

ASAPNews

OCTOBER 2012



HELLO

Abigail Stepnitz
ASAP interim director

I am very excited to have joined ASAP as interim director during such an exciting time for the organisation. I am looking forward to getting to know all of you and hoping that ASAP can grow and thrive in the near future.

A bit about myself. I am originally from San Francisco, California, and have been in the UK nearly six years. I first moved here to do an MSc in human rights at the London School of Economics and have been working in the sector ever since. I have a well-established career designing, managing and evaluating programmes and policies to protect and promote human rights.

I have been working in this field for the past nine years during which I have lived in seven countries on three continents, and worked with people and stakeholders from diverse cultural and socioeconomic backgrounds. I have extensive field experience with local organisations in Europe, Latin America, Asia and Africa.

My field work focused on advancement of women's labour rights, evaluation of micro-lending to women-led small businesses and reintegration of trafficked children into rural communities. Most recently I was national coordinator of the Poppy Project, which supports trafficked women.

Other than work my interests are reading, listening to music, travelling the world and baking, although usually not all at the same time.

I am looking forward to getting to know all of you.

New UKBA instructions: pregnancy and dispersal

THE UKBA HAS RECENTLY issued new instructions for staff when dispersing asylum seekers and refused asylum seekers (in receipt of Section 4) with health needs. This includes women who are pregnant or are new mothers. The instructions, entitled Healthcare Needs and Pregnancy Dispersal Guidance, replaces Policy Bulletin 85: (Dispersing Asylum Seekers with Health Care Needs) and Policy Bulletin 61: (Pregnancy).

For some time, ASAP, with Maternity Action and others, has been lobbying the UKBA to improve the situation for pregnant women in the support system. One of our key requests has been to suspend the dispersal of pregnant women who were already tapped into their local maternity services, and provide them with accommodation in that area, so they can continue their care.

Asylum-seeking women can have very poor maternal outcomes so it is vital that they receive regular, uninterrupted care from maternity services.

While we are pleased with some of the changes, we feel they fall well short of what we consider is needed to reduce the risks faced by asylum-seeking women when pregnant. The following is a brief overview of some of the main changes.

PROTECTED PERIOD

The UKBA has identified a 'protected period' when the dispersal of pregnant women or new mothers should be deferred. This will normally run from four weeks before the woman's expected due date (EED) until four weeks after the birth. During this period women should be allowed to remain in the initial or temporary accommodation provided by the UKBA.

TEMPORARY SECTION 4 ACCOMMODATION

On page 11 of the new guidance UKBA states that:

'Where a heavily pregnant applicant for section 4 support is street homeless, or imminently street homeless (24-48hrs), and is not registered with any maternity services, caseworkers may consider placing the applicant in Initial Accommodation.'

This is an important concession as it recognises the risks destitution poses for pregnant women. The wording suggests that women in the late stages of pregnancy who make an application for Section 4 support and are homeless can be placed in initial accommodation normally reserved for those claiming Section 95 support. Those advising pregnant women applying for Section 4 support should push for initial accommodation immediately, using this part of the instructions to support their request.

NOTICE PERIOD

The instructions also say pregnant women and new mothers should be given at least 10 calendar days' notice by the UKBA before they are dispersed to new accommodation. Obviously, this notice period should be set in accordance with the protected period outlined above. The notice period is to enable women to obtain their medical records and for care to be arranged in the dispersal area.

FURTHER DELAYING DISPERSAL

If there are complications with the pregnancy, or the mother or baby are not fit to travel, then the UKBA will consider delaying dispersal beyond the protected period. Women in this situation will need to provide evidence from their doctor or midwife outlining the problems. Special consideration should be given to those who are HIV positive to ensure the risk of transmission is kept to a minimum. Where appropriate, dispersal will also be delayed.

Contact gerry@asaproject.org.uk for more information or call our advice line.

ASAP NEWS IN BRIEF

ASAP has produced two new factsheets that are particularly aimed at those supporting and advising refused asylum-seeking women.

