DRIVING OUT FAMILIES THROUGH DESTITUTION?

Last December, section 9 of the Asylum and Immigration Act came into force, giving the Home Secretary more powers to remove people who have failed in their bid to seek asylum here. **John Nicholson** is angry…

The Home Office have been attempting to coerce failed asylum seekers with children into leaving the United Kingdom by withdrawing accommodation and support. In the past such people have continued to receive asylum support, after their immigration appeals for leave to remain under the Refugee Convention and Article 3 of the Human Rights Convention have failed, until they voluntarily left the UK or were forcibly removed. This is no longer the case.

On 1st December 2004, section 9 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 came into force. This provision amends schedule 3 of the Nationality, Immigration and Asylum Act 2002 and enables the Home Secretary to certify that in his opinion that a person seeking asylum, whose initial claim has been refused, has failed without reasonable excuse to take reasonable steps to leave the United Kingdom voluntarily or to place him or herself in a position where he or she is able to do so.

Where the Home Secretary issues such a certificate asylum support is withdrawn unless it would be necessary to exercise the power to provide support in order to avoid a breach of the Human Rights Convention or rights under the European Community treaties. There is a right of appeal to the Asylum Support Adjudicators against a certificate issued by the Home Secretary. There is no pubic funding available for representation before such an Adjudicator.

Asylum Support as a tool of immigration policy

The use of section 9 follows on from previous Labour government attempts to use asylum support as a tool of immigration control. Under section 55 of the 2002 Act, the Home Office withdrew asylum support from those they considered had not claimed asylum as soon as reasonably practicable. This scheme suffered fatal setbacks when the High Court, the Court of Appeal and finally the House of Lords, in the case of Secretary of State v Limbuela [2005] UKHL 66, all set humane tests setting out where the power to provide accommodation and support needed to be exercised in order to avoid a breach of Article 3 of the Human Rights Convention.

Under the 2004 Act there is also provision under section 10 for accommodation and support to be provided to failed asylum seekers on the condition that they perform compulsory labour in the form of community service. So far the Home Office have been unsuccessful in setting up any pilot schemes for this measure.

August 2005: Case Studies

On 1st August 2005 Ngiedi Lusukumu's family in Bolton and Vahid Khanali's family in Bury both received notice of their Asylum Support Adjudicator Appeal hearings following a decision to certify them under the section 9 provisions. This was their final chance to avoid destitution at the hands of the Home Office.

By 1st September 2005 the families had lost their appeals. Both had received eviction notices but Bolton and Bury Councils had allowed them to remain in their houses. Neither were receiving cash or food, even to care for their children, although the Councils claimed that "voluntary assistance" was now available to them pending "legal clarification".

As a result of similar measures an unknown number of other families have "absconded" and gone underground. Nineteen families were believed by the National Asylum Support Service to have had their benefits stopped by 17th August 2005 with incalculable consequences for the welfare of their children. At least one family, an Angolan mother and daughter in Rochdale, have been evicted, having received inadequate or no legal representation.

The Background to Section 9 : Not Every Child Matters

The passage into law of the 2004 Act ignored the widespread opposition raised to what is now section 9 of the Act. Senior civil servants reportedly stated that the drafting was "ill thought out". Recent commentary by Steve Cunningham and Jo Tomlinson suggested that threatening children with destitution and possible removal from their families undermined the government's stated ambition to ensure that "every child matters", see 'Starve Them Out: Does Every Child Really Matter' Critical Social Policy vol 25(2) 253-275.

Bill Morris, former General Secretary of the TGWU, said, "Using children to blackmail their parents" was "plumbing the depths of morality". For the Parliamentary Joint Committee on Human Rights (Fifth Report of Session 2003-2004), the idea of "using children and the threat of taking them into care as a deterrent or incentive to persuade adults to cooperate with the authorities" directly contravened the UN Convention of the Rights of the Child.

The British Association of Social Workers similarly argued that, regardless of the decisions of adults, it was "fundamentally unjust to introduce legislation that will make children destitute" and force them into care. It was "as if the government wishes to use children as a rod with which to implement its immigration policy". BASW stated that it would be "utterly ▶


NO TO
SEGREGATION
OF CHILDREN
SEEKING ASYLUM

inappropriate" for the social work profession to be complicit in such a policy.

The flaws in the section 9 policy can be measured against the stated policy goals towards children. In the Department for Education and Skills Green Paper 'Every Child Matters' Cm 5860, published just three months earlier, the DfES had stated that "All children deserve the chance to grow up in a loving, secure family. The bond between the child and their parents is the most critical influence on a child's life."

Indeed, this was re-iterated by the Prime Minister himself, father of four Tony Blair, when he said, "A parent's love and care is the best guarantee that a child will thrive. It's not easy being a parent. You learn on the job, never sure whether you are doing the right thing. Nor, despite increasing prosperity and greater opportunities for our children, have the challenges got any easier…. This Labour Government will continue supporting parents in the difficult, but vital, task of bringing up their children."

The use of section 9 against parents who are failed asylum seekers makes it clear that some parents have been excluded from the embrace of these sentiments. For parents whose support has been withdrawn under section 9, the line taken against them has been very tough.

