

ASAPNews

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EDITORIAL
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ASAP director

If the UKBA is serious about cost efficiency it needs to prioritise the cost savings to be made from improved initial decision making on support. This would reduce the number of unnecessary appeals and hardship and stress on already vulnerable adults and children. It is a key recommendation from our new report, 'No Credibility: UKBA decision making and section 4 support', which highlights what anyone involved in assisting asylum seekers has known for a long time. The decision-making process is flawed and distorted by a culture of disbelief that treats applications not on a case-by-case basis but by a 'one-size-fits-all' unfair and unbalanced assessment of credibility.

This is what leads to the appeals process being as 'costly' as it is and should be tackled in the first instance by improving UKBA training for caseworkers so they understand and apply the legal test for destitution and can assess applications fairly and lawfully.

The other issue highlighted is the dramatic impact that good quality legal advice and representation can have on the lives of asylum seekers, as over 80% of those assisted by ASAP won their appeals and secured housing and subsistence support. Yet cuts to refugee and advice services mean there is less advice available, while proposals to end all public funding for asylum support will make matters even worse.

It is clear that if asylum seekers are to participate in such a complex and flawed system they must have access to free legal advice and representation at all stages of the support process.

UKBA decision making is flawed – ASAP report

A NEW ASAP REPORT highlights the highly flawed nature of UKBA decision making on section 4 support applications. Based on research on London-based clients over an 18 month period, the report found that over 80 per cent of UKBA decisions to refuse support on the grounds that applicants were not destitute were overturned on appeal – a significantly higher appeal overturn rate than in other cases.

The report also reveals the extent of the vulnerabilities of London-based asylum seekers and gives a good insight into what led to them having to apply for support, usually after many years surviving without it.

The key findings of the report, 'No Credibility: UKBA decision making and section 4 support', are:

- UKBA caseworkers do not understand and/or apply the legal test for destitution when making decisions, ignore evidence submitted and do not follow their own guidelines on the evidence required to back up applications.
- Assessment of credibility is unfair and unbalanced and changes in circumstances which have led to people having to make a support application are routinely disregarded.

- UKBA decision letters are of poor quality, badly structured and difficult to understand, causing confusion among applicants and advice workers and undermining confidence in the system.

'Assessment of credibility is unfair and unbalanced and circumstances that have led to people making a support application are routinely disregarded'

- Refused asylum seekers in London appear especially vulnerable. Many applicants had serious mental and physical health problems – sometimes unusual conditions requiring long term and specialist care.
- More than 90% applied because of a significant change in their own life or the lives of family and friends. Pregnancy or the birth of a child was the most commonly stated reason for having to move from family and friends as they could no longer continue to support applicants.
- It is unclear how UKBA decision making is consistent with its statutory duty to safeguard the welfare of children. Not one decision letter made reference to how the welfare of the 23 children listed as dependents on applications was taken into consideration.
- Most applicants had to wait for more than two weeks for a decision, which given their circumstances, is too long.

The report can be downloaded at:
www.tinyurl.com/6eaj72x

**COUNTDOWN
TO SPONSORED
WALK...**

ASAP is taking part in the London Legal sponsored walk in central London on 16 May. The walk is a fun way to raise much needed core funding for our work at the asylum support tribunal. If you are interested in joining our team on the day – currently 13 strong – email sinead@asaproject.org.uk – or to sponsor the walkers go to: www.virginmoneygiving.com/asap



Q&A

Patrick Jones
Asylum Aid

What's your job title?

I'm legal team manager.

What does Asylum Aid do?

We provide legal advice and representation to the most traumatised and vulnerable asylum seekers – women survivors of gender specific violence, unaccompanied children, people rendered destitute. In 2010, we succeeded in 83% of the cases where legal representation was provided. We use this evidence to campaign for a fairer and non-discriminatory asylum system.

How are you coping in these difficult times?

Combined with the ongoing restrictions to legal aid funding, there has been a threat to our London Councils funding. This has meant we have had to realign our already stretched resources to focus more on direct client representation and limit important work on second opinions to appeal rights-exhausted asylum seekers, including outreach advice sessions at centres across London that support destitute asylum seekers – areas of work where demand is high and quality legal representation is increasingly hard to find. However, we hope to raise funds to relaunch our destitution work – so watch this space.

What's most satisfying about your work?

Seeing our legal advisers secure positive outcomes. You can see the difference it makes to people's lives, particularly the most vulnerable and traumatised asylum seekers.

How would you spend £10,000 in 24 hours?

I would pay for 30 legal advisers at RCOs across the UK who will provide legal advice to all destitute asylum seekers they see.

