to support themselves through work...”*

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<sup>26</sup> Consultation paper, paragraph 34.

<sup>27</sup> *Reforming support for failed asylum seekers and other illegal migrants: impact assessment*, page 5 and 13.

<sup>28</sup> Impact Assessment, page 6.

*It also appears that a British government is using forced destitution as a means of encouraging people to leave voluntarily. It is a failed policy: only one in five leaves voluntarily. This contrasts diametrically with Sweden, where, this year, only one in five had to be forced to leave. The rest did so voluntarily. Sweden achieves this by treating refused asylum seekers in a humane and reasonable manner...<sup>29</sup>*

20. Arguments about the enforcement benefits of the automatic withdrawal of support to families are even more directly met by reference to a 2005 Home Office pilot of current powers to halt support for families. That provision, much like the present proposal, was justified as an enforcement measure. A 2007 evaluation of the pilot, however, found that the powers did not increase co-operation with removal.<sup>30</sup> Data collected at the end of the year-long pilot period found that those subject to the power to remove support were no more likely to leave the UK than a control group, but that those in the pilot group were almost twice as likely to have their asylum support removed. Significantly the evaluation report also noted that, “[e]vidence suggests a significant number of the families may have absconded from accommodation because of concerns about the section 9 process”.<sup>31</sup> Unsurprisingly the Home Office concluded that the power to remove section 95 support from families:

*“did not significantly influence behaviour in favour of co-operating with removal...this suggests that the section 9 provision should not be seen as universal tool to discourage departure... We therefore do not propose that the section 9 provision should be used on a blanket basis by Border and Immigration Agency case owners in the future.”<sup>32</sup>*

21. The recommendation was that a power to remove support should be retained and could be considered on a case-by-case basis by case-owners if it was felt this could encourage removal in particular circumstances. 8 years on from the publication of this analysis of the evidence, the Government seeks to introduce the automatic removal of support, a far more blanket and draconian measure than that piloted in

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<sup>29</sup> *Restoring Trust in the UK Asylum System*, The Centre for Social Justice: Asylum and Destitution Working Group, December 2008. Preface by Iain Duncan-Smith at page 4.

<sup>30</sup> Home Office Border and Immigration Agency, *Family Asylum Policy: The Section 9 Implementation Project*.

<sup>31</sup> *Family Asylum Policy: The Section 9 Implementation Project*, paragraph 2.2.

<sup>32</sup> *Family Asylum Policy: The Section 9 Implementation Project*, para 4.3.

2005. In a remarkable failure to engage with the evidence, the Government ignores the fact that existing provision frustrated removal by encouraging people to abscond, instead arguing it is unsatisfactory because it *“makes the process of stopping support more lengthy and complicated than it needs to be.”*<sup>33</sup> The current proposal offers similarly poor prospects of facilitating removal but carries more crushing and far-reaching human consequences.

#### *Destitution as a deterrent*

22. The Government also argues that provision of subsistence support sends the *“wrong message”* to prospective migrants and that withdrawal of support *will “remove incentives for migrants to remain in the UK”*.<sup>34</sup> In the words of Home Office Minister, James Brokenshire, the Government hopes to demonstrate that the UK is not *“the land of milk and honey”*,<sup>35</sup> or in the words of the Home Secretary that *“Britain’s streets are not paved with gold”*.<sup>36</sup> Available evidence reveals the fallacy in this approach. A Home Office Research Study published in 2002 concluded that:

*“There was very little evidence that the sample respondents had a detailed knowledge of: UK immigration or asylum procedures; entitlements to benefits in the UK; or the availability of work in the UK. There was even less evidence that the respondents had a comparative knowledge of how these phenomena varied between different European countries.”*<sup>37</sup>

This Home Office commissioned research also found that asylum seekers have little control over where they apply for asylum concluding:

*“it is important to note that agents were critical determinants of the destination eventually reached by asylum seekers...if individual asylum seekers wanted*

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<sup>33</sup> Consultation paper, paragraph 28.

