

ASAPNews

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EDITORIAL
Roseanne Sweeney
ASAP director

One of the issues highlighted by our research on gender-related barriers to the support appeals system (see this page) is that legal advice and advocacy is vital for women asylum seekers to access their support entitlement.

The appeals system is complex, time pressured and extremely stressful for all appellants. But women do seem to face additional barriers because of increased health vulnerabilities, childcare responsibilities, reluctance to travel what is often a long distance to the tribunal, and language barriers.

There may also be structural barriers preventing particularly vulnerable groups from participation, such as the UKBA's policy on Section 4 support which only extends support entitlement to pregnant women six weeks before the expected due date and the need to meet high evidence thresholds, which trafficked women in particular may be either unable or reluctant to do.

So the tribunal and UKBA may need to look at their systems and policies to see how they can best identify and tackle gender inequalities in the system in the light of public equality duties.

It is also clear that women need a lot of encouragement to engage in the appeals process. Good quality advice and advocacy, including at the tribunal by ASAP, is essential.

In the coming months, our Women's Project, which is funded by Comic Relief and J Paul Getty, will be highlighting the issues raised by the research at both tribunal and policy level, and will run training events for advisers working with women who have been refused Section 4 support.

Barriers to appeals for women highlighted

A NEW REPORT BY ASAP suggests that gender-related barriers to the appeals system are contributing to the low number of women attending hearings at the asylum support tribunal.

The report, 'Barriers to Support Appeals for Asylum Seeking Women', which was undertaken by our Women's Project, highlights that just 13% of appellants at the tribunal over a three month period were women and indicates that factors such as childcare, poor health and fear may make it more difficult for women to access appeals.

The report is based on one-to-one interviews with 22 appellants at the asylum support tribunal and five well-known agencies that help women to make appeals. Factors identified as barriers by both appellants and agencies during the research include:

- More than three quarters of appellants had serious mental or physical health problems and most said these made it more difficult to appeal negative support decisions. One woman with renal failure said the lack of toilet facilities made the journey difficult. Another woman with depression said the process made her feel suicidal. Agencies said health problems are a key barrier at different stages of the process, making it more difficult for women to access advice, cope with the process and travel to appeals.
- A third of the women had dependent children in the UK, all lone parents. Four appellants brought their children to the tribunal including someone who brought her three-year-old twins. According to agencies, childcare responsibilities create practical problems, from making it difficult to travel to agencies for initial advice in London, to not wanting to bring children to the tribunal, which has no childcare facilities.

- Over three quarters of women found the journey difficult. Some had problems finding the way on public transport. Others were concerned for their safety. Agencies said the need to travel to London could put women off appealing particularly if they were pregnant. Some were also reluctant to travel without a companion because they felt very vulnerable. Four of the appellants were accompanied to the appeal by a friend or support worker.
- More than a third of the women said they were afraid of the appeals process. One woman said she was distressed by the experience. "Women do not want to come in front of a judge, they find it intimidating," one appellant said. Agencies said fear could leave women reluctant to appeal decisions when advised to or more likely to opt for paper appeals. They could also be afraid to disclose how they had been surviving in the UK in case it led to them being detained or having their children taken away. This made it more difficult for agencies to help them with their appeals.

Report recommendations include:

- Publication of gender disaggregated statistics by the Home Office and tribunal to highlight the number of women on Section 95 and Section 4 support as main applicants, and numbers accessing the appeals system.
- Providing childcare costs so women with children do not have to bring them to the tribunal for hearings.
- Adequate resourcing of agencies advising female asylum seekers so they can provide the advice and advocacy necessary for accessing legal entitlement to support.

For more information contact Gerry Hickey, women's legal adviser: gerry@asaproject.org.uk
The report can be downloaded at:
www.tinyurl.com/5tu2ggp



Q&A
Bethan Lant
Praxis

What's your job title?

I'm project lead for advice services.

What does Praxis do?

We work with migrants and displaced communities to protect their human rights and access social justice. We run support groups for young asylum seekers and women who have escaped trafficking who have children. We also run a project that provides interpreters to local GPs and social services. In addition we provide advice to vulnerable migrants, such as undocumented migrant women with children. These cases can be complex as women are likely to be homeless, destitute and have difficulties accessing healthcare.

How are you coping in these difficult times?

We have had to review how we provide services to see how we can work more efficiently following staff reductions. We are working more closely with other organisations to see how we can complement each other's work and ensure clients are able to access the services they need. We are also looking at diversifying our funding base, eg. by setting up a social enterprise. And we are creating a network of people who may be able to provide financial or housing support for our clients.