Patrick is a member of the London Destitution Advice Network, a quarterly information sharing network run by ASAP. For details contact Roseanne@asaproject.org.uk

Case resolution closes

THE CARE RESOLUTION DIRECTORATE

(CRD) has closed, raising questions about the fate of countless cases still pending. The CRD was established four years ago to conclude outstanding asylum applications made before 5 March 2007. The UKBA has confirmed that current transitional arrangements include the formation of a small Case Assurance and Audit Unit (CAAU), with a maximum life span of two years. This will be charged with responsibility for residual work on unconcluded CRD cases that either have been

reviewed and are awaiting removal as they do not qualify for a grant of leave, or that have been reviewed but CRD has been unable to trace the applicants.

From 1 April any applicants falling within these two categories, who have claimed asylum prior to March 2007 and wish to apply for section 4 support or additional payments, must submit their applications by post to: Immigration Group, North West Immigration Teams, UK Border Agency, 4th floor, Reliance House, Liverpool L2 8XU. Fax: 0151 213 2009.

New combined support form

THE UKBA HAS CONFIRMED it intends to introduce a new combined form for Section 95 and Section 4 applications. The form, which will replace the existing NASS1 and s4 forms, will be fully electronic and is intended to go live on 15 May. The latest draft of the form – which has not yet been seen by ASAP – will apparently have new questions, including on financial circumstances. ASAP has requested UKBA to allow us to review and comment on the proposed form before it is introduced.

Refugee Action takes over AVR

Refugee Action has taken on the administration of the Assisted Voluntary Return programme (through its Choices Project), formerly run by the International Organization for Migration (IOM). Advisers are asked to contact their regional Refugee Action, which can be found at www.tinyurl.com/3bn8fmg. The general enquiries number is 020 7654 7700.

Publishing of support numbers may stop

The Home Office plans to stop publishing asylum support statistics as part of its quarterly bulletins stating it is 'no longer reflective of the work the UK Border Agency' performs and to ensure 'resources are directed to the most important topics'. But statistics on numbers supported by local authorities will continue to be published. The number of asylum seekers (including dependents) receiving section 95 support in the last quarter of 2010 was 22,690 while just 3,560 refused asylum seekers (excluding dependents) were receiving section 4 support – both significantly down on the same quarter in the previous year. ASAP is responding to a short consultation on the proposed changes criticising the move.

Exemption for NHS hospital charges

REFUSED ASYLUM SEEKERS on section 95 or section 4 support are to be exempted from NHS hospital charges. The change was confirmed in the Department of Health's response to the consultation on access to the NHS for foreign nationals. However, all refused asylum seekers will not be exempt from charges. In its response the Department of Health notes the concerns raised, including from ASAP, that refused asylum seekers are often wrongly denied support due to 'difficulties and delays' with the support application process. But it maintains that applications for section 4 support are processed in 'a matter of days', which ASAP research indicates is not the case for the majority of applicants. Consultation responses: www.tinyurl.com/4d7vmeh

'Refused asylum seekers are often wrongly denied support due to "difficulties and delays" with the support application process'

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Low number of women at tribunal

THE NUMBER OF WOMEN appellants at the asylum support tribunal is very low, according to a survey of the daily tribunal listings carried out by ASAP over a three month period in 2010. It revealed that just 13% of appellants scheduled to appeal in person were women. The survey was carried out as part of research ASAP is carrying out into the barriers women face to appealing negative support decisions by the UKBA.

The initial findings of this research, based on interviews with over 20 women at the tribunal, indicate that most found the process difficult, which was in part attributable to issues such as poor health, language barriers and

childcare responsibilities. We will be reporting on the findings in detail in the next newsletter.

● ASAP has secured three year funding from Comic Relief and J Paul Getty Jnr charitable trust to increase access to asylum support to destitute women. The Women's Project will provide representation at the asylum support tribunal, run training for advisers working with women in partnership with community organisations, and raise awareness about gender related barriers to accessing support. We will also be updating our website on issues affecting women. For more information contact ASAP's women's legal adviser Gerry Hickey, email: Gerry@asaproject.org.uk

UPDATED SUPPORT ADVICE SHEETS AVAILABLE

ASAP has published a new series of advice sheets on asylum support. The series now features guidance on ten issues, including section 95 support, filling in an appeal notice, the evidence required for section 4 applications and an introduction to judicial review. They are aimed at helping advisers secure the increasingly limited entitlements to support of asylum seekers and refused asylum seekers.

The advice sheets can be downloaded at www.tinyurl.com/636v9w3

ASAP CREATES DUTY SCHEME COORDINATOR POST

ASAP has created a new post of duty scheme coordinator in response to the near doubling of cases since the introduction of the full-time scheme. Kirsten Powrie, who formerly worked with the RMJ, has taken up the post, as legal adviser Marie-Anne Fishwick has gone on maternity leave. The post means ASAP has a daily point of contact for all matters relating to our Duty Scheme and an opportunity to streamline our operation for the maximum benefit to clients. The fax number for referrals is 020 7033 4030.