<sup>34</sup> Consultation paper, paragraph 7 and 10.

<sup>35</sup> *Concerns raised over plan to strip failed asylum seeker families of benefits*, The Guardian, 2<sup>nd</sup> August 2015. Available at: <http://www.theguardian.com/uk-news/2015/aug/02/concerns-raised-plan-strip-failed-asylum-seeker-families-benefits>.

<sup>36</sup> *Migrants think our streets are paved with gold*, The Telegraph 1<sup>st</sup> August 2015. Available at: <http://www.telegraph.co.uk/news/uknews/immigration/11778396/Migrants-think-our-streets-are-paved-with-gold.html>.

<sup>37</sup> V.Robinson, *Understanding the decision-making of asylum seekers*, University of Wales, July 2002, page viii.

*to leave their home country they had to give over control of migration decision-making to these paid facilitators.*<sup>38</sup>

23. This was confirmed by a 2011 review of the 19 main OECD recipient countries for asylum applications carried out by the Centre for Economic Policy Research.<sup>39</sup> The review concluded that tightening of welfare provision did not have any deterrent effect.<sup>40</sup> In the UK specifically, the introduction of the separate and reduced support arrangements for asylum seekers in 1999 had no deterrent effect. Applications for asylum, excluding dependants, rose by 25,000 to 71,100 in 1999,<sup>41</sup> in 2000 applications rose by a further 13% to 80,315.<sup>42</sup> The Home Office should engage with the analysis of the Secretary of State for Work and Pensions:

*“The Government claims that the asylum system is effectively reducing the numbers of asylum seekers entering the UK. However this report shows that the rise of asylum numbers at the turn of the millennium and subsequent fall since 2003 is an international phenomenon....”*<sup>43</sup>

#### *Saving money*

24. Whilst the proposed changes do not constitute an effective means of enforcement or deterrence, they would create financial savings, at least for central Government (although the extent to which these costs would be transferred to local Government is discussed further below). By placing the onus on asylum seekers to apply for support and omitting a right of appeal against refusal, the changes proposed would make it incredibly difficult for asylum seeking families – many of whom may not speak English or lack basic literacy skills - to access support, including in cases where it is simply not possible for a family to leave. These savings would be paid for by the abject suffering of destitute people and – because the

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<sup>38</sup> *Understanding the decision-making of asylum seekers*, page 19.

<sup>39</sup> *Seeking Asylum Trends and Policies in the OECD*, Timothy J Hatton (University of Essex, Australian National University, and CEPR), July 2011.

<sup>40</sup> *Seeking Asylum Trends and Policies in the OECD*, see e.g. sections 8.2 and 9.3.

<sup>41</sup> ASYLUM STATISTICS UNITED KINGDOM 1999:

<http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/pdfs/hosb1700.pdf>.

<sup>42</sup> ASYLUM STATISTICS UNITED KINGDOM 2000:

<http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/pdfs/hosb1701.pdf>.

<sup>43</sup> *Restoring Trust in the UK Asylum System*, page 4.

evidence shows some will abscond - by compromises to the integrity of the immigration system.

25. If the Government seeks to find financial savings from the asylum support system there are many more constructive and humane ways to do so. The entire Azure card system for cashless payments to be made to those on section 4 support costs £350,000 to run for around 3,000 people.<sup>44</sup> Further 13% of asylum seekers receiving section 95 support stay with family and friends, claiming only subsistence support. This is not an option for those supported under section 4, who have to give up accommodation and accept housing paid for by the Home Office to access subsistence provision. On the analysis of *Still Human Still Here*, the creation of a single system by extending section 95 to cover those currently receiving section 4 support would bring significant savings overall. The increase in support payments would cost around £700,000 a year, but the accommodation savings would be significantly higher and potentially as much as £2 million a year.<sup>45</sup> Significant additional administrative savings could also be made, including £350,000 from the removal of the Azure system. Overpayments, which amounted to £9.3 million in 2008-2009, could be substantially reduced by the introduction of a simplified system which does not require people to reapply for support or move from one form of support to another.<sup>46</sup> Of course all of these savings pale into insignificance when compared with the huge sums that could be saved in support payments and the large amounts of additional tax revenue that could be generated by allowing asylum seekers to work in the UK, rather than forcing them to rely on state handouts.