At the time the then Immigration Minister at the Home Office, Beverley Hughes, formerly a lecturer who taught social workers that their primary duty was to ensure the welfare of children, denied that parents were faced with a choice between "voluntary" removals or having their children taken into care. In any case she stated "I expect them to act as any parent would, to make the best decision for their children and leave the UK" (letter to *The Guardian*, 17th December 2003).

For David Blunkett, then Home Secretary, taking children into care would not be the result of Government policy, but of the "unreasonable behaviour of the parents" ('I am not King Herod', *The Guardian*, 27th November 2003).

In the Lords, Baroness Scotland could only defend a "framework where the effect of what we anticipate is managed in a way that we hope will not injure… children", House of Lords, Hansard, 5th April 2004, col 1699.

Tony McNulty, the current Immigration Minister, has robustly defended the "tough" policy. He has stated "we need to send a clear message" – families "must leave the UK", (letter to *The Guardian*, 31st August 2005).

In a similar vein "irresponsible" parents are blamed in Asylum Support Appeal determinations following appeals against section 9 certificates. It is often said by Adjudicators that Article 8 (the right to respect for family life) is not breached as the family can all stay together if they all leave the country, together.

In Law and in Legal Practice

Section 9 demands a collective legal response, on the part of housing, children and immigration lawyers, and on the part of social welfare practitioners, trade unionists and local communities. The application of a certificate under section 9 withdraws support. In such circumstances a local authority will be faced with the option of taking the children into care, or supporting them alone, and leaving their parents destitute.

In time section 9 may raise wider issues, of local authority collusion in evictions generally, as their role as landlords to failed asylum seekers may expand. Local authorities cannot currently provide accommodation to failed asylum seekers under section 4 of the Immigration and Asylum Act 1999; such accommodation has to be privately provided. However under clause 43, originally clause 37, of the 2005 Immigration, Asylum and Nationality Bill will allow local authorities to do provide such accommodation. This has been presented as benevolent but it may mean that there will be local authority evictions for those who do not return home "voluntarily".

Perhaps it will take a claim for declaration of incompatibility under the Human Rights Act 1998, on the basis that the legislation is unlawful and disproportionate under Article 8(2) of the Human Rights Convention, insofar as it compels a family to be split up, before the Home Office abandons reliance on this provision.

Implementation: Yet Another Pilot Scheme

Section 9 has been being "piloted" by the Government on 116 families in Greater Manchester, West Yorkshire and North London. The implementation is, however, inhumane. It involves "making them an offer they cannot refuse": either they must "volunteer" to go back to their original country from which they have fled, or they will be made destitute, be thrown out on the streets, and have their children taken away into local authority "care".

Far from a "choice", this is cruelly blackmailing families into leaving the country. Worst of all, it brings increased anxiety to people who are already frightened, having come to this country to seek protection from persecution. Such people already face incredulous courts, which don't believe what has happened to them. As if that was not enough, they then endure a process of the removal of already limited benefits and housing to force them to leave the UK. The upset and distress caused to families by the section 9 process is itself degrading treatment for people who should be receiving support.

The Sukula family in Bolton were issued their final section 9 appeal papers on 1st August 2005, for a hearing on 4 August 2005. They lost this appeal, although the Adjudicator stated that, "in the strictest sense", the Home Office had not followed its own procedures.

Surely the point of such procedures is that they have to be followed "strictly" if they are to be lawful. The family were issued an eviction notice for 5th August 2005 but stayed put. The Council has not since sought to evict them but they are receiving no cash or subsistence support.

The Khanali family in Bury were also issued with their final section 9 appeal papers on 1st August 2005, for a hearing on Friday 5th August 2005. The Home Office denied that it had received any representations, including one from a Church to whom it had replied "thank you for your letter…..". The Asylum Support Adjudicator remitted the case, for the Home Office to "reconsider and review all the evi-

dence". They did so. It took them precisely one and a half working days. Then they just reissued the termination of support letter effective on 26th August 2005.

A second appeal was lodged, but this time unsuccessfully. In 51 paragraphs of a long determination, a different Adjudicator stated that "I am satisfied that any procedural irregularity which may (sic) have resulted in the decision of 22 July 2005 being unlawful was corrected upon remittal of the previous appeal and detailed consideration (sic) having been given to the representations of the Bury Law Centre and by Ivan Lewis MP."

Bury Law Centre commented: "In the Asylum Support Appeal hearing two weeks ago, the Adjudicator threw the Home Office case out, as they had not followed their own procedures. This time, although nothing has changed, a different Adjudicator was more forgiving of the Home Office errors. It feels like getting the umpire to call "no-ball" until eventually the bowler can get one to hit the stumps."

Official Reaction and Counter-Reaction

Both Bury and Bolton local authorities are members of the Greater Manchester group that wrote to the Home Office to call for an urgent review of the whole pilot. The Yorkshire and Humberside Councils, BASW, the Association of Directors of Social Services ("ADSS") and the Children's Commissioner did likewise.

