

Summary of the judgement of Mr Justice Popplewell in *Refugee Action v Secretary of State for the Home Department*, handed down on 9 April 2014

Asylum support

Asylum-seekers in the UK are ordinarily prohibited from working and are excluded from most forms of social security benefits. Instead, before their claim for asylum is finally determined, destitute asylum-seekers (except for unaccompanied asylum-seeking children) are provided with “asylum support” under section 95 of the Immigration and Asylum Act 1999.

It is the statutory duty of the Secretary of State for the Home Department to ensure that such support consists of “adequate accommodation” and support to meet asylum-seekers’ “essential living needs”. This second category of support is provided by a combination of services (such as NHS healthcare and free education for children) and weekly cash payments.

In accordance with this duty the Secretary of State in June 2013 set the following level of weekly cash payments under section 95 for 2013/2014:

- Single adult £36.62
- Qualifying couple £72.52
- Lone parent aged 18 or over £43.94
- 16 & 17 yr olds £39.80
- Children under 16 £52.96

The following additional weekly payments are also made to pregnant women and children under the age of three:

- Pregnant women £3
- Babies under the age of one £5
- Children aged one and two £3

In addition pregnant women are granted a maternity payment (for each pregnancy) of £300 which is payable in the period from 8 weeks before the estimated delivery date to 6 weeks after birth.

Background to the challenge

The payments set out above had not been increased since April 2011. Although, on the introduction of asylum support in 2000, payments had been fixed at 70% of the rates for income support for adults, and at the same level as income support for children, they had gradually fallen further behind the rate of such payments. By 2013 / 2014, asylum support rates were at the following proportions of equivalent income support payments:

- Single adult 25+ 51%
- Single adult 18-24 64%
- Qualifying couple 64%
- Lone parent 49%
- 16-17 yr old 61%
- Under 16 81%

For several years Refugee Action, a charity established in 1981 to support and work with refugee communities in order to facilitate the successful resettlement in the UK of refugees and asylum seekers, had along with other groups sought to persuade the Home Office that rates of asylum support cash payments were insufficient. It undertook research projects, met on numerous occasions with Home Office officials and participated in various parliamentary inquiries concerned with this subject. These efforts had not borne fruit.

The challenge

In July 2013 Refugee Action commenced judicial review proceedings against the Secretary of State's decision not to raise the level of asylum support in June of that year. It argued that the Secretary of State had:

- acted irrationally in her decision that the level of asylum support was sufficient to meet asylum-seekers' essential living needs, taking into account her obligation to provide minimum standards of support under the EU Reception Directive (in particular by taking account of irrelevant and erroneous considerations and failing to have regard to relevant factors);
- breached her public sector equality duty in coming to this decision; and
- breached her duty to have regard to the need to safeguard and promote the welfare of children in reaching this decision.

The judgement

Following a hearing on 11 to 13 February 2014, Mr Justice Popplewell handed down judgement on 9 April 2014.

The decision of June 2013 was quashed and the Secretary of State was ordered to retake the decision as to the level at which asylum support should be set, in accordance with the guidance contained in the judgement.

The judge concluded that it was necessary for him only to consider the first and third of Refugee Action's grounds for review since this was sufficient to require that the Secretary of State's decision be quashed. Among the key elements of the judge's reasoning were the following:

- The Secretary of State had wrongly failed to include the following categories of essential living needs in setting the level of cash support: essential household goods such as washing powder, cleaning materials and disinfectant; nappies, formula milk and other special requirements of new mothers, babies and very young children; non-prescription medication; and the opportunity to maintain interpersonal relationships and a minimum level of participation in social, cultural, and religious life.
- The Secretary of State had also wrongly failed to consider whether the following items were essential living needs: travel by public transport to attend appointments with legal advisors, where this is not covered by legal aid; and telephone calls to maintain contact with families and legal representatives, and for necessary communication to progress their asylum claims.
- In assessing the sums necessary to meet essential living needs the Secretary of State had made the following errors: (a) she had taken into account the proposition that since 2007 the level of cash support for adults and children had increased by 11.5% whereas in fact for most adults it had *decreased* in absolute terms by 11%; (b) she had failed to take account of the extent of the erosion of rates in real terms over several years given inflationary price pressures; (c) she had misunderstood and misinterpreted Office of National Statistics data on which she relied in support of the decision; (d) she failed to take reasonable steps to gather sufficient information to enable her to make a rational judgement in setting the asylum support rates; and (e) she misdirected herself in law as to her duties towards 16 and 17 year olds, and whether children within this age group are required to attend full-time education.

Refugee Action instructed solicitors at the Migrants' Law Project: Sonal Ghelani and Hannah Chambers. Counsel instructed were: Dinah Rose QC of Blackstone Chambers, Alison Pickup of Doughty Street Chambers and Ben Silverstone of Doughty Street Matrix Chambers.