The first, ASAP factsheet 14, covers access to **Section 4 support for refused asylum-seeking women who are pregnant**. It covers the UKBA's policy in relation to this group and provides advice on how pregnant women can access support earlier where there are complications or difficulties with the pregnancy.

The second, ASAP factsheet 15, covers the **interim position UKBA has adopted about not removing Section 4 support to families with children**, even when this group ceases to meet the criteria under which support was originally provided. The policy towards this group reflects the UKBA's duties to have due regard to the need to safeguard and promote the welfare of children in the UK under Section 55 of the Borders, Citizenship and Immigration Act 2009. As stated, this is an interim position adopted by the UKBA, so it is possible that this policy could change in the future.

The factsheets, along with several others, are available on our website and can be found under the tab 'Resources for advisers'.

13 November: Free asylum support training on Section 4

ASAP is running a free half-day training session in London on Tuesday 13 November focusing on asylum support applications, particularly in Section 4 cases. The training aims to help advisers make the best possible application for their service users and increase awareness about the application process. To book a place email Sinead@asaproject.org.uk, or if you have any questions. (Places are limited to two per organisation. If the course is oversubscribed, we may have to limit places further.)

Section 4 decisions to be made within 5 days

The UKBA has amended its policy on dealing with applications for Section 4 accommodation on the basis of outstanding further submissions, to comply with a High Court ruling. According to the new guidance, "as a general rule" applications for support made by refused asylum seekers with a fresh claim must be decided within five days, or two days if the applicant is particularly vulnerable.

The change was made after the High Court ruled the UKBA's previous Section 4 policy to be unlawful. This required case owners to deliberately delay making a decision for at least three weeks to allow time to make a decision on the further submissions. Refugee Action and others who intervened in the case presented evidence that the previous policy was leading to widespread homelessness and destitution.

According to the new policy instruction:

a) UKBA case owners must make every effort to consider the further submissions at the same time as consideration is given to the Section 4 application.

- b) The decision regarding support should not be delayed because of administrative or other problems in assessing the merits of the further submissions.
- c) "As a general rule", case owners must make a decision on support applications made on the basis of further submissions within five working days.
- d) Where the application is a higher priority, the case owner must make "every reasonable effort" to decide the application within two working days.
- e) There is a non-exhaustive list of cases requiring extra prioritisation, which includes people who are street homeless, families with minors, disabled, elderly, pregnant and potential victims of torture and trafficking.
- f) Case owners are required to "check that the further submissions are not clearly abusive, manifestly unfounded or repetitious".

The new Section 4 instruction is available on the UKBA website. For more on the ruling see the Q&A on our website at www.tinyurl.com/d8m26cm

Ruling on support for unmarried partners

R (on the application of Chen) v Secretary of State for the Home Department and Another [2012] EWHC 2531 (Admin)

A High Court ruling has clarified when unmarried partners of asylum seekers can access Section 95 support. Under current regulations an unmarried partner can only apply for support as a "dependant" where the couple has been living together for two out of the last three years. The claimant and her partner, who shared a child, did not meet this requirement.

The High Court found that the refusal to provide support in that case did not breach Article 8 of the European Convention, which protects private and family life, or Article 14, which prevents discrimination. But the Asylum Support Tribunal had made an error of law by failing to come to its own assessment of whether human rights would be breached. This potentially leaves scope for other cases to succeed on better facts.

If you have a client who may be affected by this ruling, please contact ASAP's advice line.

Informal workshops at refugee women support groups

In addition to training, ASAP's women's legal adviser, Gerry Hickey, has been undertaking a series of visits to refugee women's support groups in the UK.

During these visits Gerry delivers an informal workshop on the asylum support system and the particular needs of women. Following the workshops, women attending the groups are given an opportunity to speak to Gerry confidentially if they need advice about their own cases.

So far she has visited groups in London, Sheffield and Huddersfield. In October she will be visiting support groups in Glasgow, Slough and Cardiff.

