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Second edition

In this second, lengthy edition of the NRPf briefing we cover a spectrum of issues. These range from the new UK Borders Bill and the Independent Asylum Commission’s call for evidence, to the increased package of return under the voluntary returns programme. Regular features include Case Law Updates, Reports and Publications, Campaigns and Queries and Practice notes.

UK Borders Bill

The UK Borders Bill was published on 26 January 2007 and is now passing through parliament. There are seven parts to the Bill: detention at ports, biometric registration, treatment of claimants, enforcement, deportation of criminals, information and general.

Clause 17 and 18, within the treatment of claimants section, deal with the issue of asylum support.

Clause 17 confirms, following the *Slough v R (M)* judgement, that asylum support should continue to be paid to asylum seekers who have outstanding appeals in the immigration courts. The Slough judgement had raised a technical issue about whether asylum seekers who had received an initial refusal on their claim from the Home Office should still be regarded as asylum seekers.

Clause 18 deal with false or dishonest representations to obtain asylum support. It introduces new powers for immigration officers of arrest, entry, search and seizure. The Home Office says that asylum support fraud is a serious problem (for further details about the UK Borders Bill see <http://www.gnn.gov.uk/Content/Detail.asp?ReleaseID=259665&NewsAreaID=2>).

There are two clauses in the Bill which specifically deal with the issue of asylum support

Funding for NRPF

John Randall, Conservative MP for Uxbridge, recently put forward a parliamentary question relevant to NRPF,

To ask the Secretary of State for the Home Department if his Department will introduce a grant for local authorities that would reimburse their costs for supporting asylum seekers who have exhausted all avenues of appeal waiting for deportation. [110844]

Liam Byrne's response on 2 February 2007 was,

There are no plans to introduce an additional grant for local authorities for this purpose in addition to the money already provided by central Government towards the cost of revenue expenditure on social services and education.

However, the Home Office has recently confirmed to Islington Council that, in response to special representations made by local authorities, funding for NRPF will be discussed by a new Home Office working group.

For further information see

http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070202/text/70202w0010.htm#column_585W.

The Immigration Minister stated on 2 February 2007 that there were no plans to introduce an additional grant for local authorities towards expenditure in social services.

Independent Asylum Commission – Call for Evidence

The Independent Asylum Commission (IAC) launched a call for evidence on 31 January 2007, which runs until November 2007. It calls for evidence under eight headings, including

- The treatment of vulnerable groups in the asylum process
- Material support and accommodation for asylum seekers, including those at the end of the asylum process.

The Commission will hold seven hearings around the United Kingdom over the next nine months. The hearing on vulnerable groups will be held in Cardiff on 22 May 2007, and a hearing on asylum support and destitution will be in Manchester in October 2007.

For further information about the Commission and how to submit evidence visit www.independentasylumcommission.org.uk

The IAC has launched a call for evidence. The consultation period runs until November 2007.

Joint Commission on Human Rights (JCHR)

The JCHR is due to publish its report on the treatment of asylum seekers in early April 2007. Giving evidence to the Commission on 21 February 2007, Liam Byrne, the Immigration Minister, failed to rule out the possibility that section 9, under which the children of failed asylum seekers can be taken into care, will be rolled out across the country. He also noted that clearing the backlog of asylum cases could take up to five years. For further information about the JCHR enquiry go to http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/jchrci.cfm#AS

The JCHR is due to publish its report into the treatment of asylum seekers in April 2007.

Increased package of return under voluntary returns programme

The government announced, at the beginning of February 2007, that asylum seekers applying for voluntary return between 1 February and 31 May 2007 will be eligible for an enhanced assistance package worth £3,500.

An updated briefing on voluntary returns, which includes full details of the new scheme, is available from the Refugee Council website at <http://www.refugeecouncil.org.uk/news/press/2007/February/20070202.htm>

and further information is available from the Home Office website at <http://www.ind.homeoffice.gov.uk/lawandpolicy/voluntaryreturn/>

38 failed asylum seekers were removed to Iraq in February 2007.

Iraq

The Home Office removed 38 failed asylum-seekers to Iraq in mid-February 2007. The group was flown amid tight security by military aircraft from RAF Brize Norton in Oxfordshire to Arbil in Kurdish-controlled northern Iraq.

The Independent reported on 14 February 2007

The 38, who boarded the flight in handcuffs, are believed to be the third batch of asylum-seekers to be sent to the area against their will. Although less troubled than the rest of Iraq, the region faces a threat from terrorism.

During the same week there were reports of a sharp rise in the number of Iraqi refugees fleeing Iraq and the UN High Commissioner for Refugees António Guterres urged increased international support for Jordan, Syria and other nations that have accepted hundreds of thousands of Iraqis.

The European Union is considering emergency measures to cope with the expected tens of thousands of refugees seeking to escape from Iraq.

