Written Submission

Equal and Human Rights Committee

Scottish Parliament

Destitution, Asylum and Insecure Immigration Status in Scotland

Dr. Gina Netto

Overview

This submission identifies some of the main findings which have emerged from research into destitution and asylum in the UK, including in Scotland, and considers the implications for policy. It begins by considering the policy context for the reception and support of asylum-seekers in Scotland. It then considers definitions of destitution and how they apply to asylum-seekers and the main factors which contribute to the phenomenon. This will be followed by a discussion of studies which have examined levels of destitution, experiences of this form of hardship and possible routes out of this manifestation of extreme poverty. The submission will conclude by drawing together the main findings and considering the implications for Scottish Parliament and how public services can mitigate or respond to destitution.

Policy context

The Scottish Government has responsibility for integration, social inclusion and key policy areas, including housing, health, social care and education. However, asylum and immigration are reserved matters, responsibility for which resides with the Westminster government. Following the Smith agreement, some aspects of welfare which were formerly reserved have been transferred to Holyrood. The Scottish Government’s Refugee Integration Framework which takes the view that the process of integration begins at the asylum-seeking stage, provides a useful framework for considering what can be done to prevent and reduce the risk of destitution among individuals seeking international protection in Scotland; to mitigate against the effects of destitution and to facilitate sustainable routes out of such hardship. Outwith London, Glasgow is the city with the largest number of asylum-seekers in the UK.

Defining destitution

The main reference to destitution in UK law is found in Section 95 of the Immigration and Asylum Act 1999, which determines the circumstances under which asylum seekers can receive various forms of support. It states that: “… a person is destitute if:

a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.”

Reinforcing the significance of accommodation and the ability to meet essential living needs, two ‘destitution tallies’ by six refugee agencies have defined the phenomenon as ‘currently [having] no

1 Associate Professor/Reader in Migration, The Urban Institute, Heriot Watt University
access to benefits, UKBA support or income and either street homeless or staying with friends only temporarily.’ (Smart and Fullegar, 2008; Smart, 2009).

These definitions overlap with that produced through a recent study which was generated through consultation with experts and the public and is intended to capture all groups of people in modern UK who are destitute (Fitzpatrick, et al, 2015). According to this definition, people are destitute if

a) They, or their children, have lacked two or more of the following six essentials over the past month, because they cannot afford them:
   - Shelter (have slept rough for one or more nights)
   - Food (have had fewer than two meals a day for two or more days)
   - Heating their home (have been unable to do this for five or more days)
   - Lighting their home (have been unable to do this for five or more days)
   - Clothing and footwear (appropriate for weather)
   - Basic toiletries (soap, shampoo, toothpaste, toothbrush)

b) Their income is so extremely low that they are unable to purchase these essentials for themselves.

Fitzgerald et al (2015) point out that the destitution 'basket of goods' is austere and does not include everyday essentials such as taking a bus to get to an official appointment, household cleaning materials, three meals a day, and non-prescription medication. The study also notes that the goods selected are considerably narrower than that specified in a recent High Court judgement, which held that, in the case of asylum seekers, essential living needs include not only household goods but also a minimum level of participation in social, cultural and religious life.

Fitzgerald et al (2015) also note that the income thresholds set in the second criteria may be interpreted as meaning that certain groups supported by the UK welfare system are, by definition, destitute since their current weekly allowances (excluding housing costs) fall below these thresholds. Included among these groups are asylum-seekers. However, since many asylum-seekers are living in accommodation provided by the Home Office, which includes the provision of heating and lighting, they do not have to pay for this out of their weekly income. While this may be far from sufficient in preventing destitution within this group, it is not certain that all are, by definition, destitute.

**Causes of destitution among asylum-seekers**

The causes of destitution among asylum seekers are widely attributed to two major long-term trends in immigration policy and legislation: the systematic reduction of welfare and housing entitlements available to asylum seekers on their arrival in the UK (Phillips, 2006; Netto and Fraser, 2009); and restrictions in access to the labour market (Gillespie, 2012). Refused asylum-seekers are not allowed to work and generally have no recourse to public funds. They can only apply for very limited state support under stringent conditions. This makes them particularly vulnerable to destitution.