Peter Gilroy, chief executive of Kent County Council and chair of the Asylum Task Force of the ADSS said that section 9 raises "legal and ethical dilemmas" for local authorities. "The Government has already accepted that wherever possible children should be cared for by their parents and has made this clear by making reductions in the numbers of children in public care a principal target for local government. It seems iniquitous that they have now introduced immigration legislation which

militates against this view."

Councillors, school governors and local community groups in both areas, demanded that their Councils keep the families together, not least because it would be cheaper for council-tax-payers than taking the children into care. Both families discussed above included 7 month old, breast feeding babies.

Support for these two families has even come from the full range of local newspapers, not widely regarded as the most progressive forces in society. The Bolton *Evening News* has run front page and editorial comments calling for support, with a tear-off coupon for people to send back supporting the Sukula family, and the editor appears on campaign public meeting platforms.

The *Bury Times, Prestwich and Whitefield Gazette*, and local *Advertiser* have run front page stories, with sympathetic coverage each week. And the Manchester Evening News conducted its own telephone poll of readers, which produced an 87% result in favour of Councils refusing to implement section 9.

Amid widespread cynicism at the notion that the pilot scheme would be evaluated, Government documents talked of "when" the pilot would be "rolled out", not "if".

Arguably however the campaign against section 9 may have ensured that the Government is having to take evaluation more seriously than it intended. An evaluation survey has been circulated to local authorities with 28 questions. Stunningly, in the era of Smiley-Face Nu-Labour, number 27 asks "Does your local authority believe that there is a need for changes to the section 9 procedures or were you happy with the original procedures?" Happy?

Voluntary agencies, including even those who are involved with implementation of the Government's policies, have given section 9 a resounding thumbs down. Barnardos, supported by the Refugee Children's Consortium, have produced a damning report. Crucially they noted that refugee children are children first and foremost and that UK asylum policy should protect their welfare as a first principle. "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."

Barnardos called on the government to take the opportunity presented by the new Immigration, Asylum and Nationality Bill to repeal section 9 "before its implementation does further damage to the lives of individual children and families". Going further still, they called for a review of asylum policy as a whole, specifically to consider the extent to which it is compatible with the Children Act 1989, Human Rights Act 1998 and UN Convention on the Rights of the Child.

The Inter Agency Partnership, involving the Refugee Council, Refugee Action, Migrant Helpline, Refugee Arrivals Project, Scottish Refugee Council and Welsh Refugee Council, conducted a detailed analysis of the support that their members had given families. Their evaluation noted that families had experienced mental health problems, difficulties accessing legal advice, which included the effects of LSC funding restrictions, and destitution, as well as concerns about returning to their countries of origin and the whole decision-making process.

The evaluation concluded:

- Voluntary return has not increased as a consequence of implementation
- Section 9 support and related costs are far higher than continuing section 95 support for families (The support provided to failed asylum seeker families prior to the introduction of section 9).
- There is no evidence that asylum applications have reduced as a result of the section 9 pilot.
- The credibility of the asylum process has been questioned rather than reinforced by the section 9 pilot.

Consequently, just in its own terms, the "project" had failed, and the message to Government from these agencies was that it should not be implemented nationally.

Of those families affected to date, it is understood that some thirty families have melted away. Forty families have lost all support. As the Barnardos report noted, once beneath the radar, these families, already vulnerable, are open to "abuse and exploitation". Only sixteen families have taken up the option of agreeing to return to the countries from which they fled. None have yet been returned.

The Inter Agency Partnership report states that despite Home Office claims that one family had voluntarily returned and four had registered for voluntary return, the IAP had found that no family was willing to take steps to leave the UK and indeed that one who had signed the Immigration Service declaration to return voluntarily did so only after being coerced by Immigration Service officers to do so.

The White Welfare State or Every White Child Matters

Who Welcomes Refugees?

It is probably inaccurate to think that the Home Office aim is simply removal of as many people as possible, although the statistics may look good to their target audience of *Daily Mail* readers. More likely, they want people out of sight, removed from view in much the same way as homeless people have been swept off the streets when Olympic Bid Committees come to visit.

In particular, the welfare state appears not to mean benefits for migrant black people, especially large families of them occupying council houses. Never mind that the families want to work, pay taxes, buy their own houses, and contribute to the local community.

Mirroring the institutional blackmail of the families, the Home Office made clear that if the Councils took the children into institutional care, they could expect to have their costs reimbursed. If they chose to keep the families together, they could not.

For practitioners, BASW now sees its warnings coming true. The practice of section 9 is in conflict with the "Ethical Code for Social Workers". BASW commented:

"This brutal power is not only an infringement on the human rights of children and families but also calls into question our standing in the international community given our commitment and obligations as a nation state to the Human Rights Act 1998 and the European Convention on Human Rights", Media Statement, 8th August 2005.

Articles 3 and 8 of the Human Rights Convention prohibit inhuman and degrading treatment and guarantee families the right to respect for family life respectively. They should be considered to apply and should be used to keep the whole family together as the best way of ensuring the welfare of the child.

This is not just some academic legal debate. What matters is the situation of the people themselves, who campaigners, communities, trade unionists and others are working to support. The families and those who work to support them deserve our support. ■