What's most satisfying about your work?

Taking someone from a point of not being able to function to where their issues are sorted out and they can support themselves. It is great to meet a former client whose life is going well and about to start a job.

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.

Bethan is a member of ASAP's London Destitution Advice Network, a group of agencies that tackles destitution among asylum seekers.

ASAP wins appeal over landmark ruling

IN AUGUST THE TRIBUNAL allowed an appeal by an Iraqi man represented by ASAP, deciding that he can stay in Section 4 accommodation – a decision that clarifies when refused asylum seekers with outstanding cases before the European Court of Human Rights are eligible for Section 4 support.

The appellant was an Iraqi from Kirkuk who had been refused asylum. He made a fresh claim on the basis that the security situation in central Iraq is currently so dangerous that returning him would amount to inhuman and degrading treatment, which is banned under Article 3 of the European Convention on Human Rights. This was refused and he applied to the European Court of Human Rights to prevent his removal. After initially granting him accommodation and support,

the UKBA decided to withdraw Section 4 support and he appealed to the tribunal.

Over three hearings, the tribunal's principal judge reconsidered an earlier landmark decision from May in the light of recent legal developments. In a detailed reasons statement, which sets out guidance to other judges, she found that the client was entitled to support to avoid a breach of his human rights.

She ruled that applicants for Section 4 need to show that their case "has some merit" and that they have exhausted all domestic remedies before applying to the European Court. However, there is no need for them to exhaust all domestic remedies if they can show that an available remedy (for example judicial review) was "bound to fail".

Reasons statement: www.tinyurl.com/5sz8lay

New audit on decision making launched

ASAP HAS LAUNCHED A ROLLING AUDIT of the quality of decision making on Section 4 support. The audit will track whether UKBA caseworkers apply the legal test for destitution in decision making and assess the evidence submitted with applications in a satisfactory way, as well as the time appellants at the asylum support tribunal wait before a decision on their application.

The UKBA has introduced new training for caseworkers as part of measures to improve the quality of decision making on support and our audit will chart the impact over the coming months. It follows our report, 'No credibility: UKBA decision making and Section 4 support', which found that over 80% of decisions to refuse support for asylum seekers on the grounds they are not destitute are overturned on appeal because of flawed and unfair decision making.

In a meeting with ASAP about the report, the UKBA said it is taking steps to address many of the problems identified.

The report is at www.asaproject.org.uk

IAS closure hits ASAP clients

THE IMMIGRATION ADVISORY Service, the UK's largest provider of publicly funded immigration and asylum legal advice, has gone into administration. The closure is already affecting the ability of some IAS clients to make fresh claims or issue judicial reviews.

All IAS offices have been temporarily closed and IAS clients have been advised to seek representatives elsewhere. IAS acted for about 10,000 clients and said it will take time to set up acceptable systems for responding to requests for files from clients and their new representatives.

The administrators have written to the UKBA and the tribunal service asking that clients are given time to find new representatives and access their files from IAS. They asked that clients are not penalised for a situation that is "entirely outside of their control".

In a recent decision, the Asylum Support Tribunal granted Section 4 support to an IAS client who was waiting for their file to be passed to new representatives.

Contact ASAP for more on the IAS.

Diary date

ASAP's annual Destitution Awareness Day and AGM is on 13 December 1–5pm and will be held in London. Email office@asaproject.org.uk to book your place.

New combined support form

THE UKBA HAS PUBLISHED its new combined Section 95 and Section 4 application form. The form is meant to be fully electronic, but because of technical problems has not yet gone live. Currently it can only be submitted by printing a 50 page PDF version and faxing it to the UKBA.

The UKBA has said it is no longer accepting applications on the old form.

Agencies have told ASAP they are concerned about the new form, particularly its increased length and the high number of seemingly irrelevant questions. This will affect the cost, resources and time needed to submit the form, putting added pressure on hard-pressed advice agencies and making it even harder for vulnerable applicants to complete the form themselves.

The new form also requires applicants to submit four passport sized photographs, adding to the cost and time of submitting it.

The UKBA says the form will allow it to process applications more efficiently.

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.

TWO NEW ASAP FACTSHEETS OUT

ASAP has produced two factsheets on Section 4 support and legacy, and extra support payments for women and children. The legacy factsheet outlines what entitlement to support refused asylum seekers have, now that the legacy programme has come to a close, though many older asylum claims remain unresolved. The factsheet on maternity payments outlines the additional payments women on Section 95 and Section 4 support can receive when they are pregnant or have dependent children.

