

ASAP NEWS - JAN 07

Asylum Support Appeals Project

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“Failing the Failed” Poor Decision Making Forces Failed Asylum Seekers into Unlawful Destitution

Latest research finds that over 80% of decisions made by NASS which forced failed asylum seekers into destitution contained misapplications and / or misinterpretations of law.

ASAP will publish our latest report “Failing the Failed” on 1 Feb 07 which examines the quality of decision making within NASS. The report highlights a catalogue of errors NASS case workers make when deciding not to provide housing and welfare support to destitute failed asylum seekers, who may be suffering from physical or mental health problems.

Most failed asylum seekers are not entitled to asylum support and expected to leave the UK and return home once they come to the end of the asylum process. Many then find themselves destitute. If for some reason a destitute failed asylum seeker cannot return home immediately, for example if they are waiting for travel documents, have made a fresh claim for asylum or are unable to travel due to illness, NASS are able to provide a limited type of support called Section 4.

The qualifying test for Section 4 support is very strict and many failed asylum seekers are not aware they may be entitled to it. Those who apply for support and are refused are sent a decision letter from NASS which explains why they are not entitled to support.

ASAP looked at 117 negative decisions made by NASS between January and December 2006 and found that over 80% of these decisions either misapplied or incorrectly interpreted the law. ASAP is extremely concerned that support is being denied in this way.

One failed asylum seeker told ASAP:

“When they make decisions, they do not always have all the information. They should keep supporting people. What is the alternative for me? They should offer other types of support especially in the wintertime. I have slept outside in the pouring rain – I had nowhere else to go.”

ASAP believes that NASS should make consistent, clear and accurate decisions in line with their own policy and the law.

Sue Willman, ASAP Chair said *“Every person who is refused support has the right to know exactly why support has been refused in clear terms. Poor decision making takes away the few rights failed asylum seekers have and leaves them homeless and hungry.”*

Please contact ASAP on 020 8684 5873 if you would like a copy of the report.

The Limitations of Section 4 Support: Can we widen section 4 criteria?

Does your organisation work with people from Eritrea, Ethiopia, Palestine, Democratic Republic of Congo, Iraq and Sudan?

ASAP is concerned that there are increasing numbers of destitute 'failed' asylum seekers in the UK who, despite being unable to return to their country of origin, do not qualify for Section 4 support.

Section 4 support is given to failed asylum seekers where the Home Office accepts that there is a temporary barrier to their return. This may be because they are too ill to travel at present, because they have outstanding representations with the Home Office such as fresh claim or judicial review, or where the person has signed up to return with the International Organisation for Migration and are waiting for their travel arrangements to be finalised.

However, the criteria for Section 4 are extremely narrow and do not take into account the many other practical reasons why asylum seekers, who have reached the end of the process, are unable to leave the UK and return.

For example there are many 'failed' asylum seekers in the UK who are effectively stateless because there is no country that is willing to accept them as their national. This may be because they have resided in more than one country since their birth and have been unable to obtain nationality in these countries. This also includes individuals who have been exiled from their country of origin or who have grown up in refugee camps.

A similar situation exists for those asylum seekers whose nationality is in dispute. Again this group may face difficulties getting an embassy to recognise them as their national and to provide them with the documents they need to return.

However, the most common reason why 'failed' asylum seekers cannot return is because they can not obtain the necessary travel documents they need to re-enter their countries. In many cases their embassies are either unable or unwilling to provide them with these documents. This may be because the embassy requires proof which they are unable to obtain, such as a national ID card or an original birth certificate. With no chance of obtaining these supporting documents many will end up being stranded in the UK with no support for a very long time.

ASAP believes that the Home Office should consider extending the S4 criteria to include 'failed' asylum seekers who, for the practical reasons outlined above and through no fault of their own, are unable to leave the UK.

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If your organisation is working with individuals who are facing the problems listed here, ASAP would like to hear from you. ASAP is trying to collect relevant information and would like to find out ways to widen scope of Section 4 support for failed asylum seekers. We are particularly interested in hearing from community groups supporting nationals from Eritrea, Ethiopia, Palestine, Democratic Republic of Congo, Iraq and Sudan.

Please contact Gerry on 020 8684 5873 or at Gerry@asaproject.org.uk

ASAP training sessions for member organisations

ASAP are offering the following training sessions for our member organisations.

Wed 31 January 2007 / Wed 7 February 2007

Observing NASS Appeals at the Asylum Support Adjudicators (ASA)

We are repeating the same session on 31 Jan and 7 Feb.

