

Asylum Support Bulletin December 2015

Welcome to the first of ASAP's quarterly Asylum Support Bulletins. These bulletins provide an update on asylum support policy and practice, report on trends in Home Office and Tribunal decision-making, suggest strategies for strong asylum support applications and appeals, and share interesting and useful cases.

1. REFUGEE ACTION CHOICES PROGRAMME CLOSED

On 1 December 2015 Refugee Action stopped delivered its Choices Assisted Voluntary Return Programme (AVR). AVR is has now been taken 'in-house' and so all enquiries should be directed to:

Home Office AVR helpline
Tel: 020 8196 5535
Open Mon-Fri 9am to 4.30pm.

2. SECTION 4 DECISION-MAKERS PICK UP THE PACE

Home Office decisions to refuse and terminate s4 support are set to increase to 80 to 100 per week until at least April 2016. Don't forget that before the Immigration Bill comes into force there is a right of appeal against these decisions so if you think your client is still eligible for support you should appeal while you still can!

3. SECTION 95 SUPPORT REFUSED UNDER SECTION 57 – RIGHT OF APPEAL?

You may have noticed the s95 team using s57 Nationality and Immigration Act 2002 more widely in recent months. s57 can be used to refuse applications for s95 support, without a right of appeal, on the basis that the applicant has failed to provide complete information or cooperate with enquiries.

At ASAP, we have represented a handful of clients who have appealed these decisions, despite being told that they cannot, and in many cases have won. The appeals that succeed are those where the Home Office purports to refuse support because the information the applicant has provided is

incomplete but their decision letter reveals that the real reason for their refusal was that they did not find the evidence to be credible or reliable. If your client does receive a s57 decision it is worth interrogating the reasons given in the decision letter and any earlier correspondence and considering the way in which the Home Office has engaged with the destitution evidence. You may still be able to appeal.

Please also read our s57 briefing note, available on the [factsheets and briefing notes section](#) on our website.

4. ADMINISTRATIVE CLOSURE' OF SECTION 4 CASE – RIGHT OF APPEAL?

Another Home Office tactic to terminate asylum support without a right of appeal is to 'administratively close' s4 support cases. Members of our network have reported that when their clients' s4 support has been stopped following the refusal of their further representations their case has been administratively closed without a right of appeal.

The power to administratively close a case can be used in limited circumstances (see pp103-10, [Section 4 Policy Instruction](#)). These are: when someone receiving s4 support has absconded, failed to take up an offer of accommodation or failed to comply with requests for information. Administrative closure cannot be used when the Home Office simply take the view that the individual is no longer eligible for support.

If your client receives a letter closing their s4 case purely on the basis that they are no longer considered eligible for support but you think they still are,

they should appeal whether or not their decision letter advises them to.

5. WHAT HAPPENS WHEN THE HOME OFFICE WITHDRAWS FROM AN APPEAL?

When the Home Office withdraws their decision before an appeal hearing it is usually cause for a sigh of relief. Either your client is being awarded support, or if the decision to refuse or stop support is being re-made for different reasons, then they have more time to gather evidence. But when an appeal is withdrawn on the day of the hearing, the anxiety of having to go to court is often replaced with a new anxiety: is the new decision positive or negative and when will support be provided?

Our clients often leave the Asylum Support Tribunal without a new decision in their hand, extending their uncertainty and, in some cases, their destitution. This should not be happening.

Section 6.5 of the [Asylum Support Appeals Policy](#) is very clear on the steps that asylum support caseworkers should follow after a withdrawal, but we find that they are rarely applied in practice. The policy says that a new decision 'must' be issued 'immediately' and, if positive, support must be provided.

Alternatively, if a new decision is negative and the appeal was withdrawn after 12 noon the day before the hearing then the appellant should be given the opportunity to go ahead with the appeal hearing at the originally scheduled time or have it adjourned. They should certainly not have to wait several days, or even weeks, for a new decision and have to start the appeal process again.

To find out how to respond when this happens please read our briefing note on withdrawals, available on the [factsheets and briefing notes section](#) on our website.

