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UK immigration policy: restrictions on asylum seekers' right to study

Helen Baron

Changes to immigration legislation in the UK have led to restrictions on many asylum seekers' right to study.

The Immigration Act 2016 brought a new regime of 'immigration bail'¹ into force in the UK, expanding the powers of the UK Secretary of State for the Home Department ('the Home Office') to impose restrictions on asylum seekers, including on their right to study.

While the 2016 Act was being drafted, all indications were that the application of this restriction on study would be exceptional. It is also clear from parliamentary discussions around the passing of the Bill that the power to restrict study was intended to be used only rarely and for specific purposes.

However, when the relevant provisions came into force in January 2018, charities and asylum caseworkers saw that the imposition of study restrictions was widespread. The Home Office's response to a freedom of information request reveals that between 15th January and 31st May 2018, of the 53,901 individuals given immigration bail forms (a document defining the conditions of a person's immigration bail) by the Home Office, 12,642 individuals (24%) were prohibited from studying. The stories of some of the individuals whom our law firm has assisted over the past eight months show a range of experiences.

Aims and hopes

Sharif, Henry and Farooq² arrived in the UK as unaccompanied minors and were enrolled in school and then college. As young people leaving the care system, they were eligible for State support, including a stipend and accommodation provided by the local authority, on condition that they were engaged in study and would remain studying until the age of 21. **Josie**, who came to the UK with her mother and brother, won a scholarship for asylum seekers

which allowed her to accept a place to study biomedical sciences at university, where she hoped to build on her impressive secondary qualifications and become a scientist.

Mustafa wanted to improve his English so that once he got refugee status he could study illustration at university and build on the many exhibitions and competitions in which he had already participated. **Ali**, a victim of trafficking, aspired to study law and policing at university, in order to one day start an anti-trafficking organisation and help others in his situation. **Mary**, also a victim of trafficking, was encouraged to enrol in assertiveness, healthy eating and understanding anxiety classes at a college as part of her recovery while she was on the waiting list for counselling. **Kit**, a young mother, wished to attend an ESOL (English for Speakers of Other Languages) course, which offered childcare facilities. She wanted to learn English to be able to care for her daughter better, to more easily navigate supermarkets, buses, doctors and lawyers, and to make friends with other parents.

Effects of restrictions on study

When a query was raised in Parliament in April 2018 about the objectives of the study restrictions and numbers to whom it had been applied, the Immigration Minister replied that individuals could discuss possible amendments to their bail conditions with staff at the Home Office centre where they report on a regular basis. However, after the new regime came into force, each of the individuals whose stories are recounted here was informed that they no longer had the right to study in the UK; none was asked about their plans to study or whether they were enrolled in studies at the time. No one explained the restriction, or provided

any reasons for the change. Breaching immigration bail conditions is a serious matter – had they continued to study, their ‘non-compliance’ could have been held against them in their asylum claims. Many did not even realise that the restriction had been applied to them until it was spotted by a social worker or their asylum caseworker. Those who tried to request any changes to this condition were told to submit their requests in writing via their solicitors. However, those requests sent by asylum seekers’ legal representatives were ignored. In our experience, the only way to get the restrictions removed was to threaten the Home Office with court proceedings if they did not do so. In many cases, this was not enough, and we were forced to pursue court proceedings.

Sharif, Henry and Farooq were placed in a terrible position, caught between ceasing their studies – and so losing their local authority support (including accommodation) – or continuing to study, potentially breaching their bail conditions. Mary was deeply concerned that the courses she had been enrolled on as part of her recovery would be considered ‘study’. Mustafa and Kit had to withdraw from their ESOL courses, while Josie and Ali had their offers to study withdrawn by the university.

According to the Home Office’s own policy on immigration bail, restrictions must achieve the legitimate purpose of maintaining contact with individuals while their asylum claims are being processed and reducing the risk of individuals absconding. It is hard to envisage a situation in which a restriction on a person studying could logically be said to further this legitimate aim. Indeed, when challenged in judicial proceedings or correspondence prior to commencing proceedings, the Home Office has conceded in every case, removing the restriction and failing to provide any reasons for its imposition.

Alteration of policy

On 8th May 2018, following a series of successful judicial challenges, media attention and intervention by Members of Parliament, the Home Office altered its policy, substantially amending the section

on study restrictions. The new policy provides more guidance about who should be subject to study restrictions and clarifies that in most situations asylum seekers should and will be allowed to study.

The Home Office has also instigated a process to identify those to whom the study condition had been applied erroneously and send new immigration bail forms without study restrictions to these individuals. By the end of that month the Home Office had removed study restrictions from 4,709 individuals, presumably leaving 7,933 individuals still restricted at the end of May 2018. A senior representative of the Home Office must now first approve the application of a bail condition. A letter has also been sent to non-governmental organisations to enable them to encourage individuals who may have concerns to contact the Home Office to seek a change to their bail conditions. However, despite these measures, individuals who have had study restrictions incorrectly and unreasonably applied to them continue to be referred to us.

The battle over study restrictions shows how statutory powers, granted for a specific and restricted purpose, can be misused by a government whose policies make life very difficult for those without legal status in the UK. Charities, politicians, the media and support workers have a vital role to play in monitoring how such executive powers are applied, in order to prevent unjustified and irrational limitations on individuals’ rights and freedoms.

Helen Baron HelenS@Duncanlewis.com
Caseworker, Duncan Lewis Solicitors
www.duncanlewis.co.uk

1. Immigration bail is the temporary status granted to individuals without leave to remain (such as asylum seekers). This permits them – subject to certain conditions – to remain in the UK and reside in the community (often restricted to a particular address) while their claims are processed or their appeals are heard. All asylum seekers in the UK who are not detained are on immigration bail.
2. All clients’ names have been changed to preserve their anonymity.

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