Wed 21 February 2007

**Support Options for Failed Asylum Seekers (Introduction to NASS Support)
(this course is also available to organisations outside London as well)**

Session 1: 9.30 - 12.30 (registration from 9.15)

Session 2: 1.30 - 4.30 (registration from 1.15)

We are repeating the same session in the morning and in the afternoon.

Wed 14 March 2007

Making a Paper Appeal to the ASA

“**Observing NASS Appeals at the Asylum Support Adjudicators (ASA)**” is ideal for member organisations who want to find out how NASS appeals are dealt with at the court. We are hoping that participating organisations will gain first-hand knowledge of what happens during NASS appeals.

“**Support Options for Failed Asylum Seekers**” is ideal for those working with destitute asylum seekers. It will mainly focus on Section 4 support but will also discuss support from Social Services and who may qualify for Social Services support.

“**Making a Paper Appeal to the ASA**” is ideal for experienced advisors who do not have time to go to the court in Croydon, but would like to represent their clients on paper during their NASS paper appeal hearings.

Please note that our training courses are only open to members. For information on how to become a member please contact us on 020 8684 5873.

A fair hearing for destitute asylum seekers? ASAP's Destitution Awareness Week 4 – 8 December 2006

ASAP's Destitution Awareness Week took place between 4 and 8 December 2006, to raise awareness of the difficulties destitute asylum seekers face when appealing against NASS decisions.

Every day during the week, ASAP provided free legal advice representation to every destitute asylum seeker who had an appeal hearing at the Asylum Support Adjudicators in Croydon. Eight volunteer barristers generously donated their time to support this initiative. Normally, ASAP can do this only twice a week.

Of the total of 13 appeal hearings which took place during the week, ASAP represented 10 people and advised 2 people. 1 person declined our service. 50% of the cases we represented were successful and as a result five destitute asylum seekers finally got their NASS support.

It is important to remember that these five people should have been given their housing and benefit support when they initially applied for support. However, they were left destitute because NASS wrongly refused to support them. They successfully exercised their legal rights to challenge wrong NASS decisions in the court with the help of ASAP.

An error in a NASS decision can mean a vulnerable person having to sleep on the street with no food. ASAP believes it is unreasonable to expect asylum seekers to represent themselves in court.

During the week, ASAP also interviewed some of the destitute asylum seekers who came to the court. One of them was Helen (not her real name). Her story is printed on the next page.

People like Helen needs competent legal advice and representation during NASS appeal hearings. Would your organisation like to know more about how to represent destitute asylum seekers at the court, so that they can get support from NASS?

ASAP's Legal Advisors are inviting our member organisations to observe NASS appeal hearings in Croydon on 31 January and 7 February 07 to learn more about NASS appeals. If you are interested in attending, please call us on 020 8684 5873.

Helen's story : Helen is a "failed" asylum seeker from Africa. She is in her mid 50s. Her section 4 application was refused and she was appealing against the decision. During the appeal hearing, the judge found that Helen might in fact qualify for section 95 support because of her outstanding asylum claim. One of ASAP's Legal Advisor assisted her on the day of her hearing.

"I have been destitute since July 2005. I have had help from the Red Cross, churches, friends and day centres. Without support, I can't rest properly.

I am restricted all the time. I have problems eating properly – I can't really eat what I need such as fruit and vegetables. I have to eat anything I am given. I have health problems, swollen feet, a bad throat and a cough I cannot get rid of, because I can't rest properly."

We asked her how she found out about section 4 support and what happened when she applied for support.

"My solicitor wrote to the Refugee Council and found out about section 4. Refugee Council helped me to apply. Because I had help, it was not too difficult to apply.

I cried when I received the response from NASS (refusal letter). I needed a place to stay and I was lost. I thought, now what do I do?"

Helen did not know about asylum support appeals until she received a refusal letter from NASS. She said;

"(Only 3 days to complete the appeal form) is too fast. I needed more time to get evidence together, needed to get support. They need to give people more time."

Helen also said that she did not have enough time to respond to the directions from the court. She summarised her experience of the NASS appeal system and the current government policy on asylum support as follows.

"When they make decisions, they do not always have all the information. They should keep supporting people. What is the alternative for me? They should offer other types of support especially in the wintertime. I have slept outside in the pouring rain – I had nowhere else to go."

Helen's appeal hearing took 2.5 hours. The ASAP Advisor and British Red Cross spent the next few days talking to NASS trying to get Helen into emergency accommodation that she is legally entitled to.