Franco Frattini, the EU Justice and Home Affairs Commissioner, told interior ministers in Brussels on 15 February 2007 that he would present precise proposals for the 27 countries to deal with the surge in claims for asylum from Iraqis within the next few weeks.

Guide on how to obtain good asylum advice

AdviceNow has launched a guide on how to get good asylum advice in twelve languages. The guide explains how asylum seekers can avoid being duped out of money or documents by fraudulent advisers/solicitors and how to find a good adviser/solicitor.

To download a leaflet, go to:

<http://www.advicenow.org.uk/asylumadvice>

The Government will sign the European Convention against trafficking.

UK to sign Council of Europe's Trafficking Convention

The Prime Minister announced on 22 January 2007 that the government will sign the Council of Europe Convention on Action against Trafficking in Human Beings (European Convention against Trafficking).

The Convention requires states that are party to it to take a number of steps to enhance respect for and protection of the human rights of trafficked persons. The treaty will enter into force when 10 countries have ratified.

Home Office research, due to be published this year, suggests that, at any one time during 2003, there were in the region of 4,000 victims of trafficking for forced prostitution -- one of several forms of trafficking in the UK. When the UK sign, ratify and implement the Convention, it will help ensure that victims of are identified as such and receive some assistance and protection when they escape or are "rescued" in the UK.

The UK already has a Trafficking Centre, based in Sheffield, involving the police, experts from the academic world, victim care organisations, CPS (Crown Prosecution Service), SOCA (Serious and Organised Crime Agency), and IND, (Immigration and Nationality Directorate) in tackling the causes and consequences of trafficking in the UK. For further information go to www.ukhtc.org

Case Law Update

The January 2007 edition of Legal Action, the Journal of the Legal Action Group, contains a clear and comprehensive update on support for asylum seekers and other migrants.

Recent cases outlined in the update include *WM (DRC) v Secretary of State for the Home Department*; *Secretary of State for the Home Department v AR (Afghanistan)*, 9 November 2006. The case appears to broaden the test of when the Home Office should record a fresh asylum claim. The Court of Appeal found that the test was not whether the new claim should succeed, but whether there was a realistic prospect of an Adjudicator - applying the test of anxious scrutiny - thinking that the applicant will be exposed to a real risk of persecution if returned to their country of origin. The implications for support entitlements are that whilst a fresh claim that is not recorded by the Home Office triggers support for section 4 support, once the claim is recorded the applicant becomes entitled for NASS section 95 support (Immigration and Asylum Act 1999).

To view the article, go to:

<http://www.laa.org.uk/Templates/Internal.asp?NodeID=88852>

Reports and Publications

Failing the Failed: How NASS decision making is letting down destitute rejected asylum seekers (ASAP, February 2007)

The Asylum Support Appeals Project (ASAP) published the above report earlier this month. It highlights ASAP's concerns that poor quality decision making is resulting in many asylum seekers, particularly failed asylum seekers, being refused the support to which they are entitled, leaving them destitute.

ASAP's research indicates that between January and December 2006 80% of NASS decisions contained a misapplication of law or their own policy. The report recommends that

- All asylum seekers at the end of the asylum process are informed that section 4 support is available and how to apply for it
- NASS adopts a clear, consistent approach to decision making
- NASS caseworkers receive regular training
- Refusal letters are translated into the language of the applicant
- Public funded is provided for asylum support appeals.

To download the full report, please go to:

<http://www.asaproject.org.uk/news/reports&evidence.htm>

Population mobility and service provision (a report by LSE for London Councils, February 2007)

This research, by the London School of Economics, examined and sought to measure a number of the impacts of population mobility and transience on London boroughs.

It finds that London has high levels of mobility at various levels and some people arrive in the capital with significant needs for public support. In its findings on costs to services it identifies the public assistance costs of migrants with no recourse to public funds stating

Local authorities are required, by law, to provide resources to residents who have no other means of support. Many such individuals and families are transient. London boroughs are, in some cases, spending over £1.2 million a year on this kind of support.

It estimates that the overall cost across London probably ranges between £10 and £20 million. To view the report go to

<http://www.londoncouncils.gov.uk/doc.asp?doc=19405&cat=937>

The identification and charging of Overseas Visitors at NHS services in Newham: a Consultation - Final Report (June 2006)

Launched on 27 February 2007, this report examines the impact of restrictions on access to free secondary healthcare for Overseas Visitors in the London Borough of Newham, and the potential impact of proposals to restrict access to primary healthcare services. Key findings include

- Evidence of the denial of secondary healthcare to people who cannot afford to pay
- Indications that failed asylum seekers are a particularly vulnerable and marginalized group in the UK
- Different working definitions of who is an Overseas Visitors
- Questions about the cost benefit of expanding hospital charging to primary health services
- Indications that the proposals to expand charging to primary healthcare may widen existing health inequalities and impact on public health priorities.