If you run a women's group and think your users would benefit from one of these workshops email Gerry at gerry@asaproject.org.uk

Follow-up to 'No credibility'

ASAP has been conducting an audit of UKBA decision making on destitution, a year on from the publication of our report, 'No Credibility: UKBA decision making and Section 4 support'. We are analysing decisions to refuse or discontinue support taken in two particular months, at six months intervals, to revisit the report's recommendations and assess whether there has been any improvement. We expect to publish findings in the next few months.

Key issues from the 2011 report that we are revisiting are:

- The application of the correct legal test for destitution
- The quality of the letters

refusing support including treatment of evidence

- The application of the UKBA's duty to safeguard and promote the welfare of children.

This is in the context of the Chief Inspector of Borders and Immigration announcing, in his 2012–13 plan to inspect, how the UKBA handles asylum support. John Vine said: "This issue raises important points about the treatment of individuals and the management of public money in an area where the impact of delays or incorrect decision-making can have significant impact on particularly vulnerable people".



Regional training programme underway

ASAP delivered its first training on asylum support law in Northern Ireland this June, coordinated by the Belfast Refugee Action Group to coincide with Refugee Week. The attendees were from a range of professional backgrounds including advice services, solicitors firms and community organisations. Asylum support appeals for individuals in Northern Ireland are all conducted by video link. The ASAP duty scheme can provide free representation for clients whose appeal is by video link, provided we receive a referral in advance.

The ASAP duty scheme coordinator, who delivered the training, found it an interesting and positive session and we look forward to building on these links with partner agencies in Northern Ireland.

We are very pleased to report that since the training took place ASAP has received referrals from organisations in Northern Ireland.

We also delivered training in this September to several organisations in Sheffield delivered in conjunction with the Northern Refugee Centre.

ASAP plans to deliver training in other parts of the UK so please keep your eye on our website for further details.

DUTY SCHEME VOLUNTEER REPORT



John Eames, Garden Court Chambers

I was very keen to get the ASAP duty rota in the second six months of my pupillage at Garden Court Chambers. Having worked as a welfare benefits adviser and trainer for two decades I knew this was a jurisdiction which had certain aspects in common with mainstream social security: a statutory entitlement scheme with very little discretion, governed by an Act and regulations, with a body of case law. I had appeared at hundreds of social security tribunals so I felt I knew this territory. So far, so familiar.

I also felt attracted by the idea of learning, in effect, a new niche area of law that was discrete and manageable. The ASAP duty scheme looked well-organised and like it was doing good. Some of those assumptions proved right but many didn't. Yes, ASAP is well-organised and does plenty of good. The opponent Home Office does tend to show up though and to argue its case vigorously sometimes. The small band of judges sit in this tribunal on their own. 'A good judge on a good day' is the clichéd hope of litigants everywhere, but here it is very true: they vary, these judges. The volume of law is small but amazingly seems to raise new issues every time.

Yet, there isn't the comforting plethora of Upper Tribunal decisions to guide representatives on every point that comes up. Why? Because shockingly (to me) there is no appeal right to the Upper Tribunal. The challenge is via judicial review in the High Court. The authorities are few then, but highly complex.

What saves the day is the fantastic support that duty volunteers get from the ASAP staff team, who are clearly the national experts in this area. They are always available and understanding of the pressures demanded by on-the-hoof preparation and quick to brief you efficiently and clearly the day before, with tips and case law thrown in along with the scanned bundles. This is advocate support at its best.

What took me by surprise, despite my benefits casework experience, is the destitution that faces appellants. They have no control over their lives; their asylum appeal rights are usually at an end; they may have nothing but the clothes they appear in. They are in your hands. I have found this humbling. I'm really pleased to have been able to work with ASAP and wish I could carry on. It's been totally rewarding.

About ASAP

ASAP is a small national charity specialising in asylum support law. Our aim is to prevent the destitution of asylum seekers by defending their legal entitlement to food and shelter.

