Caring New Labour

Copy of a letter from Fiona Mactaggart, Parliamentary Under Secretary of State, replying on behalf of David Blunkett to a letter expressing concern at the effects of Section 55.

Dear (MP)

Thank you for your letter dated 15 September to David Blunkett enclosing correspondence from (C) of (address), Nottingham, who is concerned about the impact of Section 55 of the Nationality, Immigration and Asylum Act 2002 on asylum seekers. I am replying on David's behalf.

Section 55 of the 2002 Act has the effect of preventing the provision of support to asylum seekers who have not made a claim as soon as reasonably practicable. The aim of the policy is to ensure that help and support go to those who really need it rather than people who are simply using the system to get money or stay in the country when they should not be here. It is entirely reasonable to expect those fleeing persecution and coming here seeking our protection to make an asylum claim as soon as possible on their arrival, and we will of course continue to support them. However, we must send a strong message to economic migrants seeking to abuse our systems that they will not be supported at public expense.

Each Section 55 case is considered carefully on its individual merits. All applicants attend a detailed interview and are given every opportunity to explain the circumstances of their case, including how and when they arrived and how they have spent any time in-country prior to making an asylum claim. Those who can provide a convincing account that they made their claim at the earliest possible opportunity in the circumstances will be granted support. However, those who are unable to provide a credible account are not eligible for support.

There are a number of important safeguards built into the legislation to ensure that those who are vulnerable are protected. Families with children and those who can show they would suffer treatment contrary to the European Convention on Human Rights (ECHR) will receive support even if they did not make their asylum claim at the earliest opportunity. Asylum seekers with care needs and unaccompanied asylum seeking children are supported by local authorities in the same way as before the introduction of the legislation. It is always open to any applicant who has been refused support under Section 55 to ask that their case be reconsidered should their circumstances change, or if they have additional information they wish to be taken into account. It is also open to many asylum seekers to leave the UK at any time through the Voluntary Assisted Returns Programme.

Figures published in the Home Office Asylum Statistics for the 2nd quarter of 2003 showed that of the 3,110 cases referred to the National Asylum Support Service (NASS) for a Section 55 decision, 1,830 asylum seekers were notified that they were ineligible to apply for NASS support. 265 cases were considered eligible as their asylum claims were made as soon as reasonably practicable, 540 were exempted as family applications and a further 475 were exempted to avoid a breach of ECHR rights. In the same quarter, NASS received 9,985 applications for ongoing support in dispersed accommodation across the UK, including those from applicants who made their claim at a port on arrival and those who had been judged to have made their in-country claim as soon as reasonably practicable. This is 37% lower than the previous quarter, which reflects the lower levels of asylum applications in the early part of the year.

I recognise that there are concerns from the voluntary sector and others about increased levels of destitution, and I am aware of the reported instances of isolated demonstrations and gatherings of asylum seekers in the London area. However, it remains the case that most asylum seekers refused support do not become destitute, finding support from friends, family or community or

charity groups. In the majority of cases, asylum seekers will have received a decision on their asylum claim within two months. We will, of course, continue to work closely with our voluntary sector partners, local authority bodies and the police to monitor the impact of Section 55.

You may be aware that the Court of Appeal judgement in March this year gave backing to the Government on all the key points of law in relation to Section 55 and, in particular, there was no declaration of incompatibility with the ECHR on any issue. Mr Justice Maurice Kay's subsequent ruling of 31 July confirmed that the Section 55 decision making procedure is fair and reasonable in line with the Court of Appeal on the issue of when Article 3 of the ECHR is applicable.

The Court of Appeal judgement was handed down on 23 September and provided further clarification of the kind of circumstances where Article 3 would be relevant. We are of course complying with the Court's ruling when considering Article 3 challenges made by way of judicial review or requests for reconsideration. There is however no simple test that can be applied in every case. Each case has to be judged in the light of all the relevant circumstances.

Yours sincerely,
Fiona Mactaggart.

(Letter paper footer: "Building a safe, just and tolerant society)