

Migration, migrants and child poverty

Welfare benefits, housing and social services

Ignorance on the part of central and local government officials, exacerbated by the pressures of budget constraints, make migrants and their families particularly vulnerable to being unlawfully refused access to welfare benefits, housing and social services.

European Union (EU) nationals, as the largest overseas-born section of the UK population, are probably the most affected, yet no organisations address their specific needs and the Department for Work and Pensions keeps no statistics on their benefit claims: how many are refused or why.

In general, EU nationals must have a right to reside in the UK in order to access means-tested benefits. Usually, this means being in work or looking for work. Dependent relatives of EU workers, people involuntarily unemployed or temporarily incapable of work might all also have a right to reside. Nonetheless, in our experience, people in these categories are commonly – and incorrectly – refused benefit and their applications suffer lengthy delays – periods of eight weeks or more are not uncommon. Refusal of income support or jobseeker's allowance will be followed by refusal or withdrawal of housing benefit and council tax benefit and (often by eviction and magistrates' liability orders) refusal by the local authority of homeless accommodation.

As a result of a decision that there was no right to reside:

- a Portuguese woman was refused income support and housing for herself and her child after leaving her husband, and had to share a one-bedroom flat with two other women and five children;
- a Polish man with a young baby lived on only child tax credit and child benefit for over three months after he could no longer work as a result of depression brought on by his wife's sudden death from an asthma attack;
- a Portuguese woman was wrongly refused child tax credit and had to support herself and her two children on jobseeker's allowance at the single person's rate.

Maria Teixeira, a homeless Portuguese woman and the primary carer of a child with the right to

reside in the UK, had to go to the European Court of Justice to establish her right to housing. And we are currently waiting for the European Court's decision on the refusal of income support to Maria Dias, also Portuguese, who gave up work to look after her sick child who was born in the UK.

EU legislation is based on the model of the male bread winner. No provision is made for single pregnant women. As a result, in late pregnancy and after childbirth, female EU workers are frequently left without any welfare support, whereas UK nationals can claim income support. Last year, a 32-year-old French woman, Christelle Pardo, was left in this desperate position after being wrongly refused benefit and killed herself and her baby son by jumping from a sixth-floor balcony.¹

Children in the UK without their parents are particularly powerless. They depend on local social services departments for their income, education, adequate accommodation and parental guidance, including with any asylum process.

However, we have had cases where social services departments have refused responsibility by wrongly disputing the ages of unaccompanied asylum-seeking children who arrive in the UK without documentary proof. If a child is over 18 and does not have a disability or health problem, responsibility can be passed to the UK Border Agency to provide asylum support (previously support under the National Asylum Support Service (NASS)).

Ahmad, a 16-year-old from Iran, was assessed to be over 18, placed in NASS accommodation with adults and given no parental guidance. He obtained his birth certificate from Iran, but the Home Office lost it. When we found it on a Home Office file, social services eventually accepted that Ahmad was a child and placed him with children of his age in supported accommodation. By that time, he had fallen in with the wrong crowd and was in prison for alleged participation in a knife attack. The charges against him were dropped, but the bad memories remain. With the correct support and guidance, this might have been avoided.

The same happens at younger ages. Assessing a child of 12 to be aged 14 means that social services responsibility ceases two years earlier than would otherwise be the case. This is what happened to Mohammed, an asylum seeker from Afghanistan. As a result, he was placed in the wrong year at school and unable to follow the lessons. He complained of isolation as no



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one would play with him. He was bullied. This year, according to the local authority, he turned 16 and was therefore deemed old enough to go to college. However, a couple of months later the local authority finally accepted evidence we had obtained about his age, which had been available to it for the previous two years. Mohammed must now return to school as a 14-year-old. He does not feel able to return to the same school and social services are being slow in finding him another one: he has become a 14-year-old out of education.

Maria was raped by a soldier in the Democratic Republic of the Congo and was afraid of men. She was assessed as over 18 and placed in a mixed NASS hostel for adults, where she had problems sleeping, and felt fearful and isolated. She seemed under 18, but the evidence did not prove it. However, we obtained a psychological assessment showing that she had post-traumatic stress disorder and was functioning as though with borderline learning difficulties. Social services therefore moved her to her own flat and accepted responsibility for supporting her.

Failures in assessing the needs of children in care affect not only their immediate development, but also their long-term chances of successfully becoming independent. Roberta had been looked after by social services after she had been abandoned by her parents at seven years old. Social services assumed that she was unlawfully in the UK and not allowed recourse to public funds. At age 18, they failed to comply with their legal obligations to provide a detailed plan for her future, and denied all further responsibility for her. She became involved in drugs and criminality and as a young adult ended up in prison, convicted of robbery. She was 20 when we obtained her Home Office file showing that she had indefinite leave to remain in the UK and was therefore entitled to continuing support and assistance until 21 or, if following an education plan, at least until 24.

Children without leave to remain only get assistance from social services beyond 18 if they have representations pending before the Home Office or if it is necessary to avoid a breach of their human rights – for example, to avoid being destitute. Matthew fled Uganda after seeing his father killed in front of him by government officials. Social services agreed to support Matthew when he came to the UK but, after his 18th birthday, support was sporadic and he had to prostitute himself to get money to eat. He came to see us when he was 20 and social services were threatening to stop his support on his 21st birthday. Since he had representa-

tions pending at the Home Office and wanted to study, the High Court ordered the local authority to continue support.

Current government proposals will make matters worse for migrant children and their families. The cap on housing benefit will result in families having to move from areas where they have lived for many years and where established networks of support keep down the cost of childcare while parents go out to work.

Withdrawal of housing benefit for separate accommodation for 25 to 43-year-olds will have a detrimental effect on people with mental health problems who are unable to share – for example, because of compulsive behaviours or traumatic memories of torture and rape.

More generally, tighter public sector budgets will lead to greater pressure on officials to make negative decisions about access to welfare benefits, housing and social care. Meanwhile, the government has announced plans to cut £350 million from civil legal aid – a fund that paid for the legal challenges brought by people like Ahmad, Christelle and Maria. The government proposes removing funding from immigration (not asylum) and housing cases, and from all welfare benefits and education advice.

And while the government has emphasised the importance of judicial review as a legal remedy for unlawful official decisions, it is also taking steps to ensure that very few solicitors will continue their involvement in this kind of work. The freezing of hourly rates for legal aid and the introduction of fixed fees have led to some firms ending their legal aid provision. The legal aid review proposes further cuts, including reducing hourly rates by 10 per cent. This can only reduce access to justice. The importance of judicial review might be measured by the fact that, with the tragic exception of Christelle Pardo, all the cases mentioned in this article were resolved by the threat or actuality of judicial review proceedings. So while the volume of wrong and unlawful official decisions is set to rise, the ability of the individual to challenge those decisions will be much reduced. ■

Nadine Clarkson and **Lara ten Caten** are solicitors with Hansen Palomares

1 The *Guardian*, 8 January 2010