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<< 6. INTENTIONAL HOMELESSNESS AND INTENTIONAL DEPRIVATION OF CAPITAL

These two phrases may be familiar from the world of welfare benefits and housing law, but we rarely see them in an asylum support context. This is because there is no statutory basis for importing these concepts. Nonetheless, they seem to be creeping into asylum support decision-making. It is important to know how to deal with them.

Intentional homelessness

The intentional homelessness argument employed by the Home Office is that if the support applicant's landlord is seeking possession of the property they are not destitute until the bailiffs actually remove them. While this may be true in homelessness law, asylum support law applies a different set of criteria to the assessment of whether accommodation is adequate and available. These can be found in

reg 8 Asylum Support Regulations 2000.

These regulations say that in deciding whether someone is destitute the Home Office must consider an exhaustive list of factors including the affordability of accommodation and whether it is reasonable to expect them to continue

to reside there. Their legal right to remain in the property does not appear in this list and is therefore not a relevant consideration for asylum support purposes. Therefore, if your client is in rent arrears and is facing eviction, their accommodation is arguably not adequate irrespective of what stage of the eviction process they are at.

Intentional deprivation of capital

The Home Office may accuse your client of spending their money too quickly and on luxury items to become eligible for asylum support sooner than if they were spending it only on essentials. Quite apart from the implausibility of the suggestion that anyone would be eager to start living on the pitiful rate of asylum support, there are no laws restricting the way in which an asylum seeker can spend their money. Nonetheless, spending patterns can be taken into account when assessing destitution for the reasons outlined below.

Fundamentally the destitution test is forward-looking, concentrating on funds available for the next 14 days. Indeed, the Home Office's own [Assessing Destitution](#) policy acknowledges that funds already spent can only be taken into account if they can be recovered. So if the money has been spent and it can't

be refunded then only question the Home Office should be concerned with is how much money the applicant has left and whether this is enough to survive on for the next 14 days. Having said that, there are circumstances in which spending patterns are legitimately relevant to an assessment of destitution. For example:

- If someone is spending money only on luxury items and not on essentials then Home Office are likely to conclude that they have another source of income or support that they are making use of to buy essentials and will question why that cannot continue.
- If large sums of money have been withdrawn from their bank account without evidence of how it has been spent, it can reasonably be assumed still to be in their possession.
- If money has been spent on an expensive item, such as jewellery (if when sold would raise more than £1000) then they would be expected to sell this and use the money to live on.
- Someone who knows that their source of support is about to come to an end is not likely to spend excessively, so if they do, this may adversely affect the credibility of their claim that their source of support is about to stop.

7. ASYLUM SUPPORT TRIBUNAL DECISIONS

Authority on s4 and Article 8 August 2015 AS/14/11/32141

Reported decision of the Principal Tribunal Judge (PTJ)

The appellant was a refused asylum seeker who had applied for leave to remain on the basis of her private and family life (Article 8 ECHR). Her application had been refused and she had no other immigration matters outstanding. The appeal was dismissed. However, the PTJ used this case to express her views on two important questions.

Q1: Should someone with an outstanding Article 8 application be expected to leave

the UK to avoid destitution?

A1: Her answer was no, provided the application is not 'obviously hopeless or abusive'. This means that someone in this situation is eligible for s4 support.

Q2: If someone says they are preparing further submissions, are they entitled to s4 support before they submit them?

A2: Her answer was:

'I cannot conceive of a situation where the mere assertion that further submissions are in the process of being lodged will be sufficient' (para 20). There may be "exceptional circumstances" where support is required before further submissions are lodged, 'for example where an appellant has attempted to lodge the further submissions without success, through no

fault of their own [...] However, this is likely to be rare.'

Comment: In our experience some appeals for people preparing fresh claims are successful, notwithstanding the PTJ's comment in this case. The appeals that succeed benefit from either a copy of the further submissions that are about to be submitted or evidence from the appellant's immigration solicitor detailing what the further submissions are based on, what is new about them, why they have merit and when they will be submitted, ideally with an appointment booked at the Further Submissions Unit.

NB: Strictly speaking, decisions of the PTJ are not binding but are usually followed by other judges.

