

# ASAP NEWS - APR 06

Asylum Support Appeals Project

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## Section 4 support and a fresh claim for asylum - case studies

A large number of failed asylum seekers apply for Section 4 (s4) support on the basis that they require support in order to avoid a breach of their rights under the European Convention on Human Rights. In most cases this will be on the basis that they have made a fresh claim for asylum. However, the National Asylum Support Services (NASS) often refuse S4 support on the basis that the fresh representations submitted by the client contain no merit or stand a limited chance of success. In many of these cases NASS have been incorrect to refuse support as many of those refused have gone on to win their appeals at the Asylum Support Adjudicators.

The adjudicators at the ASA and have laid down some useful guidelines about when NASS are entitled to find that information submitted to the Home Office does not constitute a fresh claim for asylum. There are essentially two types of situations where this can happen.

The first type is where the fresh representations contain no details whatsoever. This would be where the solicitor or legal representative has written to the Home Office to say they are making a fresh claim but have included little or no detail about the claim.

The second type is where the fresh representations just repeat information that was included in the original asylum application and, again, contains no new material. This also includes fresh representations that appear to be merely a critique of the original asylum decision or subsequent appeal.

The following two appeals were represented by Asylum Support Appeals Project (ASAP) and illustrate instances where NASS has incorrectly decided what they consider as not constituting a fresh claim.

**Mr A** was refused s4 support on the basis that his fresh representations simply rehearsed material which was previously considered in his asylum claim. His fresh representations centred on the fact that his brother had recently been awarded refugee status on the basis of his ethnicity. The client's original application for asylum was refused as the Home Office did not believe he was a member of the same ethnic group.

The adjudicator allowed the appeal on the basis that this new information represented a material change in the client's circumstances and need to be considered by the Home Office.

**Ms F** was refused s4 support on the basis that the fresh representations she had submitted contained no new substantial information and therefore stood limited chance of success. Ms F's fresh application was based on a recent medical report which shows that she was suffering from both physical and mental health problems and these were more than likely caused by the torture she had suffered in her country of origin. The adjudicator allowed the appeal on the basis that her fresh representations contained new information that was not available to her at the time of her asylum decision or subsequent appeal.

**What should advice agencies do?** When assisting a client to appeal against NASS refusal to award them S4 support on the grounds that their fresh representation contains no merit, it is important to check the following: Do the fresh representations contain any new information? If so, was this information available to the client at the time of his/her asylum claim and subsequent appeal? If the information predates the client's initial asylum refusal and subsequent appeal, is there a good reason why this was not available to the client before now?

In general, information contained in fresh representation would normally need to be specific to the individual involved. However, where the situation in the country of origin has seriously deteriorated, such as in Zimbabwe, it is possible to make fresh representations based on risk to returnees in general.

Please note ASAP does not provide immigration advice. Those considering making a fresh claim should always seek advice from a registered immigration specialist.

**For more information or advice on appealing to the Asylum Support Adjudicators please contact our Advice Line on 020 8684 5972.**

## Next ASAP training - Representing the appellants at the Asylum Support Appeals Tribunal

ASAP is again hosting a two day training course for Refugee Community Organisations and other voluntary sector advice agencies on how to represent the appellants at the Asylum Support Appeals Tribunal. The course is specifically designed for those people who give NASS related advice to asylum seekers.

The course will include a visit to the Asylum Support Adjudicators in order to observe real representation at the ASA. There will also be a mock tribunal hearing where you can use what you have learned and see if you can win the case! The mock tribunal is always the most exciting part of the training, so don't miss it.

The training will take place on 22 and 23 May near East Croydon station, which is easy to reach from Victoria or London Bridge. You need to be ASAP members to attend this course (please note that membership for Refugee Community Organisations is free). Only 8 places are available on the course, so if you are interested please book your place now to avoid disappointment.

If you would like more information, please contact the ASAP on 020 8684 5873 and speak to Gerry or Lisa.



