



**Destitution of Young Refugees in the UK**

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# **The Destitution of Young Refugees in the UK**

By Aoife O'Higgins

Mahdi arrived in the UK alone at 16 and claimed asylum after being persecuted for his involvement with a Kurdish Independence Party in Iran. At 18, his application for asylum was refused and he lost his appeal. He was then made homeless by the local authority previously responsible for his care. A human rights assessment was later conducted by social services to determine whether this decision was unlawful. The assessment concluded that Mahdi should be offered support on a “discretionary” basis. Months of destitution have severely affected Mahdi’s mental health and the limited support he now receives does not guarantee him a secure future.

Many young asylum seekers in the UK face similar difficulties. In 2009, approximately 3,000 young people came to the UK to claim asylum in their own right. When their age is accepted to be under 18 – 35% of children have their age disputed (UKBA, 2011a) – young refugees are taken into the care of social services by virtue of the Children Act 1989. Local authorities are given a grant by the UK Border Agency (UKBA) to provide for young refugees in care, and up until the age of 21 or 24 if they are in full time education.

Where a young person has some leave to remain in the UK, their entitlements are relatively straightforward though service delivery is patchy (Brownlees and Finch, 2010). When young people have reached the end of the line their entitlements become more difficult to interpret. In a recent Court of Appeal case, a presiding judge reflected on the “impenetrable nature of the legislation” (paragraph 3) in relation to the legal welfare – asylum nexus. So where does this leave the young people directly affected? Why do young refugees become destitute? These are the issues I explore in this article. I also reflect on recent legislation of particular relevance to young refugees.

## **Processes and guidance for young refugees in the UK**

In the UK, the majority of young people under 18 are refused asylum and granted discretionary leave to remain until 17.5 according to the Home Office policy on unaccompanied minors (UKBA, 2011a). To extend their stay in the UK, they must make an in-time application for extension of Discretionary Leave. If this is refused they may have a right of appeal.

In previous years, young people would often wait years for a decision on their application to extend their discretionary leave. During this time, they continued to be eligible for support from the local authority. However, since early 2010, practitioners at The Children's Society – New Londoners Project have noted that UKBA now make decisions within a few weeks or months. Many young people therefore reach the end of the line very soon after their 18th birthday and are at risk of becoming destitute.

Small numbers of young people may also have pending asylum applications beyond their 18<sup>th</sup> birthday and some may have outstanding fresh claims for asylum if they have been able to provide new evidence towards their claim for protection. However, because these young people turn 18 without any leave to remain, determining their entitlements is complex and they may face the same risks of losing support as those who are at the end of the line.

## **Why do young refugees become destitute?**

Local authorities often seek to discharge young refugees over 18 who do not have leave to remain. These are young people who have an application for asylum or a fresh claim outstanding, or young people at the end of the asylum process.

In order to discharge young refugees from the care of the local authority, social workers must have regard for the Nationality, Immigration and Asylum Act 2002. This complex piece of legislation lists individuals excluded from any local authority support, namely failed asylum seekers (who do not have any outstanding applications or appeals) and who resist removal attempts as well as those who are unlawfully in the country and not (or no longer) asylum seekers. Therefore, young people who have an outstanding application should not be discharged. Where young people are at the end of the line, they may be excluded from support unless this would constitute a breach of their human rights (usually under article 3 or 8 of the European Convention on Human Rights). This should be determined in an assessment conducted by a social worker of the relevant local authority.

Where a decision is made to terminate support, young people are given a three-months grace period, funded by UKBA, to make arrangements for future care (UKBA, 2011b). In reality, as failed asylum seekers are not allowed to work, the options are limited to voluntary return or destitution. The Children's Society has found that many young people then become homeless until arrangements are made for removal to their country of origin. For young people from Iran or Eritrea, significant administrative barriers to removal mean young people may be destitute in the long-term.