Since the early 1990s, successive Acts of Parliament have removed many of the legal and welfare entitlements which asylum-seekers had previously had in the UK. The 1999 Immigration and Asylum Act in particular, brought about significant changes to the way in which housing and support provision for asylum seekers was provided. The Act centralised support mechanisms under the National Asylum Support Service (NASS) of the Home Office, which came into operation in 2000. NASS negotiated housing provision through a network of regional consortia, who secured contracts
with local authorities, private landlords and housing associations, often in areas of 'low housing demand'. Asylum-seekers applying for Section 95 support for the period during which their asylum application and any subsequent appeal is considered, could apply for subsistence only support or for subsistence and accommodation. Those who apply for the latter have to accept accommodation in a 'no choice dispersal' area, which will be outside of London and the South East. Consequently, they may be sent to areas where they do not have access to informal support from community networks.

During this time, further changes in the form of the Nationality, Immigration and Asylum Act 2002 have increased control over the asylum-seeking process through the introduction of accommodation and removal centres and the introduction of Section 55, which prohibits support for asylum seekers who fail to make their claim as soon as 'reasonably practicable' after their arrival in the UK. In 2005, the Court of Appeal ruled that the Home Office was in breach of Article 3 of the European Convention of Human Rights, which prohibits ‘torture and inhuman or degrading treatment’ (Crawley et al., 2011). Although Section 55 remained, asylum-seekers could now only be denied support if NASS was satisfied that they had alternative means of support.

Netto and Fraser’s Glasgow-based research (2009) found that asylum-seekers were particularly vulnerable to homelessness during the transition from asylum-seeker to refugee status. Since then steps have been taken to reduce this vulnerability. However, concerns related to welfare, housing and homelessness have been exacerbated since 2012 when council provision ceased and private sector operators were allowed to bid for contracts (Allsopp et al, 2014).

Many current and refused asylum seekers viewed their lack of access to the labour market as the major cause of their destitution (Fitzpatrick et al, 2016). Since 2002, asylum applicants have not been allowed to work until given a positive decision on their application or until they have spent more than one year waiting for the decision (Aspinall and Watters, 2010). The goal of these policies appeared to be to reduce ‘incentives’ for asylum seekers to come to the UK as they are sometimes viewed as de facto economic migrants. Social isolation could be particularly prevalent among these and other destitute migrants, and a lack of knowledge about the UK in general and about support systems in particular is also a contributory factor (Fitzpatrick et al, 2016).

Other causes of destitution include the practice of under-claiming of Section 4 support by many refused asylum-seekers (Smart, 2009). Section 4 is a form of accommodation and subsistence support given to refused asylum seekers who can show that they are destitute (according to the definition in law), and is intended as a short-term mechanism for people about to leave the country. In order to receive Section 4 support, refused asylum seekers must be willing to return to their country of origin on a voluntary basis. If an individual cannot, or will not, commit to voluntary return, and they cannot be forcibly returned by the UK government for logistical reasons, they may risk long-term destitution. Failure to apply for support could be for a number of reasons, for example because asylum-seekers are unaware that this support is available or have not yet had the opportunity to claim support (Smart, 2009; Green, 2006).

It is important to note that both Section 95 and Section 4 forms of support, particularly the latter, are paid at much lower rates than those provided through mainstream benefits, amounting to around half of that received by equivalent households under Income Support (Refugee Action, 2014). Asylum-seeking respondents who were supported by the Home Office in Fitzgerald et al’s (2016) study highlighted the very low levels of Section 95 and Section 4 benefits as the main reason for their predicament. From August 2015, Section 95 levels have decreased for families and lone parents to £36.95 for each household member.
Since April 2011, there has been no increase in the rates of support paid under Section 95. In April 2014, following a judicial review initiated by Refugee Action, the High Court ruled that the way the Secretary of State had calculated levels of support provided under Section 95 was unlawful and ordered a reassessment. The Secretary of State provided more detailed calculations in August 2014 and based on these decided not to increase the levels of support. Also importantly for this discussion, Section 4 support is delivered through a plastic payment card – Azure – which can only be used with certain retailers. It has been argued that the use of the card is dehumanising and humiliating, and increases the vulnerability of individuals to hostility (Mulvey, 2009; Reynolds, 2010; Carnett et al, 2014a).