Photos from the Feb training course at Croydon Clocktower

*ASAP can also provide free in-house training sessions or workshops which suites your organisation's needs and requirements. Your organisation needs be a refugee community organisation or voluntary advice agency based in London area which gives advice to asylum*

### Raise money for ASAP while visiting London's legal landmarks

### London Legal Support Trust Sponsored Walk

**Monday 15<sup>th</sup> May 2006  
5:30pm**



London Legal Support Trust is hosting a sponsored walk on 15<sup>th</sup> May 2006 to raise money for London's voluntary legal agencies. This sponsored walk starts at 5:30pm from the Royal Courts of Justice and ends at the Law Society. Last year, over £37,000 was raised which benefited a large number of voluntary legal agencies which are helping the most disadvantaged individuals. ASAP was one of the beneficiaries in 2005 and we would like to raise more money this year. If you want to join a team of ASAP walkers to raise more money to help destitute asylum seekers, please email

[Eiri@asaproject.org.uk](mailto:Eiri@asaproject.org.uk). If you want to sponsor one of our walkers, you can do so on-line at [www.justgiving.com/ASAP](http://www.justgiving.com/ASAP) - it is simple, fast and totally secure. For general information about the work of London Legal Support Trust, please visit their website at [www.londonlegalsupporttrust.org.uk](http://www.londonlegalsupporttrust.org.uk).

## ASAP Duty Scheme - Volunteer's View

Many people know ASAP because of our twice-weekly Duty Scheme at the Asylum Support Adjudicators. These sessions are supported by a group of volunteer solicitors and barristers who give their time and expertise for free to help asylum seekers with their NASS appeals. We have asked Wendy Pettifer, one of the volunteers, to tell us about her experience at the ASA.

*"I have participated in the rota of pro bono advocates at the Asylum Support Adjudicators in East Croydon since its inception in July 2004 twice a month. The rota was initially a tool set up by the Housing and Immigration Group (HIG) to establish the need for such a service which from 2005 has been greatly improved and amplified by the creation of ASAP.*

*Previously a solicitor in private practice working for many years with asylum seekers and since 2004 a supervising solicitor of both trainees on placement and post-graduate students at the College of Law participation in the ASAP scheme is a valuable experience for myself, the clients, the Tribunal and the students.*

*Through the Scheme I maintain and enhance my knowledge of asylum support law in a proactive context. Tribunal staff now welcome our free representation to distraught clients, most of whom cannot speak English. We have about 30 minutes at the Tribunal to read through the documents and interview our clients via telephone interpreters before presenting their case to a legally qualified Adjudicator and very much have to think on our feet.*

*The success rate (including my own) is over 50% and the service to clients who are usually destitute and desperate is invaluable.*

*My most rewarding case is that of Mr. Y who fell victim to the invidious s 9 Asylum and Immigration (Treatment of Claimants') Act 2004. He, his wife and several dependent children were threatened with the withdrawal of both NASS financial support and accommodation when he "came to the end of the asylum road" in spite the fact that immigration solicitors had submitted a fresh claim on his behalf. I obtained evidence from their local Social Services which argued that the possibility of removal of the children from their caring parents contradicted the principle of the Children's Act 1989 that the welfare of children is of paramount importance and the Adjudicator remitted the case back to NASS for fresh consideration. It is unlikely that Mr. Y would have achieved this result if unrepresented.*

*Students and trainees who observe the hearings are shocked and surprised at the harshness of the relevant statutes and several have gone on to do further pro bono work in a variety of legal settings.*

*Currently ASAP staff provide representation 2 days a week with pro bono advocates like myself as back-up. It is hoped that the Scheme can expand into more days and I urge anyone with the knowledge, time and inclination to join in."*

*Wendy Pettifer is Senior Supervising Solicitor at College of Law Legal Advice Centre.*

**We are always looking for more people who can help us with our Duty Scheme. If you are a solicitor or a barrister and would like to volunteer for the ASAP Duty Scheme, please contact ASAP on 020 8684 5873 or email [Eiri@asaproject.org.uk](mailto:Eiri@asaproject.org.uk).**

### ASAP receives more support from the Garden Court Chambers

ASAP was awarded a grant of £10,000 from the Garden Court Chamber's Special Fund towards the cost of telephone interpreters for the ASAP Duty Scheme at the Asylum Support Adjudicators. This is a great news for us especially as we are looking to expand the ASAP Duty Scheme to help more asylum seekers with their asylum support appeals.