#### *Impact on local authorities*

26. In its efforts to assuage any fears of local authorities that responsibility to support desperate families may fall on them, the callous disregard for the welfare of children which lies at the heart of the present proposals is thrown into sharp focus. The Government is at pains to demonstrate that no further obligations will be placed on local authorities to save children from destitution as a result of the removal of

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<sup>44</sup> *Home Affairs Committee Written evidence submitted by the Still Human Still Here coalition* (ASY 16) paragraph 7. Available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71we-5.htm>.

<sup>45</sup> *Still Human Still Here* accepts that net savings may well be less than this if as some individuals who would otherwise not have claimed because there was no subsistence only support would now do so.

<sup>46</sup> *Home Affairs Committee Written evidence submitted by the Still Human Still Here coalition*, paragraph 7.2.

central government funding. The consultation paper highlights the extent to which local Government is already immune from the usual duty to provide for vulnerable children with “*a range of local authority administered welfare provisions... generally unavailable to failed asylum seekers and their families...*” and limitations on the child protection duties which arise under the Children Act 1989 “*and equivalent legislation*”.<sup>47</sup> The Government suggests statutory change, to place “*beyond doubt*” the fact that local authorities are not required to accommodate destitute families.<sup>48</sup>

27. Despite these assurances, it is likely some costs will be transferred to local authorities because the automatic removal of accommodation and support, from children in particular, risks violations of the Article 3 prohibition on inhuman and degrading treatment. The consultation paper accepts that support may be provided by local authorities where an Article 3 breach would otherwise ensue and outlines its willingness to discuss any costs which are transferred in this way. In reality, the Government may find that local authorities are not as desperate to evade their responsibilities to the vulnerable as central Government. Following the piloting of powers to remove support from asylum seeking families in 2005, local authorities expressed concern that the removal of provision under these less draconian and blanket provisions created “*difficulty in reconciling what they considered to be the conflicting principles of child welfare and section 9*” (powers to remove support).<sup>49</sup>

## Conclusion

28. In a collective failure of compassion, this Government seems immune to arguments about the human consequences of its brutal immigration policy, anxiously obscuring the humanity of those it describes as “swarms” or a “marauding” mass.<sup>50</sup> If the Government is deaf to these arguments, it must at least wake up to the need for evidence based policy. As the political backlash against unfeasible projections on immigration grows with the publication of the latest immigration statistics, the Government cannot afford the reputational damage of another fruitless policy. The

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<sup>47</sup> Consultation paper, paragraph 39. Schedule 3 of the 2002 Act severely restricts broader local authority support obligations in the case of refused asylum seekers, save where a human rights breach would ensue.

<sup>48</sup> Consultation paper, paragraph 42.

<sup>49</sup> *Section 9 Implementation Project Report*, page 2.

<sup>50</sup> For more see: *David Cameron migrant swarm language condemned*, The Guardian, 30<sup>th</sup> July 2015: <http://www.theguardian.com/uk-news/2015/jul/30/david-cameron-migrant-swarm-language-condemned>; *Marauding' migrants threaten standard of living, says foreign secretary*, The Guardian, 10<sup>th</sup> August 2015: <http://www.theguardian.com/uk-news/2015/aug/09/african-migrants-threaten-eu-standard-living-philip-hammond>.

proposals included in this consultation paper will bring no immigration enforcement benefits and have no impact on migration flows. They will likely increase the number of asylum seekers who abscond and certainly create a new and more powerful wave of human misery. The proposals will result in some savings to central government, but greater far greater savings can be achieved without the desperation and suffering which these proposals would produce.

**Rachel Robinson**