BULLETIN NO. 4

Asylum Support Bulletin April 2017 (updated May 2017)

ASAP's Asylum Support Bulletins provide an update on asylum support law, policy and practice, report on trends in Home Office and Tribunal decision-making, and share best practice and interesting and useful cases.

ASYLUM SUPPORT NEWS AND TRENDS

IMMIGRATION ACT 2016 UPDATE

The asylum support regulations, pursuant to the Immigration Act 2016, have not yet been published. They had been scheduled to come into force in April 2017. The Home Office has committed to consulting stakeholders and partners (not a public consultation) before the draft regulations go through the affirmative procedure in parliament. The Home Office policy team has not indicated when the consultation might begin, though we expect that this might take place during the summer, with a possible implementation date in early 2018.

ASYLUM SUPPORT RATES FREEZE

Following a review of asylum support rates for the financial year 2016/17, the Home Office has decided not to increase the level of support. The current weekly rate (£36.95 for Section 95 and £35.39 for Section 4) has only been increased by 3p since 2011, and the rate for children was reduced by £16 a week in 2015.

ADDITIONAL SUPPORT POLICY PUBLISHED

On 16 March the Home Office published an application form (ASF2) and policy which allows asylum seekers to apply for payments for any 'exceptional needs' that are not covered by their basic level of Section 95 support, such as journeys to medical appointments. Although the Home Office has long had the power to provide additional payments under Section 96(2) IAA 1999, until now there was no mechanism by which asylum seekers could apply for such payments, other than to write to the Home Office. The creation of this policy and form is the result of persistent pressure from the refugee sector.

ASYLUM SUPPORT TRIBUNAL'S DATABASE OF DECISIONS FINALLY ONLINE!

The long-awaited database of AST decisions is up and running and can be found here: https://www.gov.uk/asylum-support-tribunal-decisions. It is fully searchable and contains a selection of 'reported' and 'landmark' decisions. Landmark cases are those decided by the Principal Judge. Reported cases are those which the Principal Judge considers to be typical or noteworthy. No decisions of the AST are binding. Anybody, including members of the public, can suggest that an AST decision is added to this database. Their request will be considered by the Principal Judge.


Asylum support tribunal decisions

From: Ministry of Justice, HM Courts & Tribunals Service, and First-tier Tribunal (Asylum Support)

Find decisions on appeals against the Home Office heard by the First-tier Tribunal (Asylum Support).

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Category
- Section 4(1) (support for persons who are neither an asylum seeker nor a failed asylum seeker)
- Section 4(2) (support for failed asylum seekers)
- Section 95 (support for asylum seekers)

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Judges

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SM v Secretary of State for the Home Department: AS/12/05/28456
Asylum Support Tribunal decision of Judge Saunders on 25 November 2014.
AS/12/05/28456 Decided: 25 November 2014

AH v Secretary of State for the Home Department: AS/13/07/30183
Asylum Support Tribunal decision of Judge Carter on 31 July 2013.
AS/13/07/30183 Decided: 31 July 2013

AG v Secretary of State for the Home Department: AS/13/09/30435
Asylum Support Tribunal decision of Judge Verity Smith on 4 October 2013.
AS/13/09/30435 Decided: 4 October 2013

MY v Secretary of State for the Home Department: AS/12/10/29033
Asylum Support Tribunal decision of Judge Verity Smith on 31 October 2012.
AS/12/10/29033 Decided: 31 October 2012

GA v Secretary of State for the Home Department: AS/12/10/29002
Asylum Support Tribunal decision of Judge Verity Smith on 26 October 2012.
AS/12/10/29002 Decided: 26 October 2012

AW v Secretary of State for the Home Department: AS/13/03/29636
Asylum Support Tribunal decision of Judge Verity Smith on 26 March 2013.
AS/13/03/29636 Decided: 26 March 2013

ASPEN PAYMENT CARD

A new method of paying asylum support via an ASPEN card has been introduced for everyone receiving asylum support. The card replaces cash payments (Section 95) and Azure card payments (Section 4) with a card that can be used to buy goods in any shop that accepts debit cards and to withdraw cash at cash machines. It was assumed that this would put an end to the deliberately restrictive method of providing Section 4 support. However, it transpires that those in receipt of Section 4 support cannot use their ASPEN card to withdraw cash and can still only use it in selected stores, so it is simply an Azure card by another name. The Home Office's timetable for rolling out the new payment card is the end of May. There have been some issues reported, such as the Home Office claiming it is not able to provide emergency support tokens once the new ASPEN card is sent out, in the event that it is lost or delayed in the post, or isn't working.

ASYLUM SUPPORT ACCOMMODATION SLAMMED IN COMMITTEE REPORT

In January the Home Affairs Select Committee published its report on the state of asylum support accommodation provided by private companies, including G4S and Serco, under the COMPASS contracts. The report includes damning criticism of the long-term use of emergency hotels for initial accommodation, under-staffing and poor standards. Despite these criticisms, the contracts, which were due to end in 2017, have been extended until 2019. However, more money will be given to the providers to be spent on welfare officers, property management and to source properties in new dispersal areas, rather than increasing the number of properties in existing dispersal areas.

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CONTACTING THE HOME OFFICE

The Home Office has confirmed the following lines of communication for asylum support matters, and has promised to update its website to reflect the same.