ASAP Duty Scheme is run by our Legal Advisors with a lot of help of barristers and other legal practitioners who volunteer to provide free legal advice and representation to asylum seekers who are challenging NASS decision to terminate their housing and welfare support. For the majority of asylum seekers who attend their hearings at the Asylum Support Adjudicators in Croydon, ASAP Duty Scheme is the only avenue through which they can have access to competent legal advice and representation.

The Garden Court Chambers also hosted ASAP's AGM in November 2005. ASAP staff members and Management Committee are very grateful for their continuing support to the organisation.

If you would like to know more about our Duty Scheme or would like to discuss a possible referral, please call ASAP on 020 8684 5873.

### Applying for NASS Support for Immigration Detainees

It is possible for those asylum seekers in detention to apply for NASS support. This includes Section 4 (s4) support for failed asylum seekers. NASS will provide support if they think that the applicants meet their requirements. The following information only applies to those who are detained under immigration powers and not those detained in connection with a criminal matter.

**NASS Policy Bulletin 64** provides guidelines to NASS caseworkers on handling applications for NASS support from detainees.

The key points in NASS Policy Bulletin 64 are as follows:

- Caseworkers must regard applications from detainees as priority 1 cases. (*this means that the application should be dealt with within 48 hours.*)
- Caseworkers should work on the assumption that bail will be granted.
- Caseworkers must be satisfied that an application for bail has been made. (*NB it is possible to be granted Section 4 support pending a bail hearing. However, if the client's representative has details of the bail application it is important to provide NASS with as much details as possible*)
- As detainees are required to live at a specified address, it is vital that NASS provide an address with the minimum of delay to enable a bail hearing to be held. Temporary or emergency addresses should not be used.
- Details of the support package should be forwarded to the detention centre, or prison, before the bail hearing takes place in the event that they are granted bail

NASS may try and refuse support to those in detention on the basis to they are not destitute. However, detention, either in prison or a detention centre, should never be considered as adequate accommodation, a principle which has been upheld by the Asylum Support Adjudicators. See Asylum Support Adjudicator's appeal decision ASA/05/05/9315. Details of this court judgement can be obtained from their website under Reason Statements at [www.asylum-support-adjudicators.org.uk](http://www.asylum-support-adjudicators.org.uk) (continue to the next page)

(*Applying for NASS Support for Immigration Detainees* continued) Where support has been refused, advisers should also argue that failure to provide support is a breach of the asylum seekers right to liberty (Article 5 of the European Convention of Human Rights ECHR) as without a NASS address they are unlikely to be granted bail.

For more information on NASS's policy in relation to those in detention see NASS Policy Bulletin 64 at [http://www.ind.homeoffice.gov.uk/ind/en/home/applying/national\\_asylum\\_support/stakeholders/policy\\_bulletin.html](http://www.ind.homeoffice.gov.uk/ind/en/home/applying/national_asylum_support/stakeholders/policy_bulletin.html)

For more information about the ECHR, or for advice on applying for NASS support from detention, please call ASAP Advice Line on 020 8684 5972.

## Immigration Advice – what you can and can't do

*Some of the organisations that ASAP has spoken to said they were not sure about the differences between immigration advice and asylum support advice. We have asked the Office of the Immigration Services Commissioner to explain what the differences are.*

*"The Office of the Immigration Services Commissioner exists to make sure everyone gets good immigration advice*

Since 2001, it has been against the law to offer immigration advice and services without being approved by the Office of the Immigration Services Commissioner (OISC). The only people who do not need OISC approval are people who are members of a recognised professional body, such as solicitors who are members of the Law Society, or people who have been given special exemption by the Home Secretary, such as publicly funded education institutions.

If you think you give immigration advice and you are not approved by the OISC or another body, you might be breaking the law. The term 'immigration advice' is a very broad one and includes everything from representing someone in court through to telling somebody how to apply or which form they need to fill in.

What you can do, however, is 'signpost'. This means you would not be breaking the law by directing someone to an appropriate source of immigration advice. ***Offering non-immigration related advice is also acceptable. That means it is fine to offer advice on housing, benefits, registering with a doctor or similar topics to anyone, including refugees and asylum seekers.***

If you think you should be regulated by the OISC, you need to fill out an application form giving details about you, your organisation and the kind of advice you intend to provide. The application process is very straightforward and the OISC will offer advice if you need it. You can also attend one of our regular Application Support Seminars where we will explain the whole process and guidance on filling the form in.

