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Response to the Home Office consultation “Reforming support for failed asylum seekers and other illegal immigrants”

Medical Justice, 9 September 2015

Medical Justice is a small charity that facilitates the provision of independent medical advice to those detained in immigration removal centres (IRCs). The organisation was established in 2005 and achieved charitable status in 2009. Medical Justice is the only organisation in the UK that arranges for independent volunteer doctors, midwives and psychologists to visit men, women and children in immigration detention. We reach more than 600 detainees with physical and mental health problems a year. The independent doctors document detainees' medical evidence of torture and any current mental or physical health problems and treatment needs, and challenge instances of medical mistreatment. Medical casework evidence informs our research and we work to identify and highlight developing trends and ongoing issues with healthcare in detention. Medical Justice works to bring the failings of the detention estate to the attention of the home office to effect lasting change, undertake strategic litigation and work with lawyers to provide them with evidence of systemic healthcare failures.

Opening comments

We are concerned that the time period allowed for consultation has been too short especially for August, when especially small organisation struggle with staff holidays. The provision of support for this highly vulnerable group is an important issue which requires proper consideration of the possible effects of any change to current policy.

Given the short amount of time available, this response is limited to the proposals concerning section 4 (1) and section 4 (2).

The repeal of section 4 (1)

Section 4 (1) support is provided to people who are either on bail or on Temporary Admission. It is only provided for those who would otherwise be destitute and who face exceptional circumstances meaning that they cannot return to their country of origin.

We are very concerned about the proposals, for 2 reasons:

Firstly, the proposals are likely to lead to an increase of destitution amongst an already very vulnerable group – migrants who are destitute and who face exceptional circumstances meaning that they are unable to return to their country of origin. Our clients on section 4(1) tend to be people who are unable to return due to a mental or physical health problem which renders them unfit to fly. About half of those who we have assisted in applying for section 4(1) support in the last year, have been pregnant women, either in the late stages of pregnancy or experiencing complications in their pregnancy rendering them unfit to fly. In many cases the medical problems preventing them from leaving the UK would also render them additionally vulnerable to the effects of destitution.

Secondly, accessing section 4 (1) support is crucial to enabling those in detention to apply for release. Depriving detainees of an avenue to access a release address is likely to lead to longer periods of detention and more detainees being detained unlawfully. We refer to ILPA’s response for more detail on this issue. There is consistent evidence that immigration detention tends to worsen

mental ill-health and release from detention can improve an individual's mental health. Time spent in detention was shown to be positively associated with the severity of mental health problems experienced¹².

The proposal to close off support for failed asylum seekers who make no effort to leave the UK at the point their asylum claim is finally rejected, subject to continuing support in cases with a genuine obstacle to departure at that point or in which further submissions are lodged with the Home Office and are outstanding (paras 20-21).

Section 4 (2) support is currently provided to refused asylum seekers who would otherwise be destitute and who meet one of the following criteria:

(a) he is taking all reasonable steps to leave the United Kingdom (...)

(b) he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;

(c) he 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;

(d) he has made an application for judicial review of a decision in relation to his asylum claim (...)

(e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998.

It is proposed to remove support from all of these groups (subject to transitional arrangements) except for those who have made further submissions and those leaving the UK. This is extremely concerning as it would expose a highly vulnerable group to destitution.

It is stated that support will continue to be available for those where 'genuine obstacle to departure' exist or who have further submissions outstanding, but it is difficult to be reassured by this provision as no further details are given. The current policy already provides for only those to be supported under section 4(2) where there are genuine barriers to departure (the 5 criteria set out above).

Those unable to leave the UK because of a medical reason are likely to be more vulnerable to the effects of destitution.

Other comments

Medical Justice frequently makes applications for section 4 support for our clients. Our experience is that the majority of section 4 (1) and section 4 (2) applications for those who are unable to leave the UK because of a medical reasons, are initially refused only for the decision to be later overturned at appeal. Our experience accords with the figures provided by ASAP in their response to this consultation. We are therefore extremely concerned about the proposal for there not to be a right of appeal against a refusal to continue support for asylum seekers who have become ARE but who face an obstacle to return.

For further information please contact:

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¹ Robjant, K, Hassan R, and Katona C. "Mental health implications of detaining asylum seekers: systematic review." *The British journal of psychiatry* 194.4 (2009): 306-312.

² Steel, Zachary, et al. "Impact of immigration detention and temporary protection on the mental health of refugees." *The british journal of psychiatry* 188.1 (2006): 58-64.