The factsheets can be downloaded at www.asaproject.org.uk

INTERNS ON BOARD

A warm welcome to our two new duty scheme interns, Giorgia Dainese and Rossen Roussanov. Both are post-grad students completing dissertations on Roma rights and both have worked with migrant communities. They are the first to take up the internship posts, created to improve support for our expanded duty scheme. Over the coming months, they will be helping us improve our filing and monitoring systems.

LAW FIRMS AWARDED FOR ASAP WORK

Three law firms have scooped an award at the annual Lawyers Awards for pro bono work on our duty scheme. Clifford Chance, Freshfields Bruckhaus Deringer and Herbert Smith were presented with the Pro Bono Award at a ceremony in June attended by volunteer and staff tribunal advocates. The award recognises the collaboration that has enabled us extend the duty scheme to a five day week and almost double the number of appellants assisted.

TRAINING COURSE IN MANCHESTER

ASAP is running a training course on Section 4 support for advice workers in Manchester. The half-day event will look at how to make effective support applications and the appeals process. It is being held on 22 September in Friends Meetings House in central Manchester between 1.30 and 4.30. For more details and to book a place email Sinead@asaproject.org.uk (places are limited to two per organisation).



Thanks to those in ASAP's team in the London Legal Sponsored Walk in May. The 14 strong team included walkers from Southwark Law Centre and Pierce Glynn solicitors and raised over £3,000

Comment: legal aid

THE GOVERNMENT IS keeping legal aid for advice on asylum support issues, bar subsistence-only support. The concession was one of only a few in the Legal Aid, Sentencing and Punishment of Offenders Bill, published in June.

The bill presses ahead with most of the proposals in last year's legal aid green paper, including scrapping legal aid for advice on welfare benefits, housing (except homelessness) and immigration (except detention and asylum).

In its initial consultation, the government proposed abolishing legal aid for all asylum support cases. ASAP's response argued that asylum support advice should be treated like homelessness, as without support many asylum seekers would be left on the streets. ASAP is not funded by legal aid, but many of our vulnerable clients rely on legal aid firms for advice and assistance, particularly in more complex cases.

Under the bill, legal aid will be kept for advice on accommodation under Section 95 and Section 4. Legal aid for advice on financial entitlements, eg. subsistence-only support, will be scrapped. There will still be no legal aid for advocacy at the tribunal.

● *Mike Spencer, ASAP solicitor*

Briefing: How will the legal aid cuts affect ASAP's clients?

What are the proposed changes to legal aid?

- The proposed reforms are aimed at cutting £350 million from the legal aid budget.
- The bill removes legal aid funding from a wide range of areas, including advice on welfare benefits, clinical negligence, debt (except where a person's home is at risk), private law family cases, employment, immigration (except detention or asylum), education and housing (unless a person is facing homelessness).
- The Legal Services Commission will be abolished and claims assessed by the Ministry of Justice instead.
- All clients seeking legal aid will first have to call a dedicated legal advice helpline.
- There will also be a blanket 10% cut in lawyers' fees.

The bill proposes keeping legal aid for:

- Asylum cases.
- Cases concerning immigration detention.
- Most judicial review cases.
- Accommodation under Section 4 or Section 95 (but not representations at appeal hearings).

Legal aid will be abolished for:

- Most immigration cases (except detention and asylum).
- Judicial reviews brought in the public interest, for example by pressure groups.
- Judicial reviews against an immigration decision where there has been a substantially similar challenge within the last year.
- Judicial reviews challenging removal directions, except where there has been

more than one year since the latest immigration decision.

- Subsistence-only support under Section 95, including decisions to refuse support for failing to claim asylum as soon as reasonably practicable.

Why are there concerns about the proposals?

- According to the Law Society the cuts will cost the taxpayer more than they save and leave vulnerable people without access to justice.
- Law Centres research suggests that every £1 spent on early advice will save £10 later on.
- The proposals will force many legal aid firms and law centres to close, leaving legal advice 'deserts' in some areas.

How will the proposals affect asylum seekers?

- Asylum seekers may be wrongly denied subsistence support because the Home Office decides they did not claim asylum soon enough after arriving in the UK.
- Refused asylum seekers will find it more difficult to challenge UKBA decisions to remove them or to reject a fresh claim.
- Asylum seekers and NGOs will be prevented from bringing judicial reviews in the public interest where the individual's claim is settled or becomes academic.
- It will become even harder for asylum seekers to find legal representatives as law centres and legal aid providers are forced to close, as has already happened with Refugee Migrant Justice and the Immigration Advisory Service.

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