

ASAPNews

SEPTEMBER 2014

WELCOME



Eiri Ohtani
Interim director

We had a particularly busy first quarter, assisting a total of 165 people at the Asylum Support Tribunal from April to June 2014. This represents 65% of the total number of appellants who had oral hearings during the period. Of those, 130 people received tribunal representation from our duty scheme, of which 61 cases were allowed and 23 cases were remitted. We also advised 35 people. As in the last quarter, the top three nationalities remain Iranian (20%), Iraqi (15%) and Zimbabwean (14%). About 74% were male. We are grateful to all the advice agencies who continue to refer cases to us. See page 5 for more first quarter stats.

I thank our Intern, Kama Petruckzenko, who has been doing a brilliant job of encouraging advice agencies to make referrals to us. We were anxious about the impact of the asylum support contract change in April on our referral mechanism, as our long-standing referral agencies such as Refugee Action and Refugee Council were stopping or reducing their asylum support advice as a result. Thanks to Kama, we were able to work with many new referral agencies.

Finally, I'm signing off, as ASAP director Hazel Williams is back from maternity leave. I have greatly enjoyed my time in her shoes.

The inspector calls

In July 2014, the Independent Chief Inspector of Borders and Immigration published his report on the inspection of asylum support. It includes a review of 344 cases for the period September 2013 to January 2014.

The chief inspector's independent scrutiny of asylum support issues is a welcome development. His report touches on key issues which ASAP (and other stakeholders) have previously highlighted. These include delays in Home Office decision-making, the use of legal powers to request further information from applicants, and stopping support before biometric residence permits are issued. The report also makes a number of findings about Home Office procedures to combat fraud.

Some of the report's findings are surprising. The chief inspector concluded that 89% of sampled decisions to refuse Section 95 or Section 4 support were reasonable, with only 17% of appealed refusals in the sample allowed. These figures are at odds with the most recent statistics issued by the tribunal. They reveal that from September 2013 to February 2014, 215 appellants had their appeal allowed. Taking 'remitted' decisions into account, 47% of appeals resulted in the initial refusal being overturned or reconsidered. How can the chief inspector's findings be reconciled with these figures?

He ascribes the higher overall allowed appeal rate to a range of complex factors

which extend beyond the quality of the initial decision. That is certainly a relevant consideration, but there are others.

In our view, the chief inspector's report contains a striking lack of detail about the more complex legal questions which commonly arise in these cases, particularly in respect of Section 4 support. To take one example, a person is entitled to Section 4 support if they are destitute and refusing support would breach their human rights. However, citing a Home Office source, the report (on page 11) simply translates this as an applicant needing to have outstanding further submissions. This lack of detail raises questions about what legal benchmark was used to test the quality of Home Office decision-making.

It may be that the more complex cases requiring further explanation were not part of the chief inspector's sample. However, the report appears to focus on the Home Office's application of the destitution test which, although a fundamental aspect of the assessment, is not the complete picture. As a result, we hope the chief inspector can build on the valuable work he has carried out to date by conducting a further inspection into the more complex issues relating to Section 4 support.

To discuss this contact Mark Rogers at mark@asaproject.org.uk and Marie-Anne Fishwick at marie-anne@asaproject.org.uk – Marie-Anne will be back at ASAP at the end of September.

ASAP – NOW CLOSE TO THE ACTION

ASAP has moved to new offices in Anchorage House, east London, just two floors below the Asylum Support Tribunal. Our new space is much bigger than our previous room in Oxford House and we are very happy to be here. Now we are so close to the tribunal, we hope to assist even more appellants.

See page 5 for our new contact details.



Follow us on
[@_A_S_A_P](https://twitter.com/ASAP) and
please retweet!

WHAT OUR DUTY SCHEME CLIENTS SAY

Each month, ASAP's duty scheme helps between 50 and 60 asylums seekers, refused asylum seekers and irregular migrants. It is possible for us to do so thanks to a large group of dedicated solicitors and barristers who volunteer pro bono two days at least every quarter. We know that we are making a huge difference in these peoples' lives. Below are some comments that we received during our quarterly monitoring exercise, when we ask our users to give us their feedback.

"It's excellent and your work is very useful and supportive."

"I think you are doing a wonderful job, by helping vulnerable people like me. I think I learned a lot of my case today that I never know."

"Was very stressful and very helpful because now I can be a better mother to my daughter as I was struggling with money."

"Very important, it has helped me to believe that everyone is equal before the law. If I have got more grounds I may be better represented."

"It make me feel confident."

"Perfect. My accommodation and support awarded, it seemed impossible, I am so grateful."

"Your work is very important because without you I would not have anyone representing me. I am very grateful. Thank you very much."

"Helped a lot because without it I might have ended up in the street because I don't know the law."

