

What should happen when the Home Office withdraws from an asylum support appeal

This is a briefing note on what should happen when the Home Office withdraws from an asylum support appeal. It looks at the relevant Home Office policy on withdrawals and the asylum support Tribunal's regulations and practice in this area.

1. Sometimes the Home Office withdraws a decision to discontinue or refuse asylum support in the run up to an asylum support hearing. This can leave clients in limbo as they wait to hear what the Home Office is going to do next on their case.
2. It is particularly difficult for those clients who have had a refusal of support (rather than a discontinuation) because they remain without support while waiting for the Home Office to make a new decision on their case. And they have been denied the opportunity to challenge the original decision in front of an independent judge.
3. There is a Home Office policy which explains the procedure that the Home Office should follow when it wants to withdraw from an appeal. It appears to have been designed to prevent clients from being left in limbo as a result of the withdrawal.
4. You can find it at Chapter 6 of the [Asylum Support: Policy Bulletin Instructions](#)
5. In practice, the Home Office does not always follow this policy and you may need to remind them of its existence.

What does the Home Office policy say on withdrawals?

6. If the Home Office withdraw their decision BEFORE 12noon on the day prior to the hearing, they should:
 - Draft a new decision letter which states that the previous decision has been withdrawn and which contains the new decision.
 - Send this letter by first class post and/or fax to the appellant and their representative
 - Fax a withdrawal request to the asylum support Tribunal and send them a copy of the new decision
 - Arrange or maintain support if the appellant has now been assessed as being eligible.
7. If the Home Office withdraw their decision AFTER 12noon on the day before the hearing:
 - A Home Office Presenting Officer must go into the hearing and ask the judge to allow them to withdraw from the appeal

- The judge should only allow this if:
 - The Home Office confirms the withdrawal in writing AND confirms in writing that the appellant will be granted support immediately or,
 - The Home Office produces a new, written decision which refuses or discontinues support AND the appellant agrees that the hearing can proceed against the new decision or,
 - The Home Office produces a new, written decision which refuses or discontinues support AND the appellant does not agree to the hearing processing. In which case, the Home Office must consent to an adjournment of the hearing while the appellant prepares their case. Support must continue until the new hearing date in discontinuation cases.

What is the Tribunal position on Home Office withdrawals?

8. [The Tribunal Procedure rules](#) (which provide the statutory framework for the legal powers of the Tribunal) provide very little in the way of protection for appellants when the Home Office withdraws before the hearing.
9. Rule 17 of the Tribunal rules states that, once a party to the appeal provides written notice of withdrawal from the appeal or states this orally at an appeal itself, the appeal is at an end. The consent of the Tribunal to the withdrawal is not required and, from that moment, the Tribunal has no role to play in the case.
10. So, in effect, the Home Office's policy on withdrawals (rather than the powers of the Tribunal itself) provides the greatest safeguards for clients in these situations, especially if the withdrawal happens before the day of the hearing.
11. The Tribunal's position is that while they recommend that the Home Office follows the procedure set out in Chapter 6 of the Policy Bulletins Instruction to ensure that the appeals procedure is fair for appellants, the Tribunal has no power to enforce compliance. This means that the Home Office procedure for withdrawals, at whichever stage they occur, is unenforceable by Tribunal judges.

What can I do to help my client if the Home Office withdraws from an appeal?

12. You should familiarise yourself with the Home Office policy mentioned above and bring it to the attention of the Home Office in cases where they have withdrawn from an appeal and not immediately issued a new decision. Although the Tribunal has no power to compel the Home Office to comply with its policy, it is reasonable to expect the Home Office to act fairly and adhere to it.
13. If they continue to ignore their own policy after having been chased, and all possible information provided to them, and they are still delaying on making the further decision, the only remedy is

judicial review. Therefore the case could be referred to a solicitor specialising in asylum support. It is likely that a solicitor's 'pre-action protocol' letter would lead to a new decision being issued.

Our telephone advice line:

If you still have questions or need further information and advice after reading this briefing, please contact our advice line on 020 7729 3042, which is open Mondays, Wednesdays and Fridays from 2pm to 4pm.

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