A series of studies have identified administrative errors and delays, and the poor quality of decision-making as major causes of destitution among refugees as well as asylum seekers, and have stressed that problems of destitution are inherent in the asylum system (Refugee Survival Trust, Brown, 2008 and Lewis, 2009). Concern has been expressed, for example, at the number of successful asylum applicants who become destitute after receiving leave to remain, with the transfer period from asylum support to mainstream benefits being described as a 'real ordeal' for many new refugees (Carnet et al., 2014b).

**Estimating destitution among asylum-seekers**

Reflecting widespread concerns relating to levels of destitution among asylum-seekers, several studies have estimated the extent of destitution within this group and documented its impacts at a local level (Coventry Refugee Centre, 2004; Malfait and Scott-Flynn, 2005; Amnesty International, 2006; Dumper et al., 2006; Brown, 2008; Refugee Action, 2006. Smart and Fullegar, 2008), including in Scotland (Green, 2006; Refugee Survival Trust, 2005; Mulvey, 2009; Smart, 2009; Gillespie, 2012). While it is not possible to compare the findings of these studies due to differences in the definitions used and the methods employed, these studies have played a valuable role in documenting and raising awareness of the vulnerabilities of this group to this form of extreme material need.

Fitzpatrick et al’s UK wide study (2016) which encompassed all groups of people who were destitute found that among the migrant (non-UK born) respondents, those who were current or former asylum-seekers were the largest group (38 per cent). Within this group, 41 per cent were awaiting a decision on their asylum application. Only 9 per cent of those who had sought asylum in the UK reported having been refused it, but a further 13 per cent were not clear about their status. The proportion of refused asylum seekers is lower than might have been expected based on previous research (Smart and Fullegar, 2008; Smart, 2009; Green 2006). The proportion of refused asylum-seekers in these latter studies was 58%, 60% and 76% respectively. It may be that in Fitzgerald et al (2016)’s study, some of the individuals who reported that they were awaiting a decision had had their claim refused and were awaiting the outcome of the appeals process. Overall, a recurrent finding is that refused asylum-seekers constitute a group who are of particular concern.

Due to the need of undocumented migrants to live undetected by authorities, it has proved very difficult to estimate how many are actually living in the UK, let alone what proportion are at risk of destitution or experiencing actual destitution. A Greater London Authority study (Gordon et al., 2009) estimated that at the end of 2007 there were 121,000 visa overstayers and people who had entered the country illegally in London. The study did not attempt to assess how far these people were able to support themselves or how many might be destitute or at risk of becoming so.

**Experiences of destitution**

Destitution has been found at all stages of the asylum-seeking process, from initial application, to the transition to refugee status (Carnet et al., 2014b). It tends to be a long-term condition for asylum
seekers (Green, 2006, Smart and Fullegar, 2008; Smart, 2009). For example, both Green (2006) and Smart (2009), found that nearly half (47% and 48% respectively) had experienced destitution for more than six months, while Gillespie (2012) found that on average destitute asylum seekers have been experiencing this form of extreme hardship for 1.5 years. Smart (2009) found that a third of destitute refused asylum seekers had been in this position for more than two years, while Fitzgerald et al (2016) indicated that extended periods of destitution among asylum-seekers were reflected in their prolonged use of foodbanks.

The British Red Cross (2010) found that 69 per cent of asylum-seekers and refugees who were destitute were staying with friends, and 28 per cent reported sleeping rough at some stage. Eighty-seven per cent of respondents often survived on only one meal a day. Fitzgerald et al (2016) found that experiences of sleeping rough were particularly common among refused asylum seekers. Although a mobile phone was an essential lifeline to stay in touch with family or friends, or to progress official processes such as asylum applications, few could afford phone credit.