If you or somebody you know needs immigration advice, the OISC will not be able to offer advice themselves but will be able to put them in touch with an approved adviser nearby. They can also take complaints about immigration advisers, so if you or someone you know has been badly treated by anyone who has given them immigration advice, whether they are OISC-approved, a member of a recognised professional body or breaking the law by not being approved, then the OISC might be able to help.

To find an adviser, make a complaint about an immigration adviser or find out about applying for regulation, please visit [www.oisc.gov.uk](http://www.oisc.gov.uk), email [info@oisc.gov.uk](mailto:info@oisc.gov.uk) or call 0845 000 0046."



## "My client has an oral hearing at the Asylum Support Adjudicators. What documents should he bring with him?"

Have you ever advised asylum seekers who are about to attend an oral hearing at the Asylum Support Adjudicators in Croydon? ASAP has produced a useful information sheet for your clients which explains what kind of documents he should bring to his hearing, so that he has a best possible chance of winning his appeal. A sample copy is sent out to you together with this newsletter. You are welcome to photocopy this information sheet to give to your clients or if you would like us to send more copies please contact us.

Before an appeal, the Asylum Support Adjudicator sends the appellant (the person who is appealing against NASS decision) *directions*. This document tells you exactly what the appellant needs to provide as evidence and send to the Adjudicators.

There are possibly other documents which the appellant should bring to the hearing, such as letters from people who were supporting the appellant with housing or food but are no longer able to do so or a letter from medical professionals which explain what the appellant's medical conditions are. Each case is different, so it is strongly recommended that you contact ASAP's Advice Line to discuss the case further so that we can give you correct information and advice.

Please do not hesitate to contact ASAP Advice Line on 020 8684 5972 or for non-urgent queries please email us at [advice@asaproject.org.uk](mailto:advice@asaproject.org.uk).

### **Rasul update - "safe route to Iraq"? R (Rasul) v Asylum Support Adjudicators & Secretary of State for the Home Department (CO/8650/2005)**

In the last newsletter we brought you news of a judicial review regarding Section 4 and whether there was a safe route to Iraq. Regulation 3(2)(c) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 (which detail the Section 4 criteria) states that a person will qualify for support if the Secretary of State has the opinion that there is no viable route to their country of origin. Mr Justice Wilkie dismissed the claim for judicial review and held that NASS can only provide support under Regulation 3(2)(c) if there is no viable route in general and were not able to take an opinion as to whether there is a viable route for any particular individual. As a result the Asylum Support Adjudicators were not able to question NASS' decisions under Regulation 3(2)(c) as they relate to overall policy.

Anyone who is advising individuals on whether they qualify for Section 4 support under any of the conditions listed in the Regulations should contact ASAP for advice on 020 8684 5873.

### **WANTED - New ASAP Management Committee Members**

ASAP is looking for more people to join our Management Committee to shape the future of the organisation. We had our Strategy Day in March to discuss how to serve the needs of our client groups better in the next few years and would like to hear from people who share our values and who can help us achieve our aim in this exciting period of development.

ASAP Management Committee meets six times a year in central London, usually early in the morning. We reimburse out-of-pocket expenses, such as travel expenses to attend the meetings. We are particularly keen to encourage people who have experiences of working with / for refugee community organisations to join our Management Committee.

If you would like to find out more about ASAP Management Committee, please contact Eiri on 020 8684 5873 for an informal chat or email [Eiri@asaproject.org.uk](mailto:Eiri@asaproject.org.uk).

## Does your organisation want to know more about asylum support appeals? Let ASAP come to you!

Since June 2005, ASAP staff members have been visiting a number of refugee forums and advice forums in Greater London area to raise awareness of asylum support appeals. We have found that many people know about immigration appeals and where to get immigration advice but relatively little about asylum support appeals.

Given a rising number of (failed) asylum seekers who are destitute and homeless, many refugee community organisations and voluntary sector advice agencies must be dealing with an increasing number of queries regarding asylum seekers' NASS entitlements. We would like to ensure that these organisations understand what asylum support appeals are and how to access ASAP's services where necessary.