NEW TRAINING COURSE ON PROVING DESTITUTION

ASAP is running a free training session on how to prove destitution in asylum support cases, particularly section 4. The UKBA asks for a lot of information in section 4 applications and proving destitution can be very difficult. This course gives a brief overview on section 4 support, an in depth look at the meaning of destitution, and looks at the evidence needed to prove a case and how to anticipate and address problems the UKBA might raise.

The course is on Tuesday 24 May between 1.30 and 4.30 at our Oxford House office.

How do you sign up? Email sinead@asaproject.org.uk to book a place or for more information.

Legal Aid proposal highly detrimental

ASAP HAS SUBMITTED a response to the government's consultation on the reform of Legal Aid, criticising the proposal to remove asylum support from its scope. ASAP's response argues that legal aid

should continue in this area because without asylum support, asylum seekers would be left destitute and in most cases homeless. Further, the quality of UKBA decision making is currently very poor and there is a lack of other sources of legal advice.

Removing this source of essential advice could be very detrimental for individuals, given the growing complexity of asylum support law and the acute vulnerability of clients.

The Ministry of Justice has delayed its response to the consultation. Read ASAP's response at www.tinyurl.com/646avej

NEED ADVICE ON ASYLUM SUPPORT LAW?
Contact ASAP's Advice Line
020 7729 3042
ASAP's second tier Advice Line provides expert advice on asylum support law and asylum support appeals three days a week.

More video appeals at tribunal

THE TRIBUNAL is increasing its use of videoconferencing in appeal hearings.

Appellants can request to attend a hearing via video link if they are unable to travel to the tribunal, for example, because of mental or physical health problems, pregnancy or lack of childcare.

UKBA presenting officers are also beginning to represent in hearings using video links in order to increase the number of appeals they are represented in and to save costs.

ASAP believes safeguards should be put in place to ensure appellants who use video links can access justice. These include only using video links at the appellant's request and ensuring the technology used is of adequate quality. Other factors to be taken into account are the appellant must be able to fully understand proceedings, the impact on their credibility and the need for the appellant to communicate and share documents with an ASAP representative.



Report by
Mike Spencer,
ASAP solicitor

Briefing: video appeals

WHAT ARE THE ISSUES RAISED BY THE INCREASED USE OF VIDEO LINK AT THE ASYLUM SUPPORT TRIBUNAL?

ASAP has represented two clients who have attended their asylum support appeals by video link, both of whom were referred to us in advance. One was a 50 year-old woman with serious physical health problems and the other a mother with a new born baby and small child. In both cases the appellants had requested a video hearing and, in our opinion, the tribunal judge handled the hearings appropriately and sensitively.

However, these cases also highlighted general concerns about the use of videoconferences in asylum support appeals. Videoconferencing is an appropriate, if imperfect, solution, in cases where the appellant would otherwise have difficulty travelling to the tribunal. However, facilities and safeguards should be put in place to ensure access to justice is maintained, specifically:

- Videoconferencing should only be used at the request of and for the benefit of the appellant. It should not be used as an alternative to oral hearings or to save the UKBA money in providing the appellant with travel costs. The appellant should always have the right to attend the hearing in person and travel costs should be provided for them and, if necessary, for a friend to accompany them.
- The outcome of an asylum support tribunal hearing rests to a great extent on the perceived credibility of the applicant, particularly where their destitution is at issue. Credibility can be conveyed through body language and demeanour, something which can be masked or distorted by a video camera image. Judges should therefore be encouraged to take the limitations of the video link into account when deciding on credibility.
- Not being physically present in the room may put the appellant at a disadvantage in proceedings or lead to them feeling they are at a disadvantage. He/she may not be able to hear or fully understand participants (ie. the judge, the Home Office presenting officer, their ASAP representative and the interpreter) and will not have met them face-to-face before.
- In one of the cases we represented, the picture was grainy and sound quality was poor. In both cases, the appellant had difficulty understanding the proceedings. As a minimum safeguard, efforts should be made to ensure that the link is of an acceptable quality and that additional time is taken to ensure that the appellant has understood.
- Normally, when appellants arrive at the hearing, they are met by the ASAP duty scheme representative in the waiting room and asked if they need advice or representation. This service should also be offered to those who attend the hearing by video link.
- The tribunal should provide adequate facilities for the appellant to communicate confidentially with their representatives before the hearing and during any adjournment. This could be done by giving the appellant access to a private room with a telephone line.
- Often the appellant has not seen all the documents for the appeal or will bring new documents to the hearing. It cannot be appropriate for the appeal to be heard on the basis of documents that are not shown to the appellant. The tribunal should therefore provide fax facilities at both video terminals so that documents can be exchanged between the appellant and the tribunal or (if they are represented) their representatives. In one case that ASAP represented, the appellant brought bank statements to the hearing and had to leave the building to send them to ASAP by fax.

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