To obtain a copy of the report please email Sally Hargreaves

s.hargreaves@imperial.ac.uk

Campaigns

Still Human Still Here Campaign

A coalition of voluntary organisations has established the *Still Human Still Here Campaign*. The Campaign seeks to end destitution amongst refused asylum seekers. The NRPF Network has observer status on the steering group of the campaign.

One of the campaign's first actions will be to seek to introduce an amendment to the UK Borders Bill that will extend asylum support until the time that an individual is granted status or removed from the United Kingdom.

Web pages for the campaign will be set up on Amnesty International's UK website in the near future (www.amnesty.org.uk/index.asp).

Refugee Council's Just.Fair Campaign

As part of its Just.Fair campaign Refugee Council organised a sleep out in Parliament Square to raise the issue of destitution amongst asylum seekers. Thirty people slept out on the night of 19 February 2007. Campaigners also took the opportunity of lobbying their MPs.

The Refugee Council is an active member of the Still Human Still Here campaign.

For further information go to <http://www.refugeecouncil.org.uk/sleepout/diary>

Queries and practice notes

Over the past five months the NRPF Network secretariat has been recording the various queries that have been put to us about practice. We have listed below some of the key issues that have arisen. Please note this is guidance only and does not constitute legal advice. Local authorities should seek their own legal advice on individual cases.

1. Access to services for irregular migrants with mental health needs

All irregular migrants are entitled to primary health care, including access to mental health services. Where an individual is admitted into a mental health service under section 3 of the Mental Health Act (MHA) 1983, their need for care and attention is met by health services. When discharged from a mental health service under section 117, the duty to provide care is a joint responsibility between health and social services. The duty to provide after care services under section 117 of the MHA takes effect when the person "ceases to be detained".

The responsibility to support under section 117 only ends when the individual is no longer found to be in need of such support. Such a decision can arise after a full community care re-assessment which hopefully will find that the individual is no longer in need of social work support because of his/her mental illness, although s/he may continue to need community care services.

If the individual was placed in another borough whilst supported under section 117, the placing authority remains responsible because the person would have been ordinarily resident in the borough that placed him/her. If s/he then has a relapse it would be the borough which placed him/her that retains the responsibility if the individual continues to receive section 117 after care services.

Where an individual had ceased to receive section 117 after care support following a re-assessment and was not being supported by the original borough under section 21 of the National Assistance Act (NAA) 1948, then if the person relapses it may be argued that s/he is not ordinarily resident in the original borough and is the responsibility of the other borough.

2. Overstayers and entitlements for support

Where a person has limited leave to remain for the duration of the visa and an application is made to extend that period before its expiry, the applicant will be deemed to remain lawfully present in the UK. If this is not done, then the person is considered unlawfully present in the UK. That being so and, where there is no question of a breach of human rights, it would be outside the authority's powers (*ultra vires*) to provide the individual with a service. In these circumstances the only assessment which would need to be made would be a human rights assessment and any service would only be that necessary to avoid a breach of human rights.

The immediate concern when an individual presents is to identify whether s/he is caught by para 7 to schedule 3 of the Nationality, Immigration and Asylum Act 2002. Local authorities could ask an individual to provide evidence that s/he is lawfully present in the UK. Once it has been established whether a person is lawfully or unlawfully present, the authority will know whether it should conduct a full community care assessment or should limit itself to a human rights assessment.

3. Support for victims of domestic violence

There is a need for clearer guidance on this, and the NRPF Network is working on this. At the moment there is no clear policy or guidance and it is up to each authority to assess individual circumstances and make decisions.

Where there are children involved, it is clearer to some extent as an authority can exercise powers under section 17 of the Children's Act and accommodate the parent with the children.

Where the case involves a single person, clarification of their care needs and vulnerabilities is needed. There is case law on this (see R(Khan) v Oxfordshire CC 2002 CCLR 611 (Admin Court)).

4. Refused asylum seeker has his NASS support withdrawn in a dispersal area and goes to stay with a relative in another local authority area in his relative's NASS accommodation. The individual is then hospitalised in a neighbouring local authority area – who is responsible for assessment on discharge?

In cases involving a refused asylum seeker no longer eligible for NASS support the responsibility for the assessment would be the borough he finds himself in. In this case it is the local authority where his relative lives, as this was his last known address.

5. Duties to support a Polish national with a severely disabled son

This would depend upon individual circumstances. Local authorities are barred from supporting EEU and EA nationals according to schedule 3 of the Nationality, Immigration and Asylum Act 2002. As a Polish national, the parent has a right to work. If the parent were unable to work, the local authority would need to examine the reasons for this. A local authority may need to undertake a human rights assessment to determine if it would be a breach to withhold or withdraw support.

If the parent is unable or unwilling to obtain work to support his family, an authority can determine that only temporary support will be provided and a ticket home.

For further information, please contact:

<http://www.islington.gov.uk/nrpfnetwork> or e-mail nrpf@islington.gov.uk or tel. 020 7527 7101

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