	Tel	Fax	Email	Postal address
Initial accommodation referrals	0300 123 1690	0870 336 9623	AccommodationGatekeeperTeam@homeoffice.gsi.gov.uk or ASCorrespondence@migranthelpuk.org	
Section 4 appeals correspondence (e.g. responses to directions)		0870 336 9485	section4nationalteam@homeoffice.gsi.gov.uk	Section 4 National Team 1st Floor, Waterside Court, Kirkstall Road, Leeds, LS4 2QB
Section 95 appeals correspondence (e.g. responses to directions)		0870 336 9624	AsylumSupportAssessmentTeam2@homeoffice.gsi.gov.uk	Section 95 Team 1st Floor, Waterside Court Kirkstall Road Leeds, LS 2QB
Asylum support applications and all other asylum support correspondence	0300 123 2235	0870 336 9627	ASCorrespondence@migranthelpuk.org	PO Box 471, Dover, CT16 9FN

DECISIONS OF THE ASYLUM SUPPORT TRIBUNAL (AST)

ATTEMPT TO CONCEAL VISA FRAUD

LANDMARK DECISION, HEARD BY THE PRINCIPAL JUDGE

AS/15/11/34507, 14 July 2016

The appellant was an asylum seeker from Sri Lanka who had been refused Section 95 support because he was not believed to be destitute. He had an outstanding appeal against the refusal of his asylum claim.

He arrived in the UK in August 2014 on a student visa to take a masters degree. He had been granted a visa because he was able to show that he had £20,000 in his bank account to fund his studies. He said this sum was put into his account by his father and returned to him after the visa was granted. He claimed that his father had then transferred the entire amount to him in increments throughout the year and he used this to pay for his fees, maintenance and setting up a small business in Sri Lanka. He said he had nothing left and his father was unable to send any more money. On his application for asylum support he stated that he had worked while studying, but at the appeal he denied this.

In August 2015, halfway through his course, he returned to Sri Lanka for a short visit. While there, he said he was arrested and tortured and that his father had to pay an agent to secure his release and safe passage to the airport. He flew back to the UK and claimed asylum on arrival. He was initially provided with Home Office emergency accommodation but when this was terminated he slept rough, relying on charities for food.

The judge allowed the appeal, finding that he was destitute but that the majority of his evidence was not credible. She did not believe that the £20,000 that was in his bank account at the time of his visa application belonged either to him or his father, suggesting that it was probably a short-term loan from a third party. She did not believe that his father had sent him any money. Instead, she found that he had worked in the UK to support himself and fund his studies. She found that he had fabricated an alternative story to disguise the fact that he had misrepresented his financial position when applying for a visa.

Comment: What was significant is that Principal Judge Storey was careful not to make any findings as to what happened to the appellant during his visit to Sri Lanka, during which time he claimed to have been detained and tortured, stating at para 33 of her decision: "I do not intend to comment upon any evidence that may affect the outcome of his asylum appeal." She also made it clear that "any adverse findings of credibility I make in this decision relate solely to the evidence before me and are not intended to cast doubt on the credibility of his evidence in his asylum appeal".

<< OVERLAP BETWEEN ASYLUM CLAIM AND ASYLUM SUPPORT CLAIM PRESENTS A CONUNDRUM

AS/16/09/35812, 23 September 2016

Reported decision

The appellant, a Ukrainian national, arrived in the UK with her daughter and claimed asylum. She said she had fled domestic violence at the hands of her husband. The Home Office refused her application for Section 95 support on the grounds that she had sufficient funds to support herself and her daughter for more than 14 days and she could sell her jewellery, laptop, phone and the property that she owned in Ukraine, in which her husband still lived. The judge swiftly allowed the appeal, finding that:

1. The Home Office had miscalculated the destitution threshold
2. The personal possessions the Home Office expected the appellant to sell were not assets that could be taken into account. The Home Office's Assessing Destitution policy, which suggests otherwise, is incompatible with the relevant legislation: reg 6 Asylum Support Regs 2000.
3. The property in Ukraine was not an asset that could be realised within 14 days, notwithstanding the question of whether the appellant could reasonably be expected to contact her husband to arrange a sale in light of the domestic violence she alleged.

Comment: The question of whether the appellant should have been expected to sell her house depends, at least in part, on whether her claim to have been a victim of domestic violence is to be believed. This issue was likely to be central to her asylum claim, which was outstanding at the time of the appeal. As the Principal Judge makes plain in AS/15/11/34507 (see page 2 of this bulletin), AST judges should steer well clear of issues that form the basis of an appellant's outstanding asylum claim. However, judge Lewis's decision confronts the fact that it is not always easy or possible and exposes an apparent 'conundrum' arising from the potential overlap in the issues in the appellants' asylum claim and their asylum support claim (see paras 31-33). In addition to the issue of jurisdiction, he points out that the standard of proof in an asylum support claim is actually higher than that applied in an asylum claim. Another unfairness he does not mention is that asylum seekers are entitled to state-funded legal representation for their asylum claim, but not for their asylum support claim.

He suggests two possible approaches that the Home Office could take in relation to this problem:

1. It could wait until a support applicant's asylum claim has been fully determined before deciding whether certain assets are realisable, following the findings of the AIT
2. It could accept the applicant's reason for not being able to realise their assets unless they consider those reasons to be 'manifestly unfounded, hopeless or abusive' applying the same threshold applied to further submissions

ASAP has observed some judges applying the second approach, essentially giving the appellant the benefit of the doubt if their account is broadly plausible. See for example AS/16/06/35518.

About ASAP

ASAP is a small national charity which aims to reduce destitution among asylum seekers by protecting their legal rights to food and shelter. We work with organisations around the UK assisting persons seeking asylum who are in need of support. We also work with people who have been forced to flee their home countries, denied the right to work in the UK and prevented from accessing support. Most come from conflict zones or countries with a well-documented record of human rights abuses yet they can find themselves street homeless in the UK, surviving on charitable donations.

CONTACT ASAP

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