"It was helpful and very important. I came here very distressed and worried but my adviser was so kind and attentive and it somehow relaxed me."

"It is the first time I got a good decision from the state here. I was surprised that someone would want to help me."

"Your work is very important because I felt that I was not alone during the hearing; that helped me to be calm about the whole situation."

High Court highly critical of the residence test

We have been used to legal aid cuts for many years – areas of law have been taken out of scope, the rates of pay reduced and the administrative hurdles made more cumbersome. There has been a steady decline in the number of legal aid providers as only the very committed have remained.

The residence test, yet another legal aid cut proposed by the government last year, and due to come into force this August, felt wrong. For the first time a person would be ineligible for legal aid, not because of the area of law (e.g. homelessness or community care) or because there was no merit in their case, but purely because of who they are. Unless a person had resided lawfully in the UK for at least 12 months, or was a current asylum seeker, he/she would fail the residence test. Many such migrants, already excluded from mainstream benefits, would be unable to enforce whatever limited rights they did have when mistakes were inevitably made by the state.

There has never been legal aid to represent at the Asylum Support Tribunal, and ASAP has never used legal aid. But it is of fundamental importance to our clients that it exists and that they have access to it. If we think an asylum support appeal is unlawfully dismissed, and if in the client's best interest, we refer the case to specialist legal aid solicitors to consider if the tribunal's decision can be judicially reviewed. This usually results in a favourable outcome for the client. Nearly all the court judgments that have helped create the asylum support regime that we currently work within (for example *Limbuela*, *Clue*, *NS* and *MK/AH*) would not have happened, had the residence test been in force.

So it is immensely satisfying that, in July 2014, a three judge High Court found the residence test to be unlawful. The Public Law Project had brought the challenge, and ASAP, along with other NGOs, provided PLP with a witness statement about the importance of the issue to our client group.

There were two aspects to the court's reasoning. First, the government was hoisted

on its own hypocrisy. The test was being brought in as secondary legislation under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). And yet the explicit purpose of that Act, in removing many areas of law from the scope of legal aid, is to target legal aid where it is most needed, to assist the vulnerable in cases involving important life issues. Therefore, a new provision as radical and fundamental as the residence test, explicitly designed to save costs, could not be slipped in under LASPO.

Second, the court considered the discrimination aspect of the test. There was no dispute that it was discriminatory; British citizens would pass, and many foreigners would not. The government's case was that legal aid is like any other welfare benefit. If it was right about that, then it could have succeeded on this issue, since it is already established law that some discrimination in the area of welfare benefits can be justified to save public money. However, the court was very clear that legal aid is not analogous to the payment of a welfare benefit.

LASPO set up a distinction between a finite list of cases (or areas of law) where legal aid is to be targeted (referred to above) and anything that falls outside that list. In the latter category, legal aid can be granted 'exceptionally' if failure to do so would be a breach of the individual's EU or ECHR rights. So these are cases in which the state is obliged to provide legal aid and, given that, the residence test could not be an additional requirement. But in the former category, the government has chosen to provide legal aid and then to discriminate on entitlement. That discrimination could not be lawfully justified by the need to save costs.

It is understood that the government will appeal. The judgement is so clear, resolute and patently right, that the grounds of appeal will make very interesting reading. Maybe their lawyers know they cannot win, but it is more important to be seen to be 'doing something' against migrants.

To discuss this issue contact Deborah Gellner at deborah@asaproject.org.uk

'Unless a person had resided lawfully in the UK for at least 12 months, or was a current asylum seeker, he/she would fail the residence test'

Vulnerable clients at the tribunal

The clients that we represent at the tribunal are all facing a difficult prospect – either the withdrawal of their accommodation and financial support, or the confirmation of a refusal to offer it in the first place. Of course, just on its own, this is a situation which is bound to cause anxiety and place people under stress. Appellants whose appeals are dismissed face an uncertain future and are vulnerable to various forms of abuse and exploitation.

However, we also see many appellants who come to the tribunal with pre-existing vulnerabilities which are independent of their immediate difficulties with asylum support, although they will inevitably be exacerbated by them. In these cases we know that, if the appellant loses their appeal, they will be at even greater risk of harm as a result.

We reviewed 3 months of women's appeal cases to find out more about the

problems facing them and which make them particularly vulnerable if they lose their appeals. These were women whom ASAP had represented at their hearings.

- In 61% of cases we found concrete evidence of additional risk factors for these women, over and above the risks posed by destitution alone.
- By far the most significant risk factor was poor mental health. This was a factor in 39% of the cases that we reviewed. The problems ranged from long-term depression to psychotic conditions and were, on the whole, severe in nature.
- In 21% of total cases reviewed, there was evidence that the woman would be at greater risk of self-harm as a direct result of losing her appeal.
- In 29% of cases there was a combination of factors that increased a woman's vulnerability. In these cases, mental health issues were compounded by other factors.