ASAP is very happy to visit your organisation to provide more information about asylum support appeals and how ASAP can help you. We can also provide informal workshops for your staff members and volunteers so that more people understand what to do when their clients' NASS support has been terminated or refused.

Organisations such as British Red Cross Refugee Unit, London Detainee Support Group and Merton Asylum Welcome invited us to their volunteers' meetings. As a result their staff members and volunteers had an opportunity to ask many questions about asylum support appeals in a friendly, informal setting. We are happy to visit both large and small groups.

If you would like us to visit you, please speak to Eiri on 020 8684 5873 or email [Eiri@asaproject.org.uk](mailto:Eiri@asaproject.org.uk). We very much look forward to hearing from you.

## Complaining about NASS to NASS

Sometimes, it can be very difficult to sort out your client's problem with NASS. Maybe your client is waiting to receive a response from NASS many weeks or months. Or perhaps you are not happy that they have lost your client's application for support.

Did you know that NASS has its own team which deals with complaints? We understand that this is a new unit which is separate from a general complaints unit at the IND. ASAP is trying to find out further information about this unit's work and has written to them. We will let you know more in our next newsletter if we receive a response from NASS. We are particularly concerned and curious to find out what efforts have been made to ensure that NASS supported asylum seekers can have access to this complaints unit.

In the meantime, if your clients have complaints about NASS you can write to:

**Diversity and Complaints Team, Management Unit, NASS, 10<sup>th</sup> Floor East Wing, Block B Whitgift Centre, 15 Wellesley Road, Croydon CR9 1AT.**

We believe that many asylum seekers might feel reluctant or uncomfortable to complain directly to NASS. Or they might find it difficult to complain in English. Therefore they might need assistance from their advisors to contact this complaints unit.

Don't forget that you can also ask your local MP to write a letter to the Home Secretary or other government departments on your behalf or on your client's behalf. You can find out who your local MP is at [www.locata.co.uk/commons](http://www.locata.co.uk/commons).

If you have complaints about Immigration and Nationality Directorate (IND) staff conduct or administrative failures, you should contact Briefing and Complaints Section, 11<sup>th</sup> Floor West Wing, Block C Whitgift Centre, Wellesley Road, Croydon CR9 1AT.

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## **Free ASAP factsheets**

- No 1: introduction to NASS support
  - No 2: Introduction to Asylum
  - No 3: Making an Appeal to the ASA
  - No 4: After a Negative Decision at the ASA
  - No 5: Section 4 Support for Failed Asylum Seekers
  - No 6: Section 4 Support and Community Activities
  - No 7: Section 9 Withdrawal of Support for Failed Asylum Seeker Families
  - No 8: Breach of Conditions of Asylum support
  - No 9: Introduction to Community Care
  - No 10: The European Convention on Human Rights and The Human Rights Act 1998
  - No 11: Introduction to Judicial Review
- If you would like a copy, please contact us on 020 8684 5873.*

**ASAP Advice Line**  
**020 8684 5972**

If you are advising asylum seekers about their asylum support problems and need help, you can always call our Advice Line. Our Advice Line is open:

**Mon 2pm to 4pm**

**Tue 10am to 12:30pm, 2pm to 4pm**

**Wed 10am to 12:30pm**

**Thu 2pm to 4pm**

**Fri CLOSED**

Our legal advisors are available to answer your queries and help you help your clients. Occasionally we might be able to represent your clients at the hearing in Croydon. Please note that we do not provide immigration advice.

ASAP believes that all asylum seekers have a right to competent, free legal advice and representation on asylum support issues. We run an Advice Line, a duty scheme at the Asylum Support Adjudicator and training courses for refugee community organisations. Please contact us if you need more information:

**Eiri Ohtani - Co-ordinator**

**Eiri@asaproject.org.uk, 020 8684 5873**

**Gerry Hickey - Legal Advice, Representation and Training**

**Gerry@asaproject.org.uk, 020 8684 5874**

**Lisa Woodall - Legal Advice, Representation and Training**

**Lisa@asaproject.org.uk, 020 8684 5875**

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**Asylum Support Appeals Project (ASAP)**

**Cornerstone House, 14 Wills Road, Croydon CR0 2XX**

## **ASAP is supported by:**

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