Three Scotland-based studies looked directly into the destitution experienced by asylum-seekers and refugees (Green, 2006; Refugee Survival Trust, 2005; Mulvey, 2009). Green (2006) found that half of destitute asylum-seekers and refugees relied on family, friends and neighbours to obtain shelter. Survey participants used support agencies primarily to obtain information and advice; one in four received a small cash payment of less than £50 a week. A study by the Refugee Survival Trust (2005) found that the effects of destitution included homelessness, lack of secure access to food, negative effects on mental health and feeling disempowered. The findings also suggest that asylum-seekers who experience destitution are not only likely to stay in this condition for a prolonged period but are likely to experience this extreme form of poverty in the future.

While relatively little research has been conducted into the circumstances and hardships faced by undocumented migrants, there is a recognition that they are at high risk of homelessness and destitution because they cannot access mainstream housing, welfare benefits and employment (Kumarappan et al, 2014). Reinforcing this view, Fitzgerald et al (2016) found that refused asylum-seekers and migrants who were neither from the EEA nor connected to the asylum system (and so were most likely undocumented migrants) had the lowest incomes of all. Yet others have highlighted the links been destitution and exploitation in the labour market, including forced labour among individuals who are not legally allowed to work, and who thus feel compelled to work in the ‘black economy’ (Lewis et al, 2013).

**Routes out of destitution**

For current and refused asylum-seekers, their lack of legal status emerges as a major barrier to navigating a route out of destitution, indicating the need for access to legal advice and speedy and efficient handing of asylum applications. Increasing the level of benefits that this group are entitled to would prevent destitution or enable them to find a route out of such hardship. Amongst both these groups and undocumented migrants, finding employment, coupled with education and training, or opportunities for volunteering, are all important pathways out of destitution.

**Conclusions**

The specific vulnerabilities of asylum-seekers and undocumented migrants to destitution, as defined legally, by experts and the public, is well-established. Similarly, the main causes of the phenomenon have also been identified. These include reductions in welfare and housing entitlements available to asylum seekers; very low or no income; restrictions in access to the labour market and administrative errors or delays in the asylum-seeking process. Refused asylum-seekers are
particularly at risk. Also of concern is that the experience of extreme material deprivation among this group is prolonged. Links between destitution, exploitation in the labour market and forced labour have also been established.

**Policy Implications**

Given the close relationship between destitution and low or no income, an obvious policy response for Scottish Parliament would be to ensure that asylum-seekers are supported in claiming the benefits to which they are entitled, particularly since lack of familiarity with the system and language barriers may increase their difficulty in doing so.

Following the Smith Commission, the Scottish Parliament will have the powers to legislate for discretionary payments in any area of welfare and set up a system to identify risks to the wellbeing of individuals. There may therefore be scope for increased responsiveness to the high levels of mental ill-health among certain groups of individuals, including asylum-seekers traumatised by loss of family and possessions through war and political conflict.

Within the current legal and policy UK framework, asylum-seekers are not allowed to work. However, during the asylum-seeking stage, skills levels could be assessed, as a means of preparing individuals for ESOL, education, training and employment, and ensuring their access to employability programmes as soon as they receive a positive decision. Such programmes could be tailored to meet the specific needs of asylum-seekers and involve liaison with public sector and other organisations to facilitate entry into the labour market and decently paid, secure work.

Transitional systems for those accepted as having a valid claim for asylum in the UK, including those of an administrative or technical nature, should be improved to ease the situation for newly recognised refugees.

Providing better emergency protection for those affected by destitution could help many of those at risk of or experiencing destitution, including children. This should include access to legal advice, housing and health services, and support for those identified as being involved in forced labour.

Addressing current levels of benefits paid to asylum-seekers, including those whose claims have been refused, is contentious and would require discussion with the UK Government. The illegality of work among asylum-seekers, is similarly contentious but could potentially be discussed with the UK Government, as part of a strategic response to addressing the labour market demands within Scotland.

**References**


British Red Cross (2010) Gone but not forgotten. London: British Red Cross