- In 14% of the files there was evidence that a woman had experienced an abusive relationship in the UK.
- Other women had significant physical health issues such as being HIV+ or diabetic.
- In 88% of these cases, ASAP was able to mitigate the risks posed to these women, through the appeal being either allowed or remitted.

TRIBUNAL – CASE STUDY

We received a fax from a solicitors firm based in Newcastle for a client whose asylum support had been stopped. They had helped the client to appeal the decision and wanted to refer him to ASAP for representation in his appeal hearing. The Home Office's decision letter said that support had been discontinued because the appellant didn't meet any of the eligibility criteria for Section 4(2) asylum support – support for destitute refused asylum seekers who face a barrier to return to their home country.

However, when we looked at the papers it transpired that he had originally been granted support under Section 4(1)(c) – this kind of

support is for people who have been released from detention on bail.

The solicitor's grounds of appeal made legal arguments about why they believed that their client was eligible for support under Section 4(2). We contacted them and advised them to submit some additional arguments, addressing an issue which the Home Office had neglected in its decision letter – that the appellant was still on bail and therefore was still eligible under Section 4(1)(c).

We referred them to the Home Office's Section 4 Bail Instruction. ASAP represented and the judge ordered the Home Office to review its decision.

ASAP ADVICE LINE – CASE STUDY

A solicitor from a firm in Glasgow called to find out whether his client was eligible for asylum support. His client is a visa-overstayer who has never claimed asylum or made any other applications for leave to remain the UK. He is on temporary admission. He has been staying with a friend who cannot support him any longer.

We explained that the Secretary of State has the power to provide support to people on temporary admission to avoid a breach of their human rights (under Section 4(1)(a) or (b) of the Immigration and Asylum Act 1999). A breach of human rights might occur in situations where the applicant is destitute and is either in the process of making arrangements to leave the UK, unable to leave the UK, or where it would be unreasonable for them to leave the UK – for example if they have an outstanding application for leave to remain being considered by the Home Office

The solicitor explained that his client had been diagnosed with a life-threatening illness and so he thought it likely that he isn't well enough to endure the aeroplane journey back to his country of origin. We advised him to ask his client's GP or consultant to complete the Home Office medical declaration form, which asks whether a journey back to their home country would pose any health risks to their patient's health. We also advised that if the doctor confirms that there is a risk, the solicitor can help his client to make an application for Section 4(1)(a) support. Since there is no application form for this kind of support we suggested that he uses the ASF1 form found on the Home Office website.

Our advice line is open on Monday, Wednesday and Friday between 2pm and 4pm on 020 3716 0283. Please note that it is open to organisations and advisers, not to individuals.

ASAP's guide to video-link appeals

According to our monitoring, about 6% of all the oral asylum support appeals hearing in 2013/14 took place via video-link. Do you know what video-link appeals are? Normally, asylum seekers with appeals travel to Anchorage House in east London, where the Asylum Support Tribunal is based. Vulnerable people who are unable to travel can request a video-link appeal so that they do not have to travel, although the request is not always granted. Interestingly, 44% of the video-link appeals took place in Leeds. Here's how video-link appeals work:

1 ORAL APPEAL VS PAPER APPEAL

In most cases it is better to request an oral appeal via video-link than an appeal to be decided on the papers alone. This is because your client has an opportunity to give evidence and respond to questions about the issues in their appeal. It is also preferable because they can have an ASAP representative.

It is essential to refer clients to ASAP who have video-link hearings well in advance of the hearing, otherwise we cannot represent them.

2 REQUESTING A VIDEO-LINK HEARING

If your client is unable to travel to London to attend their oral appeal hearing for a medical reason, you can request that their appeal is heard via video-link from a local court. Request a video-link hearing in Section 1 of the appeal form – Form E09 (2013). You must attach medical evidence.

If you forget to do this on the appeal form you can make your request later in writing.

4 EMERGENCY ACCOMMODATION AFTER THE APPEAL

If your client is successful in their appeal they can access emergency accommodation on the same day as their appeal hearing at regional 'initial accommodation' (IA) centres. This accommodation is temporary, until dispersal accommodation has been arranged.

If your client needs emergency accommodation and cannot wait until dispersal accommodation is arranged (usually 7-9 days), you must contact the asylum support team to request emergency accommodation as soon as possible. It won't happen automatically.

This is a new arrangement, agreed following ASAP's negotiations with the asylum support policy team so please contact us if you experience any difficulty.

The Home Office must arrange transport to an IA centre.

3 HOW DOES IT WORK?

The Home Office arranges transport to a local court, usually by car.