Because legislation and guidance are extremely complex and change so often, practitioners at The Children's Society have commented that implementation on the front line is patchy. While local authorities grapple with their policies, young people are not consistently provided with the support they are entitled to. Some local authorities deal with large numbers of young people who no longer have any leave to remain. As a consequence, local authorities incur costs for which they do not have a budget. Such limited resources may create an incentive for local authorities to discharge a greater number of young refugees from their care without proper regard for legislation.

## **Destitution in practice**

In 2010, the Court of Appeal clarified the law, with respect to young people who have outstanding claims, in *R (SO) v London Borough of Barking & Dagenham* [2010] EWCA Civ 110, (hereafter referred to as *SO*). The judges in the case found that local authorities could provide accommodation to young people with outstanding claims where their welfare requires it. Moreover, young refugees should not be supported by Asylum Support (accommodation provided by UKBA), as it is not considered adequate accommodation for care leavers.

However, some local authorities do not acknowledge their responsibilities to support young people which follow this legislation. Naser came to the UK alone, at 16, after being tortured in Iran. He was in care for nearly a year in a large South London local authority, but was discharged when he exhausted his appeal rights at 18. When he submitted a fresh claim in May 2011 Naser was told by social services that support could not be reinstated, as per *SO*, and that “if he had returned to his country when we discharged him, he wouldn’t be in this situation now.” Local authorities do not get grants from UKBA for those young people affected in the *SO* case (UKBA, 2011b) and with recent government cuts, local authorities have very limited resources (Pemberton, 2011). Perhaps this is why they are keen to ignore legislation. In practice however,

this means young people become destitute, or, like Naser, are housed in inappropriate accommodation.

For young people at the end of the line, like Mahdi, the *SO* case does not apply and they are excluded from local authority support by virtue of the Nationality, Immigration and Asylum Act 2002. Recent guidance from UKBA states that local authorities must, in such cases, conduct Human Rights Assessments. However, there is still very little guidance or training for social workers. The No Recourse to Public Funds (NRPF) Network in Islington has a pro forma questionnaire for practitioners to use<sup>1</sup>. The guidance on the form is very limited. For example, it suggests that social workers should refer to UKBA Country of Origin guidance notes when making such decisions; however these are also problematic (Independent Chief Inspector of UKBA, 2011). For example, these guidance notes make no reference to specific risks on return to children. Even where local authorities follow statutory guidance before discharging young people, decisions are not based on sound information, legislation or social care good practice.

The young people I advise are on the brink of destitution due to poor decision making in local authorities and incorrectly applied (or ignored) legislation. Local authorities may be frustrated that UKBA is not fulfilling its part of the contract by removing young people back to their country of origin when their claims fail, leaving them to make difficult decisions and take the blame for the destitution of young people. In reality many young people are detained and removed, particularly young Afghans. But most find themselves destitute for some time before this happens. Many question whether the government has a moral obligation to avoid destitution of those living in the UK (Red Cross, 2010). It is urgent in the first instance that local authorities and social care services comply with their legal obligations to support young people and prevent destitution. Social care services exist first and foremost to safeguard and promote the welfare of children and young people. It is not unreasonable, therefore, to suggest that local authorities should reflect on their moral duty to avoid destitution of all young people regardless of their immigration status.

Aoife O'Higgins is a French / Irish national who holds a Masters in Refugee Studies from the University of East London, where she concentrated on issues affecting refugee children. She conducted research on the concepts of agency and vulnerability in refugee children in the UK. She has worked for 7 years in the refugee sector, most recently as a Young Refugee Rights Practitioner with The Children's Society – New Londoners Project. Aoife is about to embark on a Masters in Evidence-Based Social Interventions at University of Oxford.

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<sup>1</sup> The form can be found on the NRPF website:

[http://www.islington.gov.uk/community/equalitydiversity/refugees\\_migrants/nrpf\\_network/policy\\_guidance.asp](http://www.islington.gov.uk/community/equalitydiversity/refugees_migrants/nrpf_network/policy_guidance.asp)

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