Helen appeared very exhausted on the day and was very weak because had not eaten properly for a long time. She fell asleep a couple of times in the court building and also while speaking to the Advisor.

Responding to Directions from the ASA

ASAP has been informed by the Asylum Support Adjudicators that many asylum seekers attend their appeal hearings without having responded to Directions. This can disadvantage asylum seekers' chance of getting support.

Directions are sent to the person making an appeal (asylum seeker) before the hearing and list types of evidence the asylum seeker should submit to the Adjudicator. They are also sent to NASS who also have to provide evidence to prove their point.

It appears that while many asylum seekers are helped by advice agencies and RCOs to fill in Notice of Appeal form, not everyone is getting help when responding to Directions. According to the Adjudicators, many asylum seekers said in the court that their representatives (advice agencies and RCOs who are helping them) did not explain to them what Directions are.

It is also possible that many asylum seekers who make an appeal are already destitute and have no fixed address or telephone number, so advice agencies and RCOs find it difficult to get in touch to help them with their Directions.

The Adjudicators have therefore produced a leaflet which says, in 16 community languages, "Important Information - please read. This letter is from the Asylum Support Adjudicators and is very important. If you cannot read English you will need to get it translated as a matter of urgency". This leaflet is sent with Directions so that asylum seekers are alerted to the importance of understanding and responding to Directions.

If you want to help your clients respond to Directions but do not know how to do it, please contact ASAP's Advice Line on 020 8684 5972 for advice and information.

What can advice agencies do to reduce destitution of failed asylum seekers? Join London Destitution Advice Network

The recent report by Refugee Action, *Destitution Trap*, highlighted that many failed asylum seekers are still not able to access accurate information and advice about Section 4 and other support which might be available to them.

On 24 January 2007, 13 London based advice agencies are going to meet to discuss how to respond to this situation using existing resources and expertise in the advice sector. This network, provisionally called London Destitution Advice Network, will seek ways to increase the take up of Section 4 support from NASS and community care support from the social services by setting up a good referral mechanism in Greater London and sharing good practice and up-to-date asylum support information.

If your organisation would like to join, please contact Eiri@asaproject.org.uk for more information. We are particularly keen to hear from advice agencies in west London and South West and South East of London to ensure a good geographical spread of the participants.

Section 9 and fresh claims - what has happened to those families involved in Section 9 pilot exercise?

Many will remember Section 9. In 2005, Section 9 was piloted in the UK and affected 116 families. Many of these families either lost their NASS support and started to be supported by Social Services or simply disappeared. Only 1 family actually left the UK following the removal of their NASS support under Section 9.

Section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004 allows NASS to withdraw support from failed asylum seeking families, with dependent children, who are judged as not taking steps to voluntarily leave the UK. This new legislation came into force on 1 Dec 2004.

Although the Section 9 pilot exercise finished a long time ago, ASAP has recently been involved in 2 cases where families who lost their support under Section 9 have now made a fresh claim for asylum. Generally, failed asylum seekers who make a fresh claim are entitled to Section 4 support however failed asylum seekers with families usually remain on full asylum support (Section 95) until they leave the UK.

The question was: Should a family who have made a fresh claim who had their support withdrawn be entitled to support and if so under Section 4 or Section 95?

ASAP's position is that a fresh claim for asylum re-activates a family's right to full asylum support under Section 95. This is because a failed asylum seeker with family remains entitled to Section 95 support until they leave the UK. Section 9 does not change this but *excludes* the family from support if they have not taken steps to leave the UK and do not have a reasonable excuse for not doing so. By making a fresh claim, the family once again has a reasonable excuse not to leave the UK therefore the Section 9 decision can no longer be valid and the exclusion from support should be lifted.

ASAP did not get the opportunity to test this theory at the Asylum Support Adjudicators as NASS withdrew both cases prior to the hearing and provided the families concerned with support under Section 95. ASAP were not informed the reasons NASS eventually decided to grant the families support but believe that their decision demonstrates that making a fresh claim does lead to any Section 9 decision becoming invalid.

ASAP has heard nothing further about Section 9 since the pilot ended and since then the law has been changed to make it possible for Section 9 to be removed from the asylum legislation altogether. ASAP would encourage this as Section 9 has clearly not been a success and many families have been made destitute in the process.

If you need further information on this issue, please contact us on 020 8684 5873.

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, you can ring us on 020 8684 5874 or download them from our website which is www.assproject.org.uk

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 aims to reduce destitution of asylum seekers in the UK by protecting their legal rights to food and shelter. We believe 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.

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