The judge, the interpreter, the Home Office presenting officer and the ASAP representative are all at the tribunal in London. Your client is alone in the local court. All parties can see and hear each other on a video screen.

The decision notice, which is usually handed to your client at the end of their hearing, is faxed to the usher at the local court, who gives it to your client.

ASAP training: 19 September

ASAP is running a one day training session on 19 September. It is free for organisations with an annual income of less than £100,000. The training will be delivered by our solicitor, Deborah Gellner (pictured right), and cover the following topics:

- Overview of the asylum support system
- Support for asylum seekers – Section 95 support
- Support for refused asylum seekers – Section 4 support
- Tips on how to prepare a successful application, such as how to prove destitution
- Brief overview of the appeals process and ASAP's duty scheme.



For more information and a booking form visit our webpage at www.asaproject.org/what-we-do/training – note that the fees apply to organisations with an annual turnover of over £100,000.

If you are interested in commissioning us to deliver a training session, please contact Hazel Williams, ASAP director, at hazel@asaproject.org.uk – Hazel will be back at work in late September.

More first quarter stats

The ASAP duty scheme received a total of 142 referrals (130 from agencies and 12 from individuals), an increase of 40 from the previous quarter. The top three referral agencies were NERS (Newcastle/Middlesbrough) (15), British Red Cross London (9), Coventry Refugee and Migrant Centre (8) and ASHA (Manchester) (8). We also received referrals from a large number of organisations and solicitors' firms that we had not worked with before.

Our advice line was also busy and received 132 calls, an increase from 117 calls in the previous quarter. The types of queries that we receive at advice line are quite different from the types of cases we handle at the duty scheme. For example, while a vast majority of cases we represent at the tribunal are about Section 4 (support for refused asylum seekers), 30% of calls received by the advice line dealt with queries relating to Section 95 (support for asylum seekers).

Likewise, the top three nationalities of the advice line queries were Pakistani (8%), Iranian (7%), Chinese, Eritrean and Nigerian (6% each), showing a very different user group from the duty scheme, where Iranian (20%), Iraqi (15%) and Zimbabwean (14%) were the top three.

New reports by ASAP

In the coming weeks ASAP will publish two reports detailing our latest research. Here's a flavour of what is in store.

'The Next Reasonable Step' is the culmination of our research into Section 4 support, which is provided to refused asylum seekers who are taking all reasonable steps to leave the UK. Spotlighting the Home Office's termination process through a combination of statistical trends and illustrative case examples, it analyses 51 appeals represented by ASAP between January 2012 and December 2013. To set this casework in context, the report also explains the assisted voluntary returns process and hurdles which specific nationalities must overcome to leave.

Mark Rogers (who co-researched and wrote the report) explains: "While the subject matter is quite technical, the report sheds some light on the challenges faced by people who perhaps have no option but to leave the UK, and what they can reasonably be expected to achieve in a short timeframe. Most need to obtain new documents, which can be a slow process, possibly involving contact with embassies in the UK, the Home Office and family, friends or foreign governments abroad. It's crucially important that each case is assessed individually on its merits, in light of all the relevant circumstances."

The research confirms that 'all reasonable steps' appeals are typically complex and extremely fact-sensitive. Nevertheless, it was concerning to find that in 75% of appeals the Home Office's decision to discontinue support was overturned or reconsidered. That figure climbed to 82% when looking at the top three nationalities, which accounted for the majority of the sample. The number of appeals allowed or ultimately remitted suggests that the Home Office could improve this area of decision-making, although not all of the cases were examples of poor practice.

As for how the Home Office could improve, we found that most appellants had not received adequate guidance about the steps they should be taking, and some difficult,

vulnerable cases justified more practical assistance being offered. 'The Next Reasonable Step' makes 11 recommendations relating to the grant, review and termination processes which are designed to ensure more consistent, fairer treatment of applicants.

● The other report will be the third and final instalment in ASAP's series on destitution appeals. It looks at 15 cases to see how practices have changed after the previous audit revealed a high success rate for appellants and a failure on the part of the Home Office to explain destitution requirements, assess all relevant evidence and avoid delay. The report will add context to the ongoing debate, which remains relevant in light of the Independent Chief Inspector of Borders and Immigration's report and the experience of other stakeholders. *For more information about these reports, email Mark Rogers at mark@asaproject.org.uk and from October 2014 Marie-Anne Fishwick at marie-anne@asaproject.org.uk*



Out soon: 'The next reasonable step'

Welcome back Hazel and Marie-Anne

We are excited to welcome back Hazel Williams (director) and Marie-Anne Fishwick (legal researcher) from maternity leave. Both will return to work in late September. Eiri Ohtani and Mark Rogers who were working as their maternity covers will be leaving in mid-September. They have both enjoyed working at ASAP and hope it remains successful.

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