BULLETIN NO. 1

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◀ Medically able to travel but not able to arrange voluntary return 14 September 2015 AS/15/05/33235

The appellant was a refused asylum seeker from Zimbabwe with no outstanding immigration matters. Her s4 support was being terminated because, in the view of the Home Office, there was no barrier to her leaving the UK to avoid destitution. In support of her appeal she provided evidence from her GP and from a mental health nurse confirming that she suffered from HIV and psychiatric problems and that she had attempted suicide 6 months ago. These letters had not been considered by the Home Office's medical adviser. However, they did not indicate that she was medically unable to travel to Zimbabwe. Nonetheless, the judge recognised that there was 'a significant question mark over whether [she] would

be able to make such arrangements to quit the UK on her own.' He sent the case back to the Home Office and posed seven questions:

1. Is she medically able to travel?
2. If not, would she be able to travel with on-flight assistance such as a medical escort provided by the Home Office?
3. If she can leave the UK, but only with on-flight medical assistance:
 - a) Is this available on both enforced removal flights and voluntary return flights?
 - b) Is she expected to arrange this medical assistance herself?
4. If she is expected to arrange her own voluntary return with medical assistance, does the Home Office consider her capable of doing this?
5. If the Home Office considers special medical assistance to be necessary and only they are able to arrange it but they do not have any imminent plans to do so,

mightn't the appellant be eligible for s4 support until they do?

6. If the Home Office has no plans to remove her from the UK and expects her to return voluntarily, would it not breach her human rights to leave her destitute until she has done this, given her particular vulnerabilities?
7. Could s4 support be provided on the basis that she is taking all reasonable steps to leave the UK, and how would her mental health difficulties affect the definition of what steps are considered reasonable?

Comment: This appeal highlights the importance of asking medical practitioners to give an opinion on a client's ability to undertake voluntary return. Note that this decision was heard in the AST and so is not binding on other judges – not all take this approach to medical appeals.

8. HIGH COURT DECISIONS

Dispersal of father away from son breached right to family life and does not promote the child's welfare *MG v SSHD [2015] EWHC 3142 (Admin)*

MG, an asylum seeker on s95 support, issued a judicial review challenge of the Home Office's refusal of his request to be accommodated closer to his two year-old son. He also challenged their refusal to provide travel expenses to allow him to visit him regularly. MG was living in s95

accommodation near Portsmouth, while his son lived with his ex-partner in Canterbury. They were 130 miles and a 3¾ hour train journey apart. He could not afford the return fare of £13.55 so could not have meaningful contact with his son.

The Home Office argued that it had tried to arrange suitable accommodation nearer to Portsmouth but none was available. MG argued that by preventing him from seeing his son the Secretary of State (SS) had breached his Article 8 right to a family life and had failed in her duty under s55, Borders, Citizenship and Immigration Act 2009 to 'have regard to

the need to safeguard and promote the welfare of children in the UK'. The judge found that the SS's interference with MG's family life in refusing to re-locate him could have been justified if they had provided travel expenses to allow regular visits instead. However, their failure to grant travel expenses was unlawful because 'section 55 requires the welfare of the child not simply to be safeguarded but also promoted [...] in the form of facilitating contact with his father'. The judge ordered that reasonable costs be made available to MG to enable him to visit his son at least fortnightly.

9. SUMMARY OF ASAP'S QUARTERLY STATISTICS

- The UKVI has pursued its plan to cut the numbers of people on asylum support, leading to a steep increase in the numbers of appeals in this financial year. They are doing this by focusing on determining outstanding further submissions and then discontinuing s4 support.
- The number of appeals listed has almost doubled compared to same period last year.

- Our duty scheme has therefore continued to help increasing numbers of people.
- Just over half of appeals in this quarter have related to fresh claims. This is consistent with the last quarter and the Home Office exercise described above.
- Referrals to the project are at record

- levels and have more than doubled compared with this period last year. We are continuing to meet the vast majority of referrals (90%).
- Appeals are slightly more likely to have a positive outcome than in the same period last year.

The full report is available on our website. ASAP's factsheets and briefing notes on asylum support law can also be found on our website, www.asaproject.org.uk ASAP's advice line is open Mon, Wed and Fri 2-4pm: **020 3716 0283**