We do this by running a full-time duty scheme at the First Tier Tribunal (Asylum Support) in East London, which provides free legal advice and representation to destitute asylum seekers who have been refused housing and subsistence support or had support withdrawn.

We also run an advice line and training on asylum support law for advice workers and legal practitioners, and engage in policy, advocacy and litigation to influence and change policy and practice.

Set up in 2003, ASAP staff and pro bono legal advocates now assist about 600 asylum seekers at the Tribunal every year, significantly increasing their chances of securing support.

An independent report by the Citizens Advice Bureau in 2009 concluded that ASAP representation increased asylum seekers' chances of a successful appeal outcome by 32%.*

* Supporting justice: the case for publicly-funded legal representation before the Asylum support Tribunal (CAB, 2009)

ASAP resources



ADVICE LINE

Our second-tier advice line enables other advisers to access our expertise directly and receive legal advice for their clients. Refugee community organisations and other voluntary agencies who are advocating on behalf of asylum seekers about their asylum support/ asylum support appeals can call our advice line on 020 7729 3042, Mondays, Wednesdays, Fridays, 2pm-4pm only.



FACTSHEET 15

Section 4 support and families with dependant children

The UK Border Agency (UKBA) has introduced an 'interim position' of not withdrawing Section 4 support from destitute asylum seekers who have been refused housing and subsistence support (Section 4 support) and a general guarantee. This has raised questions about the status of the public funding for destitute and a general guarantee. This factsheet provides more details of the public funding for destitute and a general guarantee. It also provides details of the links to public funding for destitute and a general guarantee and support discontinued when there is no reasonable longer destitute, or when there has been a serious breach of the support conditions.

Non-discontinuance of Section 4 support to families

In the UKBA's original funding arrangements, the UKBA withdrew support from destitute asylum seekers who had been refused housing and subsistence support (Section 4 support) and a general guarantee. This was done on the basis that the UKBA considered that the UKBA was not responsible for the destitution of the asylum seeker. The UKBA's original funding arrangements were based on the principle that the UKBA was not responsible for the destitution of the asylum seeker. The UKBA's original funding arrangements were based on the principle that the UKBA was not responsible for the destitution of the asylum seeker.

Discontinuance of support to families in limited circumstances

In the UKBA's original funding arrangements, the UKBA withdrew support from destitute asylum seekers who had been refused housing and subsistence support (Section 4 support) and a general guarantee. This was done on the basis that the UKBA considered that the UKBA was not responsible for the destitution of the asylum seeker. The UKBA's original funding arrangements were based on the principle that the UKBA was not responsible for the destitution of the asylum seeker.

FACTSHEETS

- Factsheet 1 – Section 95
- Factsheet 2 – Section 4 support
- Factsheet 3 – Appealing to the tribunal support
- Factsheet 4 – Filling in Appeal Notice
- Factsheet 5 – Proving Destitution
- Factsheet 6 – Evidence for Section 4 appeals
- Factsheet 7 – After a negative appeal decision
- Factsheet 8 – Local authority assistance
- Factsheet 9 – Introduction to judicial review
- Factsheet 10 – Section 4 and human rights
- Factsheet 11 – Extra asylum support payments for women and children on Section 95 and Section 4 support
- Factsheet 12 – Section 4 support and legacy cases
- Factsheet 13 – Asylum support for women who are victims of domestic violence'
- Factsheet 14 – Support for pregnant refused asylum seekers
- Factsheet 15 – Section 4 support and families with dependant children
- Factsheet 16 – Getting support for dependants under Section 95 and Section 4 support

REPORTS

- Recent reports from ASAP include:
- No Credibility: UKBA decision making and section 4 support
 - ASAP Destitution Awareness Day report
 - Barriers to support appeals for asylum-seeking women.

You will also find our annual reports on our website.

The 2010/11 annual report has articles on:

- Our full-time duty scheme
- ASAP volunteer experience
- Tribunal successes and litigation
- Our Women's Project.



**CONTACT
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